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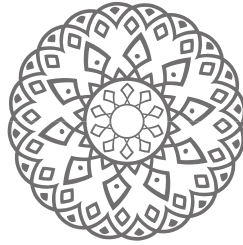
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CONCEPTUALIZATION OF ECONOMIC RIGHT FOR SMALL TRADERS AT TRADITIONAL MARKET IN INDONESIA

Mustapa Khamal Rokan

Abstrak: Kekuatan perdagangan perusahaan transnasional membuat tantangan hak asasi manusia di Indonesia. Terdapat banyak pedagang kecil telah terpinggirkan akibat kehadiran pasar modern. Artikel ini mengkonseptualisasikan hak pedagang kecil terhadap pasar yang adil (tidak dimonopoli) dengan mengambil kasus pedagang pasar ritel tradisional. Tulisan ini menggunakan metode penelitian kualitatif dengan pendekatan normatif. Studi ini menunjukkan bahwa hukum tentang pasar Indonesia belum optimal untuk melindungi dan mempertahankan pasar tradisional Indonesia sebagai hak ekonomi pedagang. Instrumen hukum terutama hukum hak asasi manusia dan hukum tentang pasar harus dirubah dan diamandemen untuk melindungi kelompok terpinggirkan seperti pedagang di pasar tradisional terutama tentang kebijakan kepala daerah untuk melindungi pasar tradisional.

Kata kunci: hak-hak ekonomi, perusahaan transnasional, pedagang kecil

Abstract: Transnational corporations trading power has been challenged human right condition in Indonesia. There are many small trader (read: traditional market) have been marginalized. This paper conceptualize right of small traders to justice market by means seeing traditional market cases. This paper is using qualitative method research by statute approach and also use primair data at the field by means interview trader at tradition market. This study shows that Indonesian law market doesn't opimize yet to protect and maintain traditional market Indonesia. The regulations give the local leader to make the policy about it. Indonesian law instrument especial human right law and law of market must be up dated to maintain the vulnarable group like traders at traditional market.

Keywords: economics right, transnational corporations, small trader

ملخص: فان القوى التجارية للشركات الخارجية العالمية تحتل تحديات ومعوقات تجاه الحقوق الانسانية باندونيسيا، كما ينحى عدد كبير من المحلات والشركات التجارية الصغيرة المحلية بسبب وجود التسويق الحديث المعاصر. كانت هذه المقالة بمثابة التنظير والتععيد لحقوق التجار المحليين الصغار ضمن التسويق المنصف بدون السيطرة والهيمنة السلبية من خلال قضية تجار الاسواق التقليدية. تظهر هذه المقالة بان القانون الوضعى الوطنى لم يستكمل تنفيذه وفعاليته لأجل حماية والحفاظ على التسويق التقليدي القديم. ومن هذا المنطلق يتطلب تعديل و تجديد القانون الوضعى المذكور من اجل رعاية حقوق التسويق المحلي التقليدي الذي تم التباعد عنه وبصفة خاصة فيما يتعلق بقرارات رئاسة المنطقة والمحافظات والأقاليم.

الكلمات المفتاحية: حقوق الإقتصاد، الشركة القومية، التجار العاميين

Introduction

Rapid development of big retail company (hereinafter referred to as modern retailer market) whether by domestic company as well as by transnational company has made problem related to small retailers with their activities in small retail market (traditional market)/small stores (hereinafter referred to as traditional retail market). Traditional retail market activities are economic activities being institutionalized since human existence. The presence and development of modern retailer has effect on marginalizing and shutting-off traditional retailer.

Such condition also occurred in Indonesia. Traditional retailer experienced difficulties to acquire business access as they have since long time. Economic access for traditional retailer has been marginalized due inability to compete with modern retailers managed by modern management and technology. This condition is unfair market situation and may infringe economic right of traditional retailer, especially for countries which are not tightly regulating and protecting their trades.

Discussion on economic right of small retailer is important due to trade globalization and liberalization has taken place on entire world. This article will discuss issue regarding retail trading in globalization and big companies expansion including transnational corporation in Indonesia. Further, this article will describe concept of economic right of traditional retailers who are always marginalized by modern retailer activities. Referred to Indonesia law, the author will describe various rules and regulation related to trading in Indonesia, from Basic Constitution (Basic Constitution 1945), Law, Presidential Decree, and Regional Regulation (especially Regional Regulation of Jakarta Capital City). Finally this article will describe objective condition of traditional retail market in order to satisfy economic right of small retailers in Indonesia and some recommendations.

Modern Retail Market in Globalization Era

According to Indonesian Law references, big company means modern stores with self service system, selling various type of goods on retail basis in the form of Minimarket, Supermarket, Department

Store, Hypermarket as well as wholesaler in the form of Grocery and come from domestic companies and majority come from overseas (transnational companies).

Transnational corporation defined as “transnational corporation refer to corporation with affiliated business operation in more than one country (Werner Feld, 1972: 901. Barbara A. Frey, 2003). The United Nations Centre on Transnational Corporations defines transnational corporation as “...enterprises irrespective of their country of origin and their ownership, including private, public or mixed, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operate under a system of decision making, permitting coherent policies and a common strategy through one or more decision-making centres, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge, resources and responsibilities with the others (Jennifer Westaway, 2012:65. Peter Fischer 1985:115).

Business activities and expansion of transnational corporation has entered emerging countries such as Indonesia and others likewise (IFPRI 2008: 5). In retail trading field, expansion of transnational retail corporation divided into three waves. First wave is take-off phase of supermarket which is occurred since beginning until mid of 1990's. Countries within this group are South America's countries and East Asia (except China and Japan), North and Mid Europe, Baltic and South African Countries (Reardon, Thomas and Julio A. Berdegue, 2002:5). Second wave are Countries such as Mexico and Southeast Asia, Central and South America and Central Europe countries. In the third-wave countries, the supermarket revolution started in the late 1990s or early 2000s, reaching about 5–20 percent of national food retail today. These areas include parts of eastern and southern Africa, some countries in Central and South America, “transition” East Asia (China and Vietnam), Russia, and India (IFPRI 2008:5). In 2006 there were seventy-seven thousand transnational corporation across the globe, with an estimated 770,000 subsidiaries and millions of suppliers, and operating in more countries than ever before (Ruggie 2012:5).

Huge expansion by transnational corporation in globalization

era has made new relationship between state and market. Business activities and expansion of transnational corporation has challenged state's power and market in developing countries. In modern world, there is intense correlation between state and market as political and economic institution, therefore question comes up that how state political process has affected wealth distribution? (Mas'oeed 2001:15). In practice, existence of transnational corporation has two faces, one side to bring benefit for national development and the other side as a tool for exploitation. These two sides are describing transnational corporation activities in developing countries (Gilpin 2002:5, Frieden 2006:470).

According to some researchers that there is significant change from *state-dominated* toward *market-dominated*. Humanities with their argumentation have been changing rapidly toward political economy without boundaries (Hicks 1998:8). Deregulation and other reformation has reduced state's role in economic activities. Many people believed that market will become most important mechanism in determining domestic and international economy especially in international relation. In an integrated globalization, nation-state will become acronymism and deterioration situation (Gilpin 2002).

Declining role of nation-state will become prelude toward global economy characterized by trading without boundaries, financial flow in global scale and international activities of multination corporation. Trading without boundaries and financial flow are done by signing series of agreements between states or agreement between state and regional and international organization. Developed countries are very dominating agreements related to economic issues (Juwana 2001:3) as consequence developing countries often helpless exercising their economic authorities in their own countries. Developed countries economic interests are more dominating international law. International agreements regarding economic issues are accommodating principles of the developed countries (Juwana 2001:3).

Experts concern regarding change from state-dominated toward market-dominated are prevails in Indonesia. Market domination has challenged state's obligation to its people. Therefore, protection policy as a policy to be taken in order to defend small business who are in the corner and even systematically dying. Negligence and omission by the

state regarding transnational corporation expansion will affect market domination toward the state itself.

Market main stream will place state in minimum role. State not as ordinate point but as sub-ordination of market. On other position, state only as connecting agent between business entrepreneurs and other entrepreneurs in encouraging corporation hegemony in people living. Moreover, in particular condition, state being hostaged by market or corporate interest and determining state's policy for the sake of people welfare by observing corporate interest. This is evidenced by reduced support to public necessities, related to public sectors such as energy needs, agriculture, housing. Regarding corporate need, state discharged public sectors to privatization by privatization policies even to overseas corporation.

Decreasing sovereignty caused economic right became unprotected. Jochnick (1999) menyebutkan "specifically refers to the growth of transnational corporations as a factor which has undermined state sovereignty and limited government prerogatives, especially within developing or host countries. He argues that the impact of this loss of sovereignty is particularly relevant in the area of economic, social and cultural rights (Westaway 2012:3).

Jennifer Westaway described how transnational corporation abused human right by quoting several research, "there are clearly documented examples of where the activities of transnational corporations have violated human rights: the Union Carbide chemical leak in Bhopal, India (Stephens, 2002), the Nike, Disney and Levi Strauss sweatshops in such countries as Indonesia (Nazeer, 2011), the Wal-mart factories in China and Honduras (Clade & Weston, 2006), the case of Royal Dutch/Shell in Ogoni, Nigeria (Wiwa, 2000); the operations of Unocal Oil Corporation in Myanmar (Chambers, n.d.) the policies of British Petroleum in Columbia (Human Rights Watch, 1998) and the actions of Texaco in Ecuador, and Freeport-McMoRan in Indonesia (Ballard, 2001, Pegg, 2003: 1).

Also John Kenneth Galbraith in his study "The Culture of Contentment" found that internationalization of capital, production and trade freely will create economic and political empowerment for upper economic actors by sacrificing the underclass (Galbraith 1992:150). This is supported by George Soros in his study "The

Crisis of Global Capitalism” that free market power granted by full authorities in economic and finance shall create chaos due to overriding fairness, ethics and morality (Soros 1998:22). Pogge said “We, the affluent countries and their citizens, continue to impose a global economic order under which millions avoidably die each year from poverty-related causes. We would regard it as a grave injustice if such an economic order were imposed within a national society. We must regard our imposition of the present global order as a grave injustice unless we have a plausible rationale for a suitable double standard (Pogge 2005:ix).

In Indonesia, transnational corporation has existed since 1960’s. Sarinah in Thamrin street, Jakarta, one of biggest shopping mall established in 1964, followed by Aldiron Plaza in 1979, Duta Merlin, Ratu Plaza, Pasar Raya, Hayam Wuruk Plaza in 1980’s. In 1998, foreign retailer started to enter retail business in Indonesia indicated by the present of Carrefour offering format concept of *one stop shopping* such as *hypermarket* and likewise. Further followed by Goro, Giant, Hypermart and Makro (Silalahi, 2008:15).

From regulation perspective, the first time trade liberalization in Indonesia initiated by policies which are pro-retail liberalization, such as took out retail business from *negative list* for FDI (Foreign Direct Investment). This is also supported by Presidential Decree No 96 /2000 regarding Business Sector Closed/Opened (Due To Special Requirement) for Capital Investment, and Presidential Decree No.118/2000 regarding Amendment of Presidential Decree No.118/2000 Regarding Business Sector Closed/Opened (Due To Special Requirement) for Capital Investment.

On attachment 2, Presidential Decree of Republic of Indonesia No. 96/2000 described that negative list of Business Sector Closed for Capital Investment which has foreign ownership and/or foreign entities in trading sector has exception for modern retail market (mall, supermarket, department store, shopping center), distributor/wholesaler, export import trading, exhibition service provider etc.

Retail industrial map has experienced drastic change especially in 1998, by signing letter of intent with *International Monetary Fund* (IMF) who provide investment opportunity to foreign company to enter retail industry. Since then foreign retailer are coming to conduct

business activities in retail industry in Indonesia. Foreign retailers are very active to invest mainly in huge scale such as hypermarket and Department Store i.e. Continent, Carrefour, Hero, Walmart, Yaohan, Lotus, Mark & Spencer, Sogo, Makro, Seven Eleven.

Conceptualizing Economic Right of Traditional Market

The idea that businesses have obligations corresponding to human rights is relatively new, still controversial and involves some revision of the thinking that is expressed in the central instruments of international human rights law (Sorel 2004:129). Four decades of human right advocacy movement are more emphasizing on civil and political rights. This phenomenon is not only in Indonesia, but also constituting global phenomenon. Therefore, discussion on economic, social and cultural rights are important issues. This is due to economic right violation usually being done by any subject which is not by state directly, but the entrepreneurs or regulation those are not in favor the vulnerable groups.

Concept of economic right as set out in *Covenant on Economy, Social and Cultural Right* (abbreviated as CESCR). Economic right is essential part in international human right law, together with civil and political right as part of *the international bill of human rights*. As part of the *international bill of human rights*, economic right is important because as benchmark for joint achievement in economic development. Economic right formulation as set out in CESCR has been ratified by UN General Assembly in 1966 together with Covenant of Economic and Civil Right.

Economic right as set out in CESCR especial in Article 6 (1) and (2). The state Parties to present Covenant recognize to right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses of accepts, and will take appropriate steps to safeguard this right; (2) The steps to be taken by a state Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to individual (El-Muhtaj, 2008).

Right to work as set out in Article 23 DUHAM stated that every person is entitled to work freely chosen and under fair labor condition. Article 23 DUHAM more emphasized on work in workforce. Right to work should emphasize access to workforce without any discrimination against religion, ethic and likewise (Muhtaj: 2008). Francis constitution 1793 defined right to work “the existence of such a thing as a human right to work, namely the right of an individual to a job that is freely chosen and allowing a dignified existence, is explicitly recognized (Harvey 2002, Tanghe 1989).

State in this Covenant admitted everyone right on employment by giving opportunities to find job freely. State in this matter protect this policy by proper precaution steps. Formulation of Article 6 ICESCR is general in nature in order to protect everyone to obtain right to work for any kind of job.

In rather difference from ICESCR formulation that small business who cannot get job directly and still get opportunity to work. However abovementioned formulation does not clearly stated regarding opportunity to get job that is free from any monopolistic situation. Therefore more appropriate sentence is right to get access to work without being monopolized. According to author, economic right in ICESCR should be revised by additional clause regarding everyone right to get profit without monopoly.

Regarding business opportunity for small business, state obligation to take proper steps and policies in order they can get feasible business location. Feasible means to get opportunity to obtain profit from trade activities. The presence of modern retailer who has strong capacity of capital, management and network has caused small business difficulties to get profit from their business, even more opportunity to get profit is difficult. Difficulties to get profit has caused businessman unable to get job. This condition has cause small business entrepreneur unable to acquire right to work.

Right to work for small business should oblige state not to take any action causing small business lose job due to eviction (*obligation to conduct*). In this matter state is not allowed to provide broad opportunities to big company including transnational corporation to enter the market (protection). State liable to issue regulation to ensure traditional retailer has economic access to retail market. Besides, state is also liable to provide

protection to ensure employment right related thereto. This formulation also implied state liability to make small business be able to compete with big companies by providing incentives and trade facilities such as tax incentives, capital support, training and advocacy. State also liable to issue policy to defend interest of small business (*remedy*).

Economic right as part of economic, social and cultural right not only demanded state obligation to do something but also demanding state obligation not to do something as well. Therefore phrase “undertake to take step, to achieve progressively and maximizing its availability” on Article 2 (1) CESRS could be viewed as dynamic relation with other clause (Ifdhal Kasim, 2008). The essence of legal obligation in this clause does not only requiring state to actively participate but also requiring state not to take any particular action. Therefore state obligation to improve economic right not only as obligation of result but also obligation of conduct.

In “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, said two basic principles, first, “states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”.

Based on above basic principles, small trader has several legal problems i.e. Firstly, state unable to prevent and protect traditional market from modern retailer expansion, this indicated by any regulation granting opportunities to foreign investment in retail business. This is described in Article 12 paragraph (3) of Presidential Regulation No.112/2007 regarding Arrangement and Supervision on Traditional Market, Modern Shopping Center and Shops describing that permit to do business issued by City Mayor and Governor for Jakarta Capital City Province.

Second, state in this matter the Judicial authorities does not have clear regulation to prosecute human right violation. State only has *Business Competition Supervisory Commission (KPPU)* who supervise and prosecute case regarding business monopoly. Allegation of any NGO to KPPU regarding eviction of traditional market also unable to be settled due reason that it is not within jurisdiction of KPPU. Second basic principles, “states should set out clearly the expectation that all

business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”

In this matter there are several legal problems on the Law itself, Article 4 of Presidential Regulation No.112/2007 requiring establishment of shopping center and modern shops should consider social and economic situation of the people, existence of Traditional Market, Small Medium enterprise within the area and observing distant between Hypermarket and Traditional market who have already existed there. Besides, Presidential Decree No.112/2007 also granted authority to local authorities in granting permit. By this delegation, local authorities shall grant permit however only small percentage of local authorities issue limitation to establishment of modern retailer and make zoning araragment.

Regulation that's related to Economic Right of Traditional Market in Indonesia

Assurance against state protection on its citizen has been set out in Constitution, Law and regulation related thereof including covenant ratified by law-maker in Indonesia.

Basic Law 1945 (UUD 1945)

Article 33 of Basic Law 1945 (UUD 1945) stated that economic sovereignty based on principle of kinship, important production by the state is for the sake of people and controlled by the state. As constitutional reference, Article 33 became basic concept, philosophy and orientation on arranging economic structure and formality in arrangement of national economic entities in order to achieve nation state goal of welfare for the people. Article 33 of UUD 1945 stated that:

1. Economy shall be developed by joint effort based on principle of kinship.
2. Important production branches for state and public interest shall be controlled by the State.
3. Earth, water, and natural resources contained herein shall be controlled by the state and utilized for the utmost benefit of people prosperity and welfare.
4. Domestic economy shall be carried out based on economic democracy by principle of kinship, efficiency and fairness, sustainable, environmental perspective, self reliance and to maintain balance between development and unity of domestic economy.

5. Further stipulation regarding operative execution of this clause shall be stipulated in further regulation related thereof.

This clause as starting point to argue market system issue in Indonesia. Argumentation related to market system with liberal-capitalist and socialist and Islamic market system. Various arguments have taken place since our founding fathers wrote word by word the content of Article 33 during Indonesia independent period until argument of interpretation nowadays. There are some keywords as starting point to see philosophical approach on national economy related to market as part of economic system:

Firstly, Indonesia economy based on principle of joint effort. Article 33 paragraph (1) stated that economy is established as joint effort based on principle of kinship. Sentence “joint effort” on Article 33 paragraph (1) indicating that economic activity shall be carried out as joint effort of people and stakeholders such as business people, consumer, authorities and entire related parties in economy. Further, joint effort in economic field among people for the purpose of joint interest i.e. people welfare as meant in preamble of UUD 1945. Economy is established as joint effort means requiring everyone involved in economic activities to support each others, help each others and national economic establishment as goal.

Indonesian economic freedom will be reference for mutual help and joint effort and took place gradually by developing cooperative.....From the content of BPUPKI documentation, national economy according to our founding fathers perspective, shall be based on cultural spirit of Indonesian people, especially concept of mutual help (Ali, 2009). Mutual help/support is a challenge against individualism and free fight competition. They considered that individualism and free competition as the “culprit” of capitalism and imperialism therefore it make sense if such values are avoided by Indonesian people (Ali, 2009). Welfare objective could be achieved by spirit of collectivism. Mr Hatta said:

According to his direction, future economic basis will be far from individualism and closer to collectivism, the common wealth. Collectivism is appropriate for Indonesian objective. From long time ago Indonesia people, likewise Asia people, is based on collectivism and popular by the name *Gotong Royong* (communal work) (Hatta: 1998).

Sentence ‘communal work’ means not only prohibition for stronger business to suppress weak business or even kill other business, however

joint effort for entrepreneurs to exchange roles and mutual support in order to enhance common wealth. Emphasizing on common wealth even for different view it means to refuse any business entity to discriminate and boycott weak business who have limited resources.

Secondly, Indonesian economy is based on principle of kinship. Principle of kinship is constructed in two perspectives, *firstly*, principle of kinship re-affirmed on economic system is established by joint effort based on mutual support without harming each other. Likewise a family that any entrepreneur who experienced loss will harm other entrepreneur. *Secondly*, principle of kinship is construed by putting clause and UUD 1945 as basic norm of Republic of Indonesia. Kinship means big family of Indonesia people. Economic is established for the big “family” of Indonesia people.

Thirdly, Indonesia economy is based on economic democracy. Article 33 paragraph 4 of UUD 1945 stated that national economy is conducted based on economic democracy. Economic democracy as a demand is equal to social justice requiring equal and common wealth and avoiding big economic differences among citizens (Yamin, 1982: 105). This is called populist economic where production by all and for all led by member of societies, people welfare as purpose and not individual wealth.

Principle of economic cooperation shall nullify big difference among business people, and of course far from marginalizing or killing other business. Economic democracy is not for individual or group of people welfare however for the sake of majority people interest. Therefore, any income related to people living sectors are under management of people through their representative agencies (Hatta 1932). Political democracy cannot provide equality and brotherhood. Besides political democracy, there should be economic democracy. If not, people are not independent, equality and brotherhood are not yet existed. Therefore objective of Indonesian economy is social democracy constituting entire living environment which are determining human dignity.” Term of populist economic is to oppose colonial economy which characterized by slavery, discriminative, egoist and greedy.

Article 28D of UUD 1945 (Basic Law 1945)

Protection guarantee is asserted by constitution stating that everyone receive acknowledgement, guarantee and protection as meant

in Article 28 D UUD 1945. Article 28 D UUD 1945 stated: *Everyone entitled to work and receive remuneration and fair and equal treatment in any working relationship*. Such clause is necessitating state to ensure fair legal certainty for everyone including legal certainty in economic live. In this matter, entrepreneur in traditional market is a citizen who have right to get economic access into market. State has obligation to play role ensuring legal protection and fair legal certainty for the existence of traditional merchant including toward prosperity resources.

Regarding prosperity resources as meant in Article 33 UUD 1945 stipulating that prosperity resources and social welfare (object), business actors (subject), institution, how to use object (production process) and final objective of business activities that is to achieve common prosperity in order to enhance social welfare (Jimly Assiddiqie, 1994).

Law No. 39 / 1999 on Human Rights

Right to work in Law No.39/1999 regarding Human Right as meant in Article 38 Seventh Section regarding right on welfare related to employment right in general, labor rights in workforce and female worker exercising right to get job. Right to work related to traditional retail market shall refer to Article 38 paragraph (1) stating every citizen according to its talent, skill, and capability, entitled to have decent work. Further paragraph has no relation with economic right of business actor.

Law No. 11/2005 regarding Ratification on International Covenant on Economic, Social and Cultural Rights

Economic right in general is stipulated on Article 1 Section I Law No. 11/2005 regarding Ratification on International Covenant on Economic, Social and Cultural Rights stating that all nations entitled to determine its dignity that giving them freedom to determine political status, freedom to develop its economic, social and culture. Related to traditional retailer as meant in Section III Article 6 paragraph 1 stating that

“State in this Covenant acknowledged right to work, including everyone right on opportunity to earn income through any job selected freely, and to take proper steps to protect its right related thereto”.

Further, paragraph 2 stating that steps taken by State in this Covenant in order to fully realize this right shall include technical guidance and skill, training program, policies and technology to achieve

stable development in economic, social and culture and sufficient job opportunities and creating conditions which are ensuring political and economic freedom for each individual.

Law No. 5/1999 Regarding Prohibition on Monopolistic Practice and Unfair Competition

Law No. 5/1999 is stipulating Prohibition on Monopolistic Practice and Unfair Competition. The purpose of this Law as set out in Article 2 and Article 3 as it contain substantive meaning of economic democracy, necessitating balance between business actors interest and public interest, and necessitating importance of enhancing economic efficiency and people welfare.

Article 3 Law No. 5/1999 requiring guarantee on existence of business actors in Indonesia including small medium enterprise (SME). Small enterprise acquired guarantee to exist in business competition including their competition with big enterprise. Besides, Law No.5/1999 also requiring protection on existence of business entities in Indonesia including small medium enterprise. Business actors get protection from competition with other big business actors. Small business protection can be done by using legal and policy instrument whether on legal level as well operative regulation related thereof.

Protection on economic right of traditional retailer cannot be done by KPPU (*Commission on Protection of Business Competition*). This is due to KPPU limited authority as described in Law No. 5/1999. This can be seen on KPPU Resolution No. 3/2000 that KPPU only be able to recommend the government without capacity to punish the accused according to its authority and sanction as meant by the Law.

Presidential Instruction No. 1/2010 Regarding Acceleration on Executing National Development Priorities

Presidential Instruction No. 1/2010 regarding Acceleration on Executing National Development Priorities focuses develop *pro poor, justice for all*, and *Milinium Development Goal-MDGs*. Regarding development program with *justice for all*, one priority is justice program for poor and marginalized group.

In order to achieve common wealth, it needs *right based development*.

Right based development requiring participation of all people including vulnerable people, disadvantage or marginalized group of people (Boesen and Tomas, 2007). Any development effort avoiding entire or part of vulnerable groups has violated human right that is protected by the constitution.

Development is not only seen from achievement in figures as targeted, but also people involvement as part of development itself. Therefore development necessitates stakeholders and partners involvement in devising strategy and objective of the development. In this matter, development paradigm purpose not only to make people participation as a tool but participation also as the objective itself (Boesen and Tomas, 2007). Therefore responsibility is not only in “figures number result” but also the process execution by executive organization in involving people.

In order to realize development based on vulnerable people participation, in this matter traditional retailer, government service should issue public policy or devise power structure in favor the vulnerable and suppressed groups and together participating in development to achieve prosperity and social welfare. In this context, any condition paralyzing street vendors in the middle of “giant liberalization” by the modern retailers has made street vendors being marginalized. Therefore state has obligation to serve them by providing access for traditional retailer to participate in development process and gain success on it too.

Traditional Market in Indonesia: Case Study of Jakarta

Indonesia has followed first time retail liberalization by taking out retail business from *negative list* for Foreign Direct Investment (FDI). Operative regulation by Presidential Decree No.96/2000 regarding Business Sectors Closed and Business Sectors Opened (by Particular Requirement) For Capital Investment, and Presidential Decree No. 118/2000 regarding Amendment of Presidential Decree 96/2000 regarding Business Sectors Closed and Business Sectors Opened (by Particular Requirement) For Capital Investment.

Retail industry map has changed drastically mainly in 1998 upon signing *letter of intent* with *International Monetary Fund (IMF)* providing

investment opportunity to foreign investment to enter retail industry in Indonesia. Since then, foreign retailers coming and crowding around Indonesia retail industry. Foreign retailers are very active in investment especially in big scale investment such as hypermarket and Department Store i.e.: Continent, Carrefour, Hero, Walmart, Yaohan, Lotus, Mark & Spencer, Sogo, Makro, Seven Eleven. Further will be described retail market development in Indonesia.

Tabel. 1
Retail Market Development in Indonesia¹

Table: Structure of Indonesia's MGR Sector - Estimated Number of Outlets 2005 - 2010						
	2005	2006	2007	2008	2009	2010
Supermarkets	2.652	3.173	3.830	4.297	4.801	5.252
Hypermarkets	502	644	747	798	900	973
Convenience stores/mini-markets	2.758	3.337	3.953	4.334	4.871	5.299
Total MGRs	5.912	7.154	8.530	9.429	10.572	11.254

Source: BMI

Table: Structure of Indonesia's MGR Sector - Sales by Format 2005 - 2010 (IDRbn)						
	2005	2006	2007	2008	2009	2010
Supermarkets	30.395	60.304	72.788	81.653	91.233	99.849
Hypermarkets	63.242	81.099	94.145	100.496	113.478	123.379
Convenience stores/mini-markets	23.716	28.696	33.997	37.267	41.896	45.549
Total MGRs	137.353	170.099	200.930	219.415	246.607	268.687

Source: Statistic Indonesia, Company information, Trade press, BMI

Table: Structure of Indonesia's MGR Sector - Sales by Format 2005 - 2010 (US\$mn)						
	2005	2006	2007	2008	2009	2010
Supermarkets	5.185	6.613	7.943	8.369	8.810	10.993
Hypermarkets	6.507	8.893	10.274	10.300	10.958	13.584
Convenience stores/mini-markets	2.440	3.147	3.710	3.820	4.045	5.005
Total MGRs	14.132	18.635	21.927	22.489	23.813	29.581

Source: Statistic Indonesia, Company information, Trade press, BMI

Above data indicated rapid modern retail market development in Indonesia. The other data according to AC Nielsen survey, traditional retail market has minus 8% per-year and modern retail market has

plus 31.4% per-year. The reason that modern market can sell cheaper price than traditional market is due to shorter supply chain network of modern retailers. There are five distribution lines followed by traditional retailer to get supply. Therefore, modern market existence currently has threatened traditional market existence due to they are more cheap and more convenient for consumer. Besides, traditional retailer problem to compete with modern retailer comes from regulation issued without considering readiness of traditional retailer to compete with modern retailer.

Monitoring result by KPPU stated that Hypermarket stores has increased significant from 105 stores (2006) become 121 stores (2007). Supermarket has 1,311 stores (2006) increased to 1,379 stores (2007). Convenient stores (minimarket) 7,356 stores (2006) increased to 8,889 stores (2007). AC Nielsen survey data (2006) has indicated that market share of modern market increased 11.8% for the last five years. If market share of modern market in 2001 is 24.8% increased to 32.4% in 2005. It means within 2001-2006, 11.8% retail consumer in Indonesia have left traditional market and move to modern retailer. Euromonitor (2004) stated that *hypermarket* constituting retailer with highest growth i.e. 25%, cooperative growth 14.2%, minimarket/*convenience stores* 12.5%, *independent grocers* 8.5%, and supermarket 3.5%. Besides growth in number of stores and sales, modern retailer also experienced market share growth 2.4% per-year against traditional market.

One of city that ritel market growth rapidly is Jakarta. Jakarta is capital and largest city of Indonesia. The city itself has about 10 million people. In a country of over 240 million people, Jakarta is clearly a major population center and the center of commerce and government. In line with the rest Indonesia, Jakarta is currently experiencing rapid economic growth. Per capita income in Jakarta, at about USD 10.000 is more than twice that of the country.

Ritel business is very interesting, moreover Jakarta's market (consumer) is very large. Overall, from 2000 through 2011, the average jakarta retail supply showed an annual growth of 12.2%. this growth demonstrated additional supply of 249,593 sq m per year during the period. With 282,827 sq m of new retail supply entering the market in 2012, it will maintain an average growth above 200,000 sq m per year.

Survey of Association of Indonesia Market Trader said that 11 traditional retail market were not operation more, that: Sinar Market, Kramat Jaya Market, Cilincing Market, Muncang Market, and Prumpung Center Market at North Jakarta Utara. Then, Blora Market at Center of Jakarta, Market of Big Cipinang and Market of Kelapa Gading at East Jakarta, Market of Sawah Besar at West Jakarta, Market of Karet Pedurenan and Market of Cidodol at South Jakarta. The condition also at about Jakarta like Bekasi, Depok, Tangerang Pasar Ciputat (Tangerang), Pasar Jumat (Tangerang), Pasar Kreo (Tangerang), Pasar Cisalak (Depok), Pasar Rawa Kalong (Bekasi).

Retail market domination by modern retail has devastated ordinary people who are commonly the entrepreneurs in traditional market. In 2000, business actors in traditional market representing by an Non Governmental Organization (NGO) filed claim to KPPU. Based on interviews by the NGO dated April 12 2000 to 429 micro business owner within Jakarta, Bogor, Tangerang and Bekasi (hereinafter abbreviated to Jabotabek) has indicated that majority from 129 micro businessman stated that rising of minimarket such as *indomaret* has negative impact to their business, income or sales omzet has drastically decreased. There are many small businesses have been closed or cannot sell anymore due to cannot compete with minimarket Indomaret in terms of price and service. Besides, living expenses of their family household are being threatened, due to those kiosks/small businesses have been the only one business in order to support daily lives.

Since establishment of Indomaret supermarket on August 17 1998 until 2000, in Jabotabek area there are 290 Indomaret stores and planning to establish 2000 Indomaret stores located in district up to sub-district level area. NGO stated that every one Indomaret stores harmed 10 small businesses surrounding it. Therefore if there are 290 stores means they will affect 2900 small businesses being threatened to die. Estimatedly 2000 Indomaret supermarket will be built in Jabotabek region, if those are completed, estimatedly 20,000 small businesses in Jabotabek region will die or minimum 80,000 poor people become more poor due to losing their jobs.²

From regulatory perspective, Jakarta City Authorities has Regional Regulation Number 2/2002. Scope of private market activities in this

Regional Regulation (*Perda*) in order to run its operation, is providing facilities/domicile, provision of goods by small business and cooperative through partnership scheme. *Perda* Number 2/2002 regarding Private Market in Jakarta Capital City has stipulated provision of right to small /traditional retailer by regulating the following issues:

Regarding provision of service, Article 11 regulating that service in private market starts at 09.00 AM until 22.00 PM and service provision that is done by self service from 10.00 AM until 22.00 PM.

Article 12 *Perda* No. 2/2002 has necessitated private market operation to cooperate and partner with small business or cooperative in order to operate big, medium or small scale market operation (especially minimarket). Article 13 stated that private market operation should provide space for small or informal/street vendor businesses. Any market operation with minimum 200 m² until 500 m² should provide space for small/informal/street vendor business 10% floor spaces and unreplaceable by other forms whatsoever.

Private market operation above 500 m² should provide floor space for small/informal/vendor street business 20% from total spaces available and unreplaceable by other forms whatsoever. Jakarta authorities has issued regulation regarding distant between traditional market and private market as set out in *Perda* Number 2/2002 and Governor DKI Jakarta Decree Number 44/2002. *Perda* DKI No.2/2002 is stipulating distant of minimarket. Article letter (a) of *Perda* DKI No.2/2002 stating minimarket with floor space 100 m² until 200 m² should have distant radius 0.5 km from any surrounding traditional market and located in arterial road. Based on Article 9 *Perda* DKI 2/2002, private market operator (in this matter minimarket) should qualify requirement that similar good price cannot be lower than any prices at surrounding stores/kiosk. Article 22 stating that any violation to distant and price regulation herein shall be sanction by jail sentence maximum 3 months or pinalti 5 Million Rupiahs.

Problem between modern retail market and traditional retail market in retail industry is an imbalance business competition. Big retailer has strong capital, proper management, large network, therefore strong position to influence consumer to buy. Modern market provides good service, full AC room, convenient, attractive display, self service, good price and even for family recreation, this is called one stop shopping

center. Therefore modern retailer became favorite destination to distribute product due to their better ability to attract customer. Their attractiveness for customer are strong as mentioned earlier showing the trend that they keep on attracting more customer from other type retailers.

Besides, traditional retailer does not have strong capital, insufficient management, limited network, inconvenient atmosphere (wet floor, dirty, humid etc). Therefore, customer not interested in shopping to traditional retailer. Data described above indicating that less interest from customer to do shopping in traditional market and many traditional markets are dying. They are existed however their operation in hard condition and some of them even have changed job.

In *Kramat Market Jakarta Timur* for instance, since 1960 until beginning 1990 is very attractive, due to strategic location and entrance way between Jakarta and Bogor city. The presence of PT.Carrefour with 200m distant on north side and *Pasar Grosir Cillitan (PGC) Cililitan* (wholesale market) with distant 250m has caused traditional retailer unable to compete and reduction of visitors. Therefore retailer income decreased 40-70% (interview with Mrs. Sa'diyah. 28 May 2013, at 15.15 PM).

Market as main economic entity should be under state control, due to market is a place to rely for people economic live whether for the retailers as well the customer. Therefore market should be under state control. State control according to Mohammad Hatta does not mean state as entrepreneur however on regulation issuance for the sake of economic smooth, regulation on prohibition to exploit weak small business by the capitalist (Hatta, 1932).

State control's right as meant in Article 33 of UUD (Basic Law) 1945 to position state as regulatory body and guaranteeing people welfare. State function inseparable one another, releasing one business sector to cooperative, or private, should include particular regulation and control measure in order to realize people prosperity (Hayati dkk, 2012).

Unequal playing field as one of competition requirement is an entry door for state role in order to ensure existence and economic right of traditional retail market. State should revitalize traditional market in order to balance the domination of modern retail market.

This condition has not performed by state sufficiently. Some traditional retail markets are in bad condition, physically as well as its activities. Many buildings are not feasible due to old age, maintenance is bad. Revitalization also related to proper market management, parking system, security, convenience etc likewise.

In *Kramat Jati* market, East Jakarta for instance, traditional retailer does not have sufficient security, retailer used to closed store earlier due to unsafe vehicle parking situation, retailer experienced inconvenience due to dirty atmosphere, although retailer already paid market management fee to market management.

Besides physical issue, revitalization on policy also important, such as unaffordable rental price, tax and incentives charges. Market management imposed high rental tariff and only retailer with capital capacity who can afford such cost.

This condition has caused economic right in term of access for traditional retailer in Indonesia is a great concern. Absent of economic acces will cause problem to other rights such as right on food, education or even right to live.

Therefore state has obligation to issue policy to ensure economic right of traditional retail market. Firstly, to promote human right in economy is a necessity especially in globalization era. Manual Coret Branco said “the crucial issue in promoting human right (especially economic, social and cultural rights) in a globalized world, therefore, is not for human rights to defeat economics but for economics to be reconciled with human rights. There are two main paths for achieving this goal that can be taken either as alternatives or as complements (Branco, 2009). Promotion can be done by “identify participants, issues and needs, set goals and objectives, determine content and formulate programmes, prepare materials, conduct the promotional activities, evaluate and follow-up” (UN 2005:77). Secondly, optimizing state role, state, in order to satisfy employment right should take proper steps and policies to fulfill right to get employment thorough successful trading. At the same time, state cannot take any action causing anyone losing job such as omitting modern retail market killed traditional retail market. Thirdly, to optimize evaluation system for the sake of corporate accountability. In 1970 transnational corporation can refuse UN effort to apply human right standard by Sub-Commission on the

Protection and Promotion of Human Rights (Gear, 2010). Therefore empowerment on corporate standard for evaluation is important and necessary.

Referred to elements of State's obligation as set out in ICESCR, "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

DKI Jakarta authorities should revitalize traditional retail market entirely. Revitalization on its physical condition and regulatory measure. Physically, some markets are in bad condition, old building. Market management service problem such as insufficient security, convenience, parking etc likewise.

Regarding regulation, DKI Jakarta authorities is expected to amend *Perda* No.2/2002 in order to ensure economic right of traditional retail market. DKI Jakarta authorities effort to provide protection to small business has been done however there are many weaknesses in protecting economic right of small retailer. Some of weaknesses as follow:

Firstly, time to open 09.00 AM until 22.00 PM. Time should be adjusted to small retailer working hours. Secondly, private market management does not regulate any company whose using franchise system. Thirdly, Article 12 of *Perda* No.2/2002 necessitated every private market operator to partner with small business and cooperative for operating private market whether big, medium or small scale. Article 13 stated that private market operator is liable to provide space for small business/informal/street vendors, however the regulation not describing any detail operative regulation related thereof. Trading term by modern retail used to suppress traditional retailer. To secure market fairness in Indonesia, there is cooperation system to necessitate big business to receive supply chain from small business. In fact supply chain does operate properly due to big business offered difficult 'trading term' for small business in order to be able to supply. Some of terms in trading terms *listing fee, minus margin, fixed rebate, term of payment, regular discount, common assortment cost, opening cost/new store dan penalty.*

Trading term made by modern retail market has been changed and become special revenue for big retailers. KPPU investigation on Carrefour Indonesia case has indicated that this France's hypermarket during 2004 could reach *other income account* up to 40.19 billion Rupiah. Biggest amount acquired from *listing fee* that is reaching 25.68 billion Rupiah. Participants fund minus margin (supplier guarantee that its selling price is the cheapest) 1.98 billion Rupiah, and the rest 12.53 billion Rupiah came from payment on trading term. Therefore any cooperation agreement to ensure small business right to run business properly is an absolute.

Conclusion

Globalization and economic liberalization could become one factor causing small business losing their economic right in case state is unable to protect and ensure economic right fulfillment for small business. Economic right of traditional retailer in Indonesia are unable to be fulfilled due to several reason as follow limited arrangement on law and regulation such as criminal sanction and responsibility and recovery problem (compensation, restitution, rehabilitation issues related to supply chain responsibility). DKI Jakarta authorities has not yet providing sufficient protection to ensure economic right of small business in the region. Some of article in Perda (local Government) must be amended to secure economic right traditional retail market.

This article also recommend to empower of state's role in discretion of supporting regulation to ensure economic right of small business retailers from hegemony of modern retailers. In Indonesia, centralized regulation is important due to wide region of the country itself. Besides that, Eempowerment of state's role to control Human Right implementation on economic field related to traditional market by protection against modern retailer domination and monopoly. It is deemed necessary to improve legal instrument on Human Right regulating economic right related to monopolistic practice by modern big retailer. I also recommend DKI Jakarta Authorities should revitalize traditional retail market comprehensively whether physically as well as policy making. Physically, by revitalizing building, facilities and incentives for store rental, tax, and from regulatory perspective, DKI

Jakarta authorities is expected to amend *Perda* No. 2 /2002 in order to ensure economic right of traditional retail market. []

Endnotes

1. Indonesia Ritel Repor Q4 2011, Business Monitor International
2. System applied by PT. Indomarco that franchisee of Indomaret Supermarket and guarantee of supply with distributor price. Franchisee liable to provide building and investment +Rp300 million (including Franchise Fee Rp82.5millions paid to PT. Indomarco). See Clause “in consideration” of KPPU Decision Number:03/ KPPU-L-1/2000

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