

# STATE ROLE MODEL IN REGULATING MARKET IN INDONESIA ON ISLAMIC PERSPECTIVE

**Mustapa Khamal Rokan**

Business Law Lecture

Chief in Center for Constitutional and Economics, State University of Islamic  
Studies North Sumatera

## **Abstract**

Background of this research is the traditional market alienation due to unbalance compete with modern market on the retail market in Indonesia. Limited capital, business management simple and limited networks make traditional markets are not able to compete with the modern market. This research use qualitative methods and use a case-based approach (statute approach) the Commission's decision number 09/KPPU-L/2005 and the Commission's Decision No. 03/ KPPU-LI /2000 and history approach, the history of the market Prophet Muhammad's time and during the time of the Islamic empire. In addition, this study also helped to pull through direct surveys in several markets in Jakarta and Medan. The result of this research is models of the pressing role state (sadd) by prohibition of monopolistic practices, intervention of price and the location, state role with a capital acces (fath) by empowering, providing capital assistance, as well as collaboration (jam'u) to encourage cooperation between traditional and modern market.

**Keywords:** Competition Law, Traditional market and Modern Market, Islamic Law

### **A. Introduction: Background**

The rapid growth of the modern market raises the issue of fairness in the Indonesian market. The problem is marginalization of small businesses like traditional market in which place of mostly small and medium-sized businesses in retail market in Indonesia. This condition can be seen in market growth, the ratio of expenditure, which shows the modern market revenue is higher than the traditional market, even the most traditional market disadvantage, marginalized and even death. Some studies show that statement as follows: Nielsen research shows modern market grew 14 percent, ie from 7,839 stores in 2005 to 8,918 in 2006, while the traditional market grew just 3 percent of that in terms of number of stores 1,787,897 in 2005 to 1,846,752 in 2006. From the shop in terms of the ratio of people's desire to shop, Nielsen study noted that the ratio of people's desire to shop in traditional markets tend to fall, from 65% in 1999 to 53% in 2004, in contrast, the ratio of people's desire to shop in modern market increased by 35% in 1999 to 47% in 2004 (Syatibi, 2011).

Similarly, the results of monitoring of the Business Competition Supervisory Commission (hereinafter Commission) number of hypermarkets has increased, from 105 stores (in 2006) to 121 stores (2007). Its growth showed an increase in 1,311 supermarkets outlets (in 2006) to 1,379 (in 2007). It happened also to minimarket, 7356 (2006) to 8,889 (in 2007) (KPPU, 2009). More broadly modern market growth such as Supermarket, Hypermarket, Minimarket, Department Store increased approximately sixteen percent (16%) per annum. The marginalization of traditional market made some of merchant that are represented by non-governmental organizations (hereinafter NGOs) filed a lawsuit to the Commission. The lawsuit based on the facts as the result of the interview to 429 small entrepreneurs/owners of stalls in Jakarta, Bogor, Tangerang and Bekasi which is indicated that the presence of supermarkets Indomaret had made negative impact on businesses and those found to be down drastically sales revenue (KPPU, 2000). Many small businesses are closed or no longer selling due to not compete in price and service with supermarket and Indomaret.

Number of outlets modern store showed an increase, while the traditional markets showed a decline. In the year 2007 the number of outlets as much as 10 365 modern shop outlets while in 2011 to 18 152 outlets which means increased as much as eight thousand more or increased as much as four (4) shops per day. While the traditional market in 2007 and as many as 13,750 outlets in 2011 to 9,950 outlets, which means reduced by 3,800 outlets, or by 29 percent (Republika, 2014). While in 2012 the number amounted to about 10,000 Shop Modern and Modern market amounted to 14,000 outlets, comprising 358 convenient stores, 11.569 Minimarket, 1,146 supermarkets, 141 hypermarkets and 260 wholesale or grocery. In Jakarta, Supermarkets growth rose significantly Indomaret that there are 525 outlets (2006), in March 2009 to 1,115 outlets, outlets in July 2010 became 1186 and 2011 a total of 2162 outlets.

The data above shows the traditional markets experiencing negative effects such as loss of access and marginalization in the retail market. Economic access is the duty of guarding the state. Guarantee of protection set forth expressly in the constitution which states that every person on recognition, security and protection as those in the UUD 1945 Article 28D. Constitution requires the state to ensure legal certainty for every citizen including the rule of law in the economy.

### **B. Relationship State of the Market**

#### **1. Overview of the Role of the State Economic Dynamics**

The debate about the state role in the economy has made polarization among four (4) ideology, those are liberalism, socialism, modern liberalism and democratic socialism. Issue key debate from the question of “what is the state role should be run in the ownership and management of the economy” (Ma’arif, 2006). Besides four of the ideological above, the debate of the state role in the market has also by Islamic scholars, which is based on Islamic teachings and thought (*ijtihad*).

Liberalism is an ideology based on freedom, the market mechanism is the main issue in it, and state intervention in the economy as far as possible eliminated. This ideology believes that state intervention in the economy will distort the market and

make the world economy is not effective, according to the view of liberalism (read: neo-liberal) state in any way must be removed from the market (Winarno, 2009).

Classical economics believes that the ideology of the free market (*laissez faire*) which gives full freedom to the individual will bring ideal society. Liberal ideology was introduced in the 17th century (1776) by Adam Smith-a-Scottish professor who introduced the concept of “economicman” (homo economicus) in *The Wealth of Nations* (Smith, 1976). According to him, economic balance derived from the operation of the market mechanism as well.

As the antithesis of individual freedom to the market and the rejection of state intervention, emerging ideology of individual liberty restrictions and granting full authority to the state to determine the economy activity. This system is called a socialist economic system. Socialist system negates individual freedom and liberty to submit to the state as a responsible life. Production and distribution as well as the investment are a collective decision through the state apparatus. Socialist economics system rejected freedom, private property and encourage economic equality. The main focus is to encourage the goals of the socialist system of production for the satisfaction of human needs, therefore this system rejects the ideology maximize profits. Kabadji said “*Socialism denies individuals economic freedom. The State or Government steps in, plan and administer the bulk of the country’s economy with no regard to people’s incentives* (Muhammad, 1975). All of Factors of production such as land, capital and labor controlled by the state so that all matters relating to the market controlled by the state.

As a synthesis of the two schools above (the freedom of the market and the role of the state) appears ideology that combines both of those. This ideology promoted by John Maynerd Keynesian. Keynes realized both systems (freedom and state) have a negative and positive impact, therefore the role of the state in the economy can be justified in certain things that when addressing economic inequality, unemployment and so on. Paradigmatically, thinking about the presence of the state (government) in the field of economics rooted in familiar Keynesian pro-government and reduce the role of the market. This understanding emerged as a

reaction to the failure of neo-classical economics understood in saving the world from economic depression in 1929 (Ma'arif, 2006).

Furthermore, ideology of modern liberalism is a critique of the classical liberalism of Adam Smith who departed from the fact that the market economy towards the end of the 19th century proved to be able to regulate the market as defined in the thesis of the “invisible hand” of Adam Smith. If classical liberalism urging the government out of the market, re-enter the state of modern liberalism in the market to protect the public from the economic system in which sometime is not fair (Ma'arif, 2006).

Democratic socialism ideology criticized socialism in which abolit of individual freedom and reduced human rights, beside that, it will reduce individual initiative. Adherents of this ideology believe in democratic struggle as a method of resistance to the capitalists for example seizing power through elections for socialist parties. They were trying to win the elections and democratic governance and control adopting peaceful wishes and strengthen the socialist policies.

In addition to the four mainstream ideology above (ideological liberalism, socialism, modern liberalism and democratic socialism), state and market relations has been discussed and debated in the treasures of Islamic law and economics. The debate of state relations and the dynamic nature of the market in the course of Islamic civilization treasures originating from interpretation of the texts of the Quran and the laws and economics policies of Prophet Muhammad. I will explain the Islamic view on the relationship between state and market.

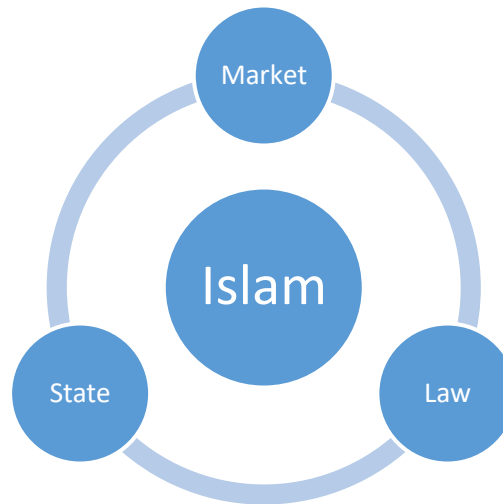
## **2. State of the Market Relations on the Islamic Perspective**

In Islam all aspects of life regulated and sourced from religious value that are a single entity called Tawhid including in the legal, economic and state matter. Scientific paradigm in Islam is not make dichotomy among the three (law, economics and the state). It's different with secularistic scientific paradigm in which distinguishes religion, state, law and economics. Therefore, talking about law of the market is a discussion about the unity of the state and religion.

Fourth component of the above relationships (religion, state, law and markets) can be described as follows:

Chart 1

Radial Circle Theory Islamic Relations, State, Law and Markets



The chart above consists of two circles that the circle of Islam at first and second circle is composed of three components namely the state, the law, they are paralleled and related markets. Islam is as the first component in the position of the innermost circle, because Islam is the core of the circle. Islam plays as a source of perspective on the three components in the second ring (the state, the law and the market) that are Islam as a source of law, Islam as a source of market activity, Islam as a source of state.

Islam is sources of perspevtive of law or regulation of the economy particularly in relation to the market. While Islam is a source of perspective on the market is the Islamic view on the market that is not only related to the law of the market but also with the general economy, because when the legal market cannot be separated from economic aspects such as price, market mechanism and so on. In this case Islam in the economic aspect. While Islam as a source of perspective on Islam as the state is the source of how the state should contribute to the market through legal policy.

**C. Role State Model *Sadd wa Fath* in Harmonizing in Diversity Market (Case of Traditional and Modern Market in Indonesia).**

Discourse of state and market relationship from the interpretation of the texts of the Qur'an and the Prophet Muhammad policy in managing the economy in general and market particularly. The scholars differed in interpreting the words of al-Quran and the Prophet Muhammad in conducting market policies. The majority opinion say state role in market institutions is not necessary. But, the minority opinion says state role is required to run the market mechanism (Fatah, 2012). To create a social ordered and social justice in the community, the Quran ordered two (2) things to humans that is sent to all the good (*ma'ruf*) and prevent/ prohibit to all things bad (*munkar*) (QS. Ali-Imran: 104).

Imam al-Mawardi relates the Quran commands to send to the good (*ma'ruf*) and forbidding the evil (*mungkar*) are done by state. State through *al-Hisbah* in charge of promoting the good and prevent the evil (Ali, 2006) through provisions established state. In terms of ideas and meaning the law serves to regulate society, to prevent injustice and ensure human rights, justice demanded the distribution of a nation (Audah, 1974).

Two of these command (push, opening opportunities to goodness (*ma'ruf*) and press each putridity (*munkar*) is in order to achieve balance (*tawazun*) community. Hence the role of the state in economic theory is essentially positioned at three (3) things that state as a driver/advocate/motivator/appetizer, state as a suppressor cover in order to perform a basic role as a counterweight.

Basically, the original position of state role is as a counterweight to the establishment of justice in the society. In the economic activities, Islamic law believes the market mechanism generates the ideal distribution of income for the community and the creation of economic balance. To do the role of market mechanism through a state economic regulatory agencies (*Al-hisbah*) regulate the supply, price control, monitoring transactions with usury, regulating property rights in the public interest, utilizing human resources (Khan, 2004).

The role of the state as a suppressor and towing can be done when inequality of income among businesses that are caused by certain factors such as lack of

capital, weak human resources, business networks are limited, the ability managerial is weak and system factors (structural) where there is a policy state is lame. In this position as mentioned in Said Hawa in *Asas al-Tafsir* call this effort as *illah*, which the state can take action to eliminate all factors (funding, opportunities, information, and so on) if it can lead to unequal distribution (Yusanto & Yunus, 2011).

In this case the difference of Islamic economic system with the capitalist economics system. In the case of the capitalist system is the dominance of monopolies of wealth concentration. In these conditions the state acts as a suppressor to ownership and profits can be properly distributed. Suppressor role of the state as may be establishment of a market intervention, price intervention, time and place intervention, and so on in order to balance the market (Yusanto & Yunus, 2011).

To explain this, Muhammad Ahmad Syakr said:

The most obvious faults of a capitalist system are the concentration of wealth and the dominance of monopolies. The Islamic pattern provides for a wider circle of ownership, constructive competition, improved methods of production and types of commodities that are produce data low cost and sold at reasonable prices. That is why it is essential to break the power of monopolies, which oppress the economies of the Islamic world, for they are little more than vestiges of a colonial system based on exploitation.

In addition, at the same time, the state also acts as a puller (Yusanto & Yunus, 2011) for small and medium enterprises by providing motivation and economic empowerment, providing infrastructure, provide capital assistance and so on. The state's role is to maintain equity markets, ensure the safety, legal rights and public order, and guarantee a market mechanism to maintain social security. In certain circumstances the role of the state to the market is "Pressure" and "Opener" (*Sadd wa Fath*). The state can act as *sadd* (suppressor) to perform such interventions, restriction, set the price and so on. Countries can also serve as *Fath* (towing) to provide motivation, support, mentoring and so on.

In the context of the modern markets and traditional markets, the state role as *Sadd* (suppressor) tells us to do protect all things that can make injustice market

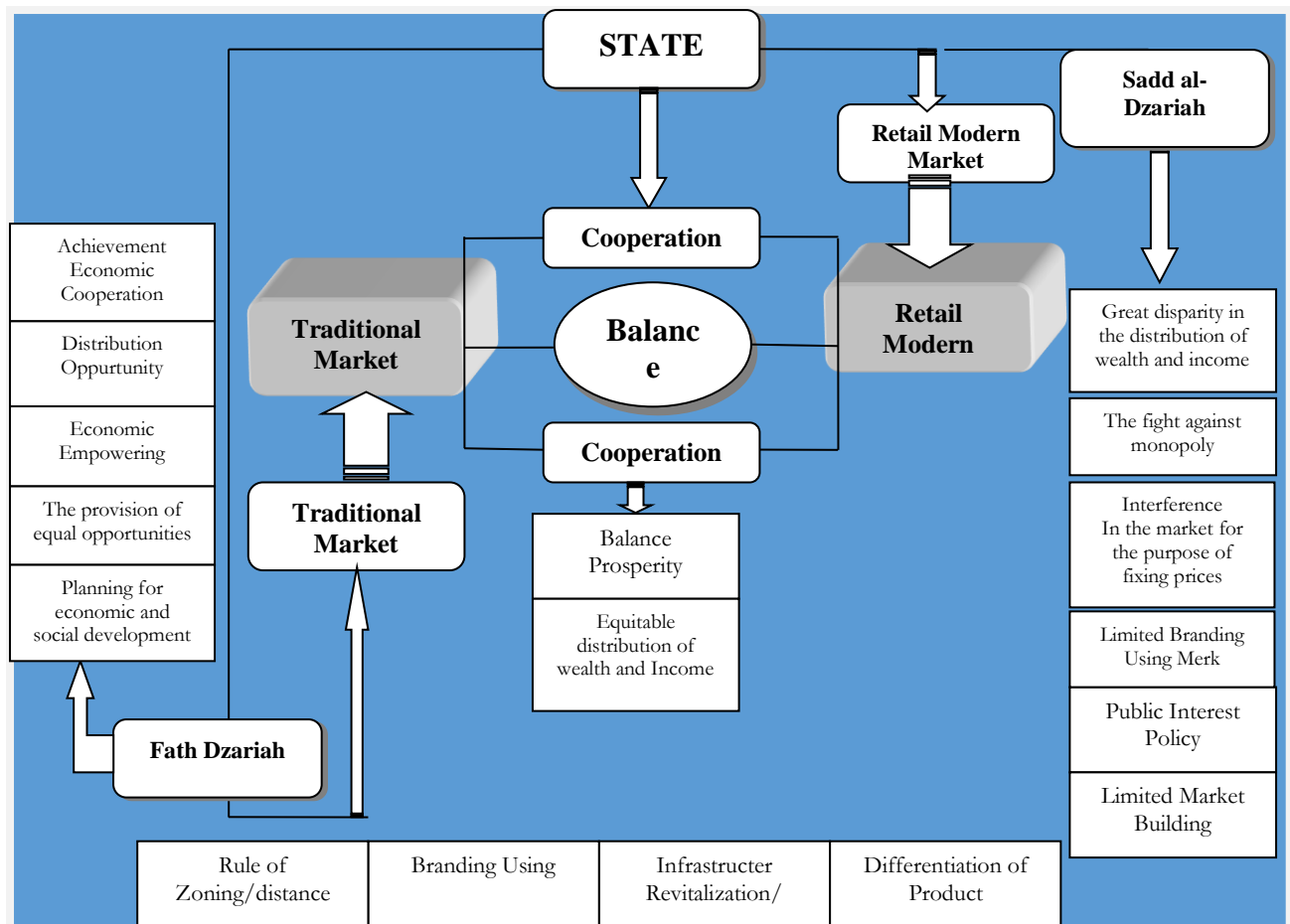


(*sadd al-zari'ah*) in the form of a modern market license restrictions on certain regions or zones, restrictions on selling for certain products, price restrictions for specified price. While the state role as *Fath* (*towing*) all forms of assistance or empowerment as perform the role of empowerment for small businesses, revitalizing of infrastructure, the role of mentoring in business activities and so on. The state role is such as *fath* (*towing*) and repair infrastructure for traditional markets, funding incentives, provision of strategic locations or zones and so on. While the state's role as a counterweight is the initial position (original position) of the state role to maintain equity market in general.

To elucidate the role of the state in market in this case traditional market and modern market can be seen in the following scheme:

**Scheme 1**

**State Role towards Modern Market and Traditional Market**



## **1. Role of the State As Sadd (Suppressor)**

### **a. Removing monopoly practices**

The state role as a suppressor in removing monopolistic practices is one of the decisive role in the Islamic literature. Monopoly practice is an act contrary to Islamic law and philosophy of the Islamic economic system which is based on cooperation (*taa'wun*) and brotherhood (*ukhuwwah*).

In history, monopoly practice is the most classic market distortion. Monopolistic practices had occurred since the fifth century. Ali bin Abi Thalib never did burn pricing and merchandise for people who did not sell at the price specified. Ali action based on Surah al-Hajj: 25, which prohibits *ihthikar* actions at Makkah. According to al-Mawardi *ihthikar* is prevention efforts cannot be done individually but must be done by parties who have a strong authority that the government at that time is represented by *Al-hisbah* institutions.

In the context of modern market and traditional markets competition, modern market power can be gaps occurrence of monopolistic practices. It can be seen from the decision of the Commission No. 9/KPPU-L/2005 regarding *trading terms*. In such case, PT. Carrefour Indonesia (hereinafter abbreviated as PT. CI) implements trading terms to suppliers with a margin of minus system where suppliers must provide cheapest prices on the products that are supplied, if suppliers sell lower supply prices to other businesses retail will be charged a penalty. Thus the application of trading terms makes PT. CI can offer the lowest prices due to have a cheapest price. Therefore, the merchant in traditional markets will not be able to compete with modern market.

State through legal policies can regulate the fair market supply system fair. Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition can be strengthened by setting restrictions on using of market power to a monopoly. Moreover, the state must play a role overseeing the supply of goods from the supplier to the retail market wheter in product quality and product price to prevent monopolistic practices.

**b. Intervention Price**

Issue price is crucial in the management of the market. Price is an indicator of some economic variables such as the level of community livelihoods, values currency, inflation, etc. State may determine product price at a certain price in order to benefit (Jaribah, 2006), otherwise the pricing should not be applied when there are no artificial barriers (not natural) in determining the price level in the market (Khan, 2004). If there are no natural barriers that exist in the market, so that the price level is controlled by a group of people who are economically strong on their behalf, *muhtasib* (as a state institution-pen) has an obligation to implement the correct measures (Khan, 2004). Price interventions can be performed to obtain the benefit. It is based kaedah:

التسعير يدور مع المصلحة وجودا وعدمًا.

[Intervention price (lower price) depends on *maslahah*. If there *maslahah*, it should, if no, then it should not be]

Based on surveys and interviews, modern store prices may be cheaper due to several things than traditional market. Because modern stores gained directly from large distributors while the traditional markets are not able to do so. This is due to the bargaining power of Indomaret, it can buy products with large scale (*economic scale*), even Indomaret has its own warehouse to deviate products in large scale. Secondly, using the cross-subsidy system that is usually by using a discount program where most of the products sold at no profit, while most of the products at a price selling with great advantage.

Although, in principle the market price is formed from the market mechanism, but with the benefit of *mashlahah* (kindness) through regulatory role of the state can intervene by making rules and price intervention. Market arrangements can be made within two (2) terms of the regulation on the average prices of suppliers to the seller (retail) and setting discounted price system, it's mostly done by modern stores.

**c. Set the supply system**

*Muhtasib* as representative of states regulate the supply of goods and services system in several ways (Khan, 2004). First, the market watchdog (*muhtasib*) closely monitoring the supply of goods and services, especially basic commodities. Secondly, the trade must be made on the open market. Confidential contracts among traders conducted in a closed can disrupt the flow of supplies and can disrupt the natural stability of the price level. Third, merchants are prohibited to conspiracy to offer higher prices artificially. Fourth, market participants are prohibited in the city to pick up supplies to the village in the middle of the road to buy their products at a cheaper price and prevent them from knowing the market conditions. Practice pick-up in the middle of the road can be detrimental to village traders who do not know this information and it can lead to unfair competition. Fifth, the interests of the merchants as a class are also protected from dumping in the market by a small group of traders. If a small group of traders can arrange the sale of a product at a price not lower than the prevalent market price exists, it is something which is forbidden because it may harm the interests of the majority. Sixth, merchants are prohibited from making false oath in marketing their trade.

In the context of the modern markets and traditional markets in Indonesia that the state role in the system of supply of goods to be arranged in a comprehensive manner. The state's role in the supply of goods as defined by Akram Khan above can be extended in view of the current context. In case of supply of goods from the supplier to the modern market can be conducted openly so that no price discrimination between traditional and modern market and can be controlled by state. Because of the requirements of the trade (*trading terms*) made by modern stores states can intervene if one party has hurt the product supplier.

In the findings of the authors, there is a modern store special order the product with a specific brand that is also of particular manufacturers so that the product is only found in the modern shop (Rajo, 2014). While traditional market obtains products from distributors even a second distributor (small) due to limited network and only able to make a purchase on a small scale (Meta, 2014).

## 2. State Role as Puller (*fath*)

### a. Motivating and Economic empowerment

Islamic teachings are very motivated to move on and creativity. In Al-Quran, sentence of *a-manu* (*faith*) is always coupled with sentence *amilu* (it's mean work) with various derivative forms of words, it indicate that a person should the fait parallel with the activity and creativity in life. Man was created for working all of which is devotion. Success, goodness and usefulness or change from bad to good is to work according to their respective fields.

Besides internal factors in forming entrepreneurship public spirited, entrepreneurship motivation is driven by the state. The government can make programs to encourage its citizens to be entrepreneurial. Entrepreneurial activity is very important to revive the real sector in the local economy. Real sector based economy will make the economic life of society is very strong. Instead, the economy is not based on the real sector lead economic fundamentals are very fragile and easily affected by the crisis (Republika, 2012).

The role of the state in this case is to open access in economic activity to the community at large. State role can give the widest possible opportunity to make access to economic creativity. All things that can shut down access to the economy such as access to markets with monopolistic practice activities that are to be removed by the government. One form of motivation to people to make productive economic activities, such as seeking alternative sources of funding for empowering traditional market, traders and managers to improve the competence of traditional markets, prioritize opportunities for traditional traders who have been there to acquire business premises in the traditional market renovated or relocated as well as evaluate market management traditional. Making of market infrastructure is one of the important role the state of the market. Provision of infrastructure is one of the priorities at the time of Abbasid market management. Ahmad Farras Oran & Ghaida Khaznekatb explain the provision of infrastructure in the Abbasid period:

The state provided marketplaces with the necessary infra structures for all, including the building of bridges to facilitate trading activities at both sides of the River Tigris: these numbered seven at the time of Al-Rashid (Oran & Khaznekatb, 2009).

Motivation to work can be done by economic empowerment. In case of traditional traders, the empowerment of traditional market can be done by the state by implement partnerships with small businesses in case of the distribution agreement, the provision of business premises, with the principle of mutual need, such as requiring strengthening and beneficial modern shop for local small businesses market their products with the principle of equal partnership and mutual benefit.

The role of state empowerment can be done by providing alternative sources of funding for the empowerment of traditional markets by enhancing the ability of traditional traders and market managers. State can also prioritize the opportunity to obtain a place of business for the traditional market traders at strategic locations. In addition to the direct role of the state, the state's role in empowerment can also be done by playing others in traditional markets such as the push to empower the modern market to facilitate the empowerment of traditional markets and developing SMEs in order to improve the quality of products that meet the quality standards.

In the climate of fair competition, the government can do by the role of motivating businesses to use its rights in its trade activities with due regard to the ethics, aesthetics, and public morality. Ethics and aesthetics oriented towards the fulfillment and maintenance of general public interest, respecting other businesses, protecting consumers and protecting the environment.

#### **b. Pushing Economic Cooperation**

The purpose of the Islamic economic system is to encourage unity and community in a sustainable manner by making mutual collaboration environmental. The Islamic economic system is a system of economic cooperation (Maududi, 2013). All systems contract in the Islamic business law is based on cooperation system. System of market based on cooperation principle and also acknowledging the existence of the principle of freedom of contract based personal (*al-Hurriyyah*) so that there is no economic inequality. Economic cooperation is essential between big businesses to small businesses.

**c. Planning for Economic and Social Development**

Socio-economic planning and social development contains two things namely planning and anticipation of economic failure.

Islamic law not only gives the state the right to formulate plans and programmes for the improvement of agriculture and industry, the provision of society with professional and academic skills, the promotion of scientific research, and the means to keep pace with technological advances, but considers its failure (or that of society) to do so sinful (Sakr, 2009).

The scope of planning is not only related to economic development in material but also in the social economic development. Development of economic system is one inseparable unity between economic and social, so that economic development is not only related to growth, but also economic equality, especially for businesses and people who are marginalized. In addition, the planning of the development is also associated with the prediction of economic failure that can make disorder society.

In this context, social justice and economic justice are inseparable. Economic and social justice intended to prevent (*sadd*) the accumulation of wealth in the hands of the public or a group of people while the rest of the community to experience poverty (Azhari, 2000). Therefore the order and rules outlined aims to keep the treasure, develop, distribute and utilize in order to realize the benefit of all parties without distinction of rich and poor groups (Qqardhawi, 2002).

**3. The role of the State as a Balancing (*Jam'u al-Zariah*)**

**a. Keeping Market Justice**

All instruments of Islamic law aimed at enforcing and maintain justice. In the field of business law (*muamalah*) all instruments is to provide justice for the parties to a business transaction that is based on freedom principle (*al-Hurriyyah*). The State is obliged to ensure that the fairness principle in business transactions run between entrepreneurs and businesses with the community.

According to Abu A'la al-Mawdudi the role of state is the organizer and escort justice by using authority to maintain and distribute welfare to the people (Hamidi, 2012). The State is obliged to prevent injustice in this case justice market. In Islamic

law rules in terms of policies to prevent injustice is more important than taking benefit of the policy.

In the context of the business competition between traditional and modern market required distributive justice. As we know the modern market with traditional markets competition unbalance. Ability level of capital, infrastructure and management of modern market is not comparable with the infrastructure, capital management and traditional markets. Therefore we need the presence of state to provide a sense of justice to the traditional market.

Maintain justice in this case is to give more attention to traditional markets to be able to compete against the modern market. This is due to the position of traditional markets and modern markets are not a level (*unequal playing field*). Competition law requires that businesses that position at the same level or levels. Conditions that are not aligned with the state's role is to make justice to market conditions by giving more attention to traditional markets. Giving attention can be given access to capital, adequate facilities, reduce and even eliminate the tax burden as well as provide capital incentives and assistance for traditional markets.

State role is to maintain the rule of injustice with displaced traditional retail markets. Efforts to close (*sadd*) all of possibilities of modern market activity can cause displaced the traditional retail market can be done with a few things such as zoning system, establishment of modern market restrictions, restrictions on foreign capital and rivals.

Justice market also related to the distribution system of goods / products from the manufacturer to the end seller to the consumer. State may make regulations to do with fair arrangement. Salah Salhi said:

The state also regulated business transactions by curtailing exploitative intermediary brokers and outlawing the monopolistic domination of the markets. In this way, it protected the interests of producers, traders and consumers alike (Salhi, 2009).

#### **b. Ensuring public safety and order**

The State is obliged to maintain public safety in all aspect like security from crime and so on. In the economic field, state is obligated to maintain the security of



citizens in terms of the passage of economic activities. Economic activities include the production, distribution and consumption guaranteed by the state. In the field of production of the state is obliged to ensure the safety of the public productivity. Disruption of community production will make unstable economic conditions as well as interfere with the needs of the community. Disruption is not only in the form of security for the production of traditional, but also the security and legal rights for businesses to not be disturbed by other businesses.

Import policy is not entirely a positive impact, but the import policy that does not see the condition and resilience of the community economic actors will have negative consequences for economic actors. The state's obligation is to provide a sense of security in relation to trade policy provides an opportunity or occasion other businesses abroad to compete domestically. Conditions of globalization cannot be avoided certainly understandable, but fair treatment and protection in proportion to conduct other businesses is the responsibility of the state in order to provide security for the people.

Giving of rights of ownership of the community is a very highly regarded in Islamic economics. Everyone is given the freedom to conduct economic transactions (QS. Al-Baqarah: 29 & 279). Islamic law divides property into three types: first, the ownership of the individual/personal (*al-milkiyyah al-khâshah*), collective ownership/shared on certain land (*al-milkiyyah al-al-'ammah*), state ownership (*al-milkiyyah al-daulah*).

In keeping the three concept of ownership above, state as institution of the community as an has a significant role to set them, wether relationship of ownership among individuals, and among individuals and the state. Government based on public interest (*al-mashlahat al-al-ammah*) has the authority to limit or revocation of the right to object (*tahdîd au naz'u al-sûq al-milkiyyah*).

The state is an institution that is needed (*wâjibât*) to regulate citizens needs (Islahi, 1997), including the economy matter. According to Ibn Taymiyyah, that the state's general duty is to do good and forbidding the evil (*amr Ma'ruf wa nahyu an al-munkar*) (Taimiyah). To do the duties of the state regulatory agency established competition known as *al-Hisbah* institutions. According to al-Mawardi in his book

*Ahkam al-Sulthâniyah* say that the basic role of the state is to promote what is good and avoid what is bad (*al-amr bi al-Ma'ruf wa al-nahyu an al-munkar*). To make it happen, technically that the Islamic state should be instituted provisions to oversee the implementation of commanding the good and forbidding the evil nahyu (Mawardi, 1973).

The state must prohibit all forms of evil y (munkar) in markets such as monopoly practices that may inhibit happen ideal market. All forms of barriers (*restraint*) for the operation of the market are the ideal form of munkar. All forms and opportunities monopoly should be prevented by making rules and policies based on equity market. The stete is obliged to control the actions of business actors who obstruct other businesses and harm consumers.

The state role of competition law is to take actions against businesses that take action to restrict the monopoly or deter other businesses entering into the market so as to elevate the market price. Conditions of high market prices caused by monopoly practices require the state to intervene to eliminate monopolistic and creating an open market for other businesses to be able to conduct business activities.

Ethics market based on the principle of fairness (*justice*) and fairness attitude marked politeness of market participants, including the state. Masudul Alam Choudhury said:

The attributes of justice and fairness arising from such an ethicized market order become the goal of the pursuit jointly launched by the individual and polity, including the state, in concert with one another. Ibn Taimiyyah saw in the Islamic social contract of Al-Hisbah the emergence of an interactive, integrative and dynamic process of unity of beings, made possible by the exercise of the Shariah (Choudhury, 2004).

### **c. Making Legal Policy**

In the modern world, ethics and social responsibility in business is a serious discourse about policy planning, management and even the process done by the state (Ahmad, 2006). Business law-in this case referred to business ethics has

become law in the conduct of business. The mention Business law is the laws concerning the relationship among the seller and the buyer.

Business law is derived from normative ethics in conducting business transactions. For purposes of legal certainty to business ethics used in the form of law (*bleid*). The values contained in the business ethics institutionalized through policies and regulations. Regulatory matters related to to business behavior that can lead to other businesses eliminated. Regulation is also associated with the regulation of the rights and obligations of consumers based on the values of fairness and balance.

In Indonesia, the norms contained the prohibition of monopolistic practices and unfair business competition and consumer protection. Anti-monopoly laws are set of laws governing among business actors in competing in the business world. Consumer protection law is the law that governs the relationship between business with buyers or consumers. In the legal field among businesses are named *fiqh* doctrines are forbidden in the sale and purchase of such *ihthikar doctrine, talaq rukbân, tadtis, ta'alluq* and so on. In terms of the relationship with the consumer businesses stipulated in *fiqh Khiar* and obligations of the consumer businesses.

The role of the state include the relationship business, consumers and government. In this case, the state dual role is to ensure the implementation of fairness and balance business and consumer relationship, and as well as creating good regulation in the welfare of the whole society. Economic institutional issues are very important as a means to stabilize and strengthen the economy. As for which is included in the scope of modern markets and traditional markets are macro issues related to investment regulation, while micro rules or regulations on competition and cooperation in a fair businesses.

In the globalization era, market becomes difficult to be defined because there has been a common market. It can be seen some regions of the world has become a common market. Common market is the implication of globalization seen in some countries in the region which previously had market. In some countries, especially countries which belong to the category of advanced globalization resulted in increased productivity and efficiency of resource management.

Economic regulation is needed in order to ensure the economic life of society. The role of the state in this case does not regulate all matters relating to the economy so that all economic activity is regulated by the state, but economic regulation is intended to ensure that each community earns a decent living and get access to the economy in the form of jobs.

Competition among businesses should be limited to encourage competition in the market in proportion. What is proportional mean? proportional means to encourage competition among businesses, while doing restriction mechanism behavior or anti-competitive practices. In terms of structure and policies, the government can make regulations that restrict or prohibit the dominant ownership or restrictions for the time, zone or a particular business so as to reduce the anti-competitive practices healthy. Competition policy can be done by restricting the behavior of businesses that have a dominant position to abuse by applying the terms of such cooperation between businesses. It aims to open up market access for businesses who have a weak ability to both capital and access.

In the context of the modern markets and traditional markets that market competition is natural in economic life, but the state can play a role to guaranteed people living on the traditional market. To ensure the economic life of the community will be established through the legal policy by the creation of economic access to traditional markets, in addition to clarity and legal certainty on the status of the land use rights of the market occupied by market participants.

The role of government can make regulations to facilitate a cooperative relationship between the supplier with modern stores in order to create equitable cooperation, mutual benefit and equal between modern and traditional markets are able to synergy and mutual benefit.

#### **d. Ensuring Social Justice (Social Security)**

State in the Islamic perspective is the caliph (representative of God) to fulfill the mission of God for the welfare of human society. In this case, the community is the main object to be served by the state. Community serviced by state can occur in two forms, the first community service to the rights of the general public such as

the right to security, right to education, the right to political participation, the right to access the local economy. Second, the guarantee of the rights of a person's social. State is obliged to consider all matters of life and livelihoods and ensure a respectable and worthy of it (Jauhar, 2010).

Social security in the market economy can be in the form of market facilities used by merchand. In line with the concept of ownership of the market, the state set up facilities, markets and other supporting facilities. In the context of the traditional market, state services the needs of the traditional market trader representative preparation, adequate market infrastructure and so on. In terms of trade competition in the market, state role is to ensure the creation of a fair trading environment among businesses, the climate healthy trade among businesses with other businesses that come from outside and settle disputes arising from the disruption of a healthy trading environment.

#### **D. Conclusion**

In Globalization era state and market relations are dynamic. In Islamic law, the state and the market are two institutions that can exist and complement each other to achieve the purpose of the law (*maqashid shari'ah*) a happy man in the world and in the Hereafter (*Human Falah*).

The relationship state and market is to be *Sadd wa Fath* within the framework of realizing the goal of law (*maqashid shari'ah*). This theory is a theory of the development of the Quran which commands man to do good (*ma'ruf*) and forbidding (*munkar*). This theory implicitly formulated by Ibn Taymiyyah through the concept of the role of state institutions through *Al-Hisbah*.

To be able to see the problems alineation of traditional market by modern market by using the theory of the state role "Fath and Sadd Nazhariyat" on the market. At the original position state serve as a counterweight to the market by ensuring the realization of market justice, ensure security, legal rights and ensure public order and ensuring the social market mechanism (maintaining social security). However in certain circumstances, the state can play a role as towing to the market and act as a suppressor of the market.

The state role as *Fath* (towing) is the role of the state in favor. The state role as a puller in the modern market relations and traditional market by way of motivating and economic empowerment for small businesses, to encourage economic cooperation among market players, especially big businesses to small businesses, build market infrastructure, providing the opportunity and the chance that a balanced distribution, role for the empowerment of small businesses, the role of mentoring in business activities, improvement and development of infrastructure for traditional markets, funding incentives, and so on.

The role of the state as *Sadd* (suppressor) is not in favor of the state or to intervene. The role of the state as *Sadd* (suppressor) in the modern market relations and Traditional Market by way of intervention prices, market establishment of zoning restrictions, restrictions on certain products, limiting the number of outlets and any intervention policies.

The state role as *Fath* (towing) and as a suppressor can be modified to form a collaborative or partnership by using the breadth and flexibility of Islamic law through theory *Zari'ah* Legal Movement against the parties who are empowered and pressed to reach the original position as a balance of the guard market.

## BIBLIOGRAPHY

### A. Books and Journal

Al-Quran al-Karim

Syamsul Ma'arif, *Dinamika Peran Negara dalam Proses Liberalisasi dan Privatisasi*, Jurnal Kebijakan dan Administrasi Publik, Magister Administrasi Publik Universitas Gajah Mada, Vol. 10 No. 2, November 2006

Budi Winarno, *Pertarungan Negara Vs Pasar*, (Yogyakarta: MedPres, 2009)

Adam Smith, *An Inquiry into The Nature and Causes of The Wealth of Nation*, Edwin Cannan (ed), (USA: University of Chicago Press, 1976)

Salmanulfarisi Abdulrahman, *Alternative Economies And Allocation Of Investment In Global Markets: The Islamic Economic Perspectives*, Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 2, No.4; Dec. 2012

Kababji M. D (2007) *Alternative Economic System Retrieved*, dalam Salmanulfarisi Abdulrahman, *Alternative Economies And Allocation Of Investment In Global Markets: The Islamic Economic Perspectives*, Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 2, No.4; Dec. 2012

Abdul Husin Muhammad, *Economics System In Islam: Compare with Capitalism and Socialism*, Second Edition, (Teheran: World Organization for Islamic Service, 1975)

Sutan Syahrir, *Sosialisme Indonesia Pembangunan* dalam Syamsul Ma'arif, *Dinamika Peran Negara dalam Proses Liberalisasi dan Privatisasi* Jurnal Kebijakan dan Administrasi Publik, Magister Administrasi Publik Universitas Gajah Mada, Vol. 10 No. 2, November 2006

Dede Abdul Fatah, *Pasar dan Keadilan Dalam Perspektif Ekonomi Islam, (Analisis Peran Lembaga Hisbah Era Abbasiyyah. Cet. 2. Jakarta: Gaung Persada (GP) Press, 2012*

Abî Hasan Alî bin Muhammad Habîb al-Mâwardî al-Bashrî, *Al-Ahkâm al-Sulthâniyah*, (Mesir: Dâr al-Hadis, 2006 M/1427 H

Ibn Taimiyah. *Al-Siyasah al-Syar'iyah fi Islah al-Ra' wa Ra'iyah*. Kairo: Al-Shab, 1971.

\_\_\_\_\_, *al-Hisbah fi al-Islam* (Riyad: Al-Mu'assasah al-Su'udiyah, t.t.

Abdul Kadir 'Audah, *Al-Islâm Wa Audhâ'unâ al-qanuniyah*, diterjemahkan oleh Firdaus A.N., *Islam dan Perundang-undangan*, Cet. V, (Jakarta: Bulan Bintang, 1974

Muhammad Akram Khan, *Al-Hisbah dan Ekonomi Islam*, dalam Ibn Taimiyah, *Tugas Negara Menurut Islam*, Cet. I, (Yogyakarta: Pustaka Pelajar, 2004

- M. Ismail Yusanto dan M. Arif Yunus, *Pengantar Ekonomi Islam*, Cet. 2, (Bogor: Al-Azhar Press, 2011 M/1432 H
- Abî Hasan Alî bin Muhammad Habîb al-Mâwardî al-Bashrî, *al-Hâwî al-Kabîr*, Jaribah bin Ahmad Al-Haritsi, *Fikih Ekonomi Umar bin Khattâb*, Cet. II, (Jakarta: Khalifa, 2006
- Ibn Taimiyah, *al-Hisbah fi al-Islam*, dalam Akram Khan, dalam Prolog dalam Ibn Taimiyah, *Tugas Negara Menurut Islam*, (Yogyakarta: Pustaka Pelajar, 2004
- M. Omar Chapra, *Islam Iqtisadi Nizam*, Trans By Yafuz Sebil Publishing, Istambul, 1977
- Ahmad Janan Asifuddin, *Etos Kerja Islami*, (Surakarta: Muhammadiyah University Press, 2004
- Ahmad Farras Oran & Ghaida Khaznehkatb, *The Economic System Under The Abbasid Dynasty*, Encyclopaedia of Islamic Economic, Vol. II, Abdelhamid Brahimi & Khurshid Ahmad (Ed), (London: FIF, 1430 H/2009 M
- Sayyid Abul A'la Maududi, *First Prinsiple Islamic Economics*. UK: The Islamic Foundation, 2013 M/1443
- Muhammad Ahmad Sakr, *The Role Of The State In The Islamic Economic System*, Encyclopaedia of Islamic Economic, Vol. II, Abdelhamid Brahimi & Khurshid Ahmad (Ed). London: FIF, 1430 H/2009 M
- Muhammad Tahir Azhari, *Negara Hukum: Suatu Studi Tentang Prinsip-prinsipnya dilihat Dari Hukum Islam, Implementasinya pada Periode Negara Madinah dan Masa Kini*. Jakarta: Disertasi FHUI, 1992.
- Yusuf Qaradhawi, *Teologi Kemiskinan: Doktrin Dasar dan Solusi Islam atas Problem Kemiskinan*, diterjemahkan A. Maimun Syamsudin A. Wahid Hasan. Yogyakarta: Mitra Pustaka, 2002
- M. Luthfi Hamidi, *The Crisis*. Jakarta: Republika, 2012
- Salah Salhi, *Criteria of Public Sector Investment In the Islamic Economic System*, Encyclopaedia of Islamic Economic, Vol. II, Abdelhamid Brahimi & Khurshid Ahmad (Ed). London: FIF, 1430 H/2009 M
- A.A. Islahi, *Konsep Ekonomi Ibn Taimiyah*, Terj. Surabaya: PT. Bina Ilmu, 1997
- Alî Al-Mâwardî bin Muḥammad Al-Bashrî, *Al-Aḥkâm al-Sulthâniyah*, Mesir: Mustafâ al-Babi al-Halabi, 1973
- Masudul Alam Choudhury, *The Islamic World-system: A Study in Polity-market Interaction*). USA and Canada: RoutledgeCurzon, 2004
- Sayyid Fayyaz Ahmad, *The Ethical Responsibility of Business: Islamic Prinsiples and Implications*, dalam *Islamic Priciples Business Organization and Management*, dalam R. Lukman Faruni, *Etika Bisnis dalam Al-Quran*, Yogyakarta: Pustaka Pesanteren, 2006
- Ahmad Al-Mursi Husain Jauhar, *Maqâshid syari'ah*. Cet. II. Jakarta: Amzah, 2010



**B. Decision Court**

Putusan KPPU Nomor 9/KPPU-L/2009.

Putusan KPPU Nomor: 03/KPPU-L-I/2000.

**C. Newspapers and Internet**

Revitalisasi Pasar Tradisional, Harian Republika, Selasa 24 Juni 2014, hlm. 4.

Firmanzah, *Investasi dan SDM*, Republika, 19 November 2012

M. Syatibi, *Strategi Pengembangan Usaha Ritel Tradisional Di tengah Munculnya Usaha Minimarket Modern Di Bandar Lampung*,  
<http://repository.unila.ac.id:8180/dspace/handle/123456789/106>, diakses tanggal 27 Juni 2011.

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

**D. Interview**

Interview with Bapak Ucok Harahap, 21 april 2013, pukul 11.00 WIB di Pasar Aksara Medan

Interview with Bagindo Datuk Rajo, 16 Maret 2014, pukul 1425.00 WIB di Pasar Perumahan Klender, Jakarta Timur.

Interview with Mbak Meta, penjual asesoris di Pasar Perumahan Kelender, Jakarta Timur, 1 April 2014, Pukul: 14.00 Wib di Pasar Perumahan Klender

Mustapa Khamal Rokan