

LEGAL PROTECTION STRATEGY DEVELOPMENT FOR RETAIL SMALL BUSINESS IN SEMARANG INDONESIA

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Abstract

The Rapid development of modern retail in the township has resulted in many small actors out of business because they can not compete. Such a state if not immediately realized by the government will result in social turmoil that is difficult to overcome. This research aims to find a strategy of legal protection against retails small business actors in order to realize fair business competition. Research method used is normative juridical. This study resulted in the construction of the need for changes to the regional regulations spatial planning as the parent of arrangement of economic actors in the form of retail both modern and traditional.

Keywords--- Legal protection strategy, Retail, Business competition, Fairness, Spatial planning plan

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INTRODUCTION

Retail small businesses in Indonesia in general and in the city of Semarang in particular in running a business so far have not received optimal legal protection. This is because there are various kinds of laws from various government institutions that regulate them sectorally and are less integrated. The next effect is that many retail small-scale businesses must close down due to competition from capital and innovation. Where if not observed by the government it will cause social upheaval that is difficult to control.

On the other hand Article 27 of the 1945 Constitution of the Republic of Indonesia has obliged the state to provide decent work and livelihood to each citizen. To carry out this obligation, none other than the state is to provide adequate means for the achievement of the objectives as stated in Article 27 of the 1945 Constitution of the Republic of Indonesia. answering the needs of citizens as part of national development. For this, legal products must be oriented to the legal ideals of the Indonesian nation, Pancasila. In order to explore the problems that exist in society and focus an in-depth study of the above problems, the following problems are formulated, namely:

1. Why has the legal protection given to small businesses in the retail sector in Semarang City not been able to realize fair business competition?
2. How is the development of a legal protection strategy for retail small businesses in the City of Semarang in order to realize fair business competition?

RESEARCH METHODS

This research begins with an empirical problem in the city of Semarang, namely the large number of retail small businesses that have closed down after many modern retailers have appeared in the form of minimarkets such as Indomaret and Alfamaret in residential areas. In order to obtain significant and comprehensive research results, in this study a qualitative paradigm is used, namely the normative juridical approach in particular the study of vertical and horizontal synchronization levels to examine the extent to which positive written laws exist in accordance with basic norms or fundamental norms of the country. The specifications in this study are analytical descriptive, that is, the data obtained are contained in a qualitative form in the form of narrative descriptions. This

research illustrates the need for reconstruction of regional regulations on spatial planning and the need for the presence of regional regulations that specifically regulate retail as an effort to overcome social conflicts. To obtain data in the form of primary legal materials and secondary legal materials, it is carried out through document studies and field research, namely by exploring the legal materials that exist in legislation in the form of regional regulations as well as on component parties.

RESEARCH RESULTS AND DISCUSSION

Before discussing the formulation of the existing problems as mentioned above, it is better to first discuss a number of theories that underlie the need for state intervention in the market so that justice occurs between large, medium and small businesses and the occurrence of market balance.

Obligations and Responsibilities of the State in protecting small business retailers.

The formation of a country has a broad goal which is to protect the entire population in order to achieve a sense of security, the achievement of common prosperity and increase the degree of humanity. Indonesia as a country has obligations and responsibilities similar to what was just mentioned.

The history of the country in carrying out its responsibilities continues to develop in line with the development of society in the process towards perfection. The shift in historical development outline can be illustrated as follows, starting from the thought of a liberal legal state or better known as a night watchman state to a formal legal state, then becoming a material law state to the conception of a welfare state (welfare state) or a country that serves the public interest (social welfare state) (Padmo Wahyono, 1991).

The welfare state is a form of democratic government that asserts that the state is responsible for the minimal welfare of the people. In this context the government must regulate the distribution of state wealth so that no people are starving and no people will die because they do not can pay for hospital costs.

It can be said that the welfare state contains elements of socialism that are concerned with welfare in the political and economic fields. It can also be said that the welfare state contains

the principles of freedom (liberty), the principle of equal rights (equality) and the principle of friendship (fraternity) or togetherness (mutuality) which can be equated with the principle of family and mutual cooperation (T. Sumargono, 2010) The type of welfare state is often also referred to as a modern legal state.

In this modern concept of the rule of law, humans are not only seen as individuals, but also as members or citizens of a community. The state is required to expand its responsibilities to the socio-economic problems faced by many people. Based on the above description, it can be explained that the state must intervene in all fields, namely political, social and especially economic fields. The state must be responsible for the welfare of the people by giving understanding to big business actors so that they want to limit themselves in trying to comply with sound business ethics and not to conduct business practices that lead to monopoly actions and provide protection to small businesses so that they can take part in the economic sector.

In this conception of a welfare / prosperity state, the state is required to expand its responsibilities to the socio-economic problems faced by many people, the role of individuals to control the livelihoods of many people is eliminated. This development gave legislation to interventionist countries in the 20th century (Gunther Teubner, Walter de Grueter, 1999). The state actually needs and even has to intervene in various social and economic problems to ensure the creation of shared prosperity in society.

On the other hand, Sri Redjeki Hartono argues that the principle of state interference in economic activity is one of the three important principles needed in the context of fostering the legal ideals of the principles of national law in terms of aspects of commercial and economic law. Two other principles are the principle of balance and the principle of public supervision. According to him, economic activities that occur in society require state intervention, bearing in mind the basic objective of the economy itself is to achieve profits. These goals encourage various deviations and even fraud that can harm certain parties, even all parties. Therefore he stressed that state intervention in economic activities in general in the context of legal relations that occur remains within the limits of the balance of the common interests of all parties. State interference in this case is in order to maintain the balance of the interests of all parties in society, protect the interests of consumers and producers, as well protect the interests of the state and the public interest against corporate or personal interests (Sri Redjeki Hartono, 2000).

In relation to the current retail industry, namely the imbalance and injustice between modern retail and traditional retail occurs because it is left to the market mechanism. To overcome this, the regulation must be taken over by the state (government) through the active role of the state, which is based on a combination of Adam Smith's market freedom theory and the difference principle theory from John Rawls. As a solution to the injustice of economic distribution by the market, in addition to maintaining equal freedom for all, the state is required to take certain specific measures and policies specifically intended to help the social and economic conditions of groups that are objectively disadvantaged through no fault of their own, and they unable to improve their economic and social conditions as a result of the existing social structure. Modern and traditional retail industries are urgently needed; thus their existence should not be mutually mutually disruptive. The existence of a modern retail market must be arranged so as not to eliminate or kill traditional retailers in both traditional markets and villages. For this reason, the government must take action to protect and develop traditional retailers that include products, manufacturers and outlets (Nanik Trihastuti, 2015).

The state on one hand is an important decision-making center and administrative power, while on the other hand it is a source to limit its own actions and the actions of its citizens. Therefore based on the "Power of Economic Regulations" owned by the government to regulate the market, the government must take decisive action against anyone who harms or protects those who break the law. The government must not pass laws and regulations which will only benefit or protect certain economic actors. Any decision issued by the government must remain in the realm of social justice, namely in the context of realizing welfare for its citizens (Nanik Trihastuti, 2015).

Theories of Justice John Rawls and Justice of Pancasila in Business Rawls Justice Theory Justice is the spirit of law and life

There are various meanings of justice that are based on the situation of a community's condition in looking for the meaning of justice that goes hand in hand with the development of society. The changing concept of justice itself (relative) is a process that continues to go hand in hand with the development of society towards perfection.

To answer the need for justice that is needed in society, by looking at the complexity of the existing problems and increasingly globalizing markets marked by increasingly fierce business competition among business actors. This business competition has resulted in large amounts of funds from corporations and financial bodies to finance and direct public politics and policies in the interests of those classified as large business actors and even conglomerates. Something that can damage democracy.

The tendency of the economy to find a balance between individual and social dimensions of humans, between the role of the market and the role of the state, in order to give birth to a more equitable economy gets theoretical support from John Rawls, a "liberal leftist thinker" in his book "A Theory of Justice" combining the concept of individual property rights of John Locke, the willingness to live together for the fulfillment of the common needs and interests (social contract) of Jean Jaques Rousseau, and the willingness to do "goodness" for others without any tendency in accordance with the formal rules of Immanuel Kant.

Based on the theoretical framework above, Rawls assumes society as a collection of individuals with double dimensions, on the one hand as social creatures who are willing to unite because there is a bond to meet the common interests, on the other hand, as individual creatures that each have a bearing (basic capital) which different, which cannot just be melted into social life. The problem is how to harmonize the will to fulfill the rights and nature of the individual, with social obligations to meet the needs and collective virtues that can create equitable social relations.

Rawls theory tries to answer these challenges by defining fairness as the fairness of "fairness". Fairness is the willingness to give what is reasonable to all people and by "naturally" what can be agreed upon by all parties involved in a transaction. Insider trading is an example of an unfair transaction because not everyone gets the same information about an item being traded (Bertens, 2000). Rawls proposes two principles of justice as a basis for maintaining harmony between individual rights and social obligations. First, the principle of equality of freedom "principle of equal liberty", that everyone has the same basic freedom. These basic freedoms include: (1) political freedom, (2) freedom of thought, (3) freedom from arbitrary action, (4) personal freedom, and (5) freedom to own wealth. Second, the principle of difference, that the differences that exist between humans, in the economic and social fields, must be regulated in such a way, with different treatments, so that (1) can benefit

everyone, especially those who are nature is not lucky, and (2) according to the position and functions for all people (John Rawls, 2011; Yudi Latief, 2011).

Based on these principles, Rawls requires that everyone should be treated equally, except if the equality of treatment can lead to greater injustice. Under such conditions, differences in treatment are needed in order to bring social justice. This is where state institutions play an important role.

The Pancasila Justice Theory

The concept of social justice in Indonesia cannot be released from the perspective of the Pancasila philosophy. The concept of social justice in question is a thought that aspires to carry out the fifth precepts of Pancasila, namely social justice for all Indonesian people, as the ultimate goal of the nation and state so that with social justice to be achieved there will be the creation of a prosperous Indonesian society. Justice in Pancasila contains the principle that everyone in Indonesia will receive fair treatment in the fields of law, politics, economics, and culture.

The operationalization of the basic values mentioned above is what is used in the preparation of legal norms in Indonesia, the basic norm or its foundation is Pancasila. The State of Indonesia has a national law which is an integrated legal system. The Indonesian legal system originates from and is based on Pancasila as the basic norm of the state. Pancasila, in the Indonesian legal system, is located as the basic norm (fundamental norm) of the state in the level of legal norms in Indonesia.

The basic values are abstract and not normative, because they are abstract and not normative, the contents cannot be operationalized. In order to be operational and explicit, it needs to be translated into instrumental values. Examples of instrumental values are the 1945 Constitution and other laws and regulations. As basic values, these values become a source of values, meaning that based on the five basic values above can be made and described the instrumental values of the implementation of the State of Indonesia

The values of Pancasila are further elaborated in various existing laws and regulations. Legislation, decrees, decisions, government policies, development programs, and other regulations are essentially instrumental values as a translation of the basic values of Pancasila, including including laws in the economic field.

The basic values of the Pancasila must be a guideline or source of direction for the implementation of government tasks in the economic field. Basically, the laws and regulations in the economic field contain as much as possible the basic values of Pancasila, especially the basic values of justice as contained in the second and fifth precepts.

In the course of the history of the Indonesian nation it was noted that the precepts of social justice are "our great protest to the basis of individualism-capitalism". As stated by Sukarno. Thus, the Indonesian state is not desired as a "liberal state", but rather a "welfare state".

The intended welfare state is a form of democratic government that asserts that the state is responsible for the welfare of the people, that the government must regulate the distribution of wealth the state so that no people will starve, no people will die because they do not get social security. Thus, social justice through the realization of the welfare state is an ethical imperative of the mandate of the Pancasila and the 1945 Constitution of the Republic of Indonesia.

Based on the theories above, now we discuss the answers to the formulation of the problem in sequence number.

Legal Protection of Retail Small Business Actors in Regulations

Regulations relating to legal protection of retail small business actors are spread in various laws and regulations and in various government regulations. Legal protection in this case can be done by excluding the enactment of a statutory regulation to retail small business actors. In Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition or also known as the Business Competition Law or the Antimonopoly Law, there are provisions that exclude the enactment of this Act to small businesses or cooperatives.

This exception refers to the provisions of Article 33 of the 1945 State of The Indonesian Republic Act in the hope that small business operators and cooperatives can develop themselves.

In addition to the above, the exceptions to the enactment of the Business Competition Law against small businesses and cooperatives are based on People's Consultative Assembly Decree Number. XVI / PCA / 1998 specifically Article 5 which reads: Small, Medium Enterprises and cooperatives as the main pillars of the national economy must obtain the main opportunities, support, protection and development as broadly as a form of firm alignment to the people's economic business groups, without ignoring the role of businesses large and State-owned enterprises.

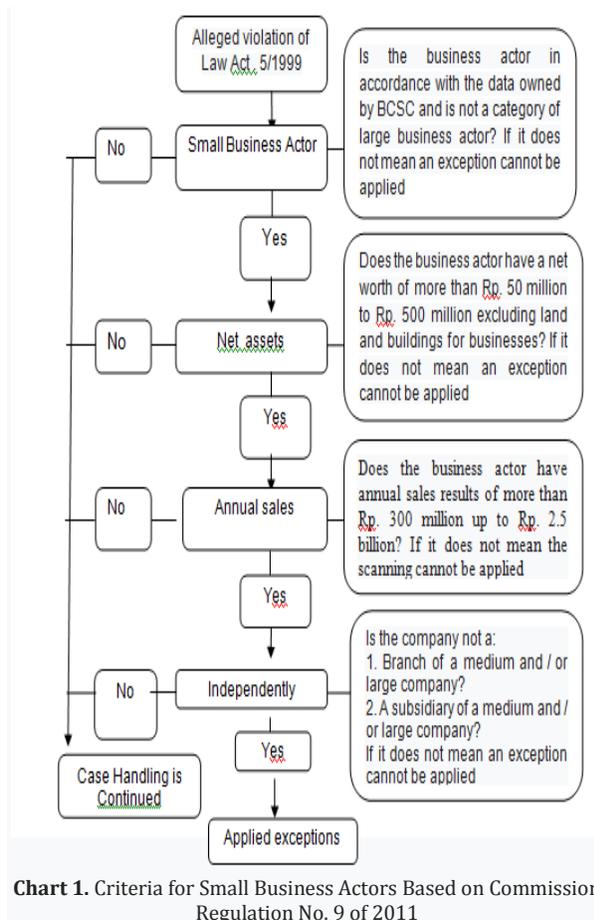
Protection of retail small business actors is also carried out by institutions which by the Business Competition Law are given the authority to enforce Law Number. 5 of 1999 namely BCSC (Business Competition Supervisory Commission) by issuing Commission Regulation Number. 9 of 2011 concerning Guidelines for Article 50 letter H of Law Number. 5 of 1999. Regulation Number. 9 of 2011 interprets what is meant by small business actors who must get legal protection from competition as can be seen from chart 1:

Even though retail small businesses have been protected normatively by several laws and regulations, at the operational level there is no protection felt because there are regulations that are not pro to small business actors in the form of Semarang City Regulation Number 14 of 2011 concerning Spatial Planning of Semarang City in 2011- 2031.

Regional Regulation This Regional Layout Plan permits the operation of modern stores in the form of minimarkets (business area < 400 m²) to open outlets in residential / settlement areas. This condition is supported by Article 5 of the Minister of Trade Regulation 70 of 2013 which states that minimarkets are exempt from completing documents analyzing the socio economic conditions of the community so that modern stores in the form of minimarkets remain free to operate in residential areas.

This situation has led to an unbalanced head-to-head business competition between small business actors and larger business actors, what followed was that many small-scale retail businesses went out of business and the aftermath was the growing number of poor people and unemployed.

Such competition should be avoided because it is not in accordance with the principle of difference Principle as taught by John Rawls and is contrary to the value of social justice from Pancasila which is based on "appropriateness" which contains the spirit of humanity. kinship, mutual cooperation, cooperation and do not kill each other.



Specifically and explicitly, legal politics in the context of legal protection for small businesses in the retail sector does not yet exist. So far, retail arrangements are only based on Presidential Regulation 112/2007 Concerning Structuring and Guiding Traditional Markets, Shopping Centers and Modern Stores and Minister of Trade Regulation 53/2008 in connection with Minister of Trade Regulation 70/2013 Concerning Guidelines for Structuring and Guiding Traditional Markets, Shopping Centers and Shops Modern. In the two regulations, there is no definition of retail but only a modern shop is found, namely a shop that is based on self-service by selling various types of goods in the form of minimarkets, supermarkets, department stores or wholesalers in the form of retail (Article 1 number 5 The Regulation of President 112/2007 in connection with Article 1 number 5 Minister of Trade Regulation 58/2008 in connection with Article 1 number 6 Minister of Trade Regulation 70/2013).

Development of a Legal Protection Strategy for Retail Small Business Actors

In order to provide legal protection to retail small businesses in Semarang City in particular and Indonesia in general it is necessary to develop strategies including: First, to provide legal protection that can be felt in real terms by small business actors, it is necessary to make changes to Semarang City Regulation Number 14 Year 2011 Concerning Spatial Planning of Semarang City 2011-2031 in which modern stores in the form of minimarkets are allowed to operate in an environmental service center which means that based on the provisions of Part 2 (Environmental Service Center) Article 10 of the Regional Regulation the Spatial Planning for the Regional Taqta may operate throughout residential areas in all subdistricts in the city of Semarang, modern shops in the form of minimarkets should

not be explicitly permitted to operate in residential areas but may only operate or open stores or outlets in the area of national roads or roads the province. To support this, it is necessary to relocate modern stores that have been operating so far by providing a relocation deadline of 2-3 years and the need for a moratorium on granting new licenses because so far there have been approximately 500 modern stores in Semarang, 299 of them illegal (Java Pos, Radar Semarang page 1, Thursday 18 May 2017)

Secondly, it is necessary to establish a regional regulation on retail that specifically regulates retail in the form of hypermarkets, supermarkets, shopping centers, department stores and minimarkets. This is necessary because all this time the regulation that has been used as a guideline by regional governments is Presidential Regulation 112/2007 on Structuring and Development of Traditional Markets, Shopping Centers and Modern Stores and Minister of Trade Regulation 53/2008 in connection with Minister of Trade Regulation 70/2013 Concerning Guidelines for Structuring and Guiding Traditional Markets, Shopping Centers and Modern Stores. In the Presidential Regulation and Minister of Trade Regulation, modern stores in the form of minimarkets are still permitted to operate in residential areas / residents' villages. This is what causes traditional retail increasingly eroded.

Third, it is necessary to set the days and hours of operation / hours of modern retail operations ie holidays and Sundays of modern retailers should not be open / must be holiday, operating hours must also be set from 10 to 22 hours. This needs to be strictly regulated in order to provide opportunity for people to continue shopping at traditional retail on holidays and before opening hours of modern retail. With retail regulations and strict and fair law enforcement, it is expected that the economic growth of the Indonesian people, which is largely supported by small businesses, will further reduce economic inequality and poverty, which is currently the gap between the rich and poor gaping wider. In large and developed countries such as the US and Japan, small businesses are supporting the prosperity and welfare of the country.

In addition to the aforementioned matters favoring small scale business actors, it is a mandate that must be carried out by the state administrators as stated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely the economy is arranged as a joint effort based on the principle of family, not as it is today as if the government allowed small business players to fight (compete) with big business actors without any partiality by the state as a liberal economic system so that what happened next was that more and more small businesses went out of business because they were unable to compete with more business actors big. Free businesses have killed small businesses, which should not have happened in the Pancasila economic system.

Then another regulation that mandates state administrators to side with small businesses is the People's Consultative Assembly Decree No. XVI / MPR / 1988 concerning Political Economy as stated in Article 4 and Article 5. Article 4 which reads weak economic entrepreneurs must be given priority and be assisted in developing business and all economic interests, so that they can be independent, especially in the utilization of natural resources and access to resources fund. Whereas Article 5 reads Small, medium and cooperative businesses must obtain the main opportunities, support, protection and broadest development as a form of firm alignment to the economic groups of the people, without ignoring the role of large businesses and State Enterprise

The provisions contained in Article 33 of the 1945 Constitution of the Republic of Indonesia and the Decree of the People's Consultative Assembly Number XVI / PCA / 1988 constitute one form of real implementation of the mandate of the Pancasila as a fundamental norm in realizing the welfare state of Indonesia

CONCLUSIONS

Based on the results of research and discussion as mentioned above, it can be concluded as follows:

1. Legal protection granted to retail small business actors has not been able to realize fair business competition because in practice small business actors are equalized with larger business actors. Where empirically can there be head to head business competition between small, medium and large business actors. Thus it can be felt that there is no just legal protection.
2. Development of a legal protection strategy for small businesses in the retail sector in the City of Semarang in the context of realizing fair business competition by means of reconstructing Regional Regulations. The City Spatial Planning of Semarang City, regional regulations regarding retail specifically need to be established. modern retail operating days and hours / operating hours, i.e. holidays and Sundays modern retails should not be open / must be holiday, operating hours must also be set from 10 to 22 hours. Next is the need for strict and fair law enforcement.

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