The Theory of Zariah Legal Movement and It’s Application in Market Law in Indonesia

Mustapa Khamal Rokan
State Islamic University North Sumatera, Medan, Indonesia
mustafa_rokan@yahoo.com

Abstract

This paper explains the legal movement zariah legal theory of history, concepts, philosophies, ways of working and its implementation in developing legal issues. The legal issue taken is the issue of antitrust law in Indonesia, especially in the contestation of modern markets and traditional markets in Indonesia. This paper uses a qualitative method with secondary data retrieval which is analyzed with a normative approach, history and legislation. The results showed the law must be able to move (movement) to form the ideal law. In the ideal market law that is by protecting (sadd), empowering (fath) and also collaborating (jam’u). The form of protection (sadd), a small market can be done in accordance with the conditions and situations that develop in the market. The form of legal protection can be in the form of legal protection of existence, giving tax payment incentives, protection against price competition, protection through granting location and time permits, protection by differentiating types of products in each type of market, as well as cooperating between modern markets and markets traditional.

Keywords: zariah legal movement, modern market, traditional market

A. Introduction

The law should be dynamic and keep moving to achieve its goals. This is due to conditions, situations and places where the law is carried out that is always changing and developing. Therefore, the law changes according to changes in time, place and conditions. Therefore, the character of law that always sees change makes the law must be able to close the opportunity for the occurrence of badness and open up opportunities to create goodness.

Realizing the goal of transforming something to good (mashlahat) (Asmawi, 2010, pp. 33-34) and avoiding evil (mafsadât) requires legal theory that continues to move towards the goal of law. Legal movement theory not only looks at the good (mashlahat) and avoids evil (mafsadât) but also looks at the intermediaries that can
make the achievement of good and the cause of evil. The theory of legal excavation (ushûl al-fiqh) to achieve the goal of law (maqâsid syarîah) is zari’ah theory.

The presence of modern markets in Indonesia causes market problems in the form of traditional market exclusion. A modern market that has entered since the 1960s (Silalahi, 2008, p. 7) By establishing various types of retail formats such as large supermarkets, supermarkets, minimarkets, drugstores, warehouse clubs and others, the traditional markets have long been eliminated.

The presence of modern markets has positive and negative impacts on the existence of traditional markets. One positive impact of the modern market as stated by Darwon: “The pull factors are related to growing business opportunities, rapid urbanization, high population growth rates, rising incomes or levels of affluence, westernization of lifestyles, increasing demand for fast food and the relaxation of investment rules and restrictive trade policies in other countries.” (Dawson, 2003, p. 324)

On the other hand, the presence of modern markets also has a negative impact on local markets. Dowson also said: The presence of large-scale foreign ritelears has a significant economic and social impact on local ritelears; especially on traditional small businesses such as ‘mom-and-pop’ stores (Dawson, 2003) (Harris, 2006) There are positive and negative impacts on local ritelears. However, studies on this specific issue have provided evidence that the impact on local ritelears is mostly negative (Farhangmehr, 2001, pp. 189-198).

This paper explains the theory of zariah law which is called the zariah legal movement from history, concepts, philosophy, ways of working and its implementation in developing legal issues. The legal issue taken is the issue of market law in Indonesia, especially in the contestation of modern markets and traditional markets in Indonesia which is running unbalanced. This paper uses a qualitative method with secondary data retrieval which is analyzed in a normative, historical and legislative approach.

B. History and Concept of Zariah Legal Movement

Al-zari’ah legal theory (الذريعة) is one of the legal theories used and developed by Islamic jurists (fuqaha) to solve legal cases. In the treasury of science, ushul fiqh is better known as the concept of sadd zariah which covers all forms that cause damage In history, the concept of sadd al-zari’ah was first coined and most used by Imâm Mâlik as the basis for establishing the law, then followed by students and followers in the Mâlikiyah school (al-Syâthibî, 1975, p. 42).

In general, the position of zari’ah as a legal basis can be divided into two (2) groups, first, the ulama who make zari’ah as the basis of hujjah namely Imâm Mâlik and Imâm Ahmad and in general Imâm Al-Syâthibî. Secondly, sadd zari’ah is used as a legal basis for certain matters. The use of zariah in the second model is mostly done by Imam Al-Shafi ’and Imâm Abu Hanîfah (Haroen, 1997, p. 169) (Zahrah, 1985, p. 287).

In language, al-zari’ah (الذريعة) is a singular noun meaning “road”, “means” or "intermediary” (Muhammad, tt, p. 207). Whereas according to the terms of the ulama
The Theory of Zariah Legal Movement and Its Application in Market Law in Indonesia

ushul al-fiqh, zari’ah is "everything that can deliver and become a path to something that is prohibited by syara" (al-Zuhaily, 1986, p. 873) The zarî’ah legal theory is an intermediary (wasâil) to achieve the goal of law (maqâshid). The intermediary law (wasâil) is the same as the goal law (maqâshid), it's just that the level of wasâil is lower than the level of maqâshid. (‘Abbâs Aḥmad, t.t, p. 13) In addition, wasâil law is very much determined by maqâshid, because wasâil does not change its law without maqâshid. (al-Buga, t.t, p. 556) Therefore, the relationship between maqâshid and wasâil is functional. In other words, the existence of wasâil to carry out functions that lead to the achievement of maqâshid. The functional nature of the relationship gives birth to juridical consequences, namely the wasal law follows the maqâshid law, if al-maqâshid is forbidden, then the wasil is also haram, conversely if the maqâshid is mandatory then the wasil is also obligatory and so on (Zahrah, 1985, p. 290).

The purpose of law (maqâshid al-syarîah) is to realize the benefit of mankind. Mashlahah means goodness and expediency for the universe. To realize the benefit of humanity, Islamic law should be able to respond to social developments and changes that occur in the reality of society (Mas’ud, 1995, pp. 23-24) (Fuad, 2004, p. 201) both with the legal basis contained in the text (nash al-manshûshah) or not (ghair al-manshûshah). The purpose of Islamic law is to realize the benefit of humans in five (5) main things namely guarding religion (hifzh al-din), guarding life (hifzh al-nafs), protecting intellect (hifz al-‘aql), protecting offspring (hifz al-nasl), maintain ownership (hifzh al-mâl).

The five main objectives of the above law can be developed into protection of honor (hifzh al-‘ird), fulfillment of contracts, social welfare (takâful), freedom (al-hurriyah), human dignity, brotherhood of fellow human beings. Specifically, in the economic field that one of the objectives of the law is economic development, (Kamali, 2013, p. 168) which includes protecting and empowering vulnerable groups, including weak/small business actors.

The target of al-zarî’ah legal theory (الذريعة) is to realize human benefit (maqâshid syarîah) (‘Abd al-Mâlik, 1400, p. 295) done through (2) two sides, namely first by closing (sadd), protecting everything (washîlah) that can bring damage (mafsadât) so that it is done through (2) two sides namely first by way of closing (sadd), protecting everything (washîlah) that can bring damage (mafsadât) so that can realize the purpose of law (maqâshid syarîah) which is called (sadd al-zarî’ah). While the second side is by opening (fath), such as accompanying, helping, empowering and all the way or intermediaries (washîlah) to realize the legal goals (maqâshid syarîah) which is called (fath al-zarî’ah).

Sadd al-zarî’ah is a method of taking law (istinbâth al-hukm) by closing all intermediaries (washîlah) even though the intermediaries may (read: halal) be done, but by working on intermediaries (washîlah) it is feared or strong allegations can result in harm / unlawful acts that are contrary to the aims of the law. The use of the theory of sadd al-zarî’ah is preventive in maintaining the maqâshid al-syarî’ah, namely the realization of benefit for humans. (al-Mughni, 1995, p. 531-532).
In *usûl al-fiqh* if the purpose of law (*maqâshid*) does not materialize except with an intermediary who can bring to the *maqâshid*, then the intermediary and cause follow the *maqâshid* law. In other words, if Allah forbids something, then taking the path and the intermediary is *haram*. Likewise, actions that lead to permissibility the law are permissible, acts that mediate the occurrence of compulsory acts are mandatory, and so on.

The *Fath al-zarî‘ah* is a method of taking law (*istinbâth al-hukm*) by opening all intermediaries (*washîlah*) to realize the benefit of the people. The two most prominent forms of *fath al-zarî‘ah* are motivating and empowering. Every effort to motivate / open opportunities or empower something to realize the benefit of human law is as the purpose of law (*maqâshid*). Thus, establishing the law for a particular action that is basically allowed either in the form of allowing (*ibah*), encouraging or obliging (*îjâb*) because the act can be a means of other actions that have been recommended or ordered.

In addition to *sadd al-zarî‘ah* and *fath al-zarî‘ah*, the *zarî‘ah* theory developed as the hour of *al-zarî‘ah*. *Jam‘u al-zarî‘ah* is a method of taking the law (*istinbâth al-hukm*) by combining all intermediaries (*washîlah*) to realize the benefit of the community both the close (*sadd*) and the open (*fath*). The two most prominent forms of *jam‘u zarî‘ah* are the collaboration of intermediaries (*washîlah*) to achieve the goal of law (*maqâshid al-syari‘ah*).

Therefore, *zarî‘ah* legal theory is active and dynamic to be used as a legal instrument to realize legal objectives (*maqâshid*). Changes in social, economic, political, geographical and social structures require the law to be active to cover all possibilities that can damage the legal goals and open all possibilities that can realize legal goals so that sometimes not only has the duty to close (*sadd*) or open (*fath*) but also do collaboration so that this theory is called *zarî‘ah* legal movement.

**C. Philosophy and How to Work Legal Theory *zarî‘ah* legal movement in Economic Law**

Legal theory *zarî‘ah* legal movement based on the objectives of Islam itself which is based on humanity and good life by emphasizing brotherhood and socio-economic justice. (Chapra, 1999, p. 346) In the context of trade, the market as a place to interact market participants is done by respecting human needs to protect each other and help each other (QS. Al-Mâ‘âdah: 2) in order to uphold social justice so as to create a good and prosperous life (*hâyah thayyibah*) (QS. Al-Mâ‘âdah: 2).

Humans are *al-insân madaniyyun bi al-thabi‘î* (humans are social beings and civilizations who need each other) (‘Abd al-Rahmân, 2007, p. 53). The existence of human beings who need each other necessitates a bond of brotherhood and humanity among each other. Therefore, the market is a human entity that conducts business transactions in togetherness, not the other way around controlling and eliminating. The formation of markets based on mutual assistance helps to demand collective and circulatory welfare to avoid prosperity for a handful of people (QS. al-Ḥasyr: 7).

Market activities based on mutual assistance help in accordance with the constitution of the Republic of Indonesia. Article 33 of the 1945 Indonesia
The Theory of Zariah Legal Movement and Its Application in Market Law in Indonesia

Constitution uses the term please help with the principle of kinship in economic activities. The principle of kinship states that the affirmation of the preparation of the economic system in Indonesia is a joint effort based on mutual assistance without harming one another. Like a family, if one business actor experiences difficulties, losses and even death, then the same will be felt by other business actors. The economic system in the constitution is called a cooperative economy, that is, the economy of mutual help and wants prosperity with members who help each other (cooperating). The Indonesian economic system does not require prosperity for only a few people who are strong in capital, management and modern but the Indonesian economic system requires prosperity of all people including marginalized people.

Economic development in Indonesia must be obtained by all parties, especially the rights of weak communities (Boesen, J.K., & Martin, T., 2007, p. 17). Legal guarantees against vulnerable groups are one of the concentrations of Islamic legal missions. The guarantee order for vulnerable groups is aligned by Allah by imposing Himself, and the embodiment of one’s Faith and Takwa (“QS. al-Zariāt: 19”) (QS. al-Mā’in: 5-6). Masudul Alam Choudhury said: “In the case where the rich and poor are shown to enjoy their God-given opportunities (Rizq), the Our’an talks of the two groups connecting with each other in solidarity. Such a participation can happen when basic needs abound and dynamically evolve by the force of the Shuratic Process (Choudhury, 2000, p. 29).

Principle please help deny the market in free competition. Mutual guarantee is realized through mutual protection and mutual responsibility. Whereas mutual help in sin is to leave what God has commanded to do (Choudhury, 2000, p. 29). In the context of trade the principle of mutual guarantee and responsibility among traders is called takāful al-tujjār. Mutual guarantee among market participants (takāful al-tujjār) is a guarantee made by traders (stronger) with other traders (weaker) by closing (sadd al-zari‘ah) all forms that can make small traders/weak losers and even die and open (fath al-zari‘ah) all forms that can maintain the existence of small markets or the collaboration of existing intermediaries.

In the context of the existence of a modern market in the retail market in Indonesia can be analyzed from (2) two things, namely through the analysis of aspects of business competition and market law based on mutual guarantee (takāful al-tujjāri). Analysis of aspects of competition is useful to ensure that the establishment or existence of an modern market is not in a decisive position so that it can regulate prices and harm consumers. In addition, the analysis of competition aspects ensures that the existence of modern markets does not marginalize traditional market entrepreneurs. Modern market businesses must be able to guarantee the existence of traditional markets. Apart from being based on a form of togetherness, this is a form of corporate responsibility for non-cooperative business entities to reduce the figure of capitalism (Swasono, 2010, p. 92).

The mutual guarantee system is carried out by making efforts to enable small traders to be able to conduct normal trading activities (fath al-zari‘ah) so as to obtain the common good / benefit. Allocating the resources of large traders to small traders is a tool to achieve the goal of law (maqāshid syarīah) namely to realize prosperity.
and the common good (Laldin, M.A., & Furqani, H., 2013, p. 281). As for those included in prevention efforts (sadd al-zarî‘ah) are all things that can have a negative impact on traditional markets, namely licensing, zones (places), opening hours, classification of product types and so on. While those included in the empowerment effort (fath al-zarî‘ah) are capital grants, tax incentives, management training and so on.

The use of sadd al-zarî‘ah in the context of market law can be seen from the prohibition of the Prophet Muhammad against monopolistic deeds such as talâq rukbân, ihtikâr ta‘alluq and so on. Prohibitions on monopolistic practices are a way to close intermediaries (sadd al-zarî‘ah) that can hinder the achievement of legal goals (maqâshid syarîah). Monopolistic practices are actions that can cause difficulties for the community (read: business actors, consumers) including small/weak business actors. Testing of results can be seen from the exclusion of small/weak business actors from the market. Even more broadly the impact on society in the form of social inequality, increasing unemployment, poverty and subsequently impacting on other social problems such as theft, robbery and other criminal acts. Islamic law forbids business competition based on profit orientation alone which can damage the lives of the wider community (Hasan, 2008, p. 7). Preventing damage to people's lives takes precedence over obtaining welfare for a group of people. This is in accordance with the rules: "Avoiding damage takes precedence over taking goodness" (Al-Nadzwi, 1986, p. 170).

The use of the theory of sadd al-zarî‘ah in business law in general and anti-monopoly law in particular has been quoted by Ibn Qayyim Al-Jauziyah:

“…. justice is the very essence of Shari‘ah and that it is its main objective. Any action directed towards the securing of justice will get the approval of the Shari‘ah and will become imperative. Price control or, for that matter, interference by state in private property was advocated by Ibn Taimiyah and Ibn al-Qayyim on consideration of justice. It is also the requirement of justice that everyone should have equal opportunity to produce and to engage in business, and that none should be allowed to create monopoly and deny others the right to produce or trade and this is why Ibn al-Qayyim has opposed these practices” (Islahi, 2009, p. 16).

The way of working the theory of zarî‘ah legal movement is to formulate the laws contained in the texts (nash al-manshûshah) as the proposition and formulate laws that are not contained in the texts (nash ghair manshûshah) in the same way. Zarî‘ah legal movement is a means to mobilize actions that may not have been given direct orders by God as the legislator (syâri‘) through the texts and the hadith of the Prophet Muhammad. with the aim of realizing benefit. At the same time zarî‘ah legal movement serves as a tool to prevent a damage even though the law of the act is not haram but by doing the act can cause a prohibited act that is damage (ihtiyâth li al-fasâd).

Thus, what is seen is the result of actions, not looking at the motives and intentions of the perpetrators. If the effect or effect of an action is something that is prohibited or mafsadah, then the action must be prevented. Conversely, if an action is strongly suspected to be a means for the purpose of shariah (mashlahah), then the
action is an obligation that is ordered. This is in accordance with the rules: "Where there is benefit (goodness) there is the Shari’a of Allah" (Al-Barri, 1975, p. 19) (al-Buti, 1977, p. 12).

The **zari’ah** legal movement theory is suitable while at the same time strengthening the adaptive character of the law to changing conditions. To realize the purpose of law (**maqâshid syari’ah**) Islamic law has three characters in interacting with other legal systems namely. First, change. Islamic law makes changes to existing laws if they conflict with the aims of Islamic law and law. Second, accept. Islamic law accepts pre-existing law if it does not conflict with Islamic Shariah. Third, modification. Islamic law modifies existing laws.

**D. Application of zari’ah legal movement theory in Market Law**

In the context of the retail market in Indonesia, efforts to protect, empower, and assist traditional markets are aimed at maintaining a balance of competition with modern markets. This can be seen how the Prophet Muhammad making market law policies in Medina. Some forms of protection of Medina Market are market exemption from taxes, regulation of market zoning, creation of market infrastructure and empowerment of market participants.

In the context of competition between modern markets and traditional markets, the law must be able to make legal movements to form an ideal market. The expected market is a market where modern markets still exist due to community needs, on the other hand traditional markets also still exist, in addition to the need to protect small businesses.

In the legal theory of *zariyah* legal movement, law must be able to move to form an ideal market that is by protecting (**sadd**), empowering (**fath**) and also collaborating (**jam’u**). The form of protection (**sadd**), a small market can be done in accordance with the conditions and situations that develop in the market of a country, for example the form of state protection can be in the form of legal protection, protection by giving tax payment incentives, protection against price competition, protection through granting location permits and time, protection by differentiating the types of products of products in each type of market, and protection of other forms in accordance with the situation and the times.

Legal protection for small business actors can also be in the form of protection for certainty of obtaining business rights such as a place of business so that they can still conduct market activities, including when small business actors are evicted for certain reasons such as market rejuvenation and so on. Legal protection for traders when they are isolated is part of the protection needed by traders, such as by preparing business alternatives before market relocation.

Other forms of protection for small business actors can be done by intervening in prices, including advertising at lower prices. The argument for price intervention is a hadith about Umar bin Khattâb reprimanding Hâtib ibn Balta’ah when selling dried wine below the market price "Raise your price or leave our market". The words “‘Umar became a proposition may do price intervention to protect sellers in terms of
profit margins, while protecting buyers from purchasing power. Likewise, to prevent the seller’s efforts to raise prices by ihtikār and ghaban fāhisy (Fatah, 2012, p. 44).

Protection for small businesses can also be in the form of determining the location and opening and closing times of the market. Determination of market location and time is closing (sadd) intermediaries (zari’ah) which causes traditional markets to be marginalized. Likewise, the protection of small markets from franchising businesses is one of the characteristics of the modern market. Franchise business can form a monopolistic or oligopolistic market structure that can cause small businesses/traditional markets to be marginalized. Prevention can be done by limiting the number of franchisees who can cause small businesses to be eliminated. On the other hand, the franchise business system can empower (fath zari’ah) by involving the community and community groups so that the findings or business franchise system is beneficial for the entire community.

The legal theory of zariah legal movement at the same time, all matters relating to motivation, empowerment, assistance (fath al-zari’ah) to realize the purpose of law (maqāshid syari’ah) must be done.

One factor of consumer interest in a market is the comfort of the place. Therefore, strengthening infrastructure that can make customers feel comfortable is an important thing to do. Revitalization of market infrastructure is a form of fath al-zari’ah to realize the objectives of market law (maqāshid al-syari’ah).

One of the important infrastructures in market management is goods supply infrastructure, where goods are supplied from producers to sellers. The quality of the infrastructure of supply of goods affects the price of a product. Therefore, the Islamic caliphs undertook the development of market infrastructure needed to ensure a smooth supply of goods so that price fluctuations could be reduced at a moderate level. (Hoeotoro, 2007, p. 104).

Another infrastructure that must be created is the access road to the market. Traditional markets should be in places/locations that can be easily reached by consumers or locations that are facilitated access to them. One of the traditional markets that suffered losses and no longer demanded by consumers due to market access roads. Due to market access that is closed by buildings that are in front of the market so that the market is closed, consumers find it difficult to get access to the market so the market presence is very alarming.

Market infrastructure includes market buildings. Building traditional markets in Indonesia is still inadequate. One indication is the age of traditional market buildings. In 2014, there were at least 5000 (five thousand) traditional markets that were more than 25 years old. Empowerment of traditional markets should encompass market participants. The problem of traditional markets is due to the factor of low management ability so that it affects the quality of products and services. Therefore, the role of government can be carried out by conducting market management training in a professional manner through providing specialized and ongoing training.

Empowerment of traditional markets can be done by providing access to adequate funding. Indonesia is one of the countries in the lowest category of access
to finance. One factor inability of traditional market traders to compete is the inadequate ability of venture capital. The facilitation of market trader financing is aimed at working capital and conventional place of ownership credit through commercial banks or rural credit banks. In fact, some market traders use funding facilities from loan sharks which are very burdensome.

Strengthening traditional market financing facilities can be done by establishing banks or special financing institutions for traditional markets. Banks or special financial institutions can provide special non-profit schemes so that traditional market players can carry out high productivity and can expand business more broadly.

The establishment of a state-owned bank which is devoted to financing traditional traders can emulate the success of a non-profit State Enterprises (BUMN) bank formed by the Thai government in the context of traditional empowerment. The Thai government applies the retail small business empowerment model by establishing a non-profit SOE-type company to oversee the program, the Allied Retail Trade Co. (ART Co.). This state-owned company was given a working capital of US $ 9.1 million to purchase goods from the manufacturer and then distribute it to a network of small shops and other traditional stalls.

After protecting (sadd) and empowering (fath), the law can also collaborate. Market regulations both at the central level (President Regulation Number. 112 2007 and Ministry of Trade Regulation Number 53/2008) and regional market regulations have established a system of collaboration between modern and traditional markets. But in some legislative materials it is necessary to strengthen the cooperation system so as to create a fair market. Some aspects of the cooperation arrangement need reinforcement as follows:

1. Balanced cooperation

The negative impact of the presence of a modern market can be minimized by building a system of cooperation with traditional markets in a balanced way. The imbalance of the cooperation between small-scale business operators and modern shops can be seen in the decision of KPPU 9/KPPU-L/ 2009. In the decision of KPPU 9/KPPU-L/ 2009 stated that PT. Carrefour created an unbalanced cooperation system with suppliers by saying "take it or leave it" on the terms of trade applied.

The perspective of Islamic law requires that business cooperation in an equal position. In the relationship of large market participants and small markets (al-Afani, 1965, p. 79), the pre-Islamic trading system was unfairly carried out between large markets and small markets. Large markets in the period before Islam were dominated by foreign traders who expanded to various places in the Arabian Peninsula. Trade relations between outside traders (nomadic) with local traders do not occur a balanced reciprocal relationship based on mutual help and economic exchange (Klimovich, tt, pp. 79-90).

The Koran forbids profit from unequal transactions (al-Ridhâ). The law of equal cooperation is found in the jurisprudence of Islamic law during the reign of the Ottoman Empire (Hitti, 2010, p. 710) al-Ahkam al-Ahkam al-Adliyah
(Rahman, 1980), which requires equal buying and selling such as the prohibition of trading term. Article 189 of the Ottoman Turkish Civil Code says: A sale with a condition, which is not for the benefit of one of contracting parties, is lawful, but the condition is bad (Justice, tt, p. 26).

Likewise, in the arrangement of partnerships between modern markets and traditional markets at both central and regional market settings, placing traditional markets is part of modern markets, not equal partners. Even though the market regulation states that it is based on the principle of equality and fairness between the two markets, the majority of cooperation system patterns place traditional markets to depend (subordinate) on modern markets.

Likewise, the form of unevenness in the cooperation in providing land / space. Most regional market regulations do not require modern markets to provide land for traditional markets. Whereas several Regional Market Regulations have required that modern markets provide land/space for traditional markets in accordance with the details of the area of land owned by modern retail stores. Regional Market Local Regulation regulations do not yet regulate equal systems and mechanisms in cooperation in land supply, for example related to business actors, types of businesses, profit and payment systems and cooperation mechanisms mediated by local governments.

Therefore, in the relationship between suppliers and modern stores can use a profit-sharing system. Revenue-sharing systems in the relationship between suppliers and modern stores can use profit sharing schemes (musyârakah), not per-item price of goods from suppliers. The division of profits based on the percentage of profit in sales will make the suppliers and suppliers are aligned and helping one another.

Effective cooperation mechanisms in providing land for small businesses with a system of profit sharing such as musyârakah or mudhârabah. Modern shops can socialize by putting up banners in front of modern stores or reporting to the local government about the system of cooperation through providing land for small businesses to be socialized to citizens and fair rules or in other ways followed by requirements that do not burden business operators. small.

Mudhârabah profit sharing system as defined by the “contractual agreement between the owner of capital (rab al-mâl) and the user of the fund (mudhrib) to be used for productive activities where profits are halved or in accordance with the agreement. In the context of market cooperation, it places small business actors as capital executors (mudhrib) and the modern market is the owner of capital (rab al mâl) by providing places and merchandise. Whereas the profit sharing system places the small business and modern market business actors as the owners of capital and works with profits in accordance with the agreement.

Strengthening balanced cooperation regulations begins with strengthening cooperation plans including the following:

First, the partnership plan must be included in the licensing process concretely. The concrete form of the cooperation plan can be in the form of the approach and relationship with the surrounding traditional markets, so the
cooperation plan is no longer in the form of a concept but a concrete form of cooperation. Strengthening cooperation plans in the form of concrete becomes important to prevent (sadd al-zari‘ah) business actors who are not in good faith from cooperating with small businesses in the surrounding area. Concrete forms of cooperation to ensure that the system of cooperation carried out with surrounding businesses runs according to a fair collaboration system. Because, in practice, many modern stores do not open up opportunities to hold partnerships with small businesses in the vicinity.

Second, the strengthening of regulations on partnerships must be supplemented by clauses on terms and penalties for modern market businesses that do not want or are able to carry out partnerships after the establishment of modern stores as made in the licensing requirements. Strengthening the concrete form of cooperation clauses, in addition to ensuring the good intention of modern stores to collaborate, also to be able to annul the establishment of modern stores that are not in good faith to collaborate. This is because the Government has never withdrawn licenses because modern stores do not have partnerships with small businesses.

2. Strengthening Collaboration Patterns of Modern Markets and Traditional Markets

Modern market collaboration with traditional markets should be done with a pattern. Because the system of cooperation carried out without a pattern will run ineffectively. The strengthening of cooperation patterns is due to the fact that most of the Regional Market Regulations have not yet regulated it. The results of research in the Purbalingga Market on partnership implementation mandated by Presiden Regulation Number 112/2007 and the Minister of Trade Regulation Number 53/2008 could not run properly due to a partnership pattern that did not yet exist. In addition to the ignorance of small business operators on the occasion, it also involves a system of fair cooperation between small business operators and modern shops.

Strengthening the pattern of modern shop partnerships and traditional markets can be adjusted to the needs of the area where the market stands. For regions that have a lot of production, the pattern of partnership should be more emphasized on the marketing cooperation of the products in the local area by modern shops. Whereas in densely populated areas, in addition to marketing cooperation, cooperation patterns can take the form of land / space, repackaging are some of the more appropriate patterns.

E. Conclusion

Based on the description above that the law should actively move to create choices to prevent all forms that can lead to evil. On the other hand, the law makes norms that are empowering and collaborating to achieve goals. All of these are intermediaries for effective change in the context and conditions of the ongoing community change. Creativity is required to find or make choices in accordance with the objectives of the law (maqāshid syarīah). A good regulation formulation is a
regulation that is able to open all possible solutions of intermediaries (*fath al-zarî‘ah*) related to bring benefit and close all possibilities (*sadd al-zarî‘ah*) that can damage the legal objectives, and unite intermediaries to realize the purpose of law (*jam‘u al-zarî‘ah*) so that the law moves to be able to follow the dynamic movement of society.

Bibliography

A. Books and Journals

Asmawi, Teori Maslahat dan Relevansinya dengan Perundang-undangan Pidana Khusus di Indonesia, Ed. I, (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2010)

Abî Ishâq al-Syâthîbî, al-Muwâfaqat fi Ushûl al-Syâri‘âh, Juz III, (Beirût: Dâr al-Ma‘rifah, 1975)

Ahmad Muḥammad al-Mughnî in Majallât Majma‘ al-Fiqh al-Islâmi, Al-Daurât al-Tâsi‘at (Abu Dabi: Munzîmât al-Mu’tamar al-Islâmi, 1996)

Al-Qurṭûbî, Al-Jâmi‘ li Akhkâm al-Qurân, Juz II, (Kairo, Dâr al-Hadîs, 1994)

Bianchi, Constanza and Mena, J, Defending the Local Market Against Foreign Competitors: The example of Chilean ritelers. International Journal of Ritel & Distribution Management, 32 (10),2004

Da Rocha and Dib, The Entry of Wal-Mart in Brazil and the Competitive Responses of Multinational and Domestic Firms, (International Journal of Ritel and Distribution Management, 30 (1), 2002)

Dawson (2003), Model of the Impacts of Ritel Internationalisation in The Internationalisation of Riteling in Asia (Ed.), Dawson, J., Mukoyama, M., Choi, Sang Chul and Larke, Roy, London and New York: RoutledgeCurzon, Taylor & FrancisGroup.

Farhangmehr et al. (2001) Hypermarkets versus Traditional Ritel Stores – Consumers’ and Ritelers’ Perspectives in Braga: A Case Study, (Journal of Riteling and Consumer Services, 8, 2001)

Reardon, T. T., Barret, and Berdegué, J.A., The Rapid Rise of Supermarkets in Africa, Asia and Latin America, (American Journal Agricultural Economics, 85, 2003) in Shivee Ranjaneek Kaliappan, Rokiah Alavi, et al, Liberalization of Ritel Sector and the Economic Impact of the Entry of Foreign Hypermarkets on Local Ritelers in Klang Valley, (Int. Journal of Economics and Management 9 (2), 2008).

Jur. M. Udin Silalahi, Persaingan di Industri Ritel Ditinjau dari Aspek Hukum Persaingan Usaha, Jurnal Hukum Bisnis, Vol. 27, 2008

Harris, Thomas J. (2006). The Economic and Social Impact of Big Box Ritelers: Discussion, American Journal of Agricultural Economics, 88 (5), 2006).
The Theory of Zariah Legal Movement and Its Application in Market Law in Indonesia

Tosonboon, Jirapar, *The Impact of World Class Distributors on the Ritel Industry in Thailand, in The Internationalisation of Riteling in Asia* (Ed.), Dawson, J., Mukoyama, M., Choi, Sang Chul and Larke, Roy, London and New York: Routledge Curzon, Taylor & Francis Group, 2003).

Hitoshi, T, *The Development of Foreign Riteling in Taiwan: The Impacts of Carrefour, in The internationalisation of riteling in Asia* (Ed.), Dawson, J., Mukoyama, M., Choi, Sang Chul and Larke, Roy, London and New York: Routledge Curzon, Taylor & Francis Group, 2003).

Wang, Shuguang, *Internationalization of riteling in China, in The Internationalisation of Riteling in Asia* (Ed.), Dawson, J., Mukoyama, M., Choi, Sang Chul and Larke, Roy, London and New York: Routledge Curzon, Taylor & Francis Group, 2003).

Muhammad Hisyam, al-Burhâni, *Sadd al-zari’ah fi al-Syari’ah al-Islâmiyyah* (Damaskus: Dâr al-Fikr, 1406 H/1975 M).

Su’ûd Ibn Malluh Sulthân al-‘Anzi, *Sadd al-Zarâ‘i‘inda Ibn Qa'yim al-Jauziyyah Wa aqâruhu fi Ikhtiylaratuhu al-Fiqhiyyah* (Cet. I, (Amman: Dar al-Atsariyah, 1428 H/2007 M).

Wahbah al-Zuhailî, *al-Zarâ‘i‘inda Siyâsah li Syar’iyati wa al-Fiqh al-Islâmi, Juz I* (Suriah: Dâr al-Maktabi, 1419 H/1999 M).

Nasrun Haroen, *Ushul Fiqh I* (Jakarta: Logos Wacana Ilmu, 1997).

Muhammad Abû Zahrah, Ushûl a-Fiqh, (tt: Dâr al-Fikr al-‘Azâli, 1377 H/1985 M).

Muhammad bin Mukarram bin Manzûr al-Afriqi al-Mishri, *Lisân al-‘Arab, Juz III* (Beirût: Dâr Shadir, tt).

Wahbah al-Zuhailî, *Ushûl al-Fiqh al-Islâmî, Juz II* (Beirût: Daar al Fikr, 1406 H/1986 M).

Imâm al-Quarâfî Syihâb al-Dîn Abî ‘Abbâs Aḥmad bin Idrîs al-Mishrî al-Malikî, *Al-Furûq, Juz II* (Beirût: Alam al-Kutub, t.t.)

Mustâfâ Dib al-Buga, *Âṣâr al-Adillah al-Mukhatalaﬁhâ* (Mashâdir al-Tasyrî‘ al-Tabi‘iyah fi al-Fiqh al-Islâmî, (Damaskus: Dâr al-Imâm al-Bukhârî, tt).

Muhammad Abû Zahrah, Ushûl a-Fiqh, (tt: Dâr al-Fikr al-‘Azâli, 1377 H/1985 M).

Muhammad Khalid Mas‘ud, *Filsafat Hukum Islam dan Perubahan Sosial*, Terj Yudian W. Asmin (Surabaya: Al-Ikhas, 1995).

Mahsun Fuad, *Hukum Islam Indonesia*, Cet. I, (Yogyakarta: LKiS, 2004).

Mohammad Hasyim Kamali, *Membumikan Syariah: Pergulatan Mengaktualkan Islam*, (Bandung: Mizan, 2013).

Imâm Haramainî abû al-Ma‘âlî ‘Abd al-Mâlik bin ‘Abd Allâh al-Juwainî, *Al-Burhân fi Ushûl al-Fiqh* (Kairo: Dâr Al-Anshâr, 1400).

Muhammad bin ‘Alî al-Syaukânî, *Irsyâd al-Fuhûl fi Tahqîq al-Haqq min ‘Ilm al-Ushûl* (Beirût: Dâr al-Kutub al-‘Ilmiyyah, 1994).

Ibrahim bin Mûsâ al-Lakhmi al-Gharnâthî al-Mâlikî (al-Syâthibî), *al-Muwâfaqât fi Ushûl al-Fiqh, Juz III* (Beirût: Dâr al-Ma’rifah, tt).

Muhammad bin Bahadur bin ‘Abd allâh al-Zarkasyî, *al-Bahr al-Muhîth, Juz 7* (Beirût: Dâr al-Kutub al-‘Ilmiyyah, tt),
Fathi al-Darârainî, *al-Nazhariyyât al-Fiqhiyyah*, Cet. IV, (Damaskus: Mansyrât Jamî’ah Damascus, 1417 H/1997 M)
M. Umar Chapra dalam Gillian Rice, *Islamic Ethic and Implication on Business*, (Springer: Journal of Business Ethics, Vol. 18, No. 4 (Feb., 1999)
‘Abd al-Rahmân bin Khaldûn, *Muqaddimah*, Cet. I, (Mesor: Dâr al-Ghad al-Jadîd, 1423 H/2007 M)
Jakob Kirkeman Boesen And Tomas Martin, *Applying A Right-Based Approach (An Inspirational Guide For Civil Society)*, (Copenhagen: The Danish Institute For Human Right, 2007)

Instruksi Presiden Nomor 1 Tahun 2010 tentang Percepatan Pelaksanaan Prioritas Pembangunan Nasional Tahun 2010
Masudul Alam Choudhury, *Regulation in the Islamic Political Economy: Comparative Perspectives*, J.KAU: Islamic Econ., Vol. 12, hlm. 21-51, (1420 A.H / 2000 A.D)
Al-Iman Abul Fida Ismail Ibnu Kasir Ad-Dimasyqi, *Tafsir Ibn Kasir*, Juz 6, Cet. Pertama, (Bandung: Sinar Baru Algensindo, 200)
Sri Edi Swasono, *Indonesia dan Doktrin Kesejahteraan Sosial*, (Jakarta: Prakarsa, 2010)
Akram Laldin dan Hafas Furqani, *Developing Islamic finance in the framework of maqasid al-Shari’ah Understanding the ends (maqasid) and the means (wasa’il)*, International Journal of Islamic and Middle Eastern Finance and Management, Vol. 6 No. 4, 2013,
‘Alî Ahmîd Al-Nadzwî, *Al-Qawâ’îd Al-Fiqhiyyah*, Cet. I, (Damaskus: Dâr Al-Qalam, 1986)
Abdul ‘Azhîm Islahi, *Economic Thought of Ibn Qayyim*, (Jeddah: International Centre for Research in Islamic Economics, King Abdulaziz University, 2009)
Zakariyyâ Al-Barri, *Mashâdir al-Ahkâm al-Islâmiyyah*, (Mesor: Dâr al-Ittihâd al-‘Arabi, 1975)
Muhammad Sa’îd Ramadhan al-Buti, *Dawâbith al-Mashlahât fi al-Syarî’ah al-Islamiyyah*, (Beirût: Muassasah al-Risâlah, 1977)
Dede Abdul Fatah, *Pasar dan Keadilan Dalam Perspektif Ekonomi Islam (Analisis Peran Lembaga Hisbah dalam Era Abbasiah)*, Cet. 2. Jakarta: Gaung Persada (GP) Press, 2012
Arief Hoetoro, *Ekonomi Islam: Pengantar Analisis Kesejarahan dan Metodologi*, Cet. I. Surabaya: Kerjasama Bayumedia dengan BPFE Unibraw, 2007.
L.I. Klimovich, *Islam*, (Moscow, 1965) dalam Robert Simon, *Meccan Trade and Islam (Problem of Origin and structure)*, diterjemahkan oleh Feodora Sos dari buku, *A Mekkai Kereskedelem Kialakulasa es Jellenge*, (Hungaria: Akademiai Kiado, Budapest, 1989)
Philip K. Hitti, *History of Arab*, diterjemahkan Dari *History of Arab: From the Earliest Times to Present*, (Jakarta: Serambi Ilmu Semesta, 2010)
The Theory of Zariah Legal Movement and Its Application in Market Law in Indonesia

Mr. Justice S. A. Rahman, *The Mejelle, (Being An English translation of Majallah al-Ahkam al-Adliyah and Complete Code on Islamic Civil Law*, (Lahore: Law Publishing Company, 1980).

H.A. Jazuli, *Kitab Undang-undang Hukum Perdata Islam*, Terjemahan *Majallah Al-Ahkâm Al-Adliyah*.

M. Fahin Khan, *Essay in Islamic Economics*, (United Kingdom, The Islamic Foundation, 1995)

Wede Kupita dan Rahadi Wasi Bintoro, *Implementasi Kebijakan Zonasi Pasar Tradisional dan Pasar modern (Studi di Kabupaten Purbalingga)*

**B. Internet and Newspapers**

Zulkifli Hasan, *Islamic Perspective on The Competition Law and Policy*, [http://zulkiflihasan.files.wordpress.com/2008/07/islam-and-competition-policy.pdf](http://zulkiflihasan.files.wordpress.com/2008/07/islam-and-competition-policy.pdf)

SuryaDarma et al., *Impact of Supermarkets on Traditional Markets and Ritelers in Indonesia’s Urban Centers*, [http://www.smeru.or.id/report/research/supermarket/supermarket_eng.pdf](http://www.smeru.or.id/report/research/supermarket/supermarket_eng.pdf), 2007.

Harian Kompas, *Dari pasar Tradisional ke Internasional*, Selasa, 24 Juni 2014

Iklim Wirausaha Indonesia Rendah, Harian Republika, Senin, 24 November 2014

Revitalisasi Pasar Tradisional, Harian Republika, Selasa 24 Juni 2014

[http://m.bisnis.com/industry/read](http://m.bisnis.com/industry/read)