

Legal Construction of Strengthening Traditional Art Market in Denpasar City in Creating a Healthy Business Competition Climate

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Abstract. In developing healthy business competition, it requires systematic and coordination which is integrated each other sectors. Particularly, regulation and protection of the business legal approach is needed to ensure business do not have negative impacts. This study aims to determine the existence of a traditional art market in Denpasar City and to determine the legal construction of strengthening it. This study is designed by using descriptive analytical method with a normative legal approach to examine settings from a juridical, sociological and philosophical standpoints. The results show that there was a legal appropriate arrangement in structuring and fostering traditional art market, leading to healthy business competition. Access to economic resources in the field of tourism can be obtained fairly by all entrepreneurs, irrespective of their sizes.

Keywords: legal construction; traditional art market; healthy business competition

1 Introduction

Bali Island is an area that is the main destination for domestic and foreign tourists. The tourism climate supports increased investment in Indonesia, especially in the Province of Bali. Foreign retailers or modern shops began to arrive and enliven the Indonesian retail industry. Apart from having a positive impact on the local and national economy, the presence of modern shops, on the other hand, has a negative impact on the income of traditional market entrepreneurs. Specifically what can be noticed is the traditional art market which is increasingly displaced by the existence of shopping centers with art goods or in the form of modern shops that sell various objects of local art.

Modern art shops that have emerged have in fact had a negative impact on the existence of traditional art markets, so that as an autonomous region, the Provincial, Regency and City Governments, through their authority, are appropriate to make a series of regulations in the form of legal rules related to the existence of traditional art markets to be able to compete fairly with many modern shops that sell art objects. In response to this, the Denpasar City Government issued Denpasar Mayor Regulation Number 9 of 2009 concerning the Arrangement and Development of Traditional Markets, Shopping Centers and Modern Stores (hereinafter referred to as PERWALI Number 9 of 2009).

Based on the sociological aspect, the development of society and the flow of globalization will certainly bring fundamental changes to the regulated objects (Traditional Art Markets and Modern Stores that sell art objects), so PERWALI Number 9 of 2009 needs to be studied for its effectiveness and the production of ideas as an effort to improve regulations in order to support fair business competition in Denpasar City. Based on the above background, the purpose of this new research is to determine the existence of traditional art markets in Denpasar City and to determine the legal construction of strengthening traditional art markets in Denpasar City.

2 Research Method

This research is designed using descriptive analytical methods that aim to describe and analyze juridical aspects and provide legal constructs that produce solutions to the problems being studied. The type of approach used in this research is the normative legal approach that examines the arrangement from a juridical, sociological and philosophical point of view. Normative legal research is also called doctrinal legal research. Normative legal research aims to conduct legal research by examining laws, namely laws and regulations that regulate business competition between traditional and modern markets. This research was conducted at the Denpasar Traditional Art Market (Kumbasari), Denpasar City. Data collection techniques were carried out by observation, interviews and documentation.

3 Results and Discussion

3.1 The Existence of Traditional Art Market in Denpasar City

The existence of a traditional art market which is one of the real characteristics of culture is an industrial chain that connects producers and consumers, a meeting place between sellers and buyers, between the business world and the community. The market has a very important role in the modern economy because modern prices are formed in the market, and with the help of the price mechanism in the market it is an economic problem (Gilarso, 2004).

In line with the orientation of the implementation and development of Indonesian tourism, it is shown in Article 3 of the Tourism Law as follows: "Tourism functions to meet the physical, spiritual and intellectual needs of every tourist with recreation and travel and to increase state income to create people's welfare". The final estuary of implementing tourism is a fair and equitable welfare that is felt by the people. It is realized that tourism business is a very broad term, it also involves so many *stakeholders*. The freedom to try has led to the emergence of many entrepreneurs who want to obtain economic benefits directly from the tourism sector. A bad business competition climate will in fact create conflicts of interest, which lead to chaos (war of all against all).

The spread of modern shops in Denpasar, which are seen as having great potential for the tourism economy, which continues to grow rapidly and encourages the increasing demand for quality products and competitive prices. The development of the trade sector, especially Modern Stores, which tends to be more numerous than the spread of traditional markets that are scattered in the city of Denpasar. This trend is generally due to the city of Denpasar being an economic center with good business opportunities.

With good opportunities, many modern shop business actors have emerged as bar economy institutions and have become competitors for the development of traditional markets in the city of Denpasar. It is not surprising that the city of Denpasar has tremendous attractiveness for retail traders, because the dense city population with adequate community income is accompanied by a hedonic, consumptive culture in the style of big cities that never sleep for 24 hours making the city of Denpasar a very potential market.

In the last 10 years, modern retail businesses with hypermarket, supermarket and minimarket formats have sprung up, following the construction of malls or shopping centers in big cities. At the same time, small-scale supermarkets are minimarket formats that can compete with supermarket formats. Both of these modern market formats have strong networks so that minimarkets can offer competitive prices with supermarkets and the same convenience, even minimarkets can be closer to the location of their customers. In recent years, it is not difficult to find modern shops on a number of roads in Denpasar City. The number of modern markets in the city of Denpasar can be seen in the table below:

Table 1. Number of Modern Markets in Denpasar City in 2010

Type of	Region Denpasar			
	West	East	North	South
Hypermarket	-	-	-	-
Supermarkets	5	-	9	10
Minimarkets	62	31	35	124
Traditional markets	10	7	6	16

Source: Denpasar city data bank

Based on the table above, the number of modern shops in Denpasar is 278, most of which are spread out in southern Denpasar. The comparison of modern shops and traditional markets mentioned above can be illustrated that there is only one traditional market in Denpasar City, namely the Kumbasari traditional art market. Of course, if it is classified on the comparison of traditional markets with modern art shops, there is a sharper imbalance which tends to lead to less than ideal conditions of business competition. The Kumbasari traditional art market is a market location which consists of micro, small and medium entrepreneurs (Law No. 20 of 2008). Of course, in terms of management, capital and marketing, they have a different domain from modern art shops.

Referring to economic democracy can be interpreted as the freedom of individuals to choose rationally all things related to their economy. One or several people are given the freedom to do business in order to obtain happiness numerically (economically). According to (Mill, 2005), general happiness is created by meeting the happiness of each individual. Striving for individual freedom to do business is to continue to create a climate of good and healthy competition. In this case, the right of the state to regulate in the form of policies (form, supervise and enforce) law in the economic sector is carried out to create fair business competition. The freedom given to individuals to do business in the economic field will result in a monopoly on human resources, market areas, raw materials, and so on. This situation will in fact cause significant differences between individuals in access to the economy. The highest welfare will be owned by those who have capital or who control the largest resources and means of production. To anticipate this, it is necessary to direct the arrangement of micro, small and medium enterprises in the tourism sector to achieve justice in the economic sector. This is in line with Roscoe Pound's opinion that law functions as a social engineering tool (*law as tool as social engineering*). So in order to establish justice in the economic sector, it is

necessary to have government regulations in the form of legal rules that contain orders as well as prohibitions in creating a fair business competition climate, in this context a healthy business competition climate in the tourism business. Thus, the result of this phenomenon has moved the Denpasar City government to issue regulations on modern shopkeepers which are packaged in mayor regulation No. 9 of 2009 concerning the arrangement and development of traditional markets, shopping centers and modern shops. This Denpasar mayor regulation regulates the requirements and quotas for minimarkets or modern shops in the city of Denpasar.

3.2 Legal Constructions for Strengthening Traditional Art Markets in Denpasar City

Enforcement of a good rule of law must contain several bases for its implementation, such as juridical, sociological and philosophical grounds. These three bases are very important to strengthen the rules contained in laws and regulations to be legally valid (*legal validity*) and to be effective because they can be accepted by society fairly and are valid for a long period of time (Kelsen, 1973). Looking again at the term "validity" by Hans Kelsen is expressed as follows "*The rule in question is valid not only for the subject but also for the law applying norm*". Atmadja (2013) states that validity means that legal rules are obeyed by citizens or the community as well as by officials or law enforcers.

The foundation used in the formation of regional regulations must be adjusted to the basis of statutory regulations. In statutory regulations there are several important foundations, namely philosophical basis, sociological basis, juridical basis, political basis and design technical basis (Modeong, 2003). The purpose of making laws and regulations is for order and legitimacy which also takes into account competence (Utsman, 2010). The requirements for the enforcement of law as a rule include, among others:

- a. Legal rules apply juridically, if the determination is based on a higher level principle or is formed on a predetermined basis.
- b. The rule of law applies sociologically, if the rule is effective. This means that the rule can be enforced by the authorities even though it is not accepted by the community (theory of power) or the rule is valid because of the recognition from the community.
- c. The rule of law applies philosophically, namely in accordance with the ideals of law as the highest positive value (Ali, 2010).

According to Max Weber, it is related to the issue of legal validity or legal validity that has legal consequences for society. Whether a legal rule benefits the community or not, with this measure, the drafter of the Regional Regulation must be able to abstract the objectives of the regional regulation being formed. If in practice later, the Regional Regulation is ineffective, then the designer's aim in trying to enforce the rule of law can be declared a failure.

Explaining this consistency stage, Kelsen with the Pure Law Teaching (*Reine Rechtslehre*) assumes that "a new rule of law has its effect if the rule is based on a higher rule." vertical and horizontal in the substance of the perda. If in a local regulation there is a provision that contradicts a higher regulation, it can be declared invalidity *of law*. As a result, the regional regulation cannot be implemented properly and thus the perda loses. It's binding power because invalidity causes the loss of the obligation for the community to comply (the principle of legality; *legaliteit beginsels*) (Ali, 2010).

The evaluative use of the idea of enforceability rests on the idea of a rule of law based on its contents that must have value at an empirical and philosophical level. The nature of these values can be seen from both empirical and philosophical aspects. A perda is a provision whose substance is well accepted by the community (it does not cause turmoil in society).

Therefore, local regulations must be ensured to regulate a matter that is true (*truth*), not just justify. If Max Weber's thought is used, this section will be closely related to the conception of "consistency of law with external ethical or moral values." This conception will provide an easy guideline for perda makers, namely whether the perda is against the moral values of the community or not.

Every society always has "*rechtsidee*", that is what is expected from law, for example to guarantee justice, order, welfare, etc. *Rechtsidee* or legal ideals grow from a value system regarding good and bad, views on individual and social relations, about materiality, etc. All of them are philosophical in nature, meaning that they are related to the view of the essence or essence of something.

The philosophical basis is the foundation related to the basis or state ideology, namely the values (legal ideals) contained in Pancasila in Preamble of the 1945 Constitution, at the fourth paragraph: Then rather than that to form an Indonesian State Government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice, the National Independence of Indonesia was compiled in a Constitution of the State of Indonesia, which was formed in a composition of the Republic of Indonesia which is sovereignty of the people based on the One Godhead, just and civilized humanity, Indonesian unity and democracy led by the wisdom of wisdom in Deliberation/Representation, and by realizing a social justice for all Indonesian people.

In accordance with Article 33 paragraph (4) of the 4th amendment to the 1945 Constitution of the Republic of Indonesia, it is stated that "The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance between progress and national economic unity."

The context of modern thinking about justice in the Indonesian dictionary, the term justice, comes from the word fair, which means impartial, rightly, not arbitrarily. So justice is defined as a fair attitude or action. The meaning of justice as law, then develops the meaning of the word "*justice*" as "*law fullness*", namely legality according to law. Another definition attached to justice in a broader sense is "*fairness*" which is commensurate with fairness. Fair characteristics, in the sense of being appropriate or appropriate, can be seen from the terms used in legal science. For example, "*principle of fair play*" which is one of the general principles of good governance, "*fair wage*" is defined as a decent wage which is often encountered in terms of labor law. The same thing is stated in Aristotle's concept of justice which he calls "*fairness in human action*". Justice is the appropriateness of human action.

Justice is something abstract, being in a sullen world grows philosophically in the human realm, but it cannot be denied that everyone craves justice (Nsution, 2015). Based on this, the efficiency of justice referred to in the Constitution is the driving force for a series of efforts to strengthen the traditional art market by prioritizing banking efficiency in an effort to create a business climate that is fair, conducive and has a high level of competitiveness.

Law in the axiological context is expected to reflect the value system of justice both as a means of protecting values and as a means of realizing them in people's behavior. In this context, of course, it aims to create a healthy business climate in the marketing industry for souvenir items between the traditional art market and the modern art market. These values are left in society so that any formation of laws or statutory regulations must be able to capture them every time they form laws or statutory regulations so that what is the goal of law (*rechtsidee*), namely social justice for all Indonesian people can be achieved.

The factual condition of the Denpasar Art Market (Kumbasari) currently shows a decrease in interest in visits and spending by foreign and domestic tourists. The most obvious impact is of course on the income or sales results of the traders at the Denpasar Art Market, who are micro, small or medium entrepreneurs. Several traders of Balinese handicraft products at the Kumbaari art market, Denpasar, complained about the decreasing demand from buyers recently. This situation is clearly different from previous years where buyers were very enthusiastic about the handicraft products offered. Based on the aforementioned several aspects, a breakthrough or visionary policy from the Denpasar City government is needed to increase competitiveness or strengthen the competitiveness of the Kumbasari traditional art market, Denpasar. The first thing to note is the identity that must be possessed to strengthen the characteristics that can strengthen the Kumbasari traditional art market. Identity is an essence that can be interpreted through signs of taste, belief, attitude and lifestyle. Identity is considered both personal and social and indicates that "we are the same or different from other people (Kumbara, 2012). A person's identity can be seen from their gender, race, ethnicity, language, nation, religion, and even the way they dress. The identity that needs to be raised is in line with the essence of the "art market" which sells handicrafts and is identical to culture. According to (Koentjaraningrat, 2005), culture is all human thoughts and behavior that are functionally and functionally arranged in society. According to Chris Jenks, "culture is a medium that connects humans with nature. Culture exists because humans exist. Culture is meaningful only if the nature which is the cause of the birth of the culture remains in an identity quality equivalent to the state when the culture was created (Surjawa, 2014). Cultural identity is an appropriate identity as a characteristic of the traditional art market.

Cultural identity as a representation is not permanent because of incomplete production or construction, but is always in a process of change and is formed from within the group. According to Aristotle, identity is anything that makes an entity (really exist) recognizable. All entities have characteristics and qualities that allow a person to define a person, to define traits or definitions and distinguish them from others (Kleinman, 2013). Realistically, the identity of the traditional art market can be raised by the policy of the Denpasar City government to oblige every trader at the Denpasar Traditional Art Market to wear Balinese traditional clothing. The pattern of support from the government is also needed in strengthening the identity of the traditional art market by holding cultural attractions on certain days in the traditional art market area. Cultural attractions in the form of traditional and cultural attractions are in line with artistic and traditional concepts that give rise to Balinese identity. Another policy that can be pursued is to create a theater that contains a visual spectacle in the form of a video containing a documentary film on the development of objects or habits that become the culture of the people in Bali. For example the history of the barong, the history of the gong, the history of the line dance, etc. Of course, these things will create a new attraction for the traditional art market so that it can attract tourists to at least visit the Kumbasari traditional art market, Denpasar.

4 Conclusion

Based on the analysis above, it can be concluded that the Denpasar Traditional Art Market (Kumbasari) is a market area that sells handicrafts consisting of micro, small and medium entrepreneurs. The current condition of the Denpasar Traditional Art Market (Kumbasari) is weak with the emergence and expansion of modern shops in Denpasar. The spread of modern shops selling the same commodities as the Traditional Art Market (Kumbasari) cannot be

denied given the spirit of national policies to increase interest in foreign and domestic investment to do business in Indonesia, including Bali. Of course, the government must respond to this by making policies to balance or strengthen the competitiveness of the Denpasar Traditional Art Market (Kumbasari) which, in fact, has various weaknesses when compared to large businesses. Based on philosophical, sociological and juridical aspects, a visionary policy from the Denpasar City Government is needed in strengthening the competitiveness of entrepreneurs in the Denpasar Traditional Art Market (Kumbasari). One step that can be taken is to create a traditional art market identity that is identical to Balinese arts, culture and local wisdom. In a more concrete picture, steps can be taken, for example by requiring every merchant to wear Balinese traditional clothes, making a theater where on certain days a cultural attraction is held and showing videos on the big screen containing documentary films or the history of each art in Bali. . These steps can increase the attractiveness of tourists to visit which will increase the purchasing power of tourists at the Denpasar Traditional Art Market (Kumbasari).

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