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Effectiveness of Management and Development of Markets Bandar Kediri City Based on Regional Regulation of Kediri City Number 5 Year 2013 in Maslahah Mursalah Perspective

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Abstract

In implementing regional regulations, it has not been fully implemented effectively. Legal factors, law enforcement factors, facilities and infrastructure or facilities, and community factors are obstacles in overcoming violations in traditional market areas. For example in the Bandar market area, the use of buildings provided for traders is not optimal, as evidenced by the emergence of traders who sell on the sidewalk. So that this condition results in a lack of comfort for market users and road users in their activities. Slum, dirty is something that will definitely be found in the market, this condition has a negative impact on the development of the market itself. The formulation of the selected problem is How is the effectiveness of Article 18 of the Regional Regulation of Kediri City Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets, Shopping Centers and Modern Store in Bandar Market Kediri City? How is Maslahah Mursalah's review of the traditional market Bandar area in Kediri City Market after the enactment of Regional Regulation Number 5 of 2013? This research is empirical legal research using a sociological juridical approach by describing in depth about the object under study. And the data collection methods used are interviews (interviews), observation, and documentation. The results showed that the effectiveness of Regional Regulation No. 5 of 2013 concerning the Arrangement and Development of the Bandar Kediri City Traditional Market was not yet effective. This is due to the non-compliance of traders selling merchandise on the sidewalk. Whereas the Regional Regulation according to Maslahah Mursalah's perspective has provided benefits where the purpose of the establishment of Regional Regulations brings benefits to lawmakers, law enforcers, and those who implement the law.

Keywords: Regional Regulation; Traditional Markets; Maslahah Mursalah.

Introduction

The problem of law enforcement is a very serious problem and will continue to develop if the elements in the system itself do not change. Poor character of the community is the main factor of all the incompatibility of law in this country. Regulations need to be enforced which in fact are still violating a lot. For example in the practice of law enforcement in Regional Regulations.

The implementation of the authority to take care of the interests of the community, the Regional Head together with the DPRD stipulates the Regional Regulations. Regional Regulation is the main pillar that underlies the realization of regional autonomy. Regional regulations have regulating characteristics, specifically regulating relations between local governments, local communities, local stakeholders such as the business world. Regional regulations not only regulate the political, social and cultural life of the community, but also regional economic problems. Therefore, local regulations become an important instrument in improving the economy and regional welfare in general.¹

Explained by Soerjono Soekanto that whether or not a law enforcement is effective in this case the application of Regional Regulations is determined by 5 (five) factors. First; Own legal factor (law). Second; Law Enforcement Factors, namely those who form and implement the law. Third; Factor facilities or facilities that support law enforcement. Fourth; Community factors, namely the environment in which the law applies or applies. Fifth; Cultural factors, namely as a result of work, creativity and taste that are based on human intention in social life.²

Toward improve efficiency and effectiveness, coordination between government institutions and between community institutions in HR development needs to be further developed. The community, including the business community (private sector), cooperatives and other community organizations are encouraged to be more participatory in various efforts to improve the quality of human resources.³

Today many are found in the application of local regulations, not yet fully implemented effectively. Legal factors, law enforcement factors, facilities and infrastructure or facilities, and community factors are obstacles in overcoming violations in traditional market areas. For example in the Bandar market area in the practice of regional regulations in the City of Kediri, namely in Article 18, namely in the agreed space ration and not taking land / space that has been allocated for other purposes, such as roads, parks, and sidewalks. In the Article it is explained that it is not permissible to sell on roads, parks and sidewalks because buildings are already available to sell in the market. However, the use of buildings provided for traders is not optimal, as evidenced by the emergence of traders who sell on the sidewalk. So that this condition results in a lack of comfort and peace for market users and road users in their activities. Slum, dirty and chaotic is something that will definitely be found in the market, this condition has a negative impact on the development of the market itself.

In addition, the existence of sidewalks has triggered income from economic factors, namely opening up employment opportunities so that unemployment can be suppressed and its existence is needed by lower class people because of the relatively cheaper prices of shops or restaurants. But its existence besides being profitable also brings new problems. Traditional market buying and selling activities on sidewalks are considered as illegal activities because the use of space is not in accordance with its designation which disrupts public interest.

Toward curb traditional market traders who sell on the sidewalk, of course, need support from various parties, especially the merchant himself. Because if they are given a good understanding of legal awareness, provide assurance of business certainty and

¹ Sirajuddin dkk, *Hukum Administrasi Pemerintahan Daerah*, (Malang: Setara Press, 2016), h. 185.

² Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT. Raja Grafindo, 2008), h. 8.

³ Mulyadi, *Ekonomi Sumber Daya Manusia*, (Jakarta: PT RajaGrafindo Persada, 2006), h. 3.

facilitate so that their business can be sustainable then they will obey the Regional Regulations. This means that efforts to curb Bandar market traders who sell on the sidewalks in Kediri City in accordance with these Regional Regulations, the Regional Government involves the community, especially the traders who sell on the sidewalk to be disciplined. The government did not directly use its authority by forcibly evicting traders. But through approaches and outreach to traders until they understand and understand the government program, so the traditional market traders are willing to be relocated without coercion or eviction.

Research Methods

This study is a type of legal research⁴ with the focus of existing studies on phenomena in people's lives and using a sociological juridical approach⁵ by describing in depth about objects. Data sources used are primary data, namely interviews, observations, documentation, secondary data, namely official documents, journals, books, and regulations.⁶

Result and Discussion

Effectiveness of Article 18 of the Regional Regulation of the City of Kediri Number 5 of 2013 Concerning Arrangement and Development of Traditional Markets, Shopping Centers and Modern Stores in Bandar Market Kediri City

Seeing the phenomenon of violations that occurred in the Bandar Market Kediri area related to market regulation and fostering regulations that violated the rules, there were several factors behind the occurrence of these violations. By using the theory of legal effectiveness proposed by Soerjono Soekanto, as conveyed by Mrs. Wiji, one of the interviewees who sold on the sidewalk *"I am an ordinary person, Ms., looking for sustenance, if I sell inside it must be rare, on this sidewalk it is also sometimes quiet . Delicious on the sidewalk, buyers can immediately know what I'm selling, and make it easier for buyers to look for fruits on the market, without having to go around the market."*⁷ According to the interview explained by traders that buyers can more easily make buying and selling transactions on the sidewalk than in the market room and without the need to find food ingredients to be purchased by looking from the road when going through the market.

The development of traders who sell on the increasingly fast pavement, of course, can damage the physical beauty and layout of the city. The emergence of these traders without the existence of curbing would hamper the construction of the city, so that arrangements were needed to control and control the sellers who were selling on the sidewalk.

The Civil Service Police Unit Office which has the authority to carry out the duties of the City Government in terms of enforcement of regional regulations on the arrangement and guidance of traders has a very important role in realizing order in the presence of Traders selling on the Bandar market sidewalks. In carrying out its duties, it certainly faces many obstacles and obstacles in the field. For this reason, there is a need

⁴ Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2007), h. 41-42.

⁵ Burhan Ashshofa, *Metode Penelitian Hukum*, (Jakarta: PT Rineka Cipta, 2004), h. 56.

⁶ Suwardi Endraswara, *Metode Teori Teknik Penelitian Kebudayaan*, (Yogyakarta: Pustaka Widyatama, 2006), h. 151.

⁷ Wiji, *wawancara* (Bandar Lor, 14 April 2019)

for a solution to solve the existing constraints in managing and fostering traders. Thus the purpose of structuring and fostering traders who sell on the sidewalk can be achieved.

According to an interview by the Deputy Chief of the Kediri Civil Service Police Unit, "*The Civil Service Police Unit every day has carried out their duties as enforcers of Regional Regulations. Therefore, we carry out every day enforcement in the Bandar Market area, starting from traders, security guards, and parking attendants. In the market area, we have also regulated traders who sell on the sidewalk every day, because from the side of the village community they have allowed to sell on the sidewalk, but the traders do not disturb security and order traffic.*"⁸ According to one of the members of the Civil Service Police Unit, as long as the traders do not disturb the security and order of traffic it is permissible to sell on the sidewalk. Traders who sell on the sidewalk are not many, only a few.

In his book Prof. Dr. Damsari entitled Introduction to Sociology of Economics that markets regulate social life, including economics, automatically. Because the achievement of personal interests and welfare of individuals will bring good results, not only they as individuals as well as the community as a whole. The most important characteristic of the market, seen as one mechanism that works in social life, is a free exchange of goods and services.⁹ So in the case of a violation that I described above, actually this market is a regulator of social and economic life. The public can easily do direct selling, no need to bother parking their vehicles, just by approaching traders who sell on the sidewalk, they can make a sale transaction.

Although in writing the regulations concerning the regulation of the market area are considered good, the problem is the implementation process. By way of reading a little interview that has been done to Mr. Wiko Kediri City DPRD that "*We have enforced Regional Regulations in the Market areas in the City of Kediri. The Civil Service Police Unit has also been in good order. When we discipline the traders, these traders the wong cilik, they also want to find sustenance, we think it's okay as long as we don't disturb security and order traffic*".¹⁰

In his book Bambang Waluyo entitled Legal Research in Practice that the Indonesian National Police (POLRI), the Attorney General's Office and the Department of Justice and the Supreme Court are all law enforcement agencies. In the current period, except for the Supreme Court, it seems that the law enforcement agencies not only function as institutions that maintain the existence of mere positive law but more broadly. The agencies are also responsible for increasing public legal awareness law enforcement efforts will certainly experience inhibition.¹¹

From the results of the research that has been obtained, based on the theory of legal effectiveness from Soerjono Soekanto regarding the benchmarks of the effectiveness of law enforcement, it can be described as follows: :

1. About the Legal Regulations

The legal regulation referred to in this case is the Regional Regulation of the City of Kediri Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets. If seen from the substance, according to Mr. Wiko as a member of the Kediri City DPRD Perda Number 5 of 2013 so far it has been quite complete as a guideline in controlling the Bandar Kediri Market area.

⁸ Dodik, *wawancara* (Karangrejo, 8 Mei 2019).

⁹ Damsari, *Pengantar Sosiologi Ekonomi*, (Jakarta: Kencana, 2011), h. 110.

¹⁰ Wiko, *wawancara* (Burengan, 22 Maret 2019)

¹¹ Bambang Waluyo, *Penelitian Hukum dalam Praktek*, (Jakarta: Sinar Grafika, 2008), h. 141.

2. About Law Enforcement

Law Enforcement in this case is the Kediri City Civil Service Police Unit Office, namely the party that accepts and implements Regional Regulation Number 5 of 2013 concerning Structuring and Fostering Traditional Markets. At present, the Civil Service Police Unit has carried out its duties optimally, namely with the implementation of its work programs in the form of guiding, structuring and controlling Traders.

3. Supporting Facilities and Facilities

Facilities and facilities are supporting factors whose existence is very important to support the smooth implementation of a regulation. So far the supporting facilities and facilities of Regional Regulation No. 5 of 2013 have been well provided by the City Government of Kediri. In arranging and controlling traders, the City Government has provided adequate facilities such as parking lots, green open spaces, bathrooms, prayer rooms, and buildings that are adequate for traders.

4. Society

Society is a legal subject that supports the effectiveness of the implementation of legislation. Community behavior is a reflection of the effectiveness of a regulation. Community adherence to the law can be seen from its behavior whether it is appropriate or not with existing regulations. The behavior of traders who sell on the sidewalk cannot be said to be law-abiding. This can be seen from the behavior of traders who are still selling on the sidewalk continuously and not in accordance with Regional Regulation No. 5 of 2013 concerning the Arrangement and Development of Traditional Markets.

5. Culture

Culture is a complex thing in society. Legal culture is a part of culture in general that is related to law. Viewed from the aspect of culture, especially legal culture, the people of Kediri City as one of its components have not been so aware of the importance of a legal order in this case is the order of traders who sell on the sidewalk. This is one of the obstacles in the business of controlling traders.

Thus, based on the above effectiveness theory, it can be said that the Implementation of the Arrangement and Development of Traditional Markets Bandar Kediri City Market has not been effective in implementing the Kediri City Regional Regulation Number 5 of 2013 concerning Structuring and Guiding Traditional Markets because it has not fulfilled the elements of the benchmark a legal effectiveness according to Soerjono Soekanto.

Overview of Masalah Mursalah of the Traditional Markets Areas in Bandar Kediri City Market after the Enactment of Regional Regulation Number 5 of 2013

Basically the formation of law is intended to realize the prosperity of the people. That is, bringing benefits to the community, in fact human welfare is not limited to its parts, unlimited individuals and in fact the benefit continues to emerge together with the renewal of human situations and conditions and develops due to environmental differences. The prescription of a law sometimes brings benefits at a time and at other times it brings harm, and at the same time sometimes a law mandates benefits in a particular environment, but sometimes it can bring harm in another environment.¹²

¹² Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, (Jakarta: PT Rineka Cipta, 2005), h. 98.

Maslahah Mursalah is a method of determining the law in which cases are not explicitly regulated in the Qur'an and Hadith. Arguably with Maslahah Mursalah is something that is intriguing in following the needs of humans who are always dynamic in accordance with the times. As we know that Maslahah Mursalah in addition to referring to the laws of syara 'in general, also must consider the customs of a society and the relationship between one human being with another human being.

In the aim of establishing the Regional Regulation of the City of Kediri Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets in accordance with what is stipulated in Islamic Sharia, for example in the Regional Regulation brings benefits to the lawmakers, law enforcers, and those who implement the law. The benefit given by Islamic Shari'a (Allah SWT) as a law maker for His servants which includes the safeguarding of religion, soul, reason, descent, and property, so that it will avoid loss (mafsadat) both in the world and the hereafter.

Advantages must bring benefits and avoid mafsadat (loss or damage) for the people, both in terms of physical and spiritual, both for the life of the world and the hereafter, and Mashlahah must be related to personal and many people's welfare. This is in the purpose of the establishment of the Regional Regulation of Kediri City Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets namely general and personal welfare as equals for example with the practices that occur in traditional markets, namely sellers and buyers can bargain so that both get the same profit.

The Regional Regulation of Kediri City Number 5 of 2013 concerning the Arrangement and Development of the Traditional Market can already be a problem, because in each Perda making through certain stages there are also goals and benefits. As explained by Mr Wiko, a member of the City of Kediri DPRD, the purpose of Perda Number 5 of 2013 is that "*The existence of traditional markets if managed with the concept of good governance is expected to be jointly developed and complementary which in the end will be more profitable because given more choices to meet their needs, increase investment in the City of Kediri, which ultimately can provide welfare and reduce unemployment for the people of Kediri City*".¹³

Provision of various types of facilities and services provided by the Regional Government in this case in the Bandar market is a means to make it easier for traders to carry out buying and selling transactions. The existence of this facility is very important because if the facility does not exist, the selling activity cannot run well. But its existence in addition to being profitable also brings new problems with which traders sell on the sidewalk.

As for the violations in the Bandar Market Kediri City, traders who sell on the sidewalk do not disturb security and order, pedestrians rarely want to pass through the area. So that in this case there is no harm, sellers and buyers can easily carry out buying and selling transactions. Even though it is not in accordance with the Regional Regulations if the community does not feel that their rights are harmed, the Regional Regulation can bring together benefits.

In the City Regulation of Kediri Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets in terms of Maslahah Mursalah contains benefits even though in its implementation it has not been effectively carried out properly, because the Islamic Shari'a is actually revealed, as concluded by the scholars based on the Qur'an's instructions and As-Sunnah, aiming to realize the benefit and human needs.

¹³ Wiko, *wawancara* (Burengan, 22 Maret 2019)

Therefore, what is considered as *masalah* as long as it does not conflict with the Qur'an and the Sunnah of the Prophet, is legitimate to be used as a legal basis.¹⁴

Based on the explanation that the author has described above, it can be concluded that the practice of implementing Kediri Regional Regulation Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets which has long been fulfilling the requirements for using *Maslahah Mursalah* as a permit of wisdom. In practice there are benefits, avoiding difficulties and walking according to the will of the faith '.

Conclusion

The effectiveness of Local Regulation No. 5 of 2013 concerning the Arrangement and Development of the Traditional Market in Bandar Kota Kediri has not been effective. This is if it is related to the five theories of legal effectiveness by Soerjono Soekanto that there are 2 theories that have not been fulfilled, namely (1) community factors namely the behavior of traders who sell on the sidewalk cannot be said to be law-abiding. This can be seen from the behavior of traders who are still selling on the sidewalk continuously and not in accordance with Regional Regulation No. 5 of 2013 concerning Structuring and Guiding Traditional Markets, (2) cultural factors, namely Seen from cultural aspects, especially legal culture, the people of Kediri City as one of the components is apparently not so aware of the importance of an orderly law in this case is the order Traders who sell on the sidewalk. This has become one of the obstacles in the business of controlling traders. The purpose of making sidewalks is to smooth road activities and reduce accidents between pedestrians and motorized vehicles. But if the use of sidewalks is misused to become a very mushrooming selling location, then the community experiences an imbalance. If road management can be firmly regulated and can be managed properly it will certainly affect the survival of the community.

By looking at the explanation above, the feasibility to be achieved in Regional Regulation Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets is in accordance with the perspective of *Maslahah Mursalah*. Where this regulation prioritizes more general benefits for group benefits. This is in the purpose of the establishment of the Regional Regulation of the City of Kediri Number 5 of 2013 concerning the Arrangement and Development of the Traditional Market that brings benefits to the lawmakers, law enforcers, and those who implement the law.

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