

## MARKET JUSTICE FROM ISLAMIC BUSINESS ETHICS PERSPECTIVE\*

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### ABSTRACT

*In Indonesia, modern retail market has been entered into Indonesia since 1970. It's been more expand 1998 by legal instrument which gives free to foreign investor to join this sector. Liberalization and monopolization of retail modern market have made the existence and rights of economics access of merchant traditional market marginalized, demolished even murdered. This paper want to introduce Islamic law transaction (fiqh mu'āmalah) such as prohibition of ihtikār (hoarding), ṭalāq rukban (entry barrier), ta'alluq (collusive dealing) toward market justice for vulnerable society, in particular for the merchant of traditional market. This paper is using qualitative method research and case approach, especial decision of Business Competition Supervisory Commission (KPPU) No. 03/KPPU-LI/2000 and No. 9/KPPU-L/2009 on Islamic business ethics. This paper is proposing Islamic Business Ethic become Islamic Antimonopoly Law.*

**Keywords:** *modern and traditional market, Islamic business ethics, monopoly*

### INTRODUCTION

#### Background

Justice is the main mission of Islamic law. The main message of *al-Qur'ān* dan Islamic law is justice, including law and economic field. The economics

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justice is one of the most important aspect of Islam. Economics justice refers to two form i.e. equity in income distribution and equality that requires every individual has equal opportunity for economic accesses. To make harmful and inequality of income is contrary to the spirit and commitment to principles of Islamic brotherhood and social justice economics. The gap, even murdered cooperation system in trading and provide economic access to any person actively in the process of production, distribution, circulation and consumption, ensuring fulfillment of basic needs social economics security insurance. Market is center of economics institution. As the center of economic activity, it should be based on equity principles. Everyone can be market participant and they have the same right and obligation there. The other hand, everyone has to oblige to respect to others, it's called social justice. The concept of justice on Islamic perspective can be seen in *fiqh mu'āmalah* (transaction of Islamic law) concept, and implemented by government policies (*state*) in market regulation.

In recent years, since about 1970s, modern retail market has been entered in Indonesia by trading activities. The retailer get a large opportunity to take Indonesia market by establishing different type of retail format such as large supermarket, supermarket, minimarket, drugstores, warehouse clubs and more. In 1999, retail business activities are larger and larger. Foreign retailers has joined to retail business in Indonesia, like Carrefour that offer one stop shopping concept format and other retailer are lagging any time. The growth of modern retail market has been made the special problem in Indonesia market condition. The problem is the alienation of small retailer business like traditional retail market. It is caused capital limited, lack of management of traditional market retail, so that they are difficult to compete to modern retail market that much capital and large networking. Actually, in the Indonesia legal system has been oblige the cooperation of them, but in practice the modern retail market make some of trading term that it make difficulties to traditional retail market. The condition has made some element community group take a lawsuit to Business Competition Supervisory Commission (KPPU) as an authority in the business competition in Indonesia. According to the lawsuit, the Commission decision No. 03/KPPU-LI/2000, and related to the terms of trade (trading terms) by Carrefour, the Commission issued Decision number 9/KPPU-L/2009.

## **Purpose**

This paper will elaborate fair market concept on Islamic business ethics. Islamic business ethics contain *fiqh mu'āmalah*, and practiced in Islamic economic political through state roles.

## Method and Approach

This paper uses qualitative methods with the approach of the cases (case approach). The method used is to get the norms of Islamic business ethics contained in the jurisprudence and the economic legal history (*siyāsah mu‘āmalah iqtisādiyyah*) performed by the Prophet and Islamic golden era. The approach that used in this paper is the case of the Business Competition Supervisory Commission (KPPU) as authority in Indonesia market i.e. the decision Number 03/KPPU-LI/2000 related with terms of trade (trading terms) by Carrefour, and Decision No. 9/KPPU-L/2009. The method of data compilation used library research particularly the primary legal instruments such as Islamic law business, legislative regulations and secondary legal instruments such as scientific books, written by experts of Islamic law business or Islamic economic and discussing matters in relation with this topic.

## CONCEPT OF FAIR MARKET (MARKET FAIRNESS) IN ISLAMIC ECONOMICS

The nature of fairness is describing freedom and equality for the people. Every human being was born as free creature in order to respect other human being (Behechti & Bahonar, 1990: 414-415).<sup>1</sup> Human equality creates equal right and obligation for expression in life. Therefore, as consequence of human equality, there are two issues rise at the same time i.e. freedom as well as responsibility. Right is freedom of expression and at the same time it contain obligation to do good things (*ihsān*) for all people who have the same equality with him/herself. Essence of equality and freedom for expression in life for every human being creates obligation of honoring (*ihsān*) other individual.<sup>2</sup>

Freedom of expression which has created equality among human being takes place when people intend to fulfill need and to survive in life. The challenge to fulfill need by economic activities is deeply felt in competition therefore always generate economic problems. However, different perspective toward economic freedom in the market has generated specific perspective in economic school of thought, such as capitalism thinking which allows ultimate freedom for everyone. Besides, socialism system negates individual

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<sup>1</sup> ‘Alī Ibn Abī Ṭālib said, “...do not be al slave of others because Allah has created you free.”

<sup>2</sup> Messenger of Allah SWT for people to perform fairness (*‘adl*) and good thing (*ihsān*) indicating that fairness can produce good thing or ideal condition. See Surah al-Nahl, 16: 90.

freedom and surrender freedom to states authority. Conflict among the rights of everyone sometimes unavoidable when there is conflict of interest and in the same room. Common interest due to common opportunity and capacities. Anyone who forces particular interest against the same opportunities will reduce and deprive other people interest at the same time.

Islam thought on principle of fairness that necessitates human equality with respect to individual right. Compromise can be done by giving same opportunity to everyone in order to acquire or execute something, and at the same time respecting everyone right to acquire or perform something properly. Every individual has social obligation to anyone surrounding him/her, mainly with the closest people or society. Intention to get something according to his/her right should observe the same right entitles to other people (Afzalur Rahman, 1995: 10).<sup>3</sup> Equality on acquiring right should observe equal right of other people. Therefore, contradiction among them shall establish peaceful social co-existence. Recognition toward equality as the will of God (*Allah*) which has implication toward human behavior as part of guidance of *al-karāmah al-insāniyyah* (human glory) which is also part of God's will (Amiur Nuruddin, 2008: 153). In economic activities, there is rational and irrational behavior. Rational behavior means any behavior of economic actors in order to achieve economic goal. Economics for the purpose of maximizing economic potential in order to achieve economic goal. Economics has goal to maximize economic potential in order to enable any economic actors to survive and exist in life.

Fairness in Islamic economics is based on principle of divinity (*ilāhiyyah*). The essence of *tawhīd* (monotheism) teaching is unification in creation, humanity, life guidance and life purpose, containing strong message that human being has equal position (*egalitarian*) in front of Allah and history (*Ibid.*, 19). Egalitarianism which is constituting emancipatory aspect of *tawhīd* (monotheism) teaching is inspired by condition of Mohammed the Prophet in facing monopolistic political and economic situation at that time. Especially in economic field, Mecca city situation as a business city is experiencing economic inequalities due to monopolistic economic system (Nurcholish Madjid, 1987:

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<sup>3</sup> Regarding this, Afzalur Rahman said that Islam justified egoism without allowing any damage to social order.

158; John L. Esposito, 2009: 68).<sup>4</sup> The *al-Qur'ān* critics in order to respond to that situation is not against the business activities however against behavior of economic players who are exploitative and monopolistic. Behaviors of those oligarchic entrepreneurs member as described by *al-Qur'ān* such as not donate the orphans, abandoning poor people,<sup>5</sup> does not care of limitation in life, love wealth excessively etc. Root problem of social economic as the target of *al-Qur'ān* in order to abolish monopoly practice as disease in society of Mecca city at that time (W. Montgomery Watt, 1987: 4). In order to establish economic fairness, Islamic economics teaching prepared several mandatory instrument and voluntary instrument. Tithe (*zakāh*) is a mandatory instrument in Islamic economic within limited value amount (*niṣāb*) and time limit (*ḥawl*). Also tax as resource distribution instrument which has been executed since beginning era of Islam (Joseph A. Pechman, 1997: 5; Irfan Ul Haq, 1996: 167).<sup>6</sup> Moreover, monopolistic practice has been replaced by Islamic business transaction system which required cooperation system among business people in order to establish fair market.

### FAIR MARKET IN *FIQH MU'ĀMALAH*

Fair market in Islamic economics can be seen from its contract or commitment (*'uqūd*) system. Fair contract system means any contract based on equal cooperation principle. Philosophical essence of *'akad* (contract) is cooperation between the parties in executing any business transaction. As we knew that cooperation required common equality and agreement (*al-riḍā* principle) among the parties. Equal position of everyone and interdependency on one and another shall create cooperation of one party with another party. Such cooperation shall nullify any opportunity to take advantage by one party and incur harms to other party. Any exploitative action shall not take place in this business format which is based on equality in cooperation.

<sup>4</sup> According to Nurcholis Madjid, short letters as the nature of Makkiah text to criticize monopolistic condition and emphasizing monotheism teaching and social justice. Esposito described unfair condition of Mecca at that time *However the situation in commercial towns such as Makkah was different. Here markets operated freely and great differences in wealth left the poor, orphans and women at the receiving end of exploitation and injustice.*

<sup>5</sup> Surah al-Mā'ūn, 107: 1-3.

<sup>6</sup> Joseph A. Pechman stated that *“taxation, a major instrument of social and economics policy, has the goal of transferring resource from the private sector to the public sector so as to equitably distribute the cost of government within society, and to promote economic growth and maintain stability with efficiency.*

Business transaction in Islamic economic law at least based on four contract system i.e. *muḍārabah*, *mushārahah*, *muzāra'ah*, *mukhābarah*. Capital owner (*ṣāhib al-māl*) is unable to acquire profit nor use capital without any employee (*muḍārib*) whom utilize and empower the capital. Besides, *syirkah* product having its profit and loss sharing principle, where all parties have the same interest as consequence having equal position among them. Any absence or inability of one party shall make other party powerless or cannot maximize its business goal. Balance and equal position necessitates fairness in job description/division of labor and profit distribution. Ignoring principle of equality and cooperation shall make business and economic activities not in an ideal state. In the context of international trading, concept of fair trading is that to create equal opportunity within global trade structure. Fair trade has purpose to confine business players and work forces in poor countries from the flow of global trade and market. Fairness required balance of resources allocation. Everyone has equal right to take and utilize resources in proportion. In the market, entire individuals are free to perform any activities including place of market, government regulation shall only applicable whenever any social interest request thereto (Monzer Kahf, 1996: 16).

In essence, fair market requires entire condition on its surroundings do not felt any harm or unfairness. Ajaz Ahmad and Laura Thaut stated that requirement of fair market is a condition where fair environment exist. *A person or organization therefore, should no undertake an action or instigate a business transaction that will cause greater harm than benefit to the community or environment* (Ajaz Ahmad Khan & Laura Thaut, 2008: 6). Fair market doctrine is described in *fiqh mu'āmalah* requiring players in the market have equal position and supporting each other, and not the contrary where they harm each other. Some of anti-monopoly doctrine on Islamic perspective are:

### **1. Ṭalāq Rukban Doctrine**

*Ṭalāq rukban* doctrine is similar with barrier to entry doctrine in entrust law. This doctrine is the oldest doctrine in antitrust law. Prophet Muhammad has declared this doctrine when he managed Madinah Market. The main principle of competition law in Islamic business ethics is prohibition towards others merchant to join the market. Prohibition of receiving newcomer will not make market mechanism. In the tradition of common law system, entry barriers doctrine is called restraint of trade doctrine, which is absorbed by the Sherman Act. Competition law in the United States was formed to give right to compete. Exploitation of one's ignorance of market condition is another common

unethical practice in modern business. Islam condemn any intervention that is based on exploitation of the seller's ignorance of market condition.

This doctrine is from *ḥadīth*:

أن رسول الله صلى الله عليه وسلم قال ( لا تلقوا الركبان ولا يبيع بعضكم على بيع بعض ولا تناجشوا ولا يبيع حاضر لباد ولا تصروا الغنم ومن ابتاعها فهو بخير النظرين بعد أن يحتلبها إن رضيها أمسكها وإن سخطها ردها وصاعا من تمر<sup>7</sup>

Restriction behavior in that *ḥadīth* is restriction in trading vertically and horizontally. Imam Shāfi'ī said that, this prohibition of blocking the outsider trader in this *ḥadīth* when the trader was still at village, so that they're not know about the market condition, especial the price of things. It effect will make market condition instability like price. In other word, the sunnah seek to ensure that fair price prevail and to preempt unjust price manipulation by middleman and price hiker. As most food seller in Madinah were importers who sold their goods upon arrival in the market, the prophet the townspeople to sell for the nomads or to act their agent (*bay' ḥaḍīr li badīn*) (Mohammad Hasyim Kamali, t.t.: 31). This *ḥadīth* is based on anti monopoly doctrine.

## 2. *Ihtikār* Prohibition Doctrine

Antitrust law is based on prohibition of *ihtikār* doctrine<sup>8</sup>. *Ihtikār* means that act to harm or the social harm (*isa ul mu'āsharah*) or hoarding to sell the good expensively (Ahmad Warson Munir, 1984: 285). Therefore, *ihtikār* is consumer persecuting act by holding good and rising prices after certain time. Practically, it is make market destructive and deaden other business by holding goods and services. In term, *ihtikār* means *habs al-sal'ian bay* (Imām Muḥammad 'Alī al-Shawkānī, n.d.: 235) (make hoarding of goods from its circulation), or *bay' ussali yu'akhir al-sal'i yanẓuru bihi ghala' al-as'ar*. In other term, *ihtikār* means *al-iddikhār li al-bay' min jami' al-ashya' min al-ṭa'am wa al-ilbās wa kullu ma adharra bi al-suq*. *Ihtikār* refers to the case where shortage are created by holding large stocks of goods in warehouses and withholding them from sale. The motive is that to keep supply less than the

<sup>7</sup> Al-Bukhārī, Abī 'Abd Allāh Muḥammad Ibn Ismā'il al-Ju'fī, *Ṣaḥīḥ al-Bukhārī*, 2043.

<sup>8</sup> Doctrine of *ihtikār* prohibition are in *al-Qur'ān* and *ḥadīth* Rasulullah SAW. See Surah al-Mā'idah, 5: 2; Surah al-Baqarah, 2: 279; Surah al-Ḥajj, 22: 78; Surah al-Mā'idah, 5: 6.

demand and profiteer by this situation. Trader who can afford to block large sum of capital normally does this activity. Second caliph, ‘Umar bin Khaṭṭāb imposes the additional amount of the monetary payment paid by the offender of the victim. The decision by Saidina ‘Umar to impose penalty to person who concealed the property showed that Islam always prevent any kind of deed, which will lead to unfair competition such as economics crisis and inflation.<sup>9</sup>

One of acting form that hood up mechanism of perfect market is *iḥtikār* (hoarding). Goods are needed by consumers who accessed reasonable price. Holding goods up is easy way to get profit, because, scarcity will cause goods price rise, and that moment holder sell the good at the market. Hoarding is a form barrier to circulate well, so this practice is mentioned market mechanism restraint. Prophet has reminded us that Allah SWT will curse a person who monopolies others. In another *ḥadīth* reported by, prophet declared that:

من احتكر فهو خاطئ

“Who monopolizes is nor but a wrongdoer.”<sup>10</sup>

### 3. *Ta‘alluq* Doctrine

*Ta‘alluq* or *muallaq* is means purchase term. *Ta‘alluq* doctrine prohibition included in the scope of the ban of *taghrir* (*gharār*) عيوب الأمانة أو الرضى. A businessmen would sell something to the others perform a number of conditions such as selling more goods to certain people or other. In Islam, all businesses are free to determine for themselves of the seller or the buyer in the market in accordance with the law of market. As one *illat* (reason) that cause damage to buying and selling *ta‘alluq* is any element of *gharār* (uncertainty). *Gharār* contained in obscurity for businesses and consumers to the continuation of the bond sale and purchase between the parties must wait due to other elements of the specified requirements. With the requirement, the parties do not know exactly under what conditions can the transaction be implemented, because it could have happened when desire transaction the parties have changed. Thus, the element of *gharār* is located on the implementation aspects of the execution time and in terms of actors (subjects) the willingness (agreement) of the parties at the time of requirement. In fact, the Ḥanafī’s make *ta‘alluq* in the transaction are in the category of *qimar* (*gambling*) (Husain Syahatah & Siddiq Muh. Amin al-Dhahir, 2005: 160).

<sup>9</sup> Zulkifli Hasan, “Islamic Perspective on The Competition Law and Policy,” files.wordpress.com/2008/.../islam-and-competition-policy

<sup>10</sup> Imām Muslim (n.d.). *Ṣaḥīḥ Muslim*. n.p: Mawqī‘ al-Islām, 312.



In Islamic business ethic, the application of the *ta'alluq* doctrine has been adopted in the book of civil law Ottoman Government, Turkey last time, in book *Majallah al-Ahkām al-Adliyyah*, it had regulated civil and public relations in the trade are widely included in the sale and purchase terms. In this matters, the terms of the sale and purchase of which requires terms favorable to one party. Article 189 says: “ A sale with condition, which is not for the benefit of one of the contracting parties, is lawful, but the condition is bad. In terms of buying and selling that depend on terms unfavorable to one party, then the trading itself legitimate, but the terms can be canceled” (Justice S. A. Rahman, 1980: 26; H.A. Jazuli, 2002: 33).

### **FAIR MARKET IN ETHIC SYSTEM OF ISLAMIC ECONOMICS (CASE STUDY KPPU DECISION IN INDONESIA)**

Fair market, in term of modern market and traditional market competition in Indonesia has taken place unfairly. Monitoring result from Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha/ KPPU*) that number of hypermarket has increased significantly, from 105 stores building (2006) up to 121 stores building (2007). Besides, Supermarket also increased, from 1,311 outlets (2006) up to 1,379 outlets (2007). The same experienced by minimarket, 7,356 outlets (2006) up to 8,889 outlets (2007).<sup>11</sup> Abovementioned facts description have indicated sales omzet of traditional business is decreasing, on the contrary, omzet of modern retail business are keep on increasing.

Table 1: Market Share Retail Modern di Indonesia (IDR billion)

Year	Supermarket	Share %	Hypermarket	Share %	Mini Market	Share %
2001	11,783	34.7	10,108	29.8	2,212	6.5
2002	12,808	33.2	12,292	31.9	3,002	7.8
2003	14,330	32.2	14,678	33.0	3,693	8.3
2004	14,330	31.7	17,426	33.9	4,353	8.5
2005	18,689	31.1	21,093	35.1	5,171	8.6
2006	21,363	30.7	25,108	36.0	6,146	8.8
2007	24,429	30.2	29,659	36.7	7,308	9.0

<sup>11</sup> KPPU Decision Number 9/KPPU-L/2009

Year	Dept. Store	Share %	Total	+/- %
2001	9,824	29.0	33,928	13.7
2002	10,471	27.1	38,573	15.3
2003	11,782	26.5	44,483	15.6
2004	13,324	25.9	51,422	16.9
2005	15,178	25.2	60,131	16.9
2006	17,072	24.5	69,688	16.9
2007	19,371	24.0	80,767	16.9

Data has shown that modern market has grown higher from time to time. If in 2008 the modern market has grown 28.0%, in 2009 it has decreased to 13.4%, such decrease also for traditional market i.e. growth 18.8% in 2008 and 4.1% in 2009. Therefore modern market has grown higher than traditional market i.e. modern market 13.4% and traditional market grew only 4.1% (2009).<sup>12</sup> Retail market domination by modern retail has devastated ordinary people who are commonly the entrepreneurs in traditional market. In 2000, business actors in traditional market representing by an Non Governmental Organization (NGO) filed claim to KPPU<sup>13</sup> Based on interviews by the NGO dated April 12 2000 to 429 micro business/kiosk owner within Jakarta, Bogor, Tangerang and Bekasi (hereinafter abbreviated to Jabotabek) has indicated that majority from 129 micro businessman stated that rising of minimarket such as *indomaret* has negative impact to their business, income or sales omzet has drastically decreased.<sup>14</sup> There are many small businesses have been closed or cannot sell anymore due to cannot compete with minimarket Indomaret in terms of price and service. Besides, living expenses of their family household

<sup>12</sup> Nielsen, "Market Update on Economic Downturn," 10 October 2011, <http://id.nielsen.com/news/documents/2009.06.16MarketUpdate.pdf>.

<sup>13</sup> Accused Witness applied Article 1 paragraph 4 regarding dominant position, Article 1 paragraph 8 regarding conspiracy, and Article 25 regarding dominant position in Monopoly Practice and Unfair Competition Acts, on filing claim. Dominant position means dominating market share due to capacity in finance and access to supplier. Article 1 paragraph 8, conspiracy to dominate market for the interest of the entrepreneurs who are in conspiracy, therefore it is prohibited pursuant to Article 22 regarding conspiracy and Article 225 regarding dominant position, further Article 15 regarding prohibition to apply supplier requirement for particular Entrepreneur. KPPU Decision by Verdict KKP No.03/KPPU-L-I/2000.

<sup>14</sup> According to data acquired from KPPU, currently there are 13,450 traditional market in Indonesia with merchants about 12.6 millions people, traditional market growth is keep-on decreasing. KPPU Decision No. 03/KPPU-L-I/2000.

are being threatened, due to those kiosks/small businesses have been the only one business in order to support daily lives.<sup>15</sup>

Since establishment of Indomaret supermarket on August 17 1998 until 2000, in Jabotabek area there are 290 Indomaret stores and planning to establish 2000 Indomaret stores located in district up to sub-district level area. NGO stated that every one Indomaret stores harmed 10 small businesses surrounding it. Therefore if there are 290 stores means they will affect 2900 small businesses being treated to die. Estimated 2000 Indomaret supermarket will be built in Jabotabek region, if those are completed, estimated 20,000 small businesses in Jabotabek region will die or minimum 80,000 poor people become more poor due to losing their jobs.<sup>16</sup>

Besides of small retailers exclusion problem, other problem is the rising pressure to the small business suppliers by the modern retailer who have huge capital capacities. Carrefour enforces trading terms which became heavy burden for any small medium supplier interested in establishing cooperation with Carrefour.<sup>17</sup> Trading terms made by Carrefour has killed Small Medium Enterprises, due to Carrefour does not differentiate treatment to suppliers of large business and small business by their scales and create dependency from the suppliers to Carrefour. Related to problem of relationship between supplier-modern retailer, the case being handled by KPPU is Carrefour case, i.e. to sentence Carrefour for its trading terms application in the form of minus margin program.<sup>18</sup> Based on data, KPPU decision has indicated that market condition in Indonesia does not reflect fair market. Supermarket which have strong capital capacity and good management is slowly defeating traditional market. Fairness which came from the source of freedom and equality among business players should be based on principle of mutual respect and helping each other. Freedom in performing business activities should not enable ignorance to surrounding condition. Traditional market contain business

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<sup>15</sup> KPPU Decision Number: 03/KPPU-L-I/2000

<sup>16</sup> System applied by PT.Indomarco that franchisee of Indomaret Supermarket and guarantee of supply with distributor price. Franchisee liable to provide building and investment +Rp300 million (including Franchise Fee Rp82.5millions paid to PT.Indomarco). See Clause "in consideration" of KPPU Decision Number:03/KPPU-L-I/2000

<sup>17</sup> Trading terms applied by Carrefour i.e.: *listing fee, minus margin, fixed rebate, payment term, regular discount, common assortment cost, opening cost/new store, penalty*. KPPU Decision. No. 02/KPPU-L/2005, p. 4

<sup>18</sup> See Decision No. 02/KPPU – L/2005

players who are doing business for a long time and should be bankrupt due to the rising of modern market.

In the Law of Islamic economic, economic activities requires freedom from any monopolistic forms and unfair competition. Market in its nature should be fair that enable perfect market access for business players and consumers. Market system damage due to monopolistic practice resulting to wealth only concentrated in one person or particular group.<sup>19</sup> Prohibition of monopoly has been quoted by hadith of Mohammed the prophet. Prohibition of monopoly related to market power utilization and buyer power by enforcing other entrepreneur to sell goods and supplier should sell the goods without realizing the reasonable price. Therefore business players who use market power can enforce supplier to follow their terms. Cooperation between businessman who have capital power and management should be executed in balance and fair. Any cooperation that is not based on equality is an exploitation to the weak business actors. Enforcement of trading terms has created some terms such as listing fee, minus margin, fixed rebate, term of payment, regular discount, common assortment cost, opening cost/new store and penalty, by Carrefour, indicating cooperation principle among businessmen are not running in balance and fair. Principle of balance cooperation in order to create fair market has been formulated in codification of civil law and recognized by *Majallah al-Ahkām al-‘Adliyyah* (Justice S. A. Rahman, 1980) related to sales purchase requirement requiring prohibition to apply any term for the advantage of one of party (H.A. Jazuli, 2002: 33).<sup>20</sup>

Unfair market condition caused by disproportion of allocation or placement system. Too close and face to face between modern market and traditional market has created imbalance market condition. Therefore, placement or distant between market should be managed properly. Market arrangement in order to run fairly should observe the policy of the Prophet. In order to determine market placement, the Prophet surveyed several markets (such as *Al-Nabit* market), however he felt it is not appropriate. Further the Prophet surveyed a place (further called *Medina* Market) and saying that this is your market, and do not impaired it nor impose tax (Kallek, Cengis, 1995: 2-3). Policy to determine market by the Prophet has implied two things, i.e. to realize Islamic teaching in economic sector by social engineering. Social engineering indicated by further market regulation by the Prophet, such as prohibition of

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<sup>19</sup> Surah al-Ḥashr, 59: 7.

<sup>20</sup> Article 189: In the matter of sales-purchase depend on any term as disadvantage for any party, the sales purchase itself is legitimate, however such related term can be invalidated.

monopoly, perjure, forbidden (*ḥarām*) element in trading, practice of usury, charging interest in sales purchase of precious stone, sales purchase risk of fraud (*bay' al-gharār*), bought-up all commodities before reaching the market (*ṭalāq al-rukban*), sales by city people to the remote villages people in order to fool them (*bay' al-ḥaḍīr li al-badi*), accumulating commodities (*iḥtikār*). Rules determined by the Prophet regarding market has indicated how much attention he gave for market regulation that is anti-monopoly and fair competition. Fair market arrangement has two purpose: (1) to strengthen competitive advantage of Medina market in order to challenge Jews market, (2) equality of economic accessibility for Muslim people at that time (Arif Hoetoro, 2007: 100-101).

In order to realize fair market, any authorities should issue policy in order to support or give incentive to the market concerned or businessmen who do not have strong capital. Therefore, modern market power supported by strong management system and strong capital can be equal with traditional market whom received incentives in performing its economic activities. The Prophet has removed tax for Medina market. Tax elimination has purpose to give more attractiveness for merchants, reducing their expenses and increase welfare. Moreover, prohibition to practice monopoly and unfair competition has purpose that the society can independently operate business and create wider economic access for the society. In front of market, the Prophet made an announcement board announcing prohibition to practice monopoly trading. At the same time, the Prophet ask anyone to destroy any sign of trade monopoly (*Ibid.*). Proper market management and supervision has been carried out by 'Abbasīyyah Era. During period of Caliph Abū Ja'far Al-Manṣūr, market management has been carried out professionally by issuing policy to create fair market by applying Zone system Al-Mansyur performs relocation by removing Baghdad market and *al-Madīnah al-Sharqīyyah* to other particular place far from central city and authority agencies in order to avoid monopoly. Those market are removed to *Bāb Al-Khukh* and *Bāb al-Sha'ir*; and assigned officers to supervise and give sanction to anyone violating the regulation (Raghīb al-Sirjanī, 2009: 565). Regarding relationship between State and Market, 'Umar Ibn Khaṭṭāb one of Islam's Calliph who enable synchronizing and maintain distant between state and Market. Regarding State's policy in economic sector, economic policy of 'Umar is based on market orientation by creating "free" competition atmosphere in the market.

Free market should be balanced by maximizing role of state. 'Umar as the Head of State also often has intervention on market policy by performing several things such as issued policy to reduce tax burden for some commodities i.e. reducing 50% vegetables and dates trade tax of Syrian people. This policy issued by 'Umar in order to accelerate food inflow distribution to cities and

capital city. ‘Umar also supervise market against monopolistic or unfair market behavior such as Merchant behavior of dumping price, taking excessive profit, sale on lower price to threat other merchants, those are monitored by ‘Umar Authorities.

## **CONCLUSION**

Market is an economic centers requiring fair market condition. Fair market not only to ensure market mechanism operating properly, also to provide economic access to entire parties including any businessmen who do not have big capital. Fair market concept was found in contract agreement of Islamic economic system. Anti-monopoly doctrine such as *ṭalāq rukban*, *iḥtikār*, *ta‘alluq* may become references in order to issue regulation in order to enforce fair market. In order to create fair market, state role is needed to conduct market zoning system between market with good management and capital and market with limited capital. Authorities can play role in empowering traditional market by support program, advocacy and empowerment. Besides, authorities execute legal system based on cooperation system referred to *fiqh* (Jurisprudence) *mu‘āmalah*. Principle of cooperation and fairness in *fiqh mu‘āmalah* can be construed and interpreted onto the prevailing rules and law in a country.

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