

**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**

**THESIS**

**By:**

**Umi Azizah Tahta Almuna  
NIM 15230088**



**CONSTITUTIONAL LAW DEPARTMENT  
SHARIA FACULTY  
STATE ISLAMIC UNIVERSITY  
MAULANA MALIK IBRAHIM OF MALANG**

**2019**

## STATEMENT OF THE AUTENCITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the writer declares that the thesis entitled :

**EFFECTIVENESS OF MANAGEMENT AND DEVELOPMENT  
OF MARKETS BANDAR KEDIRI CITY  
BASED ON REGIONAL REGULATION OF KEDIRI CITY  
NUMBER 5 YEAR 2013  
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Is truly the writer's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 23<sup>rd</sup> of June 2019

Author,



**Umi Azizah Tahta Almuna**  
**Student ID Number 15230088**



## APPROVAL SHEET

After reading and verifying the thesis of Umi Azizah Tahta Almuna, NIM 15230088, Constitutional Law Department of the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Of Malang entitled :

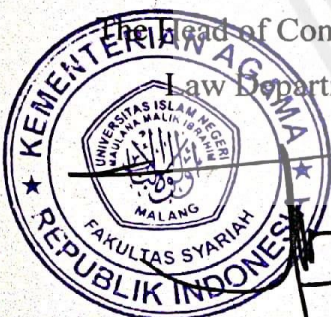
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IN MASLAHAH MURSALAH PERSPECTIVE**

The supervisor states that this thesis has met the scientific requirement to be proposed and to be tested by the Thesis Board of Examiners.

Malang, 23<sup>rd</sup> of June 2019

Acknowledged by,

The Head of Constitutional  
Law Department



**Dr. M. Aunul Hakim, S.Ag., M.H.**  
NIP. 196509192000031001

Supervisor,

**Dr. H. Saifullah, S.H. M.Hum.**  
NIP. 196512052000031001



## LEGITIMATION SHEET

The Thesis Board of Examiners state that Umi Azizah Tahta Almuna, NIM 15230088, student of the Constitutional Law Department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Of Malang, her thesis entitled :

**EFFECTIVENESS OF MANAGEMENT AND DEVELOPMENT  
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Board of Examiners :

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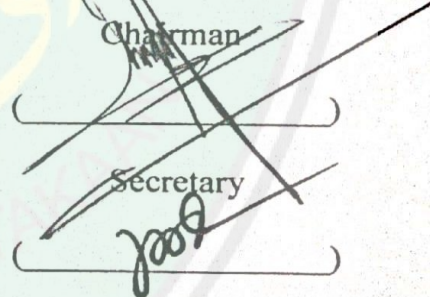
NIP. 196509192000031001

2. Dr. H. Saifullah, S.H., M.Hum

NIP. 196512052000031001


3. Dra. Jundiani, S.H., M.Hum

NIP. 196509041999032001

  
(Chairman)  
  
(Secretary)

Main Examiner

Malang, 27<sup>nd</sup> of July 2019

  
Dean  
Dr. H. Saifullah, S.H., M.Hum  
NIP. 196512052000031001

## MOTTO

مَنْ أَرَادَ الدُّنْيَا فَعَلَيْهِ بِاِلْعِلْمِ، وَمَنْ أَرَادَ الْآخِرَةَ فَعَلَيْهِ بِاِلْعِلْمِ، وَمَنْ أَرَادَهُمَا فَعَلَيْهِ بِاِلْعِلْمِ

Meaning: "Whoever wants the life of the world is obliged for him to have knowledge, and whoever wants the life of here after, then it is obligatory for him to have knowledge, and whoever wants both of them is obligatory for him to have knowledge". (HR. Turmudzi)

## ACKNOWLEDGEMENT

*Alhamdulillah bini'matihi tatimmu shalihat*, with all of His grace, mercy and guidance the thesis entitled **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** can be done very well. *Wasshalatu was salam 'ala Rasulillah*, for his teachings that taught us to live in the world, led our way from the darkness to the light in this life. May we are become one of those who will has his *syafaat* in the Judgment day.

1. Prof. Dr. Abdul Haris, M.Ag., as the Rector of the State Islamic University Maulana Malik Ibrahim Malang.
2. Dr. Saifullah, S.H., M. Hum., As Dean of the Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang.
3. Dr. M. Aunul Hakim, S.Ag., M.H., as the Head of the Constitutional Law Department of Sharia Faculty of Islamic University Maulana Malik Ibrahim Malang.
4. Dra. Jundiani, S.H., M.Hum., as a principal examiner and Dr. M Aunul Hakim, S.Ag., M.H., Chair of the main examiner, and Dr. H. Saifullah, S.H., M.Hum. as a secretary. Thank you for your willingness and sincerity in time to provide input and improvements in this thesis.
5. Dr. H. Saifullah, S.H., M.Hum., as a time thesis supervisor. Thank you for your willingness and sincerity to guide and teach the best writers until this thesis is completed properly.



6. Dra. Jundiani, S.H., M.Hum., as a guardian lecturer. thank you very much, who has provided guidance, advice, and motivation during the course
7. All lecturers at the Islamic Faculty of the State Islamic University of Maulana Malik Ibrahim Malang which has delivered teaching, educating, guiding, and with sincere practice. May Allah give his reward that is worth him all.
8. Parents, whom Allah gave to accompany the writers' struggle because of the two islah writers are up to this point. Thank you, not even enough, just thank you for his struggling way to raise, pray for, motivate and even devote all of his body to his beloved children.
9. My friends, thank you for support until I can finish this thesis well, hopefully we will meet later in the future.

Finally, the advantages of coming from God and all pure shortcomings came from the author. The author hopes that the final assignment of this thesis can provide benefits to the reader. The author apologizes for all the shortcomings in completing this thesis and expects criticism and suggestions that are of a constructive nature so that they are able to improve and learn better.

Malang, 23<sup>rd</sup> of June 2019

Author,



Umi Azizah Tahta Almuna  
NIM 15230088

## TRANSLITERATION GUIDANCE

### A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	‘
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	ء	‘
ص	Sh	ي	Y
ض	Dl		



The hamzah (ء) which is usually represented by an alif, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a comma facing upwards ('), as oppose to a comma (,) which replaces the "ع".

### C. Vocal, Long-pronounce, and Diftong

In every written Arabic text in the latin form, its vowels fathah is written with "a", kasrah with "i", and dlommah with "u, whereas elongated vowels are written such as:

Elongated (a) vowel = â	for example قال	beomes qâla
Elongated ( i) vowel = î	for example قيل	becomes qîla
Elongated (u) vowel = û	for example دون	becomes dûna

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by "i", unless it is written as "iy" so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after fathah it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = و	for example قول	becomes qawlun
Diftong (ay) = ي	for example خير	becomes khayrun

### D. Ta' Marbûthah (ة)

*Ta' marbûthah* is transliterated as "t" if it is in the middle of word, but if it is *Ta' marbûthah* at the end of word, then it is transliterated as "h". For example الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration

will be using “t” which is enjoined with the previous word for example في رحمة الله becomes *fi rahmatillah*.

#### **E. Auxiliary Verb and Lafadh Al-Jalâlah**

Auxiliary verb “al” (ل) written with lowercase form, except if it located at the beginning of word, while “al” in lafadh jalâlah which located in the middle of two words or being or become *idhafah*, it removes from writing. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. MasyâAllâhkânawamâ lam yasya” lam yakun.

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## ABSTRAK

Umi, Azizah, NIM 15230088, 2019, **Efektivitas Penataan dan Pembinaan Pasar Bandar Kota Kediri Menurut Peraturan Daerah Kota Kediri Nomor 5 Tahun 2013 Dalam Perspektif Masalah Mursalah**, Skripsi Jurusan Hukum Tata Negara, Fakultas Syari'ah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing: Dr. H. Saifullah, S.H., M.Hum.

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**Kata Kunci** : Efektivitas, Peraturan Daerah, Pasar Tradisional, Masalah Mursalah.

Dalam penerapan peraturan daerah, belum sepenuhnya dijalankan dengan efektif. Faktor hukum, faktor penegak hukum, faktor sarana dan prasarana atau fasilitas, dan faktor masyarakat yang menjadi hambatan dalam mengatasi pelanggaran di kawasan pasar tradisional. Misalnya di kawasan pasar Bandar yaitu pemanfaatan bangunan yang disediakan untuk pedagang belumlah optimal, terbukti dengan munculnya para pedagang yang berjualan di trotoar. Sehingga kondisi ini mengakibatkan kurangnya kenyamanan bagi pengguna pasar dan pengguna jalan dalam beraktivitas. Kumuh, kotor merupakan hal yang pasti akan ditemukan di pasar, kondisi seperti ini berdampak buruk terhadap perkembangan pasar itu sendiri.

Rumusan masalah yang dipilih adalah Bagaimana efektivitas Pasal 18 Peraturan Daerah Kota Kediri Nomor 5 Tahun 2013 tentang Penataan dan Pembinaan Pasar Tradisional, Pusat Perbelanjaan dan Toko Modern di Pasar Bandar Kota Kediri ? Bagaimana tinjauan Masalah Mursalah terhadap kawasan pasar tradisional di Pasar Bandar Kota Kediri setelah diberlakukannya Peraturan Daerah Nomor 5 Tahun 2013 ?

Penelitian ini merupakan penelitian hukum empiris dengan menggunakan pendekatan yuridis sosiologis dengan mendeskripsikan secara mendalam mengenai objek yang diteliti. Dan metode pengumpulan data yang digunakan adalah interview (wawancara), observasi, dan dokumentasi.

Hasil penelitian menunjukkan bahwa Efektivitas Peraturan Daerah Nomor 5 Tahun 2013 tentang Penataan dan Pembinaan Pasar Tradisional Bandar Kota Kediri belum efektif. Hal ini disebabkan tidak patuhnya para pedagang yang menjual barang dagangannya di trotoar. Sedangkan Peraturan Daerah tersebut menurut perspektif Masalah Mursalah sudah memberikan kemaslahatan dimana tujuan dibentuknya Perda mendatangkan manfaat bagi pihak pembuat hukum, penegak hukum, dan yang melaksanakan hukum.

## ABSTRACT

Umi, Azizah, NIM 15230088, 2019, **Effectiveness of the City Market Planning and Development of Kediri City According to the Regional Regulation of Kediri City Number 5 of 2013 in Perspective Maslahah Mursalah**, Thesis Department of Constitutional Law, Faculty of Shari'ah, State Islamic University Maulana Malik Ibrahim Malang Advisor: Dr. H. Saifullah, S.H., M.Hum.

**Keywords:** Effectiveness, Regional Regulations, Traditional Markets, Maslahah Mursalah.

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.



### المستخلص البحث

أومي عزيزه تحت المني ، 2019 ، رقم القيد 15230088 ، فعالية تخطيط وتطوير سوق المدينة في مدينة كديري وفقاً لللائحة الإقليمية لمدينة كديري رقم 5 لعام 2013 في منظور المصلح مرسله ، بحث جامعي ، قسم السياسة ، كلية الشريعة ، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج .

المشرف: سيف الله S.H.,M.Hum

الكلمات الدلالية: الكلمات المفتاحية: الفعالية ، اللوائح الإقليمية ، الأسواق التقليدية ، مصلحة مرسله

في تنفيذ اللوائح الإقليمية ، لم يتم تنفيذه بالكامل بشكل فعال. العوامل القانونية وعوامل إنفاذ القانون والمرافق والبنية التحتية أو المرافق والعوامل المجتمعية هي عقبات في التغلب على الانتهاكات في مناطق السوق التقليدية. على سبيل المثال ، في منطقة سوق بندر ، فإن استخدام المباني المقدمة للتجار ليس هو الأمثل ، كما يتضح من ظهور التجار الذين يبيعون على الرصيف. بحيث ينتج عن هذا الشرط عدم راحة مستخدمي السوق ومستخدمي الطرق في أنشطتهم. الأحياء الفقيرة ، القدرة هي شيء سيوجد بالتأكيد في السوق ، وهذا الشرط له تأثير سلبي على تطور السوق نفسه.

صياغة المشكلة المختارة هي كيف يتم تطبيق المادة 18 من اللائحة الإقليمية لمدينة كديري رقم 5 لعام 2013 فيما يتعلق بترتيب وتطوير الأسواق التقليدية ومراكز التسوق والمتاجر الحديثة في سوق بندر مدينة كديري ؟ كيف يتم مراجعة مصلحة مرسلح لمنطقة السوق التقليدية في سوق بندر مدينة كديري بعد سن اللائحة الإقليمية رقم 5 لعام 2013؟

هذا البحث هو بحث قانوني تجريبي باستخدام نهج قانوني اجتماعي من خلال وصف متعمق حول الكائن قيد الدراسة. وطرق جمع البيانات المستخدمة هي المقابلات (المقابلات) والملاحظة والوثائق.

أظهرت النتائج أن فعالية اللائحة الإقليمية رقم 5 لعام 2013 بشأن ترتيب وتطوير مدينة بندر بأسار التقليدية في كديري لم تكن فعالة بعد. هذا بسبب عدم امتثال التجار الذين يبيعون البضائع على الرصيف. في حين أن اللائحة الإقليمية وفقاً لمنظور مصلح مرسله قد وفرت فوائد حيث أن الغرض من وضع اللوائح الإقليمية يحقق فوائد للمشرعين وموظفي إنفاذ القانون وأولئك الذين ينفذون القانون.

## CHAPTER I

### INTRODUCTION

#### A. Background of Research

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.<sup>1</sup>

Regional regulations are one of the characteristics of a region that has the right to regulate and manage its own (autonomous) household..<sup>2</sup> The

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

<sup>2</sup> Sirajuddin dkk, *Hukum Administrasi Pemerintahan Daerah*, h. 187.

purpose of regional autonomy is to improve the usability and results of the implementation of regional government, especially in the implementation of development and service to the community and to improve the fostering of political unity and national unity.<sup>3</sup> The main objective of implementing regional autonomy is to improve services to the community in a tangible and responsible manner.

The implementation of regional autonomy for human resources (HR), namely personnel or apparatuses who occupy government leaders who are truly able to invite the public to participate in the development of human resources and how to empower human resources as an aspect of regional development. Therefore, human resources that support the implementation of regional autonomy must be prepared. Efforts to increase human resources for regional autonomy need to be maximized.<sup>4</sup>

Besides the factors of facilities and infrastructure, equipment and equipment and financing or funding, the factor of human resources is the holder of an important key role in the success of government administration, implementation of development and improvement of services to the community. No matter how good the rules are if they are not supported by productive and quality human resources, high loyalty, the regulation will have nothing.<sup>5</sup>

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<sup>3</sup> H.A.W. Widjaja, *Percontohan Otonomi Daerah di Indonesia*, (Jakarta: PT Rineka Cipta, 1998), h. 136.

<sup>4</sup> H.A.W. Widjaja, *Percontohan Otonomi Daerah di Indonesia*, h. 150.

<sup>5</sup> H.A.W. Widjaja, *Percontohan Otonomi Daerah di Indonesia*, h. 150-151.



As explained by Soerjono Soekanto that whether or not an 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.<sup>6</sup>

In connection with the issue of the effectiveness of the law, identifying the law is not only with the element of external coercion but also with court proceedings. The threat of coercion is an absolute element so that a rule can be categorized as law, so of course this element of coercion is closely related effectively, one of the questions that can arise is what happens with the threat of coercion, the possibility of lawlessness because the threat of coercion is less severe , also because the threat of coercion is not adequately communicated to citizens.<sup>7</sup>

Talking about the effectiveness of the law means talking about the power of legal work in regulating and or forcing people to obey the law. The law can be effective if the factors that influence the law can function as well as possible. The effective size of a law that applies can be seen from the behavior of the community. A law or regulation will be effective if the community

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<sup>6</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT. Raja Grafindo, 2008), h. 8.

<sup>7</sup> Achmad Ali, *Menjelajahi Kajian Empiris Terhadap Hukum*, (Jakarta: Yarsif Watampone, 1998), h. 186.

members behave according to what is expected or desired by the laws and regulations in achieving the desired goal, then the effectiveness of the law or legislation has been achieved.

To 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.<sup>8</sup>

The source of Islamic law is divided into two, namely, the source of Islamic law which is *Muttafaq* (agreed) and the source of Islamic law which is *Mukhtalaf* (which is disputed). The agreed sources of Islamic law are divided into four, namely the *Qur'an*, *Sunnah*, *Ijma'*, and *Qiyas*. The sources of disputed Islamic law are *Istihsan*, *Maslahah Mursalah*, *Istishab*, *Urf*, *Shahaby School*, *Saddu al-Zariat*, and *Syar'u Man Qablana*. One of the sources of Islamic law that is *Mukhtalaf* will be discussed in detail, namely *Maslahah Mursalah*.

In general, *Maslahah Mursalah* means that the determination of a law is nothing but to apply the benefit of mankind; namely attracting a benefit, rejecting danger or eliminating the difficulties of mankind. And that benefit is not limited to its parts and is not limited to people, but benefit is advancing along with the progress of civilization and developing according to the development of the environment. Establishing a law sometimes attracts a post-

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<sup>8</sup> Mulyadi, *Ekonomi Sumber Daya Manusia*, (Jakarta: PT RajaGrafindo Persada, 2006), h. 3.

benefit one time but becomes a danger at other times. At one particular time, the law can attract a benefit in one environment, but it brings danger to the other environment.<sup>9</sup>

Advantages must be in accordance with the will of faith 'and / or not contrary to the arguments of syara', not only in accordance with the reason of rationality and lust of mankind, advantages must bring benefits and avoid mafsadat (loss or damage) for the people, both in physical terms as well as spiritually, both for the life of the world and the hereafter, and Mashlahah must be related to personal and many people's welfare.

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

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<sup>9</sup> Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, (Jakarta: Darul Qalam, 2003), h. 110.



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.

To 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 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.

In the midst of the density of this modern era, it seems as if the ethical values are fading, or even if it is said to begin to disappear. The tendency of society to be free is as if it has plagued every corner of life. The loss of morals, ethics, norms of rules and various similar things that aim to improve human behavior to be better as if it is useless. Even though the above values are applied to prevent the damage caused by human behavior and behavior. Obeying the intended value is ethics. The implementation of intentional ethical values in all aspects of life is something that cannot be bargained anymore, especially with the condition of this modern society. In the case of trade or business, the community has begun to freely conduct sales and purchase transactions.<sup>10</sup>

## **B. Statement of Problem**

Based on the background of the problems described above, the problem of the research is :

1. How is the 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 ?
2. How is Maslahah Mursalah's review of the traditional market area in Bandar City Market after the enactment of Regional Regulation Number 5 of 2013 ?

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<sup>10</sup> Johan Arifin, *Etika Bisnis Islami: Mengenal Etika dan Bisnis*, (Semarang: Walisongo Pers, 2009), h. 1.

### **C. Objective of Research**

The objectives to be achieved in this study are to find out :

1. Effectiveness of Kediri City Regional Regulation Number 5 of 2013 concerning Structuring and Guiding Traditional Markets, Shopping Centers and Modern Stores in Bandar Market Kediri City.
2. Overview of Masalah Mursalah of the traditional market area in Bandar Kediri City Market after the enactment of Regional Regulation No. 5 of 2013.

### **D. Significance of Research**

Based on the purpose of the study, the researcher divides the benefits of the research as follows :

1. Theoretically, the results of this study are expected to be useful as reference material, especially for the development of science related to the Effectiveness of Regional Regulations, especially Regional Regulations concerning traditional markets. In addition, it is expected to be one of the sources of reference for those who will continue research with a sustainable theme.
2. Practical use, this research is expected to be useful for legal practitioners, especially as a reference or one of the sources of consideration in establishing a policy to implement Regional Regulations in particular Regional Regulations concerning Traditional Markets.

3. For the writer, as a requirement to get a bachelor's degree and also expected to add scientific insight in the area of Effectiveness of Regional Regulation and review Masalah Mursalah.
4. For the academic community, it is hoped that it can be one of the references on the discussion of Regional Regulations and can also add knowledge and knowledge insights for the students of Malang's UIN Maulana Malik Ibrahim Campus, especially the Shari'ah Faculty of UIN Malang.

#### **E. Operational Definition**

Operational definitions are intended to avoid misunderstanding and differences in interpretation related to the terms in the title of the thesis. According to the research title "The Effectiveness of the Arrangement and Development of the City of Bandar Kediri Market Based on Regional Regulation of Kediri City Number 5 of 2013 in Masalah Mursalah Perspective". The operational definitions related to the author's title are :

1. Effectiveness is success in achieving targets or goals that have been set. This achievement is the achievement of goals by carrying out actions to achieve this, so as to cause an effect or desired effect.<sup>11</sup>
2. Regional Regulation is a statutory regulation formed by the Regional People's Representative Council with the agreement of the Regional Head (Governor or Regent / Mayor).<sup>12</sup>

<sup>11</sup> Zainuddin Ali, *Sosiologi Hukum*, (Jakarta: Sinar Grafika, 2006), h. 62.

<sup>12</sup> Pasal 69 Undang-Undang Nomor 22 Tahun 1999 tentang Pemerintahan Daerah.



3. Article 18 paragraph 2 letter (c) that is trading on the agreed space ration and not taking land / space that has been allocated for other purposes, such as roads, parks, and sidewalks.<sup>13</sup>
4. Sidewalks are pedestrian pathways which are generally parallel to the road and higher than the surface of the pavement to ensure the safety of the pedestrians concerned. According to the decision of the Director General of Highways No. 76 / KPTS / Db / 1999 dated December 20, 1999 which is meant by sidewalks is part of a highway specifically provided for pedestrians located in the area of benefit of the road, given a surface layer with elevation higher than the surface of the pavement, and generally parallel by jaur vehicle traffic.<sup>14</sup>
5. Traditional markets are markets that are built and managed by the Government, Regional Governments, Private Enterprises, State-Owned Enterprises and Regionally-Owned Enterprises, including cooperation with the private sector with businesses, shops, kiosks, tents and tents owned / managed by small traders. medium, community self-help or cooperative with small-scale business, small capital and with the process of buying and selling merchandise through bargaining.<sup>15</sup>

<sup>13</sup> Pasal 18 ayat 2 huruf (c) Peraturan Daerah Kota Kediri Nomor 5 Tahun 2013 tentang Penataan dan Pembinaan Pasar Tradisional, Pusat Perbelanjaan dan Toko Modern.

<sup>14</sup> <https://m.wikipedia.org/wiki/Trotoar>, "Trotoar", diakses pada tanggal 22 Maret 2019.

<sup>15</sup> Bab I Ketentuan Umum Pasal 1 ayat (5) Peraturan Daerah Kota Kediri Nomor 5 Tahun 2013 tentang Penataan dan Pembinaan Pasar Tradisional, Pusat Perbelanjaan dan Toko Modern.

## **F. Structure of Discussion**

The systematic discussion in this thesis will be arranged in 5 (five) chapters systematically, hierarchically in the hope that it will make it easier for readers to understand the flow and contents of the thesis. The systematic discussion is as follows, namely:

### **Chapter I Introduction**

Chapter I contains several sub-chapters which include, among others, the background of the underlying problems of the author to conduct research on "The Effectiveness of the Arrangement and Development of the City of Bandar Kediri Market Based on Regional Regulation of Kediri City Number 5 of 2013 in Perspective Maslahah Mursalah". Then from the background it will be summarized in the formulation of the problem that will be the focus of this research. The formulation of the problem relates to the most important part that explains the results to be achieved in the research, namely the purpose of the study. When the objectives of the study have been established at the outset, it is important to describe the benefits of research that contain the usefulness and contribution of the results of this study. Next in the last sub-section of this section describes the systematics of writing which outlines briefly the writing sequences in this study.

### **Chapter II Literature Review**

Chapter II contains sub-chapters covering previous research and theoretical / theoretical frameworks. Previous research contains information on research that has been carried out by previous researchers, both in the form of

books that have been published and in the form of unpublished theses or legal journals relating to the focus of research, both substantially and methods, having an association with problems research to avoid duplication and then explain the differences in this research with previous studies. While the theoretical framework / theoretical foundation contains about theory as a basis for analyzing every problem that will be discussed in this study. The theoretical basis used in this study contains the theory of legal protection, the theory of legal effectiveness and an explanation of Maslahah Mursalah.

### **Chapter III Research Methods**

Research methods are used as instruments in research to produce more directed and systematic research. In the research method will be explained about the type of research used to determine the space for research, then there is a research approach as a place to extract the main information of research. Include data sources obtained by researchers to solve problems in this study. Furthermore, the method of collecting data contains the procedures for collecting data by researchers. After the data obtained by the feeding researcher will be done, namely processing the data so that the researcher gets the data validity.

### **Chapter IV Research Results and Discussion**

Chapter IV contains the exposure and description of mature data to be correlated with juridical theories and concepts in this study, in order to be directed to be able to answer questions in the formulation of the problem above. So the discussion will be about two points as the problem has been formulated,

namely; First, 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 Stores in Bandar Market Kediri City. Second, the review of Maslahah Mursalah on the effectiveness of traditional market areas in Bandar Market Kediri City after the enactment of Regional Regulation Number 5 of 2013.

#### **Chapter V Closing**

Chapter V is the last chapter which contains conclusions and suggestions. The conclusion is a short answer to the formulated problem. And Suggestions are suggestions or recommendations to related parties or parties that have more authority over the theme under study for the good of the community, and suggestions for recommendations for future research in the future.



## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

##### 1. Analysis of the Effectiveness of Tanjung Market Service Levy and Its Contribution to the Original Regional Revenue of the City of Mojokerto.<sup>16</sup>

Journal written by Novita Eka Anggraini, Muhammad Saifi, and Achmad Husaini (2015), Business Administration Department students, Faculty of Administrative Sciences Universitas Brawijaya Malang. This study uses descriptive methods to describe a particular condition or condition and explain how much the contribution of cape market service retribution for Regional Original Revenue.

The results showed that the contribution of Tanjung Market service levies to the Regional Retribution of Mojokerto City in 2009-2012 was in very poor indicators. This happened the Clerk of Clerk was not optimal in carrying out collection fees. While the effectiveness of collection Retribution is in the effective category even though the realization of Market Service Retribution receipts has not yet reached the target. Constraints for not achieving the target in realization were due to the lack of enforcement of the Regional Regulations, lack of fulfillment of facilities and

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<sup>16</sup> Novita Eka Anggraini dkk, "Analisis Efektivitas Retribusi Pelayanan Pasar Tanjung dan Kontribusinya Terhadap Pendapatan Asli Daerah Kota Mojokerto", (Januari, 2015).

infrastructure, inaccurate data on mandatory levies, poor market hygiene, and lack of order in structuring market traders.

## **2. Development Effectiveness of Market Management Services for Street Vendors in Bandar Lampung City.<sup>17</sup>**

The thesis written by Maifori Watiah (2011), Magister student of the Faculty of Social and Political Sciences, Lampung University, Bandar Lampung. This study uses a qualitative method, where the author will describe the problem for an event, then interpreted the facts on the ground to be made conclusions. The location of the study was conducted in the city of Bandar Lampung, especially in the Bambu Kuning Market.

The results showed that guidance through counseling was considered to be ineffective because only the material and methods of counseling were considered to be quite effective while the purpose of counseling and participants were still far from expectations. Whereas guidance with inspection is known to be effective because it is often carried out and always gives direction, appeals and even reprimands against Street Vendors at the Yellow Bamboo Market in Bandar Lampung City. Obstacles from the implementation of fostering street vendors are limited funds, lack of coordination, lack of awareness of street vendors, obstacles to policies carried out by the Government, and lack of rules regarding locations that are permitted and not allowed for street vendors.

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<sup>17</sup> Maifori Watiah, "Efektivitas Pembinaan Dinas Pengelolaan Pasar terhadap Pedagang Kaki Lima di Kota Bandar Lampung", Tesis, (Lampung, Universitas Lampung, 2011).

### **3. Effectiveness of Article 23 Paragraph (2) Regional Regulation of Malang City Number 8 of 2010 concerning Implementation of Industry and Trade Businesses related to the Distance of Establishment of Minimarkets with Traditional Markets.<sup>18</sup>**

Journal written by Maharani Fathia (2013), student of the Faculty of Law, University of Brawijaya Malang. This type of research uses empirical research using the Juridical Sociological approach to examine problems that occur in the community or their application in reality and then relate them to the applicable laws and regulations.

The results showed the Effectiveness of Article 23 Paragraph (2) of Malang City Regional Regulation number 8 of 2010 concerning the Implementation of Industrial and Trade Businesses related to the Distance of Establishment of Minimarkets to Traditional Markets was ineffective because there were still many minimarkets standing close to the minimarket standing adjacent to traditional markets. The obstacle experienced by the Integrated Service and Licensing Agency is the lack of supervisory staff from the Integrated Service and Licensing Agency which oversees the number of establishments of the minimarkets.

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<sup>18</sup> Maharani Fathia, "Efektivitas Pasal 23 Ayat 2 Peraturan Daerah Kota Malang Nomor 8 Tahun 2010 tentang Penyelenggaraan Usaha Perindustrian dan Perdagangan terkait Jarak Pendirian Minimarket dengan Pasar Tradisional", (Malang, Universitas Brawijaya, 2013).

**4. Effectiveness of Article 75 of the Regional Regulation of Malang City Number 1 of 2004 concerning the Implementation of Buildings Regarding the Granting of Building Permits for Shop Houses (Study in the Integrated Licensing Service Agency of Malang City).<sup>19</sup>**

Thesis written by Indawari Lupita Ninggarwati (2013), Faculty of Law Universitas Brawijaya Malang. In writing this thesis the author uses a sociological juridical approach, in which to analyze the effectiveness of the permit to build shop buildings that are carried out by the community in Malang City, especially regarding the provisions of Article 75 of Malang City Regulation Number 1 of 2004 concerning Building Implementation and critical efforts to answer problem with studying it not only from the side of legal norms but also the behavior of the community.

The results showed that the Regional Regulation of Malang City Number 1 Year 2001 was still not effective. This can be proven by the amount of news regarding the number of shop houses located in Malang City and most of the shop houses of the private property do not yet have permission. In addition, the information the author obtained from the speaker who prioritized building a shop first rather than prioritizing applying for a Building Permit letter. The obstacle found in this problem was the lack of supervision from the Malang City Integrated Licensing Service Agency to the people who built shop houses. In addition, there is a

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<sup>19</sup> Indawari Lupita Ninggarwati, "Efektifitas Pasal 75 Peraturan Daerah Kota Malang Nomor 1 Tahun 2004 tentang Penyelenggaraan Bangunan terkait Pemberian Izin Mendirikan Bangunan Rumah Toko," (Malang: Universitas Brawijaya, 2013)



lack of attention from these parties in disseminating information to the wider community, so that the community understands the process, and sanctions given if it does not work properly. Speed of time is also a problem that is often overlooked from the public and must pay more if the process can be completed quickly.

#### **5. Effectiveness of Relocation of Baledono Market in Purworejo Regency.<sup>20</sup>**

Journal written by Fitria Molandari and Sugi Rahayu, M.Pd., M.Sc, Faculty of Social Sciences, Yogyakarta State University. This study aims to determine the effectiveness of the Baledono Market relocation in Purworejo Regency along with supporting factors and inhibiting factors. The next objective is to provide input to the local government in providing facilities related to the Baledono Market relocation program to a new place. The research design used was descriptive research with a qualitative approach.

The results showed that the relocation of Baledono Market in Purworejo District was not yet fully effective. This is measured by indicators that indicate that traders who are relocated behind the Plaza shop feel a loss due to lonely buyers. The location is considered to be the least strategic because of the emergency market position which is closed by Plaza shop houses. The difference in location conditions resulted in the inequality of income of traders at each location point of the emergency market.

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<sup>20</sup> Fitria Molandari dan Sugi Rahayu, "Efektivitas Relokasi Pasar Baledono di Kabupaten Purworejo," (Yogyakarta, Universitas Negeri Yogyakarta).

**Table 1.2****Research Differences and Equations**

<b>No.</b>	<b>Name</b>	<b>Title</b>	<b>Formulation of the Problem</b>	<b>Research Result</b>
1.	Novita Eka Anggraini, Muhammad Saifi, and Achmad Husaini, Journal, Business Administration Department, Faculty of Administrative Sciences Universitas Brawijaya Malang, 2015.	Analysis of the Effectiveness of Tanjung Market Service Levy and Its Contribution to the Original Regional Income of the City of Mojokerto	<ol style="list-style-type: none"> <li>1. What are the factors influencing the reception of Pasar Tanjung Service Levy?</li> <li>2. Efforts of regional governments in order to increase receipt of cape market service fees?</li> <li>3. Obstacles in Penggalia Services for Market Services?</li> </ol>	The contribution of the Tanjung Market service retribution to the Regional Retribution of Mojokerto City in 2009-2012 is in very poor indicators. This happened the Clerk of Clerk was not optimal in carrying out collection fees. While the effectiveness of collection Retribution is in the effective category even though the realization of Market Service Retribution receipts has not yet reached the target. Constraints for not achieving the target in realization were due to the lack of enforcement of the Regional Regulations, lack of fulfillment of facilities and infrastructure,

				inaccurate data on mandatory levies, poor market hygiene, and lack of order in structuring market traders.
2.	Maifori Watiah, Thesis, Faculty of Social and Political Sciences, Lampung University, 2011.	Development Effectiveness of Market Management Services for Street Vendors in Bandar Lampung City	<ol style="list-style-type: none"> <li>1. Is it effective or not the guidance of the Market Management Service for Street Traders in the Yellow Bamboo Market?</li> <li>2. What are the obstacles faced by the Bandar Lampung City Market Management Service in conducting guidance for the Street vendors in the Yellow Bamboo Market?</li> </ol>	<p>Guidance through counseling was considered not effective because only the material and methods of counseling were considered to be quite effective while the purpose of counseling and participants were still far from expectations. Whereas guidance with inspection is known to be effective because it is often carried out and always gives direction, appeals and even reprimands against Street Vendors at the Yellow Bamboo Market in Bandar Lampung City. Obstacles from the implementation of fostering street vendors are limited funds, lack of coordination, lack of awareness of</p>

				street vendors, obstacles to policies carried out by the Government, and lack of rules regarding locations that are permitted and not allowed for street vendors.
3.	Maharani Fathia, Tesis, Faculty Law, Brawijaya University Malang, 2013.	Effectiveness of Article 23 Paragraph 2 of the Regional Regulation of Malang City Number 8 of 2010 concerning the Implementation of Industrial and Trade Businesses related to the Distance of the Establishment of Minimarkets with Traditional Markets	<p>1. How is the Effectiveness of Article 23 Paragraph 2 of the Regional Regulation of Malang City Number 8 of 2010 concerning the Implementation of Industrial and Trade Businesses Regarding the Distance of the Establishment of Minimarkets with Traditional Markets?</p> <p>2. What are the obstacles faced by the integrated licensing service agency in the application of Article 23 paragraph 2 of the Regional Regulation of Malang City Number 8 of 2010 and</p>	Effectiveness of Article 23 Paragraph (2) Regional Regulation of Malang City number 8 of 2010 concerning the Implementation of Industrial and Trade Businesses related to the Distance of Establishment of Minimarkets to Traditional Markets is ineffective because there are many minimarkets that stand close together between minimarkets standing adjacent to traditional markets. The obstacle experienced by the Integrated Service and Licensing Agency is the lack of



			What are the efforts to deal with these obstacles?	supervisory staff from the Integrated Service and Licensing Agency which oversees the number of establishments of the minimarkets.
4.	Indawari Lupita Ninggarwati, Thesis, Faculty of Law, Brawijaya University Malang, 2013.	Effectiveness of Article 75 of the Regional Regulation of Malang City Number 1 of 2004 concerning the Implementatio n of Buildings related to the Granting of Building Permits for Shop Houses (Study in the Integrated Licensing Service Agency of Malang City).	1. How is the effectiveness of Article 75 of the Regional Regulation of Malang City Number 1 of 2004 concerning the Implementatio n of Buildings related to the Permit to Establish a Shop House Building? 2. What are the obstacles faced by the Licensing Services Agency in the implementatio n of Article 75 of the Regional Regulation of Malang City Number 1 of 2004 concerning the Implementatio n of Banunan related to the provision of Building Permits and how are the efforts to deal	The results showed that the Regional Regulation of Malang City Number 1 Year 2001 was still not effective. This can be proven by the amount of news regarding the number of shop houses located in Malang City and most of the shop houses of the private property do not yet have permission. In addition, the information the author obtained from the speaker who prioritized building a shop first rather than prioritizing applying for a Building Permit letter. The obstacle found in this problem was the lack of supervision from

			with these obstacles?	the Malang City Integrated Licensing Service Agency to the people who built shop houses. In addition, there is a lack of attention from these parties in disseminating information to the wider community, so that the community understands the process, and sanctions given if it does not work properly. Speed of time is also a problem that is often overlooked from the public and must pay more if the process can be completed quickly.
5.	Fitria Molandari and Sugi Rahayu, Faculty of Social Sciences, Yogyakarta State University	Effectiveness of Relocation of Baledono Market in Purworejo Regency	1. How is the market relocation in Baledono in Purworejo Regency	The results showed that the relocation of Baledono Market in Purworejo District was not yet fully effective. This is measured by indicators that indicate that traders who are relocated behind the Plaza shop feel a loss due to lonely buyers. The location is

				considered to be the least strategic because of the emergency market position which is closed by Plaza shop houses. The difference in location conditions resulted in the inequality of income of traders at each location point of the emergency market.
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## B. Theoretical Framework

### 1. Theory of Legal Effectiveness

#### a. Definition

Based on the Theory of Legal Effectiveness proposed by Soerjono Soekanto, the effectiveness or failure of a law 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 based on human intention in life.<sup>21</sup>

<sup>21</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT. Raja Grafindo, 2008), h. 8.

In connection with the issue of the effectiveness of the law, identifying the law is not only with the element of external coercion but also with court proceedings. The threat of coercion is an absolute element so that a rule can be categorized as law, so of course this element of coercion is closely related effectively, one of the questions that can arise is what happens with the threat of coercion, the possibility of lawlessness because the threat of coercion is less severe , also because the threat of coercion is not adequately communicated to citizens.<sup>22</sup>

Talking about the effectiveness of the law means talking about the power of legal work in regulating and or forcing people to obey the law. The law can be effective if the factors that influence the law can function as well as possible. The effective size of a law that applies can be seen from the behavior of the community. A law or regulation will be effective if the community members behave according to what is expected or desired by the laws and regulations in achieving the desired goal, then the effectiveness of the law or legislation has been achieved.

To 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

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<sup>22</sup> Achmad Ali, *Menjelajahi Kajian Empiris Terhadap Hukum*, (Jakarta: Yarsif Watampone, 1998), h. 186.



community organizations are encouraged to be more participatory in various efforts to improve the quality of human resources.<sup>23</sup>

#### **b. Legal Effectiveness Parameters**

According to Soerjono Soekanto, the effectiveness of a law is determined by five supporting factors. The five factors are interrelated, because they are the essence and benchmark in law enforcement. The five factors are as follows :

- 1) Legal factors (legislation, treaty law, juridical law, customary law, and scientific or doctrinal law).<sup>24</sup>

The legal factor in the theory of law is referred to as the rule of law, and can be distinguished three types of things regarding the enactment of the law as a rule, namely:<sup>25</sup>

- a. The rule of law applies juridically, if the determination is based on rules that are higher in level or formed on a predetermined basis.
- b. The rule of law applies sociologically, if the rule is effective. This means that the rules can be enforced by the authorities even if they are not accepted by the community (the theory of power) or the rules apply because of the recognition of the community (recognition theory).

<sup>23</sup> Mulyadi, *Ekonomi Sumber Daya Manusia*, (Jakarta: PT RajaGrafindo Persada, 2006), h. 3.

<sup>24</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT. Raja Grafindo Persada, 2008), h. 8.

<sup>25</sup> Zainuddin Ali, *Sosiologi Hukum*, (Jakarta: Sinar Grafika, 2006), h. 62.

- c. The rule of law applies philosophically, which is in accordance with the ideals of the law as the highest positive value.

When studied more deeply, so that the law functions then every rule of law only applies juridically, there is a possibility that the rule is a dead rule. And if it only applies sociologically in the sense of the theory of power, then the rule becomes the enforcing rule. Whereas if it only applies philosophically, the possibility of that rule is only a law that is aspired (*ius constituendum*).

- 2) Factors in law enforcement (both parties that form or parties that apply law or law enforcement).

In law enforcement there is a law enforcement apparatus that is able to provide certainty, fairness and benefit of the law proportionally. Law enforcement apparatus covers the understanding of law enforcement institutions and law enforcement officers (people), while law enforcement officials in a narrow sense are started from the police, prosecutors, judiciary, legal advisors and prison guards.<sup>26</sup>

There is an adage that states "*fiat justitia et pereat mundus*", which means that even though the world is collapsing the law must be enforced. The law cannot walk or erect if no law enforcement officer is credible, competent and independent.

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<sup>26</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, h. 34

How good a law is if it is not supported by a reliable law enforcement official, justice is only wishful thinking. This reliability includes professional skills and good mentality.

3) Factors for facilities or facilities that support law enforcement.

The means and infrastructure in question are facilities used by law enforcers as a tool to achieve legal effectiveness. Soerjono Soekanto predicts the standard of effectiveness of the infrastructure must be clearly a part that contributes to the smooth functioning of the apparatus in his place or location.<sup>27</sup>

4) Community factors (the environment in which the law applies or applies).

Discipline and community compliance with the law depend on the motivation that appears on each individual, which becomes the smallest element of the social community. In this case, the degree of community legal compliance is one of the parameters regarding whether or not the law is enforced, and community compliance can be motivated by a variety of causes, whether caused by internal or external conditions.<sup>28</sup>

Internal conditions arise because there is a certain push both money is positive and negative. While the impulse that is external because there is a kind of external pressure that requires

<sup>27</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, h. 42

<sup>28</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, h. 50

or is forcing people to submit to the law. On general measures, the necessity of citizens, the community to submit to and obey the law is due to sanctions or punishments that cause fear or comfort, so they prefer to obey the law rather than commit violations which will later cause them trouble. The motivation is usually temporary or only temporary.

- 5) Cultural factors (ie as a result of work, creativity and taste based on human intention in social life).

In cultural factors it contains a system of values which is the core of spiritual or non-material culture. Legal culture basically covers the values that underlie the applicable law, values which are abstract conceptions of what is considered good (to be followed) and what is considered bad (so avoided). These values, usually a pair of values that reflect two extreme conditions that must be harmonized.<sup>29</sup> The value pairs that play a role in law according to Soerjono Soekanto are as follows:

- a. Value of order and peace of mind.
- b. Physical / material values and spiritual values / equals.
- c. The value of permanence / conservatism and the value of novelty / innovation.

With the harmony of the cultural values of the local community, mutual relations between customary law and

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<sup>29</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, h. 60



positive law are expected to be established, thus the provisions in written legal articles can reflect the values that form the basis of customary law so that the statutory law can apply effective. Then it is also expected that there will be harmony between the two values that will put the law in place.

According to Soerjono Soekanto, the five factors above are closely related to each other, because they are the main thing in law enforcement, as well as a measure of the effectiveness of law enforcement. Of the five law enforcement factors the law enforcement factor itself is the central point. This is due to both the law being drafted by law enforcers, the implementation of which is carried out by law enforcement and law enforcement itself is also a role model by the wider community.<sup>30</sup>

## **2. Regional Regulation of Kediri City Number 5 of 2013 concerning Structuring and Guiding Traditional Markets, Shopping Centers and Modern Stores.**

The Regional Regulation of the City of Kediri concerning the Arrangement and Development of Traditional Markets, Shopping Centers, and Modern Stores is a guideline for both the Kediri City Government as the manager and the parties related to the use of selling places in the market and certain permitted places as well as investors who will cooperate in

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<sup>30</sup> Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT RajaGrafindo, 2007), h. 8.

structuring and coaching. Market management in this Regional Regulation provides an opportunity for the community or agency to manage or utilize the market and selling places for the progress of Kediri City. The Regional Regulation of the City of Kediri concerning the Arrangement and Development of Traditional Markets, Shopping Centers, and Modern Stores is very much needed as a legal basis for the operation and development of markets and merchant selling places, to provide services to the community based on benefit principles, fair and equitable and empower the community economy. Market management aims to create, expand and flatten employment opportunities, increase income and prosperity of the community, utilize local government resources for the benefit of the community and provide opportunities for the community or agency to manage or utilize the market for the advancement of the region.<sup>31</sup>

In accordance with the provisions of Article 12 of Law Number 10 of 2004 concerning the Establishment of Legislation, the content of the Regional Regulation is all material content in the framework of implementing regional autonomy and co-administration tasks and accommodating regional special conditions and further elaboration of higher legislation. The draft Regional Regulation can come from the Regional People's Representative Council (DPRD), the Governor or Regent / Mayor. If in one session the Governor or Regent / Mayor and DPRD submit

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<sup>31</sup> Penjelasan Atas Peraturan Daerah Kota Kediri Nomor 5 Tahun 2013 tentang Penataan dan Pembinaan Pasar Tradisional, Pusat Perbelanjaan dan Toko Modern.

a draft Perda with the same material, what is discussed is the draft Perda submitted by the DPRD, while the draft Perda submitted by the Governor or Regent / Mayor is used as a comparative material.

The drafting of the Perda program is carried out in one Regional Legislation Program, so that it is expected that there will be no overlap in the preparation of a Regional Regulation material. There are various types of regulations stipulated by the Regency and Provincial District Governments, among others :<sup>32</sup>

- a. Local tax;
- b. Regional Retribution;
- c. Regional Spatial Planning;
- d. APBD;
- e. Regional Medium Term Program Plan;
- f. Regional Apparatus;
- g. Village Government;
- h. Other general settings.

### **3. Regional People's Representatives Council (DPRD)**

In accordance with the provisions of Article 40 of Law No. 32 of 2004, the DPRD, both at the provincial, regency or city level, is a regional representative body and is domiciled as an element of regional government administration. The DPRD is determined to have legislative, budgetary and

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<sup>32</sup> Eyang Surur, "Peraturan Daerah", <https://sururudin.wordpress.com/2008/09/20/peraturan-daerah/>, diakses tanggal 14 Februari 2019.

supervisory functions. DPRD rights are (a) interpellation rights, (b) inquiry rights, and (c) rights to express opinions. The implementation of the questionnaire rights is carried out after the proposed interpellation rights as referred to in paragraph (1) letter a and obtain approval from the DPRD Plenary Session which is attended by at least 3/4 of the total DPRD members and decisions are taken with the approval of at least 2/3 of the total DPRD members present.<sup>33</sup>

In order to carry out the duties and authority of the DPRD, the right to ask State officials, government officials or citizens to provide information about a matter that needs to be addressed in the interest of the State, nation, government and development. Those who reject the request are threatened with a maximum of one year imprisonment because they lower the contempt of parliament's dignity and honor.<sup>34</sup>

Each DPRD in accordance with its position has duties and authority:<sup>35</sup>

- a) Forming district / city regulations with regents / mayors;
- b) Discuss and approve the draft Perda concerning district / city APBD submitted by regents / mayors;
- c) Carry out oversight of the implementation of the district / city Perda and APBD;
- d) Choose regents / mayors;

<sup>33</sup> Jimly Asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sinar Grafika, 2010), h. 273.

<sup>34</sup> Jimly Asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, h. 168.

<sup>35</sup> Jimly Asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, h. 166.



- e) Propose the appointment and dismissal of the regent / mayor to the minister through the governor as the representative of the central government to obtain ratification of the appointment and dismissal;
- f) Propose the appointment and dismissal of the regent / mayor to the minister through the governor as the representative of the central government to obtain ratification of the appointment and dismissal;
- g) To approve plans for international cooperation carried out by the district / city government;
- h) Request a statement of accountability for the regent / mayor in the administration of the district / city government;
- i) Give approval to plans for cooperation with other regions or with third parties that burden the community and the region;
- j) Carry out other duties and authorities stipulated in the provisions of the legislation.

#### **4. Traditional Markets**

The market is a place where sellers and buyers can meet to buy and sell goods. The seller offers his merchandise in the hope of being able to sell it and get money instead. There sellers and buyers will bargain prices until a price agreement occurs. After a price agreement can be made, the item will move from the seller's hand to the buyer. The buyer will receive the goods and the seller will receive money. This is a concrete understanding of the market, meaning the understanding of the market in everyday life, namely where people meet to carry out a sale and purchase transaction. But the

market can also be interpreted in terms of markets according to economics (abstract), which is a meeting between sellers and buyers to buy and sell certain goods or services at a certain price.<sup>36</sup>

Buying and selling activities in the market are also called market economic activities. Market economy implies an economy where goods traded are fragmented into transactions from person to person, each of which has no previous relationship with a very large number. The distinctive features of the market economy are (1) selling goods / services for daily needs, and most of them are offered locally made raw materials; (2) the price of goods is uncertain, people can bargain; (3) goods switch from one trader to another trader many times before finally falling into the hands of consumers; (4) involving many small-scale retailers; (5) the existence of complex debt-debt relationships between these traders.

## **5. Mahlahah Mursalah**

### **a. Definition Maslahah Mursalah**

According to the language, the word Mashlahah comes from an Arabic word and has been standardized into Indonesian which becomes the word maslahah, which means to bring goodness or to bring benefits and know to reject damage. According to the original language, the word mashlahah mursalah comes from the word saluha, yasluhu, salahan: صلح يصلح صلاحا means something that is good, proper and

<sup>36</sup> Arhild, "Pengertian Pasar", <https://arhild.wordpress.com/2012/01/22/pengertian-pasar/>, diakses tanggal 15 Februari 2019.

useful. While the word Mursalah means free release, not bound by religious arguments (the Qur'an and al-Hadith) that allow or prohibit it.<sup>37</sup>

Specifically, the definition and scope of the validity of this method of discussion has been discussed by Dr. Jalaludin Abdur Rahman in his book *Al-Masalih al-Mursalah wa makanatuha fi al-Tasyri* 'which among others states: "Maslahah is valid among Arabic linguists, which is every action that can bring benefits to humans, the word mashlahah is a singular form of masalih which means every kindness (the interests of human life) of the opponent from damage. It is said to be good if it can bring benefits / benefits, namely things that are good and right. But what is meant by misfortune here is to maintain the objectives of the Shari'ah from useful benefits, as well as limited by a number of limitations and not applied to things caused by human lust and desires. "<sup>38</sup>

Thus the mashlahah mursalah is a mashlahat that is in line with the goal of Shari'a which can be used as a foundation in realizing the goodness needed by humans and avoiding harm. In real life masculinity becomes a benchmark in establishing law as the growth and development of the life of the Islamic community is influenced by differences in conditions and places.

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<sup>37</sup> Amin Farih, *Kemashlahatan & Pembaharuan Hukum Islam*, (Semarang: Walisongo Press, 2008), h. 15.

<sup>38</sup> Amin Farih, *Kemashlahatan & Pembaharuan Hukum Islam*, h. 17.

## **b. The Object of Maslahah Mursalah**

By paying attention to some of the above explanations, it can be seen that the Maslahah Mursalah field is compatible with Shara'ah law 'in general, it must also be considered adat and the relationship between one human being and another. The field is the main choice for achieving benefit. Thus, the aspect of worship is not included in the field.

In summary, it can be said that Maslahah Musalah is focused on the field that is not contained in the text, both in the Qur'an and as-Sunnah which explains the laws that have an amplifier through I'tibar also focused on things that are not obtained the existence of ijma 'or qiyas related to the event.<sup>39</sup>

## **c. The Conditions of Maslahah Mursalah**

Abdul Wahhab Khalaf explained several requirements in the functioning of Maslahah Musalah, namely :

- 1) Something that is deemed maslahat must be in the form of an essential problem, that is, what truly will bring benefit or reject detriment, not in the form of mere conjecture by only considering the existence of benefits without looking at the negative consequences it causes. For example, the latter is the assumption that the right to impose divorce is in the hands of women is no longer in the hands of men is a false problem, because it contradicts the

<sup>39</sup> Abdul Wahab Khallaf, *Ilmu Ushul Fiqh*, (Jakarta: Pustaka Amani, 2003), h. 122.



provisions of the Shari'a which confirms that the right to drop divorce is in the hands of the husband.

- 2) Something that is considered to be maslahat should be in the form of public interest, not personal interest.
- 3) Something that is considered maslahah does not conflict with provisions that have firmness in the Qur'an or sunnah.

In using maslahah mursalah as hujjah, the ulama are very careful, so as not to cause the formation of Shari'a based on certain desires and desires. Therefore, the ulama formulated the conditions for the maslahah mursalah which were used as the basis for the formation of the law. Imam Maliki gives at least three main conditions so that maslahah can be used as Hujjah, i.e. :

1. There is a correspondence between maslahah which is seen as the source of a stand-alone proposition and syara'a goals (Maqashid Asy-Shari'ah). Maslahah has to be reasonable, it has qualities that are consistent with rational thinking.
2. The use of this maslahah argument in order to eliminate the difficulties that occur (raf'u harad prevalent). This means that humans will experience difficulties if the maslahah taken is not accepted by reason.

Imam Gazali gives several requirements so that the term (Maslahah) can be used as evidence in legal terms.<sup>40</sup>

<sup>40</sup> Fathurrahman Djamil, *Filsafat Hukum Islam*, (Jakarta: Logos Wacana Ilmu, 1997), h. 142.

1. Maslahah is in line with the types of shara'a actions.
2. Maslahah it does not leave or contrary to the texts of Personality.
3. Maslahah is included in the category of darlah maslahah, both concerning personal welfare and universal welfare which means it applies to everyone without exception.

For the last time, al-Ghazali also said that the Hajiyah, if it concerns the interests of many people, could be daruriyah.

Advantages must be in accordance with the will of faith 'and / or not contrary to the arguments of syara', not only in accordance with the reason of rationality and lust of mankind, advantages must bring benefits and avoid mafsadat (loss or damage) for the people, both in physical terms as well as spiritually, both for the life of the world and the hereafter, and Mashlahah must be related to personal and many people's welfare.

### CHAPTER III

### RESEARCH METHODS

Research method is a way to do something by using the mind carefully to achieve a goal by searching, recording, formulating, and analyzing until compiling reports. The research method can also be said as an investigation by using predetermined ways to obtain a truth that later can be accounted for by the researcher. In order to obtain optimal results, a research method is needed in accordance with the theme of the discussion as follows.

#### 1. Type of Research

According to Soerjono Soekanto legal research is divided into two, namely normative legal research and empirical legal research.<sup>41</sup> Empirical legal research focuses on the study of phenomena in living in a society, looking for meaning, elements and structure through the help of sociology so that the real meaning will be obtained. Where the law is conceptualized as real behavior (actual behavior) or social symptoms that are not written, which is experienced by everyone in the relationship to live in a community. The consequences of such a view cause the law to be influenced by the facts that live in society.<sup>42</sup>

The type of research used in the author's research is empirical juridical research or empirical law. The purpose of the author's research is to find out the extent to which the work of law in the life of the community, whose base is a

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<sup>41</sup> Bambang Sunggono, *Metodologi Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2007), h. 41-42.

<sup>42</sup> Bahder Johan Nasution, *Metode Penelitian Hukum*, (Bandung: CV Mandar Maju, 2008), h. 121.

community law phenomenon or social fact in the community. The starting point of this study is to look at the practice of the Regional Regulation of Kediri City Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets in their effectiveness, which is then in the perspective of Maslahah Mursalah.

## 2. Research Approach

The research approach is a problem related to the way a person reviews and how he approaches the problem in accordance with the discipline he has. The approach used in the author's research is that when viewed from the point of view of the study using a sociological juridical approach.<sup>43</sup> In this study, the authors describe in detail and in depth about a situation of the object under study, namely the Effectiveness of Kediri City Regional Regulation Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets in their effectiveness, which is then in the perspective of Maslahah Mursalah.

In this study, the authors used a qualitative approach. The qualitative approach is one of the scientific methods as a descriptive analysis process that produces written or oral data from the research subject. This approach will produce descriptive data that is trying to understand the relationship between events with people around in a particular study.<sup>44</sup> The strategy used is a case study. Case studies are a type of qualitative research that intensively studies an individual or group who is seen experiencing a particular case. In this case, the

<sup>43</sup> Bahder Johan Nasution, *Mertode Penelitian Hukum*, h. 127.

<sup>44</sup> Burhan Ashshofa, *Metode Penelitian Hukum*, (Jakarta: PT Rineka Cipta, 2004), h. 56.



researcher will study in depth by revealing all the variables that can cause the case.

### 3. Research Location

The research location is the place used for research. In qualitative research, the determination of the location of research is a very important stage, because if the location of the study has been determined it means the object and purpose of the study have been established so as to facilitate the author to conduct research. The location of the study can be in a certain region or a certain institution in the community.<sup>45</sup> The location of the research carried out by the researchers is the Bandar Kediri City Market Area, the Regional Representative Council (DPRD) of Kediri City, the Office of Industry in Mining and Energy Trading, the Head of Bandar Lor Village, Civil Service Police Unit of Kediri City, and traditional market traders selling on the sidewalk Bandar Market Kediri City.

### 4. Data Types and Sources

The type of data used in empirical research comes from primary data, namely data that is directly obtained by problems through interviews and observations for qualitative research. The secondary data used is information obtained from books or written documents.<sup>46</sup> While the data source is where the desired data is obtained. In connection with this research, the data sources are classified into :

<sup>45</sup> SF Sulistiarsi, "Thesis" (Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2014), h. 48.

<sup>46</sup> Fakultas Syariah UIN Maulana Malik Ibrahim Malang "Pedoman Penulisan Karya Ilmiah", (Malang: Fakultas Syariah, 2012), h. 28.

1. Primary data, namely data obtained directly from the source or the first data source where a data is generated. This primary data is obtained from:
  - a) Results of interviews with Wiko Winarno (member of Commission B of the Regional Legislative Council (DPRD) of Kediri City), Head of Bandar Lor Village, Civil Service Police Unit Kediri City, and traditional market traders selling on the sidewalk of Bandar Market Kediri City.
  - b) Regional Regulations of Kediri City Number 5 of 2013 concerning Structuring and Guiding Traditional Markets, Shopping Centers and Modern Stores
2. Secondary data, namely data obtained from official documents, journals, books, thesis, and statutory regulations that will later support the results of research.<sup>47</sup>

## 5. Data Collection Method

Data collection is one factor in determining the success or failure of a study conducted. Broadly speaking, data collection methods or instruments are classified into two types, namely tests and non-tests. For non-test instruments include, (1) questionnaire or questionnaire, (2) interview, (3) observation; (4) multilevel scale (rating); (5) documentation.<sup>48</sup> In this study, the data collection methods used were: observation methods, interviews (interviews) and documentation methods.

### 1. Observation

<sup>47</sup> Suwardi Endraswara, *Metode Teori Teknik Penelitian Kebudayaan*, (Yogyakarta: Pustaka Widyatama, 2006), h. 151.

<sup>48</sup> Suharsinni Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik*, (Jakarta: PT. Rineka Cipta, 2006), h. 150.

Observations or field surveys are conducted with the aim of testing hypotheses by studying and understanding the legal behavior of the community which can be observed in the eyes. In this study researchers conducted observations by making observations directly at the specified location by taking samples at predetermined markets to see the existence of modern stores in the market area.

## 2. Interview

To obtain information from the informants used in-depth interview techniques (in-depth interviews) that are not structured. The researcher has a record of the points to be asked, but allows the emergence of accidental questions in accordance with the flow of conversation, in order to be able to reveal more deeply about the research.<sup>49</sup>

## 3. Documentation

Documentation studies are carried out by examining the documents in the form of research results, relevant laws and regulations as well as the study of the literature, which are all secondary data. The secondary data is related to an in-depth study of the recording of legal events.<sup>50</sup>

## 6. Data Analysis Techniques

After the data is collected, the next step is to analyze the research data that has been collected. Data analysis is an activity and process of integrating data, sorting data, open coding, compilation and so on so that it becomes new

<sup>49</sup> Saifullah. *Tipologi Penelitian Hukum*, (Bandung: PT Refika Aditama, 2018), h. 237-238.

<sup>50</sup> Saifullah. *Tipologi Penelitian Hukum*, h. 162.

data that becomes a reference for research. The raw data obtained from respondents cannot simply be concluded as the results of the study. The next stage is by processing data, one of which is by collaborating raw data with selected variables so that the right conclusions can be drawn. The following are the steps in the technical analysis of this research data:<sup>51</sup>

- a. Editing Process. Editing is an activity carried out after collecting data in the field. This process is important because of the fact that data collected sometimes does not meet the expectations of researchers, some of which are not even missed. The editing process can be done by reducing data, namely the process of simplifying data by selecting data from the field and concentrating on a word. Reducing data that is not in accordance with the theme that is being meticulous. So that you will get detailed and significant data.
- b. Data classification process. In order for this study to be more systematic, the interview data are classified according to certain categories, namely based on questions in the formulation of the problem, so that the data obtained actually contains the information needed in this study.
- c. Data Verification Process. Data verification is checking back from the data that has been collected to find out the validity of the data whether it is really valid and in accordance with what the researcher expected. So in this process, a researcher verifies data, proves the data obtained from the interviews that have been conducted in the field, matches the data and

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<sup>51</sup> Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2006), h. 167.



guarantees the validity of the data, namely meeting the source and subject with data to be answered whether the data obtained from the respondent is appropriate or not . Besides that, for some data the researcher verified it by triangulation, that is to match (cross-check) between the results of the interview with the one subject with the opinions of other subjects, so that it can be concluded proportionally.

- d. **Data Analysis Process.** Data analysis is the process of organizing and sorting data into patterns, categories and basic description units so that themes can be found and working hypotheses can be formulated. Qualitative data analysis is an effort carried out by working with data, organizing data, and sorting it into manageable units, censoring them, finding and finding patterns, discovering what is important and what is learned, and discovering what can be told to people other. As well as presenting data and expressing information that will be written systematically. So that it becomes a more effective form and makes it easier to draw conclusions.
- e. **Conclusion Process.** Conclusion is the process of bringing together the steps above to perfect this research, namely the last step in analyzing the entire data. In this step, the author writes conclusions from the data obtained from the interview, observation, and documentation process. As an answer to the formulation of the problem raised in this study.

## CHAPTER IV

### RESEARCH RESULTS AND DISCUSSION

#### 1. Overview of Research Objects

Bandar Market is one of the city center districts located on Jl. KH Wachid Hasyim, Bandar Lor, Mojoroto, Kediri City, East Java in the west of the river, which grew into a trading community center for remote areas in the City of Kediri, such as muning, mojo to waung on the slopes of the klotok mountain. In this market we can find various items that we want to buy, both clothes (children, teenagers, old people), bags, shoes, sandals, various kinds of headscarves, equipment and household necessities, staples, fruits, and vegetables. Likewise there are various food stalls lined up in front of the market. The price offered is also very friendly with student pockets. The quality of the goods is pretty good, the transaction method is unique, every purchase of goods the buyer must be clever in bidding for the items purchased. The more the buyer is good at bidding the price, the cheaper the price he receives, so it is not uncommon for every day visitors are always huddled on the road in the market location.<sup>52</sup>

The facilities provided at the Bandar Market are also many, including a large parking lot, the price and quality of goods is quite promising, the cleanliness of the market is very much considered. So, the Bandar market can be used as a good tourism destination in the City of Kediri. However, on the one

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<sup>52</sup> Pasar Bandar, <http://newsbandarkediri.blogspot.com/?m=1>, diakses pada tanggal 10 Mei 2019

hand there are still shortcomings, one of which is security. Actually security here is very involved, but it's still not effective. Not infrequently there is also pickpocketing. Usually this happens in the holiday season and holidays. Therefore, you must be careful.

## **2. 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**

Reviewing a statutory regulation, of course, is related to the effectiveness of implementing the regulation. In order to streamline the law, a system that consists of components that influence each other is needed so that the objectives of the policy maker are achieved.

In understanding a formula of the rule of law it is not enough to only understand its form in written formulations, but also understand the rule of law as an empirical phenomenon that appears and applies in society. Understanding the law is not limited to forms that have already been made, but also looks at the background that underlies the treatment of the rule of law and how it is implemented or enforced.

The application of making a system to law enforcement is confirmed by Soerjono Soekanto who said that the main problem of law enforcement

actually lies in the factors or components that influence it. These factors and components are:<sup>53</sup>

1. Legal Regulatory Factors That Alone;

The law that has been made by the law-maker is a written regulation which is official legislation. These regulations concerning certain areas of life must be made systematically so that a regulation can be implemented properly. The substance of the regulation must be solid and simple, not complicated, the structure of the language must also be standard in the sense that it is easily understood and understood by the community. If the articles of the regulation are difficult to understand, this makes the regulation not implemented by the community.

2. Law Enforcement Factors;

Namely the parties that form and accept the law, the parties that make up the law are parties or bodies which in their role make their legal regulations while those who accept the law are parties or bodies that implement and enforce the law. Law enforcers cover a very broad scope because it involves officers in the upper, middle and lower strata in carrying out their duties must have a guideline, namely written regulations that cover the scope of their duties.

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<sup>53</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: PT. Raja Grafindo, 2008), h. 37.



### 3. Factors in Facilities or Facilities that Support Law Enforcement;

Facilities or facilities are everything that can be used as a tool that can provide convenience and fluency in achieving the goals and objectives. If the purpose and objective is to make the Law effective, all supporting facilities and facilities need to be provided so that the parties implementing the Law will be easier and more comfortable with these adequate facilities and facilities.

### 4. Community Factors;

That is the environment in which the law applies or applies. The community is a set of entities, both individuals and groups that have a culture that they consider the same. Society is a legal subject so that the effectiveness of the law is influenced by the condition of the community. It can be said that a person obeys if he behaves or behaves according to the expectations of the law-maker.<sup>54</sup>

### 5. Cultural Factors.

Namely as a result of work, creation and taste that is based on human intention in life. Culture is a complex matter that involves knowledge, beliefs, arts, morals, laws, customs, abilities and habits that humans get as members of society.

Of the five factors are closely related. Therefore it is the essence of law enforcement, on the other hand it is also a measure of the effectiveness of law enforcement in the community.

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<sup>54</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, h. 45.

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."*<sup>55</sup> 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

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<sup>55</sup> Wiji, *wawancara* (Bandar Lor, 14 April 2019)

sidewalks. In carrying out its duties, it certainly faces many obstacles and obstacles in the field. For this reason, there is a need 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."*<sup>56</sup> 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.<sup>57</sup> So in the

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<sup>56</sup> Dodik, wawancara (Karangrejo, 8 Mei 2019).

<sup>57</sup> Damsari, *Pengantar Sosiologi Ekonomi*, (Jakarta: Kencana, 2011), h. 110.

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"*.<sup>58</sup>

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.<sup>59</sup>

<sup>58</sup> Wiko, wawancara (Burengan, 22 Maret 2019).

<sup>59</sup> Bambang Waluyo, *Penelitian Hukum dalam Praktek*, (Jakarta: Sinar Grafika, 2008), h. 141.



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.

#### 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.

### **3. Overview of Maslahah Mursalah of the traditional market 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.<sup>60</sup>

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.

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<sup>60</sup> Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, (Jakarta: PT Rineka Cipta, 2005), h. 98.

In the purpose of the establishment of the City Regulation of Kediri Number 5 of 2013 concerning the Arrangement and Development of the Traditional Market in accordance with what is stipulated by Islamic Law, for example in the Regional Regulation it brings benefits to lawmakers, law enforcers, and those who implement the law. The benefit given by the Islamic Shari'a (Allah SWT) as a lawmaker for His servants which includes efforts to guard against religion, soul, mind, lineage, and wealth, so that it will avoid losses (mafsadat) both in the world and in the end.

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.<sup>61</sup> This is in the aim of the establishment of the City Regulation of Kediri Number 5 of 2013 concerning the Arrangement and Development of the Traditional Market namely general and personal welfare as equals for example with the practice that occurs 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*

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<sup>61</sup> Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, (Jakarta: Pustaka Amani, 2003), h. 113.

*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".<sup>62</sup>*

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. Therefore, what is considered as

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<sup>62</sup> Wiko, wawancara (Burengan, 22 Maret 2019)



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.<sup>63</sup>

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 '.

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<sup>63</sup> Satria Efendi, *Ushul Fiqh*, (Jakarta: Kencana, 2005), h. 151.

## CHAPTER V

### CONCLUSION AND SUGGESTION

#### 1. Conclusion

- a. The effectiveness of Regional Regulation No. 5 of 2013 concerning the Arrangement and Development of the Bandar Kota Kediri Traditional Market has not been effective. This is due to the non-compliance of traders who sell their merchandise on the sidewalk around the market in the long run. The culture of violations by these traders if done continuously will cause other traders to follow, thus disrupting the rights of road users in passing the road. The purpose of making sidewalks is to make road activities smooth and reduce accidents between pedestrians and motorized vehicles. But if the use of sidewalks is misused to become a very mushrooming place for selling, the community experiences imbalances. If the management of roads can be regulated firmly and can be managed properly, it will certainly affect the survival of the community.
- b. 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.

## **2. Suggestion**

- a. Should there be a violation then sanctions are appropriate, so that the road situation and market order are good. So that it is in accordance with what is written in the Regional Regulation of the City of Kediri Number 5 of 2013 concerning the Arrangement and Development of Traditional Markets.
- b. An understanding of the benefits of implementing Regional Regulations needs to be improved on the community, law enforcement, and legislators, so as not to harm the parties concerned. And can uphold the values of prosperity, not only strive to seek individual benefits, but the interests of all people.

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## Appendixes



Interview with Mr. Wiko members of DPRD Kediri City

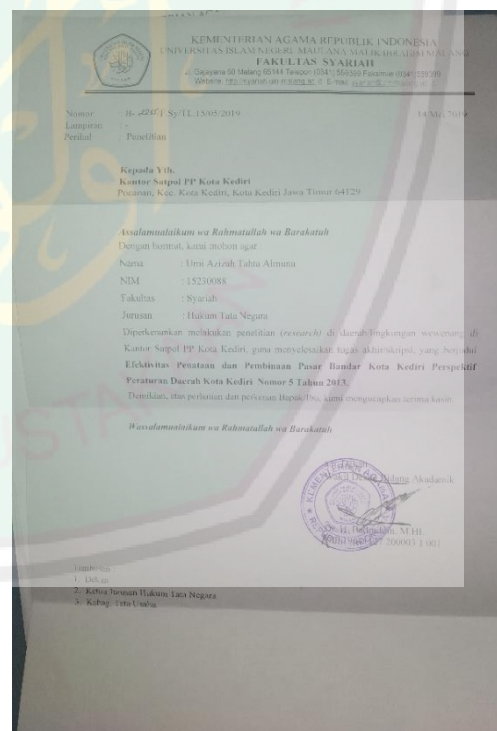
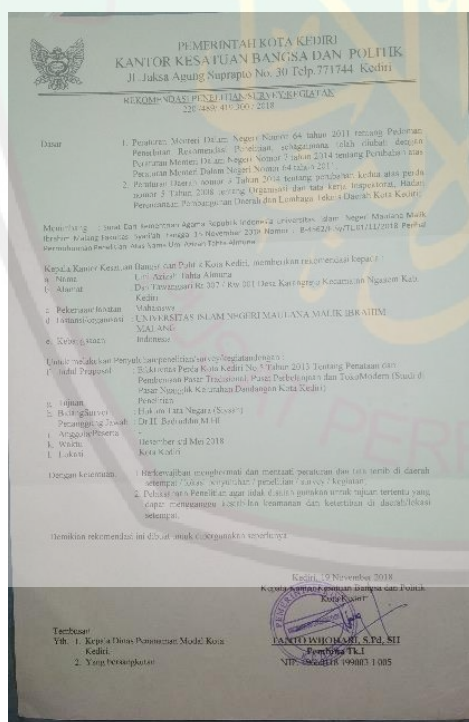


Interview with Mr. Dodik member of Civil Service Police Unit Kediri City



Merchants selling on the sidewalk on the Bandar Market

### Research License



## CURRICULUM VITAE



### **Personal Data**

Name : Umi Azizah Tahta Almuna  
Place, Date of Birth : Kediri, February 19<sup>th</sup> 1997  
Address : Mataram Street Number 123B RT/07 RW/01  
Karangrejo Ngasem Kediri Jawa Timur  
Mailing Address : PPP. Al-Hikmah Al-Fathimiyyah Joyosuko Malang  
Phone : 0857084340747  
E-mail : [umiazizah219@gmail.com](mailto:umiazizah219@gmail.com)

### **Formal Education**

2002-2004 : TK Perwanida Kediri  
2004-2009 : SDN Karangrejo II Kediri  
2009-2012 : SMPN 2 Kota Kediri  
2012-2015 : MAN Tambakberas Jombang  
2015-2019 : Universitas Islam Negeri Maulana Malik Ibrahim  
Malang

### **Organization**

2016-2019 : AHAF Institute PPP-Al-Hikmah Al-Fathimiyyah  
Malang





KEMENTERIAN AGAMA  
**UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG**  
**FAKULTAS SYARIAH**

Terakreditasi "A" SK BAN-PT Depdiknas Nomor : 157/BAN-PT/Ak-XVII/II/2013 (Al Ahwal Al Syakhshiyah)  
Terakreditasi "B" SK BAN-PT Nomor : 021/BAN-PT/Ak-XIV/S1/VIII/2011 (Hukum Bisnis Syariah)  
Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399, Faksimile (0341) 559399  
Website: <http://syariah.uin-malang.ac.id/>

**CONSULTATION PROOF**

Name : Umi Azizah Tahta Almuna  
Student ID Number : 15230088/Constitutional Law (Siyasah)  
Supervisor : Dr. H. Saifullah, S.H., M.Hum  
Thesis Title : 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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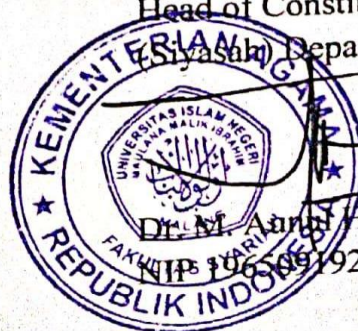
Malang, 23<sup>rd</sup> of June 2019

Acknowledged by:

o.b. Dean

Head of Constitutional Law

(Siyasah) Department



Dr. M. Anwar Hakim, M.H.

NIP. 196509192000031001