



APPLICATION OF CRIMINAL SANCTIONS FOR VIOLATIONS OF SELLING IN PROHIBITED PLACES

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Abstract

Implementation of criminal sanctions for violations of selling in prohibited places. The formulation of the problem in this study is the factors causing violations of selling in prohibited places, obstacles received in the process of resolving cases of Violations of Selling in Prohibited Places and what is done in implementing sanctions for violations of selling in prohibited places. The purpose of the study is to determine the factors causing violations of selling in prohibited places, to determine the obstacles received in the process of resolving cases of Violations of Selling in Prohibited Places and to determine what efforts are made in implementing sanctions for violations of selling in prohibited places. The results of this study indicate that the factors causing violations of selling in prohibited places are the limited availability of adequate jobs accompanied by an increase in the number of unemployed, economic difficulties, the existence of business opportunities with little capital and quite in demand by many people who are economically affected and the existence of a very rapid flow of urbanization. The obstacles received in the process of resolving cases of Violations of Selling in Prohibited Places consist of internal factors and external factors. Efforts made in implementing sanctions against violations of selling in prohibited places are to increase government attention to street vendors through the provision of adequate and suitable locations, increasing prevention activities through officer patrols and increasing self-security in each environment, both residential and vital places. The government should be able to provide a solution by providing a proper and appropriate place to sell for street vendors so that their existence does not disrupt public order.

Keywords: *Criminal Act, Law Enforcement, Selling in Prohibited Places*

1. INTRODUCTION

The Unitary State of the Republic of Indonesia is a state based on law (rechtstaat) and not based on power (machtstaat). peace by realizing legal certainty and justice in society. Legal certainty requires that the formulation of rules in statutory regulations must be implemented strictly. Therefore, all Indonesian people really hope that the law will be enforced and that no one should take sides.

Street Vendors (PKL) are one of the informal sector actors who are treated unequally by the government. Although some organized groups in this sector (such as street vendors) tend to have an entrepreneurial spirit, in general the informal sector is often seen as a small-capital business that is difficult to make a profit, with limited market access and low living standards for its workers. Not only in Indonesia, abroad such as America and Europe, street vendors or hawkers are also often found on shop verandas and crowded public places. Street vendors have become a profession that is quite widely chosen by the majority of lower-

APPLICATION OF CRIMINAL SANCTIONS FOR VIOLATIONS OF SELLING IN PROHIBITED PLACES

¹*Novi Juli Rosani Zulkarnain, ²Hairul Amren Samosir

middle class people and immigrants/urban communities. Nowadays, the profession of street vendors is quite developed considering that it only requires small capital without having to rent a shophouse and added to the factor of minimal employment opportunities so that entrepreneurship and becoming a street vendor are options that are widely chosen. This is relevant to the growth of street vendors in big cities, considering that in big cities the job market is dominated by the formal sector, namely a field that requires having high skills and/or education. People who are not accommodated in the formal sector then enter the informal sector.

The realization of formal sectors has been regulated with more detailed regulations starting from legal business aspects, licensing, and spatial planning. However, the informal sector then emerged as a general symptom that cannot be avoided. The location of the informal sector often appears not far from the formal sector. This can create a gap, especially in terms of spatial planning, considering that the formal sector is organized and compared to the informal sector which is basically uncontrolled/emerges spontaneously. Therefore, street vendor activities often cause problems for each region/city. The problem of street vendors has always been an interesting thing to study. Street vendors have always been a polemic in various circles, both among the community and the government. Its existence is often connected to the problem of order and eviction. Efforts to restore order carried out by government officials often end in clashes with street vendors. Together with other components of society, street vendors often hold demonstrations, always ending in chaos and commotion. So that order is very difficult to realize. The street vendor phenomenon is a social phenomenon. In general, there are a number of characteristics that can be attached to street vendors, although in some places these characteristics may not apply. The characteristics in question are operating in a location that is not in accordance with its intended use, not being equipped with an official business permit from the authorized agency, having high mobility (easily moving around following the accumulation of consumers), serving end consumers directly, having a low level of discipline towards the law, and tending to be very pragmatic in viewing the law.

2. Literature Review

a. Definition of Street Vendors and Sidewalks

a. Definition of Street Vendors

According to Aris Ananta, street vendors are people from the lower economic class who sell daily necessities, food, or services using relatively small capital, their own capital or other people's capital, whether selling in prohibited places or not. Street vendors are traders consisting of people who sell goods or services from public places, especially on the streets or on sidewalks. In Article 1 of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 41 of 2012 concerning Guidelines for the Arrangement and Empowerment of Street Vendors, Street Vendors are "business actors who conduct trade using movable or immovable business facilities, using city infrastructure, social facilities, public facilities, land and buildings owned by the government and/or private sector which are temporary/non-permanent."

Breman stated that street vendors are small businesses run by people with low incomes (daily wages) and limited capital. In the economic field, these small traders are included in the informal sector, which is a job that is not permanent and unskilled and groups that are not bound by legal rules, live in hardship and are semi-criminal to a certain extent.

b. Characteristics of Street Vendors



The characteristics of street vendor activities can be viewed from the physical facilities in urban spaces. The characteristics of street vendors are described by Simanjutak as follows:

1. The business activity is simple and does not have a complicated cooperation system and flexible division of labor.
2. Small scale businesses with business capital, working capital and income that are generally relatively small.
3. Activities that do not have a business license.

c. Definition of Sidewalk

Sidewalks are pedestrian paths located in road benefit areas, given a surface layer, given a higher elevation than the road surface, and are generally parallel to the vehicle traffic lane. The main function of the sidewalk is to provide services to pedestrians so as to improve the smoothness, safety and comfort of pedestrians. Sidewalks also function to facilitate highway traffic because they are not disturbed or affected by pedestrian traffic. The space under the sidewalk can be used as a space to place utilities and other road equipment.

Law No. 22 of 2009 concerning Traffic and Road Transportation (LLAJ) Article 45 paragraph 5 which states: Sidewalks are one of the supporting facilities for organizing traffic and road transportation among other facilities such as: bicycle lanes, pedestrian crossings, bus stops and/or special facilities for the disabled and elderly as stated in the law.

The article above can be concluded that the sidewalk is not a place for motorcyclists, or street vendors. In the LLAJ Law there are sanctions for violators, namely:

1. The criminal threat for anyone who causes disruption to the function of road equipment is a maximum prison sentence of 1 (one) year or a maximum fine of IDR 24,000,000.00 (twenty four million rupiah) (Article 274 paragraph (2) of the LLAJ Law).
2. Any person who commits an act that results in disruption to the function of traffic signs, road markings, traffic signal devices, pedestrian facilities and road user safety devices, shall be punished with imprisonment for a maximum of 1 (one) month or a maximum fine of IDR 250,000.00 (two hundred and fifty thousand rupiah) (Article 275 paragraph (1) of the LLAJ Law).

3. METHOD OF IMPLEMENTATION

a. Type of research

The type of research used in this study is a normative legal approach. The normative legal approach is used to analyze laws and regulations¹⁵ related to the crime of prostitution using online media.

b. Nature of Research

This research is descriptive analytical in nature, namely research that merely describes the condition of an object or event without any intention of drawing generally applicable conclusions.

c. Data Types and Data Sources

The type of data used in this study is library research. Data was obtained through several literatures in the form of scientific books, laws and regulations and other documentation related to the crime of sexual exploitation of children. The data sources used in this study are secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials obtained through:

APPLICATION OF CRIMINAL SANCTIONS FOR VIOLATIONS OF SELLING IN PROHIBITED PLACES

^{1*}Novi Juli Rosani Zulkarnain, ²Hairul Amren Samosir

- a. Primary legal materials are statutory regulations, in this study the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 41 of 2012 concerning Guidelines for the Arrangement and Empowerment of Street Vendors, Law No. 22 of 2009 concerning Traffic and Road Transportation (LLAJ) was used.
- b. Secondary legal materials are in the form of reading books that are relevant to this research.
- c. Tertiary legal materials include encyclopedias, internet materials, bibliographies and so on.

a. Data Processing and Analysis

Data collected through literature study were analyzed using qualitative analysis. Qualitative analysis is an analysis based on the paradigm of dynamic relationships between theories, concepts and data which are feedback or constant modifications of theories and concepts based on the data collected and related to the application of criminal sanctions for violations of selling in prohibited places.

4. RESEARCH RESULTS AND DISCUSSION

a. Criminal Acts and Elements of Criminal Acts

The term criminal act is used as a translation of the term strafbaar feit or delict. Strafbbaar feit consists of three words, namely straf, baar, and feit, literally, the word "straf" means criminal, "baar" means can or may and "feit" is an act. In relation to the term strafbaar feit as a whole, it turns out that straf is also translated with the word law. And it is common for law to be a translation of the word recht, as if the meaning of straf is the same as recht. For the word "baar", there are two terms used, namely may and can. While the word "feit" uses four terms, namely, act, event, violation, and deed.

The term strafbaar feit is a criminal event or a criminal act. Meanwhile, according to several legal experts, criminal acts (strafbaar feit) are:

- a. According to Pompe, "strafbaar feit" can theoretically be formulated as a violation of norms (disruption of legal order) which is intentionally or unintentionally committed by a perpetrator, where the imposition of punishment on the perpetrator is necessary for the sake of maintaining legal order and guaranteeing legal interests.
- b. According to Van Hamel, strafbaar feit is the power of a person that is formulated in law, is unlawful, is punishable and is carried out wrongly.
- c. According to Indiyanto Seno Adji, a criminal act is an act of a person that is subject to criminal penalties, the act is against the law, there is an error for which the perpetrator can be held responsible for his actions.
- d. According to E. Utrecht, "strafbaar feit" is a term for a criminal event which he often also calls a crime, because the event is an act of positive handelen or doen or a negligent negligence, or its consequences (conditions caused by the act or doing it).
- e. According to Moeljatno, a crime is an act that is prohibited and is punishable by anyone who violates the law.
- f. According to Vos, he is one of the experts who defines a criminal act briefly, namely human behavior which is subject to punishment by criminal legislation.

Based on several definitions described above, it can be concluded that a crime is a human act that is contrary to the law, threatened with punishment by law, which act is carried out by a person who can be held responsible and can be blamed on the perpetrator of the crime. In



accordance with several definitions above, there are several conditions that can be determined as a crime, namely:

- a. There must be human action;
- b. Human actions are contrary to the law;
- c. This act is prohibited by law and is punishable by criminal penalties;
- d. The act was carried out by a person who can be held responsible; and
- e. The perpetrator must be accountable for the act.

An act that is against the law and detrimental to society is not necessarily a crime, if the act is prohibited by law and the perpetrator is not threatened with criminal punishment. For example, prostitution is an act that is detrimental to society, but is not made a criminal prohibition. This makes it difficult to formulate the right thing about prostitution and make it a search and habit. To determine which acts are considered criminal acts in Article 1 paragraph (1) of the Criminal Code, the "Principle of Legality" or what is known as its adage reads as follows: "Nullum delictum nulla poena lege previa poenali" namely the principle that determines that every criminal act must first be determined by law.

In everyday life we often encounter the term crime. This crime statement refers to actions that are contrary to the rules, but not all acts that violate the rules are crimes. For example, someone who throws an old newspaper into a neighbor's back garden, he should give it to the trash man or throw it in the trash, this is impolite to disturb the neighbors (violates the rules) and this is not a crime, but can be said to be mischief as contained in Article 489 of the Criminal Code.

The elements of a crime can be distinguished at least from two points of view, namely (1) from a theoretical point of view and (2) from a statutory point of view. The theoretical point of view is based on the opinion of legal experts, which is reflected in their formulation. While the statutory point of view is the reality of the crime being formulated into a specific criminal act in the existing statutory articles.

- a. Theoretical elements of a crime

Based on the formulation of criminal acts according to Moeljatno, the elements of a criminal act are acts, which are prohibited (by legal rules), criminal threats (for those who violate the prohibition). From the limitations made by Jonkers, it can be detailed that the elements of a criminal act are acts, against the law (related to), mistakes (made by people who can), be accounted for. EYKanter and SR. Sianturi compiled the elements of a criminal act, namely:

- a) Subject
- b) Error
- c) Unlawful (from action)
- d) An action that is prohibited and required by law/regulation and violators are subject to criminal penalties. Violators are subject to criminal penalties.
- e) Time, place, circumstances (other objective elements).

Meanwhile, K. Wantjik Saleh concluded that an act will be a criminal act if the act:

- 1) Against the law
- 2) Harmful to society
- 3) Prohibited by criminal law
- 4) The perpetrator is threatened with criminal penalties.
 - a) Elements of a crime from a legal perspective

APPLICATION OF CRIMINAL SANCTIONS FOR VIOLATIONS OF SELLING IN PROHIBITED PLACES

^{1*}Novi Juli Rosani Zulkarnain, ²Hairul Amren Samosir

Book II of the Criminal Code contains formulations regarding certain criminal acts that fall into the category of crimes and Book III is violations. It turns out that there is an element that is always mentioned in every formulation, namely behavior/actions, although there are exceptions such as Article 335 of the Criminal Code. The elements of error and against the law are sometimes included and often not included. Not included at all is the element of the ability to be responsible. In addition, many other elements are included, both around/concerning the object of the crime and actions specifically for certain formulations.

5. CONCLUSION

The conclusions that can be summarized based on the results of this study are:

1. The factors causing the occurrence of violations of selling in prohibited places are the limited availability of adequate employment opportunities accompanied by an increase in the number of unemployed, economic difficulties, the existence of business opportunities with little capital and quite attractive to many people who are economically affected and the existence of a very rapid flow of urbanization.
2. Obstacles received in the process of resolving cases of Violations of Selling in Prohibited Places consist of internal and external factors. Internal factors include the lack of personnel and fleet owned by officers. While external factors include the uneven socialization of correct trading rules, the lack of available fostered locations, the distribution of information and the method of conveying information that is not well understood and the lack of legal awareness for street vendors.
3. Efforts made in implementing sanctions against violations of selling in prohibited places are to increase government attention to street vendors through the provision of adequate and suitable locations, increasing prevention activities through officer patrols and increasing voluntary security in each environment, both residential and vital places.

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APPLICATION OF CRIMINAL SANCTIONS FOR VIOLATIONS OF SELLING IN PROHIBITED PLACES

¹*Novi Juli Rosani Zulkarnain, ²Hairul Amren Samosir

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