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## Examination of Supreme Court Decision No. 42/P/HUM/2018: Legal Protection for Street Vendors

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**Abstract:** The Supreme Court Decision No. 42/P/HUM/2018 states that Article 25 paragraph (1) of the Jakarta Special Capital Region Provincial Regulation Number 8 of 2007 about Public Order (DKI Jakarta Regional Regulation 8/2007) does not have legally binding force because it violates Article 127 paragraph (1) of Law Number 22 of 2009 about Road Traffic and Transportation (LLAJ Law) and does not apply to the public. This case resulted in street vendors being evicted from the land where they sell even though it was their livelihood. The author feels the need to criticize this decision so that the author conducts normative legal research. The problem discussed in this study is whether the Supreme Court Decision No. 42/P/HUM/2018 is appropriate to cause street vendors to be unable to sell in certain areas and how the law should regulate street vendors. The author does not agree with the decision because it only uses the interpretation of the Governor's Regulation of the LLAJ Law even though if it uses other regulations and even higher regulations, the Constitution, then the use of sidewalks for street vendors can be a priority compared to the use for pedestrians. The Supreme Court should be more active in digging deeper into other laws and being able to interpret a rule constitutionally, something that is common even by first-instance court judges in the United States. The solution for pedestrians must be sought by the government by expanding sidewalks or making areas used by street vendors at certain times. Another solution is to expand the sidewalks so that they are in accordance with other regulations that will make street vendor areas an active economic area.

**Keywords:** Street Vendors, Supreme Court Decision, Governor's Regulation, Traffic and Road Transportation Law.

### INTRODUCTION

The Supreme Court Decision No. 42/P/HUM/2018 states that Article 25 paragraph (1) of the Jakarta Special Capital Region Provincial Regulation Number 8 of 2007 about Public Order (DKI Jakarta Regional Regulation 8/2007) does not have legally binding force because it violates Article

127 paragraph (1) of Law Number 22 of 2009 about Road Traffic and Transportation (LLAJ Law) and does not apply to the public. As a result of the decision, the areas of certain roads, sidewalks, and places of public interest that have been designated as street vendors (PKL) business places in Jakarta become illegal to be used for business again based on Jakarta Regional Regulation 8/2007.

At first glance, the policy of expelling and banning street vendors is the wrong policy. However, considering that their selling activities can also disturb other people who will cross the area.

## **1.2 Problem Formulation**

1. Is the Supreme Court Decision No. 42/P/HUM/2018 right to cause street vendors to be unable to sell in certain areas?
2. How should the law regulate street vendors?

## **1.3 Research Objectives**

1. Knowing whether the Supreme Court Decision No. 42/P/HUM/2018 is appropriate with the result that street vendors cannot sell in certain areas.
2. Know how the best arrangements are to manage street vendors.

## **METHODS**

The type of research conducted in this study is normative juridical research that is descriptive and analytical. Normative juridical research is used to describe and analyze legal problems that occur based on applicable laws and rules that have a direct bearing on the topic of this study, namely how much policymakers use it. Examining several laws and regulations that are pertinent to the legal issues under study is how the statute approach is implemented. This method concentrates on examining laws and rules pertaining to the legal concerns brought up in the study.

The data collection method in this study was obtained through a literature review that included various sources such as books, articles, documents, laws and regulations, scientific research results in the form of reports, and other literature materials related to the topic being researched. The data sources used in this study consist of:

### **1) Primary data source**

Primary legal material is legal material obtained from norms, basic rules and related laws and regulations, which are binding, namely legal materials that are binding on this thesis research which consists of laws and regulations

### **2) Secondary data sources**

Secondary legal materials are based on legal science, law books, legal journals, and the views of legal experts which are compiled in the form of written works in online media or in other mass media.

### **3) Tertiary Legal Materials**

Resources that offer direction or clarifications on primary and secondary legal documents include encyclopedias, dictionaries, periodicals, newspapers, journals, and other scientific publications.

In this study, useful data analysis is needed to answer the problems being researched. Data analysis is a research process that involves the study or review of the results of data processing, with the support of theories that have been obtained previously. In simple terms, data analysis can

be interpreted as an activity that involves study, which includes challenges, criticisms, support, additions, or comments, as well as concluding research results based on one's own thoughts with the support of existing and mastered theories.

## **RESULT AND DISCUSSION**

Street vendors are included in Micro Enterprises, Small or Intermediate based on the MSME Law, so that the Government and Regional Governments must foster a business climate with policies and laws and regulations regarding aspects of facilities and infrastructure. The use of public infrastructure on sidewalks can certainly encourage and develop the growth of Micro, Small Enterprises, and Intermediate. Even the designation of sidewalks to be a selling location is also a form of implementing business opportunity policies to foster a Business Climate.

Sidewalk abuse has seemed to be commonplace. Sidewalks can be said to be a reasonable location for street vendors based on Article 13 Paragraph 1 of the MSME Law as long as the use is properly studied. For example, the time allocation for street vendors to use the sidewalk only at night hours such as half past 6 pm to 3 am so that it has passed the times when people who want mobility have changed to times where someone has started to need consumption for dinner.

The use of sidewalks at certain times can also be juxtaposed with the use of certain areas for *car free day* (CFD) activities. CFD basically uses certain road sections that are commonly used for passing vehicles, but are converted for residents to carry out activities without using motor vehicles. CFD activities also usually provide parking areas for visitors which can be likened to street vendors who need a parking area for their business visitors.

The comparison and relationship between CFD and street vendors is first, both CFD and street vendors have a positive effect on the community. CFD will provide space for people's physical activities, and even tend to revive street vendors in the surrounding area because after physical activity. Second, street vendors actually revive the community's economy because it opens up jobs for people to trade that should require expensive place capital to tend to be cheap with carts that can be moved.

Additionally, it should be mentioned that empowerment is an endeavor that the government, regional governments, business community, and community work together to support business development and climate growth for micro, small, and medium-sized enterprises so that they can become resilient and self-sufficient enterprises. The granting of permits to street vendors in certain areas to sell can be said to be a form of empowerment mandated by the MSME Law, especially if its implementation is based on the Governor's Regulation as a tangible form of the Regional Government's policy to carry out Empowerment based on the MSME Law.

### **Analysis of Supreme Court Decision No. 42/P/HUM/2018 which Resulted in Street Vendors Unable to Sell in Certain Areas**

The Supreme Court Decision No. 42/P/HUM/2018 (hereinafter referred to as the Supreme Court Decision) is inappropriate because it only takes into account the LLAJ Law. It is true that if interpreted narrowly, the Governor's Regulation violates Article 128 Paragraph (1) jo. Article 127 Paragraph (1) of the LLAJ Law, but if you remember that philosophically the law is tasked with making as much happiness as possible for as many people as possible so that the law has benefits for the community, then the Supreme Court's decision is wrong.

Judges must investigate, adhere to, and comprehend the legal principles and feeling of justice that permeate society is an obligation that is expressly stated in the Law on Judicial Power. The judge should also see that in addition to the LLAJ Law, there are also other regulations such as the

Presidential The Republic of Indonesia's Regulation Number 125 of 2012 regarding the Coordination of the Arrangement and Empowerment of Street Vendors, the Republic of Indonesia's Regulation Number 41 of 2012 concerning Guidelines for the Arrangement and Empowerment of Street Vendors, and the Regulation of the Minister of Public Works Number: 03/PRT/M/2014 concerning Planning Guidelines, all address the provision and use of pedestrian network infrastructure and facilities in urban areas, which can still serve as the foundation for choosing which areas for street vendors to sell in, even if the lawsuit is granted, the Governor still has a legal basis to determine certain areas for street vendors to use. Even if you look at other regulations in Pekanbaru, there is Pekanbaru City Regional Regulation Number 13 of 2021 concerning Public Order and Public Peace in Article 11 which states similar rules where the mayor has the right to determine certain areas that can be used by street vendors to sell.

If the judge has a high moral conscience, he will sincerely provide assistance within the limits that the law allows, on the other hand, if the judge is caught in the arrogance of power, he does not care about the cries of the search for help. Judges should actively lead the course of the trial and try their hardest to overcome obstacles and obstacles for the sake of upholding justice. In this case, the judge only emphasized justice on the side of the applicant but not with street vendors who also need justice based on other regulations other than the Traffic Law.

If this case is tested not only as a regulation under the law against the law but also based on the Constitution, then if interpreting it based on Article 33, especially Paragraph (3), then the sidewalk should be able to be used for the prosperity of the people's economy and easy access for the public to cheap goods and food. However, the court was too rigid in interpreting only the law submitted by the plaintiff.

### **Arrangements Regarding Street Vendors**

Street vendors should get legal protection because taking an example in the Tebet area, street vendors make it easier for the surrounding community to meet their daily needs. The community also consists of employees, students, and students because of the many offices, schools and campuses in the area so that at lunchtime there are a lot of people who buy street vendor food. The situation is also getting more crowded at night. Good sidewalk arrangement must pay close attention to the aspects of the trade carried out by street vendors especially its positive aspects, so that the arrangement does not only pay attention to pedestrians as subjects who are traditionally the main users of the sidewalk.

The government should also focus on improving the condition of sidewalks that are not suitable to meet the basic human needs for a comfortable environment so that it can accelerate human mobility in urban environments. The urban spatial layout with car lanes that are too wide is a development that is centered on motor vehicles so that it is necessary to expand pedestrian areas that are friendly to people also for people selling so that the wheels of the economy move in harmony with the movement of people's footsteps.

Street vendors also need to pay attention to the aspect of ease of walking in addition to the aspect of ease for pedestrians, they must also pay attention to the location economically because moving locations often leads to a decrease in traders' income. When the Sambas Market was renovated, there were several street vendors who were prohibited from selling in their usual areas, while street vendors who continued to sell on the sidewalk experienced a decrease in income with an average of 70% from normal times. This shows that not only relocation, but even environmental improvements around the place of sale can affect sales rates. The government needs to organize urban planning so that street vendors can continue to live and street vendor areas can become the

center of urban community activities, for example becoming a suitable place for meetings to entertain clients. Such an area can also be seen from the implementation of the Jakarta Block S Food Court, which is actually a street vendor.

Street vendors in the Bandung City area said the reason they work as street vendors is because 13% do not have a permanent job, 33% have been selling on sidewalk locations for a long time and 54% are close to schools; with 93% saying they do not want to be relocated. This means that the strategic selling location must be facilitated by the government so that the economy runs in line with the Sambas Market street vendor revenue data which has decreased due to relocation and improvement of the surrounding area. Even worse, 87% of respondents consisting of street vendors and parking attendants in the Bandung City area admitted that paying "security fees" that should be included in the Bandung City levy revenue instead went into the pockets of thugs.

Street vendors (PKL) are defined as business actors who conduct trading business using mobile or non-mobile business facilities, city infrastructure, social facilities, public facilities, and land and buildings owned by the government and/or private that are temporary or non-residential, according to Presidential Regulation Number 125 of 2012 of the Republic of Indonesia concerning the Coordination of the Arrangement and Empowerment of Street Vendors. One of the economic actors involved in the informal sector trade is street vendors, who must be given the authority to grow and enhance their enterprises. The location, trade hours, physical amenities, and distribution patterns of urban space can all be used to examine the features of street vendor operations. The following are some of the traits of street vendors:

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

Measurement of the degree of adherence to the rule of law is the first step in determining the effectiveness of the law. Factors that affect compliance with the law in general, including local regulations, are as follows:

- a. The relevance of the rule of law in general, to the legal needs of the people who are the target of the rule of law in general.
- b. The clarity of the formulation of the substance of the rule of law, so that it is easy to understand the target of enforcing the rule of law.
- c. Optimal socialization to the rule of law.
- d. The rules should be prohibitive, and not mandatory.
- e. The sanctions threatened by the rule of law must be matched with the nature of the rule of law that is violated.
- f. The severity of the sanctions threatened in the rule of law must be proportionate and possible to be implemented.
- g. It is possible for law enforcement to process in the event of a violation of the rule of law.
- h. A very effective rule of law is a rule of law that prohibits and threatens sanctions for actions that are also prohibited and threatened with sanctions by other norms.
- i. Optimal and professional law enforcement officials.
- j. There is a minimum socio-economic standard of living in society.

The effectiveness of the implementation of the street vendor empowerment policy can be seen from various indicators, namely:

### **1. Clarity of Goals to Be Achieved**

In achieving the goals to be achieved, it must be seen as a process. So that in order to achieve the final goal more guaranteed, it is necessary to have stages in achieving the goals in each part or period. Therefore, it is necessary to set goals or objectives that are to be achieved in a certain period of time.

### **2. Clarity of goal achievement strategy**

Clarity of goal achievement strategy is a way to obtain effective, optimal, and appropriate results leading to pre-set goals and with a relative period of time.

### **3. Policy analysis and formulation process**

A steady process of analysis and policy formulation is the initial stage of policy making. If the analysis is carried out in depth and regarding all aspects that are raised, the policy formulated will run well. Policy formulation consists of several indicators, as follows: (1) Guidelines, (2) Decision making

### **4. Careful planning**

Careful planning is a decision that is made now on something that will be carried out in a tense period of time in the future. measures in mature planning with Long-term, Medium-term and Short-term planning.

### **5. Proper program preparation**

Preparing the right program is to make a concrete activity that can be carried out. A program is a plan that basically describes a concrete plan consisting of goals, procedures, and budgets. In the preparation of the right program, there must be a real plan or picture of a program to be carried out.

### **6. Availability of facilities and infrastructure**

Facilities and infrastructure are important factors in the success of policy implementation. If the suggestions and infrastructure are adequate, it will facilitate the achievement of the implementation of a policy and affect the effectiveness of the implementation of a policy.

### **7. The existence of an educational supervision and control system**

The existence of a supervision and control system is something important in the implementation of a policy. A good plan will fail if there are no control and supervision activities because every policy that is implemented will have the potential to experience problems and turn the direction so that the desired goals of the policy are not achieved.

## **CONCLUSION**

The author does not agree with the Supreme Court's Decision which canceled the Jakarta Regional Regulation 8/2007 because it only uses the interpretation of the Governor's Regulation on one law, namely the LLAJ Law, even though if other regulations are used, even higher regulations, the Constitution, then the use of sidewalks for street vendors can be a priority

compared to the use for pedestrians. The Supreme Court should be more active in digging deeper into other laws and being able to interpret a rule constitutionally, something that is common even by first-instance court judges in the United States. The solution for pedestrians must be sought by the government by expanding sidewalks or making areas used by street vendors at certain times. Another solution is to expand the sidewalks so that they are in accordance with other regulations that will make street vendor areas an active economic area.

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