

IMPLEMENTATION OF CRIMINAL SANCTIONS FOR VIOLATION OF SELLING IN PROHIBITED PLACES

Joharsah

* Alwashliyah University, Medan, Indonesia

Correspondence Author: *) joharsyah73@gmail.com

Article history: received November 15, 2022; revised December 2, 2022; accepted December 14, 2022

This article is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)



Abstract. Formula problem on study This is factor reason happening violation selling where it is prohibited , obstacles are accepted in the process of completion case Violation selling where prohibited And what to do in application penalty to violation selling in prohibited places. As for who became objective from study ie For knowing the factors that cause violations of selling in prohibited places, knowing the obstacles received in the process of resolving cases of violating selling in prohibited places and knowing what efforts have been made in imposing sanctions on violations of selling in prohibited places. Results study This show Factor reason happening violation selling where it is prohibited is narrow field accompanying adequate work with enhancement amount unemployment , yes difficulty economics , yes opportunity business with little capital And Enough interested many people are affected in a manner economy as well as exists current very urbanization heavy . Obstacles received in the process of completion case Violation selling where prohibited consists from internal factors and factor external . Internal factors include lack of personnel and owned fleet officer. Whereas factor external that is not enough evenly socialization rule trade right , lack location available construction, distribution information And method delivery less information understandable as well as lack of awareness law for street vendors . Attempts made in application penalty to violation selling where prohibited is increase attention government against street vendors through arrangement provision adequate location And worth , improvement activity prevention through patrol officer as well as Enhancement security independently in each environment Good settlement nor vital place . Should government can give solution with provide place selling right And in accordance for street vendors so that existence No bother order general.

Keywords: Action Criminal, Law Enforcement, Selling in Prohibited Places

I. 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 the formulation of rules in statutory regulations that must be implemented strictly. Therefore, all Indonesian people really hope that the law will be upheld and cannot take sides with anyone.

Street vendors (PKL) are one of the actors in the informal sector who are treated unequally by the government. Although some organized groups in this sector (such as hawkers) tend to have an entrepreneurial spirit, in general, the informal sector is often seen as a small-capitalized business which is difficult to make a profit, with limited market access and low living standards for its workers. Not only in Indonesia, outside countries such as America and Europe, street vendors or *hawkers* are also often found in storefronts and public places full of crowds. Street vendors are a profession that is quite widely chosen by the majority of the lower middle class and migrants/urban communities. Nowadays, the profession of street vendors is quite developed considering that they only need small capital without having to rent a shophouse and the added factor is the lack of jobs so that entrepreneurship and becoming street vendors are the most chosen options. This is relevant to the growth of street vendors in big cities, bearing in mind that in big cities jobs are dominated by the formal sector, namely fields that demand a high level of skills and/or education. People who are not accommodated in the formal sector then enter the informal sector.

Realized that the formal sectors have been regulated with more detailed regulations starting from *legal business aspects*, permits, and spatial planning. However, the informal sector then emerges as a general phenomenon which cannot be avoided. The location of the informal sector often appears to be close to the formal sector. This can lead to gaps, especially in terms of spatial planning, considering that the formal sector is organized and compared to the informal sector, which is inherently uncontrolled/emerges spontaneously. Therefore the activities of street vendors then 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 groups, both among the public and the government. Its existence is often connected with the problem of policing and evictions. Efforts to control by government officials often end in clashes from street vendors. Together with other components of society, it is not uncommon for street vendors to hold demonstrations, always ending in chaos and commotion.

So order is very difficult to realize. The phenomenon of street vendors 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 doing business in a location that is not in accordance with its designation, not provided with an official business license from the competent authority, having high mobility (easily moving to follow the accumulation of consumers), serving directly the end consumer, low level of discipline towards the law, tending to very pragmatic in looking at the law.

2. Literature Review

a. Definition of Street Vendors and Sidewalks

a. Definition of Street Vendors

The definition of street vendors according to Aris Ananta is people from the economically weak group, who sell daily necessities, food, or services which use relatively very 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 the 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 carry out trading businesses using movable or immovable business facilities, using city infrastructure, social facilities, public facilities, land and government and/or private buildings that are temporary/non-permanent."

Breman stated, street vendors are small businesses carried out by people who have low income (daily salary) and have 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 as well as groups that are not bound by the rule of law, life is difficult and semi-criminal to a certain extent.

b. Characteristics of Street Vendors

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

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

c. Definition of Sidewalk

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

Law No. 22 of 2009 concerning Road Traffic and Transportation (LLAJ) Article 45 paragraph 5 which contains: 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 people with disabilities and elderly people as stated in the law.

From the above article, it can be concluded that the sidewalk is not a place for motorbike riders 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 to be punished with imprisonment for a maximum of 1 (one) year or a fine of up to Rp. 24,000,000.00 (twenty-four million rupiah) (Article 274 paragraph (2) of the LLAJ Law).
2. Any person who commits an act that causes disturbance to the functioning of Traffic Signs, Road Markings, Traffic Signaling Equipment, Pedestrian facilities, and Road User safety devices, shall be subject to imprisonment for a maximum of 1 (one) month or a fine of a maximum Rp. 250,000.00 (two hundred and fifty thousand rupiah) (Article 275 paragraph (1) of the LLAJ Law).

II. METHODS

a. Types of research

The type of research used in this study is a normative juridical approach. A normative juridical approach is used to analyze laws and regulations^{related} to the crime of prostitution using online media.

b. Nature of Research

This research is analytical descriptive in nature, namely research that only describes the state of the object or event without any intention to draw general conclusions.

c. Data Types and Data Sources

The type of data used in this research 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 source of data used in this study is secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials obtained through:

- a. The primary legal material is laws and regulations, in this study used namely 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 Road Traffic and Transportation (LLAJ)
 - b. Secondary legal material is in the form of reading books that are relevant to this research.
 - c. Tertiary legal materials, for example, encyclopedias, materials from the internet, bibliographies and so on.
- a. Processing and analysis of data

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

III. RESULTS AND DISCUSSION

a. Criminal Acts and Elements of Criminal Acts

The term crime is used as a translation of the term *strafbaar feit* or *delict*. *Strafbaar 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 by the word law. And it is common that law is 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 permissible and able. Meanwhile, the word "*feit*" is used four terms, namely, action, event, violation, and deed.

The term *strafbaar feit* is an event that can be punished or an act that can be punished. Meanwhile, according to some criminal law experts (*strafbaar feit*) are:

- a. According to Pompe, "*strafbaar feit*" can theoretically be formulated as a violation of norms (disorder of law and order) that has been intentionally or unintentionally committed by an actor, where the imposition of the perpetrator is necessary for the maintenance of legal order and the guarantee of legal interests.
- b. According to Van Hamel, *strafbaar feit* is the power of a person which is formulated in law, is against the law, deserves to be punished and is done wrongly.
- c. According to Indiyanto Seno Adji, a criminal act is an act of a person who is threatened with a crime, his actions are against the law, there is a mistake for which the perpetrator can be held accountable for his actions.
- d. According to E. Utrecht "*strafbaar feit*" with the term criminal incident which he often calls offense, because the event is an act positive handelen or doen or a negligent-negative negligence, as well as its consequences (states caused by doing or doing that).
- e. According to Moeljatno, a criminal act is an act that is prohibited and punishable by criminal whoever violates the law.
- f. According to Vos, he is one of the experts who formulates a criminal act in a nutshell, namely a human behavior that is criminalized by criminal laws and regulations.

Based on a number of the meaning described above, got concluded that follow criminal is something deed conflicted man with law, threatened with criminal by Constitution deed where done by those who can be held accountable And can to blame on si maker follow criminal. In accordance with a number of definition on there is a number of conditions that can determined as follow crime, namely:

- a. There must be human action;
- b. Human action is against the law;
- c. The act is prohibited by law and is punishable by crime;
- d. The act was carried out by a responsible person; And
- e. The act must be accountable to the maker.

An act that violates the law and harms society is not necessarily a crime, if the act is prohibited by law and the perpetrator is not subject to criminal penalties. For example prostitution as an act that harms society, but is not used as a criminal prohibition. It is difficult to hold a precise formulation of the right for prostitution and make this a search and a habit. To determine which actions are considered as criminal acts in Article 1 paragraph (1) of the Criminal Code, it is known as the "Principle of Legality" or what is known as the adage which reads as follows: "*Nullum delictum nulla poena lege previa poenali*", namely the principle that determines that each Criminal acts must be determined in advance by law.

In everyday life we also 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 a newspaper that was used in the

neighbor's back garden, he should have given it to the garbage man or put it in the trash, this is not polite to disturb neighbors (violating rules) and this is not a crime, but can be said to be delinquency contained in Article 489 of the Criminal Code .

The elements of a crime can be distinguished from at least two points of view, namely (1) from a theoretical point of view and (2) from a statutory point of view. The theoretical intent is based on the opinion of legal experts, which is reflected in the formulation. Meanwhile, the point of the law is the fact that the crime is formulated as a specific crime in the existing laws and regulations.

a. Elements follow criminal in a manner theoretical

Based on the formulation of a crime according to Moeljatno, the elements of a crime are actions that are prohibited (by the rule of law), criminal threats (for those who violate the prohibition). From the limitations made by Jonkers, it can be specified that the elements of a crime are acts, unlawful (related to), mistakes (committed by people who can), be held accountable. EYKanter and SR. Sianturi arranges the elements of a crime, namely:

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

Meanwhile K. Wantjik Saleh concluded that an act would become a crime if the act:

- 1) Against the law
 - 2) Detriment to society
 - 3) Prohibited by criminal rules
 - 4) The perpetrator is threatened with a criminal sentence .
- a) Elements No criminal from corner view Constitution

Book II of the Criminal Code contains formulations regarding certain criminal acts included in the crime group and Book III are violations. It turns out that there is an element that is always mentioned in every formula, namely behavior behavior/deeds, even though there are exceptions such as Article 335 of the Criminal Code. Elements of error and against the law are sometimes included and often not included. Not included at all is the element of responsible ability. Besides that, it includes many other elements both around/regarding the object of crime and specific acts for certain formulations .

IV. CONCLUSIONS

Possible conclusion summarized based on results study This are :

1. Factor reason happening violation selling where it is prohibited is narrow field accompanying adequate work with enhancement amount unemployment , yes difficulty economics , yes opportunity business with little capital And Enough interested many people are affected in a manner economy as well as exists current very urbanization heavy .
2. Obstacles received in the process of completion case Violation selling where prohibited consists from internal factors and factor external . Internal factors include lack of personnel and owned fleet officer. Whereas factor external that is not enough evenly socialization rule trade right , lack location available construction, distribution information And method delivery less information understandable as well as lack of awareness law for street vendors.
3. Attempts made in application penalty to violation selling where prohibited is increase attention government against street vendors through arrangement provision adequate location And worth, improvement activity prevention through patrol officer as well as Enhancement security independently in each environment Good settlement nor vital place.

ACKNOWLEDGEMENTS

The author would like to thank for sponsorship and financial support.

REFERENCES

A. Books

- A. Rasyid Rahman, *Citizenship Education*, Makassar, UPT MKU Hasanuddin University Makassar, 2006,
Abdulkadir Muhammad, *Legal Profession Ethics*, Bandung: PT. Citra Aditya Bakti, 2006. Pg. 115 .
Adam Ramadhan , *Zoning Model for Arrangement of Street Vendors in the City of Bandung (UNNES Law Journal)*, 2015,
Adami Chazawi, *Lesson of Criminal Law II*, Rajawali Press, Jakarta, 2002, p. 78 .
Adami Chazawi, *Lesson of Criminal Law*, Rajawali Press, Jakarta, 2005, p.122 .

- Alfitra, 2012, Elimination of the Right to Prosecute and Carry Out a Criminal Case, Achieving Hope for Success, Depok, p. 25-28.
- Ali Ahsan. Model of Social Transformation of the Informal Sector: History, Theory and Praxis of Street Vendors, Pg . 53.
- Alisjahbana, 2006, Marginalization of the Urban Informal Sector, Surabaya, ITS press, H Im. 43 .
- Andi Hamzah, Important Principles in Criminal Procedure Law, Surabaya, FH University, 2005
- Aris Ananta, *Human Resource Economics*, LPFE UI, Jakarta, 2000,
- Audrey Breman and Shirlee J. Snyder, *Fundamentals of Nursing: Concepts, Process, and Partice (9th ed)* Person, New Jersey, 2012.
- Bambang Sunggono, *Legal Research Methodology*, Raja Grafindo Persada, Jakarta, 2018,
- Bromley, Ray. The Urban Informal sector: Critical Perspective on Employment Housing Policy, (Oxford: Pargamon Press, 1979), Pg . 161.
- Chaerudin and Syaiful Ahmad Dinar, Strategy for Prevention and Law Enforcement of Corruption Crimes, Bandung: Refika Editama, 2008, p.87 .
- Dellyana Shant, The Concept of Law Enforcement, Liberty, 1988, Jakarta, Pg. 32
- Djoko Asmoro, *Pavement Planning Guide no. 007/T/BNKT/1990 Directorate General of Highways, Directorate of City Road Development*, January, Jakarta, 1990,
- EY Kanter, Principles of Criminal Law in Indonesia and Their Application, AHMPH Alumni, Jakarta, 1992, p . 211.
- Ende Hasbi Nassaruddin, *Criminology* , Faithful Librarian: Bandung, 2015,
- Erdianto Effendi, Indonesian Criminal Law An Introduction, (Bandung: PT. Refika Aditama, 2014), p.97.
- Erdianto Effendi, Indonesian Criminal Law An Introduction, p. 98.
- Franciscus Theojunior Lamintang, *Fundamentals of Criminal Law in Indonesia* , East Jakarta, 2014, p. 179
- Gilang Permadi, SS, *PKL Your Past History, Your Fate Now!* , Yudhistira: Jakarta, First Printing, 2007,
- Handoko Tanuwijaya, Street Vendor Business, PT. Student Library, Yogyakarta, 2011, p. 15 .
- Henny Purwanti and Misnarti, Efforts to Control and Develop Street Vendors in Lumajang Regency, Argumentum Journal, Vo. 10, No. 1, December 2010. Pg 1.
- Indriyanto Seno Adji, Corruption and Criminal Law, (Jakarta: Lawyer and Legal Consultation Office "Prof. Oemar Seno Adji & Partners, 2002), p.155.
- Jimly Asshidiqie, Constitutional Law and the Pillars of Democracy, Fragments of Legal Thought, Media and Human Rights, Jakarta: Constitutional Press and PT. Syaamil Cipta Media, 2006,. p. 386.
- Kartono K, et al, street vendors (Bandung: Parahyangan Catholic University, 1980), p . 3-7.
- Kusnadi Harjasumantri, Environmental Management Law, Gajah Mada University Press, Yogyakarta, 2000, page 375.
- Lili Rasjidi and Ira Thania Rasjidi, Introduction to Legal Philosophy, Mandar Maju, Bandung, 2001, page 8 .
- Lilik Mulyadi, *Anthology of General and Special Criminal Laws* , Alumni Publisher: Bandung, 2012
- Muladi and Arif Barda Nawawi, Criminal Law Enforcement, Rineka Cipta, 1984, Jakarta, Pg. 157 .
- Muladi, Human Rights (Bandung: PT. Refika Aditama, 2009). Pg. 4 .
- Nurdin Usman, Curriculum-Based Implementation Context, Jakarta, PT. Raja Grafindo Persada, 2002, p. 70 .
- Paulus Hariyono, City Sociology for Architects (Jakarta: PT Bumi Aksara, 2007), Pg . 111.
- Peter Mahmud Marzuki, Introduction to Law, Jakarta: Kencana Persada, 2012. Pg. 15.
- Purwosutjipto, Basic Understanding of Indonesian Commercial Law: Basic Knowledge of Commercial Law, (Jakarta: Djntangan, 1999), Pg . 10 .
- Rasyid Ariman and Fahmi Raghil, Criminal Law, (Malang: Setara Press, 2016), p.57 .
- Rena Yulia, Victimology (Legal Protection of Crime Victims), Yogyakarta: Graha Ilmu, 2010, p.85.
- Retno Widjayanti, Physical Arrangement of PKL Activities in Commercial Areas in the City Center, (ITB: Postgraduate Program, 2000), Pg . 28.
- SR Sianturi, Criminal Law Principles and Their Application in Indonesia 2nd Print, Alumni AHAEM PTHAEM, Jakarta, 1998, p.208 .
- Saban Echdar, Entrepreneurship Management, (Yogyakarta, Andi Offset, 2013), p. 163 .
- Satipto Rahardjo,tt, Law Enforcement Issues, Sinar Baru, Bandung, p. 15 .
- Sidharta, *The Phenomenon of Street Vendors in the Perspective of Legal and Consumer Protection Philosophy Studies* , Humanities, Vol. 5 No, 2014
- Siswanto Sumarso, *Psychotropic Law Enforcement* , PT Raja Grafindo Persada, Jakarta: 2004,
- Soerjono Soekanto, 2007, Factors influencing law enforcement, PT.Raja Grafindo Persada, Jakarta, p. 5 .
- Soerjono Soekanto. 2008. "Factors Influencing Law Enforcement". Jakarta. PT. King of Grafindo Persada. p . 8 .
- Solehuddin , *System Penalty In Law Criminal* , King of Grafindo Persada , Jakarta, 2003,
- Sonny Sumarsono, Human Resource Economic Public Policy and Theory, (Yogyakarta: Graha Ilmu, 2009), Pg . 307.
- Stanley D. Brunnm, et al. Cities of the World, R, Fifth Printing, New York 2012, p. 31-33 .
- Sudarto, Capita Selekt Criminal Law, Bandung: Alumni, 1996. Pg. 111.
- Sudikno Mertokusumo, 2007, Knowing the Law of an Introduction, Liberty, Yogyakarta, p. 160.

Tolib Setiady, *Principles of Penintesisier Indonesian Law* , Alfabeta, 2010,
Wahju Muljono, *Introduction to Criminological Theory* , Yustisia Library, Yogyakarta, 2012.

B. Legislation

Law No. 22 of 2009 concerning Road Traffic and Transportation
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

C. Journal

Arief, Nawawi Barda. Non Penal Efforts in Crime Control Policy, Semarang: Criminology Seminar Paper UI. 1991, Undip Law,
p. 42.

That's it , Kiki. 2019. Implementation Controlling Street Vendors by Unit Pamong Prata . Study Program Knowledge
Government University Galuh : Nice .

Muhammad Yunus, Auliya Insani, "Management of Street Vendors in Makassar City (Case Study of Banana Epe Traders' in
Losari Beach)", Journal of Analysis and Policy, Issue No. 1 Vol. 3, Department of Administrative Sciences,
Hasanuddin University, 2017, p. 24

Suyatno, Bagong and Kanarji. Poverty and Social Inequality: When Development Doesn't Favor the Poor. (Surabaya: Airlangga
University Press, 2005), p . 47-48 .