

PRACTICE OF BUYING AND SELLING IN AREAS PROHIBITED IN THE PERSPECTIVE OF ISLAMIC LAW

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ABSTRACT

Regional Government of Sambas Regency has arrange problem Street Vendors (PKL). In Sambas Regency Regional Regulation Number 7 of 2006 concerning "Public Order". Perda this arrange in a manner general related controlling street vendors as well facilitate it with provide land special for trade. Though with various facility place reserved, still many offending merchant rule with sell in places "Prohibited Selling", one of them namely in the area of Jalan Hasan Saleh, Sambas Regency. This study aims to determine how practice sell buy in a prohibited area selling for Street Vendors (PKL) by the Regional Government of Sambas Regency. Study this use method study field (field research), namely with plunge live to field for get data from parties related like street vendors, good pedestrians ever shop to street vendors, as well officer from the Department of Order as authorized party. Study this use approach juridical and normative that is use rules fiqh and law positive related with the problem under study. Based on results study that sell buy done Street vendors (PKL) on Jalan Hasan Saleh are legitimate in a manner terms and conditions sell buy in Islam. However in in practice, the street vendors selling in locations that do not allowed as the place trade. The consequences of the actions taken can bring harm to sidewalk road users and deny the public good that should be achieved from the regulations that have been formed. This is not in accordance with existing fiqh rules and violates applicable legal regulations. In addition, the practice of street vendors is not based on muamalat principles and principles, namely the principle of prioritizing obligations over rights, the principle of protecting rights, the principle of upholding the values of justice, avoiding elements of persecution and taking advantage of opportunities in adversity. Therefore, the practice of street vendors in the Hasan Saleh street area is classified as a form of work that violates the law, even though the validity of the contract does not cancel the sale and purchase agreement that occurred.

Keywords: *Buying and selling, street vendors, Islamic law.*

INTRODUCTION

Islamic teachings contain teachings about human life and problems, not only governing human life with Allah SWT, it will also regulate human relations with others and their environment. This form of relationship cannot be separated from one another. The closer the human relationship with God, the stronger the relationship with others (Retno Widjajanti, 2012).

Humans in facilitating their daily lives cannot be separated from interactions between one human being and another human being. One of the interactions carried out by humans is in economic matters which can be found in almost all levels of society including the practice of buying and selling which of course must be in accordance with Islamic law (Ahmad Samngani, 2018).

Judging from the current situation, there are many buying and selling activities with various variations ranging from traditional buying and selling to buying and selling in modern forms using *online* models, labeling models and others (KD Oryntasari, 2019). One phenomenon

that is often encountered is the buying and selling model carried out by sellers by opening stalls to sell on the sides of the road known as street vendors (PKL) (Suparyanto dan Rosad, 2015).

Street vendors (PKL) are one of the informal sectors that play a very important role in the economy of the low-income people in the city of Sambas. The growth of street vendors (PKL) from year to year is increasing rapidly. The number of street vendors (PKL) throughout Sambas Regency in 2022 will be 2 5 5 PKL (Disperindagkop Sambas: 2022).

These street vendors (PKL) are included in the business in the informal sector which is currently widely spread in various places, one of which is in the Sambas Regency area. The activities of street vendors usually occupy public spaces such as sidewalks, parks, roadsides, riverside areas, above drainage canals, above irrigation, above bridges (Retno Widjajanti, 2009). This can result in public spaces not being properly utilized by users according to their functions (Retno Widjajanti, 2009).

The existence of street vendors (PKL) has a positive impact in reducing unemployment. However, the existence of street vendors (PKL) who use the sidewalk as a place to sell, on the other hand, disturbs pedestrians who use the sidewalk. The existence of sidewalks is intended to serve pedestrians so they can walk comfortably. However, when there are many street vendors (PKL), the sidewalks cannot function as they should and often many people feel disturbed, especially in places/areas that are prohibited from selling by the Regional Government of Sambas Regency, namely along the sidewalks of Jalan Hasan Saleh, Pendawan Village, Sambas District.

The sidewalk, in essence, is a place for pedestrians, but in reality there are some traders who use the sidewalk for a place to sell. As explained in the Law of the Republic of Indonesia Number 22 of 2009 concerning road traffic and transportation article 1 paragraph (1) road traffic and transportation networks, traffic infrastructure and road transportation, vehicles, drivers, road users, and their management (Undang-Undang Republik Indonesia, Nomor 22 Tahun 2009 Pasal 1 ayat 1).

Based on these 1 (one) places, the street vendors (PKL) who are on Jalan Hasan Saleh who occupy the forbidden zone for selling for street vendors who violate the provisions and provisions of the Regional Regulations of Sambas Regency are still at issue. There are 13 street vendors (PKL) in the Jalan Hasan Saleh area. Of the many street vendors (PKL), not all of them comply with the regulations and there are still traders who do not comply with the Regional Regulations of Sambas Regency. As a form of controlling street vendors (PKL). The role of the Sambas Regency Government has regulated the problem of street vendors (PKL) in Sambas Regency Regional Regulation No. 7 of 2006 concerning "Public Order". In this regional regulation, street vendors (PKL) are prohibited from constructing buildings, stalls, tents, or the like on sidewalks, rivers, ditches, drainage on the side of the road and/or on the body of the road, on land facilities. social services, public facilities for selling or trading (Pasal (20) Peraturan Daerah Kabupaten Sambas, Nomor 7 Tahun 2006 tentang Ketertiban Umum).

In determining the location of street vendors (PKL), the government must consider interests general, especially for the benefit of pedestrians, social, cultural, educational, economic, conditions and comfort. Even though there are clear regulations, there are still many street vendors (PKL) who act naughtily by opening stalls in the "No Selling" area. This should be

considered and there should be guidance for street vendors (PKL) because in muamalat, not only Islamic provisions must be fulfilled, but also the fulfillment of the rights of justice by creating comfort for pedestrians as sidewalk users.

In the perspective of Islamic law, the practice of buying and selling carried out by street vendors in the Jalan Hasan Saleh area, which is a place where trading is prohibited, needs to be reviewed from the point of view of its validity and whether the practice meets the requirements and pillars of buying and selling or not. Therefore, the researcher is interested in further studying the "Practice of Buying and Selling of Street Vendors in Areas Prohibited from Selling from the Perspective of Islamic Law."

RESEARCH METHODS

Types of research this is included in qualitative research. Qualitative research is research that produces descriptive data in the form of written or spoken words from observable people and actors (Ahmad Tanzeh, 2011). The meaning of qualitative research is a research process that produces descriptive data, namely written or spoken words from interviewees and observed behavior, (J. Moleong, 2006) where descriptive data is data collected in the form of words, pictures and not numbers. So in this study, the researcher tries as much as possible to describe or describe an event or take the actual problem as it is contained in a study. In this study, it was carried out using a conceptual approach and analysis of the problems taken by comparing data obtained from the field with concepts from books, magazines, papers, newspapers, the internet or from other sources.

RESULTS AND DISCUSSION

Inside Islamic teachings, determination rule must based on rules base laws as introduced in the Qur'an and Hadith because that is part from faith . In Islamic teachings it is obligatory for its adherents to uphold a rule that functions to maintain and maintain social life so that all can live normally and regularly according to their functions. Islam has also taught how to build an order of life be it in terms of economic, social, and political that is justified in syara', so that it does not interfere with the rights of other people which can cause harm to fellow human beings (Ismail Nawawi, 2012).

The practices carried out by street vendors (PKL) are very disturbing to other people, in particular pedestrian. Sidewalks, places that are supposed to be used by pedestrians for walking, are misused by street vendors to sell, so that pedestrians walk on the main road and cause traffic jams.

The practices carried out by street vendors (PKL) give rise to harm, because bother many people did congestion and chaos on Jalan Hasan Saleh. In addition, the street vendors also change the function of the sidewalks as they should be used. So that matter the no can done and prohibited by the government.

Street vendors should obey and carry out the rules made by the government. As commanded by Allah SWT in QS. An-Nisa verse 59 which reads:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ۝

Translation: O you who believe, obey Allah and obey the Messenger (Him), and Ulil Amri among you. then if you disagree about something, then return it to Allah (the Qur'an) and the Messenger (the Sunnah), if you truly believe in Allah and the Last Day. that is more important (to you) and better the result.

Ulil amri referred to in the verse is the Government as a community leader whose orders must be obeyed and carried out in accordance with Islamic law (Javanlabs, 2022). The community, especially street vendors, should obey and implement the regulations made by the government for the common good.

The government itself has set orders and made rules that can be used so that social life is always orderly in all activities. Things like this in line with command in di in word of Allah SWT. Surah Yunus verse 23:

فَلَمَّا أَنْجَلَهُمْ إِذَا هُمْ يَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ يَآئِهَا النَّاسُ إِنَّمَا بَغْيُكُمْ عَلَى أَنْفُسِكُمْ مَتَّعَ الْحَيَاةَ الدُّنْيَا ثُمَّ إِلَيْنَا مَرْجِعُكُمْ فَأُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ ٢٣

Translation: So when Allah saved them, suddenly they made injustice on earth without the right (reason). O people, in fact (disaster) your injustice will befall yourself, (the result of your injustice) is only the pleasures of worldly life, then to Us is your return, then We will inform you of what you have done. (QS Yunus: 23)

It can be concluded from this verse that Islam teaches its adherents that it is unlawful to interfere with other people in social life. One of them is disturbing or causing disturbance in public places because it is an act that violates the rights of others. From this verse it can be concluded that it is unlawful to act unjustly and oppress one another. Disturbing or causing unrest in places of public interest, including acts of abusing the rights of others.

Sidewalk is facility general character can used by everyone and is owned by together. Then when something group Public want use it must in accordance procedure from function actually sidewalk. However if used no in accordance function so based on hadith the prohibited because harm and even harm others self alone (Kamali, 2019).

In case abuse function sidewalk, no there is in the Qur'an as well hadith. But inside Islamic law exists a method for determination no law there is in theorem syar'i however can made something reference for benefit the so call people maslahah murlah. Can be seen in study this activitie carried out by the offender function sidewalk this raises loss because bother many people did congestion, chaos, and danger. Beside that public around too much has changed function such sidewalks should used for general as a road icon highway for pedestrian. So that could concluded the harm it causes is quite the opposite with draft maslahah in Islam.

Benefit could embodied if five elements tree could created and maintained. The five basic elements are religion, soul, lineage, mind and wealth. The role of the government is very appropriate and has carried out what was mentioned by al-Imam al-Ghazali in the book Al-Mustasyfa. In the book written by Imam al-Ghazali, Maslahah Mursalah is formulated: anything (maslahah) for which there is no evidence for him from syarak in the form of certain texts that

invalidates it and no one pays attention to it (Abu Hamid al-Ghazali). While in terms of terminology there are several scholars who express their opinions. According to Imam al-Ghazali *maslahah* is taking advantage and rejecting harm in order to maintain the purpose of sharia.

The sidewalk, in essence, is a place for pedestrians, but in reality there are some traders who use the sidewalk for a place to sell. As a form of controlling street vendors (PKL), the Sambas Regency Government has regulated the problem of street vendors (PKL) in Sambas Regency Regional Regulation No. 7 of 2006 concerning "Public Order". In this regional regulation, street vendors (PKL) are prohibited from constructing buildings, stalls, tents, or the like on sidewalks, rivers, ditches, drainage on the side of the road and/or on the body of the road, on land facilities, social services, and public facilities for selling or trading (Pasal (20) Peraturan Daerah Kabupaten Sambas, Nomor 7 Tahun 2006 tentang Ketertiban Umum).

The government has also provided benefits for street vendors (PKL) to sell. First, in terms of the rules that are formed, the government not only stipulates a ban on selling in several locations, but also provides alternative places such as several points in the Jalan Hasan Saleh area. All forms of government regulations must consider the public good. As long as the rules made do not conflict with the Shari'a, it is an obligation for every individual to obey them. The existing rules contain the goal of realizing the benefit of pedestrians, the general public and the street vendors themselves.

However, in practice, violators are only given warnings and fines. Indecisiveness in implementing rules like this provides an opportunity for street vendors to commit violations again. In addition, supervision is also not carried out strictly and thoroughly for all street vendors, whether official or not. The raids and control of street vendors that are carried out are only routines that are known by street vendors and do not have a deterrent effect at all. It can be seen from the number of illegal street vendors who still survive in this location even though they have been raided several times. Thus, even though the existing rules contain the goal of realizing the public good, in practice the authorities have not been able to optimally discipline street vendors and restore the main function of the sidewalk as a place for pedestrians. Controlling street vendors needs support from all parties, both from the government, Satpol PP and the community.

Second, the buying and selling carried out by street vendors in the Jalan Hasan Saleh area is viewed from the pillars and conditions as long as the authors are careful there are no problems, namely that there are no elements that damage the contract such as fraud, loss, *fasid* and usury terms.

However, in practice street vendors use public facilities that are not allowed to be used as a place to sell or trade. The behavior of the street vendors has violated the law so that it brings harm to other parties by creating locations that are increasingly crowded and do not consider the rights, safety and comfort of pedestrians.

This is not in accordance with the rules of *fiqh* that rejecting harm is prioritized over achieving benefit. When talking about the benefit of one party, the other party may feel that their rights are limited. However, in one *fiqh* rule it is explained that the general benefit must take precedence over the specific benefit. If it is related to the behavior of street vendors in the Jalan Hasan Saleh area, the fulfillment of the needs of the street vendors is individual so that it

can be said that the benefit for street vendors is a special benefit because only the people involved in the sale and purchase benefit, namely traders and buyers. While fulfilling the rights, comfort and safety of pedestrians is the achievement of general benefit because it is related to the wider community. So that what is prioritized is the achievement of pedestrian safety as the main user of the sidewalk.

In addition, a rule that is formed must have disadvantages because it limits the rights of several parties, in this case it limits the rights of street vendors to make a living where they want. However, if there is no set rule, it will bring more harm. This is based on one of the principles of fiqh which indicates to choose between two existing harms. If there are two choices that both cause harm, then the one that carries the lighter or smaller harm is carried out. Thus, it is permissible to limit the rights of street vendors in order to achieve city order and maintain the safety and comfort of the wider community. Practices of street vendors who do not comply with these rules are not only not in accordance with existing fiqh rules, but are also not based on the principles and principles of muamalat, namely the principle of prioritizing obligations over rights. the principle of protection of rights and upholding the values of justice, avoiding elements of persecution and taking advantage of adversity. Therefore, the practice of street vendors in the Jalan Hasan Saleh area is classified as a form of work that violates the law even though the validity of the contract does not cancel the sale and purchase agreement that occurred.

CONCLUSION

Based on the discussion and analysis above, the practice of buying and selling in areas where street vendors (PKL) are prohibited from selling by the Regional Government of Sambas Regency causes harm because it disturbs many people which causes traffic jams and chaos on Jalan Hasan Saleh, Sambas Regency. In addition, street vendors (PKL) also change the function of the sidewalks as they should be used. So that matter the no can done and prohibited by the government.

However according to Islamic law, selling purchases made by street vendors are legal in a manner terms and conditions sell buy in Islamic law. However in in practice, the street vendors selling in locations that do not allowed as the place trade. Consequence from action taken could bring harm for user road sidewalk as well as refuse benefit should be general achieved from established regulations. This no in accordance with rule existing fiqh as well as violate rule applicable law. Besides that, the practice of the street vendors no based on principles and principles in bermuamalat that is principle put first obligation than rights, principle protection rights, principle uphold values justice, avoid element persecution and taking opportunity in narrowness. Therefore, the practice of street vendors on Jalan Hasan Saleh is classified to in form violating work law though in a manner validity contract no cancel contract sell buy what happened.

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