

LEGAL POLITICS FROM THE PERSPECTIVE OF THE 1945 CONSTITUTION ABOUT THE STREET VENDORS

Yohanes Suhardin, SH, M. Hum

ABSTRACT

The street vendors is one of the elements of marginal groups. Marginalized groups is poor and disadvantaged. Most of marginalized groups as informal urban workers were absorbed into the commercial sector, namely as a street vendor, who is currently in Indonesia amounted to around 20 million inhabitants. Political laws against street vendors from the perspective of the 1945 Constitution can be seen on the purpose of establishing the Government of the Republic of Indonesia stated in the Preamble of the 1945 Constitution which, among others, promote the general welfare. Here in Article 33 paragraph (3) of the 1945 Constitution states "earth and water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people". Furthermore, in Article 34 paragraph (2) of the 1945 Constitution affirms "the country to develop a social security system for all citizens and empower the weak and underprivileged in accordance with human dignity". The provisions of the Act are then formulated in national development missions, among others declared for the little people.

Keywords: Legal politics, Street Vendors, 1945 Constitution.

Introduction

The Street Vendors is one of the elements of marginal groups. The marginal groups are poor and disadvantaged, while vulnerable groups are the groups in society that objectively dominated social order as a result of economic, political and cultural (Adnan Buyung Nasution - A. Patra M. Zen 2006) that were unfavorable to them. Among these groups are the poor overall, workers, poor farmers, fishermen, small traders (the street vendors), women, children, indigenous peoples, and the urban poor. Most of marginalized groups as informal workers in urban absorbed into the trade sector street trade or as street vendors, who is currently in Indonesia amounted to around 20 million people (Suara Merdeka, 2011).

Cities in large metropolis like Jakarta, Surabaya, Medan, Bandung and other major cities is a battleground social dynamics of people, especially the marginalized groups such as street vendors, resulting in frequent conflicts in a neighborhood setting. The existence of street vendors pose a conflict with the formal meaning of space (employers) and the Local Government. The space conflicts caused by the different meanings of space between Local Government, the formal and the public in general with the informal. For Local Government in accordance with the meaning of space have spatial whereas for an informal group that space is an opportunity or an opportunity to sell and trade. In a spatial concept, there is a special room for shops, housing, parks, public facilities, sidewalks, markets and others who all provide comfort for the inhabitants. For an informal group - hawkers, parks, sidewalks, curbs and other public facilities is an opportunity to trade.

The meaning differences cause conflicts designation. Actually, it is clear that the meaning and purpose of urban space has had a legal basis, either by the Provincial Regulation on Spatial exist in every major cities in Indonesia, as well as Regional Regulation on Public Order. The bottom line is forbidden to sell and trade in places such as sidewalks, city parks, road and other public facilities dominated. In addition to violating the legislation also disrupt public order, public order and tranquility.

As a result of the different meanings that, vendors still take advantage of the open space, temporarily the Local Government regard it as a violation of the Local Regulation in particular on Public Order. Within the meaning of different patterns expel and evict street vendors from places as already mentioned is considered appropriate therapy by most Local Government is currently in Indonesia by reason of the existence of street vendors spoil the face of the city and break the rules.

Indeed, lately expel and evict hawkers followed by policies such as localization in certain places, but it does not always make the hawkers improved economic conditions. Action expel and evict hawkers have legal and political at the same time, especially the policy of the Regional Government. Indeed, Pancasila and the Constitution of the Republic of Indonesia Year 1945 either express or implied has been guiding the national legal system building Indonesia as an effort to raise the dignity of Indonesian people, especially marginalized communities such as street vendors.

This study focuses on the street vendors in Indonesia, because there are many the street vendors in Indonesia namely Jakarta, Surabaya, Medan, Bandung and other big cities. The existence of the street vendors who occupy the roadside result in traffics jams. In addition, the existence of the street vendors disrupt the beauty of the city, because the occupy the land of the city. Such conditions also occur in medium and small cities, so that is a uniform landscape in Indonesia. Although there have been improvement efforts for the arrangement of street vendors, especially in Jakarta and Surabaya, but until now there has not been a significant result in favor of street vendors as intended by the 1945 Constitution.

Politics of law

To understand what a political law, below are a few theories and opinions about the legal politics. According to Hans Kelsen legal politics is a discretion to determine the rules of law in accordance with the ideology of the ruling (Theo Huijbers, 1999). Thus, legal politics is closely related to the ruling ideology, even the embodiment of the ruling ideology.

Meanwhile, Teuku Mohammad Radhie, defines law as an expression of political will of the state authorities regarding laws applicable in the territory and on the direction of legal developments built (Teuku Mohammad Radhie, 1973). Against the opinion of Moh. Mahfud MD declared finding include *ius constitutum* or laws applicable in the territory of the country at this time and *ius constituendum* or law that would or should be imposed on future (Moh. Mahfud MD, 2006).

Still related to legal politics, Soedarto states' legal politics is the policy of the state through state bodies authorized to establish regulations that desired expected to be used to express what is contained in the community and to achieve what is aspired (Soedarto, 1986). Adjusting with the development of politics and society, then Soedarto in 1986 to restate that the politics of law is an effort to realize the regulations according to the condition and situation at any time. The definition seems more realistic, it means start to accommodate and respond to the needs of society in order to create well-being of society.

Law politics in concept Satjipto Rahardjo as an activity to select and how that would be used to achieve a social purpose with a particular law in a society whose scope includes answers to some fundamental questions, namely, (1) what objectives to be achieved under the existing system; (2) In what ways and which they think are good for use in achieving these objectives; (3) when the time and by the way how the law needs to be changed; (4) Can a standard and well-established pattern that is formulated to assist in deciding the destination selection process as well as ways to achieve the goal by either (Satjipto Rahardjo, 2006).

In its development, the concepts and ideas about politics law has left its proximity to power and ideology of a country. It is read from the amendments made some countries of the constitution, so that it appears in a legal political constitution adapted to the goals and ideals of the nation. Opinion Moh. Mahfud MD justify it stating the politics of law is a legal policy or the direction of law will be enforced by the state to achieve the goal of the state whose shape can be making of new laws and the replacement of the old law (Moh. Mahfud MD, 2006). More Moh. Mahfud MD stated that the law was a legal political policy of the law that will be applied to achieve the objectives of the country. Here the law is positioned as a tool to achieve the purpose of the State (Moh. Mahfud MD, 2010). In the sense that such a law should be based on the political objectives of the state and the legal system in force in the countries concerned are in the Indonesian context and the purpose of the system is contained in the Preamble of the 1945 Constitution, especially Pancasila, which gave birth to the rules guiding the law. The rules guiding that should be used as guidelines in the establishment and enforcement in Indonesia is:

a. Laws must protect the people and ensure the integrity of the nation and therefore there should be no laws that planted seeds of disintegration; b. Law should ensure social justice by providing special protection for the weak from being exploited in free competition against a strong group; c. The law must be built in a democratic as well as build democracy in line with state law. d. Law must not be discriminatory based on primordial ties whatsoever and should encourage the creation of religious tolerance based on humanity and civility.

The Constitution

The Basic Law is the fundamental law is written or contained in a manuscript or document. Meanwhile, in addition to legislation there are other parts of the law that are not written, and commonly referred to as The constitutional convention or habit. The Convention is the basic rules that arise and maintained in the practice of statecraft, although not written.

Here is the notion that illustrates the difference between the constitution and the constitution. That the constitution is a book or a document containing legal rules and legal provisions which points or fundamentals that are written, describing the constitutional system of a country. While the constitution is a document containing legal rules and legal provisions which points or basics, that are written or unwritten, which describes the constitutional system of a State (Soehino, 2005).

According to James Bryce, the constitution is a framework of political society (state) organized by and through law (CF Strong, 2008). Thus the constitution is a framework of country life are governed by the provisions of the law. Another opinion states that the constitution has two (2) terms, namely the broad sense and a narrow sense. However, almost all countries in the world gives the meaning of the constitution in the strict sense, except in the United Kingdom (Soemantri Martosuwignjo, 1981).

In a narrow sense the constitution only refers to the basic provisions contained in a written document that is the constitution, hence the designation as the United States Constitution, the French Constitution, the Constitution of Switzerland, and so on. Meanwhile, in a broad sense, the constitution also includes a constitutional habit as an unwritten rule that nature. So when the term "constitution" is equated understanding with the "constitution", the term should be understood in a narrow sense.

The constitution or the state constitution not only serves to limit the power of government, but also describes the structure of the state government. According Savornin Lohman there are three (3) elements contained in the constitution, namely: a. Constitutional treaty is seen as the embodiment of society (social contract), so according to this sense, constitutions are the products or the conclusion of the public conspired to nurture the country and government that will govern them; b. Constitution as a charter that guarantees human rights, means of protection and guarantee of the rights of man and citizen that once the determination of the limits of rights and obligations of both citizens and administration tools; c. Constitution as *regimenis forma*, namely government building frame (M. Solly Lubis, 1982).

Another opinion expressed by Sri Sumantri, which states that the substance of the Constitution can be grouped into three namely: a. Regulation on the protection of human rights and citizens; b. The arrangement of the government structure of a country whose fundamental; c. Restrictions and division of tasks is also a fundamental constitutional (Ellydar Chaidir, 2007).

The Street Vendors from the Perspective of the 1945 Constitution

The purpose of writing a paper is to remind and re-create the local government about the legal politics of street vendors from the perspective of the 1945 Constitution. Because, the reality proves that there are currently about 20 million street vendors scattered in large, medium and small cities in Indonesia. Whereas politically the law has expressed the political will to empower marginal society especially street vendors in the 1945 Constitution. Political will is affirmed in Articles 33 and 34 of the 1945 Constitution and its derivatives. The reviews of the objectives of the formation of laws in general and in particular the 1945 Constitution and its derivatives below are expected to remind and re-awaken the local governor, the mayor and the regent in order to properly organize the street vendors for the affirmation of his dignity and dignity as a citizen.

Soehino as already noted, the Constitution is a book or a document containing legal rules and legal provisions which points or fundamentals that are written, describing the constitutional system of a country. Similarly, the Act of 1945 is a book or a document containing legal rules and legal provisions which points or foundations nature writing, which describes the constitutional system of the Republic of Indonesia. Act 1945 as law among others, the lives of its citizens, the rights and obligations of citizens for the good of the citizens. As historically believed to schools, the law created by man for the sake of defending the interests of man (Ujan, Andre Ata, 2001). That is why the Constitution of the majority of countries in the world set about the human rights of its citizens to the benefit and interests of its citizens. Relevant to this David Hollenbach argued that the struggle for human rights must go through three strategic moral priorities, namely: (1) the needs of the poor has priority over the desires of the rich; (2) the freedom of oppressed people has priority over the freedom of those in power; (3) the participation of marginalized groups has priority over the preservation of social order that denies them (J.B. Banawiratma, 2002).

Where the political direction of the law against street vendors from the perspective of the Constitution of the Republic of Indonesia Year 1945 can be seen in Articles 33 and 34. Article 33 of the Constitution of 1945 is the capital and the constitutional basis for the establishment of political law against street vendors. That the Constitution of 1945 actually have a clear direction towards the empowerment of the marginalized groups in the study plan, especially street vendors. It can be known from the formulation of Article 34 paragraph (1), (2) and (3) the Constitution of 1945 which states: (1) The poor and abandoned children reared by the State; (2) The State shall develop a social security system for all citizens and empower the weak and not able to match the maartabat humanity; (3) The State is responsible for the provision of health care facilities and public service facilities are decent.

Chapters are then poured in a variety of laws and regulations with reference to the proposed stufenbautheorie Hans Kelsen. Hans Kelsen theory that gets a lot of attention is the hierarchy of legal norms and chains that form a pyramid legal validity (stufenbautheorie). One of the characters who developed the theory was a pupil Hans Kelsen, namely Hans Nawiasky. Hans Nawiasky theory called the Theorie von der rechtsordnung stufenbau. The composition according to the legal norms of the theory are: (1) the fundamental norm of the state (*staatsfundamentalnorm*); (2) The basic rules state (*staatsgrundgesetz*); (3) a formal law (*formelgesetz*); (4) the implementation of the rules and regulations of autonomous (*verordnung en autonome satzung*).

Staatsfundamentalnorm is a norm which is the basis for the formation of the constitution or Basic Law (*staatsverfassung*) of a country. The legal position of a *Staatsfundamentalnorm* is as a condition for the entry into force of a constitution. *Staatsfundamentalnorm* is before the constitution of a country. According to Hans Nawiasky, the highest norms by Hans Kelsen referred to as the basic norms (within a country should not be referred to as *staatsgrundnorm* but *staatsfundamentalnorm*, or the fundamental norm of the state. *Grundnorm* basically did not change, while the supreme norm change, for example by means of a coup or revolution.

Based on the theory Nawiasky, A. Hamid S. Attamimi compare it with the theory of Hans Kelsen and apply it to the structure of the rule of law in Indonesia. Attamimi shows a hierarchical structure Indonesian legal system using Nawiasky theory. Based on the theory Nawiasky, A. Hamid S. Attamimi compare it with the theory of Hans Kelsen and apply it to the structure of the rule of law in Indonesia. Attamimi shows a hierarchical structure Indonesian legal system using Nawiasky theory. Based on this theory, the structure and the Indonesian legal system is: (1) *staatsfundamentalnorm*: Pancasila (The Preamble of the Constitution of 1945); (2) *staatsgrundgesetz*: Body 1945, MPR, and a constitutional convention; (3) *formell gesetz*: legislation; (4) *verordnung en autonome satzung*: it hierakis ranging from government regulation to the Decree of the Regent or Mayor.

Constitution of the Republic of Indonesia Number 17 Year 2007 on the National Long-Term Development Plan for Years 2005-2025 (Rencana Pembangunan Jangka Panjang Nasional/RPJPN) actually have included political laws against street vendors. At the weigh point b of the law stated that Indonesia requires long-term planning as the direction and priorities of its overall development will be done in stages to realize a just and prosperous society as mandated by the Constitution NRI 1945.

In particular, the politics of law against street vendors in RPJPN was found on the vision and mission of national development is about justice and prosperity must be reflected in all aspects of life. All people have the same opportunity to improve living standards; obtain employment; social services, education and health; Express opinions; implement political rights; securing and defending the country; as well as to protection and equality before the law.

RPJPN is a translation of the purpose of establishing the State Government of Indonesia stated in the preamble of the Constitution NRI 1945, namely: "which is to protect all the people and the country of Indonesia, promote the general welfare, educate the nation and participate in the establishment of world order based on freedom, lasting peace and social justice in the form of vision statement, mission and direction of national development".

Especially with regard to street vendors, it is visible in parts of the mission of national development, one of which states: "Democratic society based on law is to establish stronger democratic institutions; strengthening the role of civil society; strengthen the quality of decentralization and regional autonomy; ensure the development of the media and freedom of the media in communicating the public interest; and to reform the legal structure and improve the culture of law and enforce the law in a fair, consistent, non-discriminatory and impartial to the little people. "

The following mission of RPJPN marginal in the context of community development are: "Creating equal and equitable development is to improve regional development; reducing social inequalities as a whole, siding with the people, groups and regions or areas that are still weak; reduce poverty and unemployment dramatically; providing equal access to the public to various social services and economic infrastructure; and eliminate discrimination in various aspects including gender."

Based on the vision and mission of the RPJPN known that politics and policy enforcement in the development of national legal systems continue to empower street vendors. System of democratic governance or democracy becomes a prerequisite for human rights can be protected properly. State governed on the basis of the will of the people, protect people's rights as well as give an account of his actions to the people. Every citizen without discrimination, have the same right to earn an income in order to maintain life and livelihood. Similarly, street vendors as part of the citizens have the right to earn a living wherever they want with their legal protection from the state.

Establish which is more equitable and fair characterized by the following: a. The level of development that more evenly throughout the region realized by improving the quality of life and welfare of the community, including a reduction in the gap between the regions within the framework of the Unitary Republic of Indonesia; b. Food self-sufficiency can be maintained at a safe level and the nutritional quality and the availability of adequate food security instrument to the household level; c. Unmet shelter needs, equipped with the infrastructure and support facilities for the whole community that is supported by long-term housing finance system that is sustainable, efficient, and accountable to embody the city without slums; d. The realization of urban and rural environments in accordance with good life, sustainable, and able to provide added value to the community.

Developed economy on democratic principles of national economic best interest to guarantee employment and work for the whole community and encourage the achievement of poverty reduction. The management of economic policy need to watch carefully the dynamics of globalization, national commitment in various international fora economic agreements, and national interests by prioritizing communities that still weak, as well as maintain the independence and sovereignty of the nation's economy.

Labor market policies aimed at encouraging the creation of as many formal employment and improve the welfare of informal workers. A flexible labor market, industrial relations are harmonious with decent protection, adequate work safety as well as the realization of the industrial settlement satisfactory to all the parties are the traits desired job market. In addition, workers are expected to have high productivity in order to compete and produce high added value to the management of training and support for training programs are strategic to the effectiveness and efficiency of labor quality improvement as an integral part of human resource investment. Most workers, including Indonesian workers who work abroad, will be equipped with the appropriate competency recognition needs of industry dynamics and the dynamics of global competition.

Social welfare development in order to provide protection to the disadvantaged communities enhanced through the strengthening of social security institutions supported by legislation, funding, and a system of national identification number. Social security provision implemented taking into account the cultural and institutional roots in the community.

When looking at the vision and mission of the RPJPN as a derivative of the 1945 Constitution, it is known that the law politics and law enforcement policy in the framework of the development of national legal systems have been eager empower street vendors. Policy law enforcement that is pro-people and pro-social justice a close correlation with the system of government. System of democratic governance or democracy is a prerequisite in order for human rights, particularly community groups are classified as marginal or vulnerable can be well protected.

Every citizen without discrimination, have the same right to earn an income in order to maintain life and livelihood. Similarly, street vendors as part of the citizens have the right to earn a living with their legal protection from the state. Street vendors as citizens, would also be free to move and reside please, because freedom of movement and residence is part of the human rights guaranteed by the Constitution of 1945, law human rights in Indonesia and international conventions.

Conclusion

Political laws against street vendors from the perspective of the Constitution of 1945 is already clearly recognizable in the Preamble of the Constitution of 1945 is in the phrase "promote the general welfare". Here in Article 33 paragraph (3) of the Constitution of 1945, which stated "the earth and water and natural resources contained in it are controlled by the state and utilized for the benefit of the people". Further stated in Article 34 paragraph (2) of the Constitution of 1945 which states "The State shall develop a social security system for all citizens and empower the weak and underprivileged in accordance with human

dignity". Further implementation of the political laws against street vendors under the Act of 1945 is formulated in national development missions which among others stated pro-poor or small including street vendors.

It is recommended that local governments implement legal politics of marginalized communities, especially the street vendors as intended by the 1945 Constitution and their decision into Regional Regulations, which regulate the street vendors arrangement, so the street vendors are well organized.

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Yohanes Suhardin, SH, M. Hum
School of Law
University of Catholic University Saint Thomas,
Medan, Indonesia
E-mail: johnrudy@gmail.com