

RESPONSIVE LAW IDEAS IN PROTECTING THE RIGHTS AND INTERESTS OF CREATIVE STREET VENDORS POST COVID-19 PANDEMIC

Aminuddin Kasim
Nursiah Moh. Yunus
Andi Intan Purnamasari
Supriyadi

ABSTRACT

Creative Street Vendors (PKL) in Palu City (Central Sulawesi Province) is not "as lucky as" Street Vendors (PKL) in other areas. They have faced uncondusive situations twice. Creative Street Vendors are now facing new challenges in dealing with the Covid-19 pandemic not long after suffering the earthquake and tsunami. In the midst of the Covid-19 pandemic conditions, the economic activities of community members are not conducive. The fact that public are concerns regarding the possibility of Creative Street Vendors area as one of the clusters for the spread of Covid-19 cannot be avoided. However, behind those anxiety and concerns, Creative Street Vendors still face uncertainty regarding the arrangement of public spaces for them to earn sustenance. Therefore, now and in the future, the continuity of the Creative Street Vendors businesses depends on the Local Regulation which regulates the provision of public space for Creative Street Vendors. On that basis, research problem discussed in this article are: (1) why Creative Street Vendors (PKL) still exist in the public space of Palu after the earthquake and tsunami on September 28, 2018? (2) what is the ideal responsive of local law product (Local Regulation) in order to protect the economic rights and interests of Creative Street Vendors (PKL) after the end of the Covid-19 pandemic?

Keywords: Creative Street Vendors, PKL, Spatial, Rights, and Regulations.

INTRODUCTION

Creative Street Vendors (Pedagang Kreatif Lapangan) or commonly referred to as "Street Vendors" (Pedagang Kaki Lima), hereinafter also abbreviated as "PKL" for both of them in Indonesian term, is one of the business actors in the informal sector who also colours the dynamics of urban life. The existence of PKL is not only found in every provincial capital city in Indonesia, such as: Jakarta (refer: Regulation of Governor of DKI Jakarta Regulation Number 33 of 2014), Surabaya (refer: Local Regulation of Surabaya Number 9 of 2014), Bandung (Hermawati & Paskarina, 2020), Yogyakarta (Mani La, et al., 2016), Makassar (Kasmad et. al., 2018), Medan (Ruapertiwi, et. al., 2019), Semarang (R. Widjajanti and H Wahyono, 2018), Padang (Harahap, 2017), Denpasar-Bali (Nilakusmawati et al., 2019), Pekanbaru (Marliati, 2020), but also found in the capital of districts/cities in Indonesia, such as Malang (Munir, 2019), Surakarta (Rahayu et al., 2018), Karawang (refer: Local Regulation Karawang Number 4 of 2015, Tangerang (refer: Local Regulation of Tangerang Number 8 of 2015). It is not an exaggeration to say that there is no a single city in Indonesia that can be free from the existence of PKL.

Furthermore, the existence of Street Vendors (PKL) is not only found in provincial capitals and districts/cities in Indonesia. Several cities in the continents of Asia, Europe and Latin America are also colored by the economic activities of Street Vendors (PKL), for example: in Hanoi-Vietnam (Truong, 2018), New Delhi-India and Phnom Penh-Cambodia (Sekhani et al., 2019), Mumbai-India (Saha, 2010), Bangkok-Thailand (Walsh, 2010, Batréau & Bonnet, 2016), Bangladesh (Islam & Khan, 2019), Barcelona-Spain (Delclos, 2018), Roma-Italia (Piazzoni, 2020), Mexico City-Mexico (Bakić, 2012). Therefore, the existence of Street Vendors (PKL) is an inseparable entity from the dynamics of urban life.

Palu as the capital of Central Sulawesi Province admit the existence of Creative Street Vendors (PKL). The growth and the development of PKL in Palu is not only conditioned by limited employment opportunities in the middle of the increase of population and job seekers from year to year, but is also by the dynamics of the development of Palu both as a government service center and as a trade center and services.

Along with the development of Palu as a center of government services as well as a center for trade in goods and services, Local Regulation of Palu Number 16 of 2011 concerning the Spatial Planning of Palu for 2010-2030 (hereinafter referred to as Perda RT/RW Kota Palu 2010-2030), provides space for PKL to access public space in order to earn sustenance. In the Local Regulation of Spatial Planning for 2010-2030, it is stated that the coastal area of Palu Bay is designated for tourism areas (Article 49 paragraph (2) letter b) and at the same time for business actors in the informal sector, including Creative Street Vendors (Article 52 and Article 55).

The existence of PKL seems to have contributed to the economic development of Palu, especially in terms of job creation since the existence of Local Regulation of Spatial Planning of Palu 2010-2030 until before the earthquake and tsunami disaster occurred on September 28, 2018. However, along with the increasing number of PKL in public spaces, the Mayor of Palu also face the fact that PKL caused traffic in public spaces, caused dirt and impacted people on the aspect of environmental health due to residual trash in public spaces. Then, responding to this fact, in 2012, the Mayor of Palu initiated the formation of the Local Regulation of Palu Number 3 of 2012 concerning Guidance and Control of Creative Street Vendors (Local Regulation of Creative Street Vendors). One of the implementations of it is curbing (localization) of PKL in the coastal area of Palu Bay.

However, Creative Street Vendors (PKL) in Palu is not "as lucky as" Street Vendors (PKL) in other areas. After experiencing an economic downturn from the impact of the earthquake and tsunami that hit the coast of Palu Bay, now PKL in Palu face new challenges amid the Covid-19 pandemic. In the midst of this Covid-19 pandemic, all electronic and social media are reporting at any time about the number of positive citizens of Covid-19 and the number of casualties due to being infected with Covid-19. The high intensity of news about Covid-19 worried the public. The psychological condition of the public is also focused on the PKL's area. A study conducted by *Intan Fadhillah* and *Ferdinandus Ngare* in Cikedokan village revealed that people were disturbed by the frequent television media reporting on the number of casualties caused by the Covid-19 pandemic. The coverage of various television media related to the impact of Covid-19, caused worried them, including Street Vendors (Fadhillah, 2020). A study conducted by *Shejuti Haque* and *Shamsuddin Sarker* in Dhaka city revealed that the Covid-19 pandemic has caused anxiety and disturbed the mental health of many people (Sarker, 2021).

It must be admitted, the Covid-19 pandemic, which also claimed lives in Palu, has an impact that is not conducive to the social and economic life of Palu residents. There are concerns of some people, that the PKL's area could potentially become one of the infected areas of Covid-19. This concern at least affects the intensity of visits by culinary lovers to the Creative Street Vendor (PKL). Similar concern occurred in Denpasar (Bali). A study conducted by *Ni Wayan Ari Sudiartini*, et. al, revealed that since the Covid-19 outbreak in Indonesia, small businesses, especially Street Vendors, are in danger of experiencing losses. Some people avoid direct physical contact with Street Vendors because it prevents the possibility of the spread of Covid-19 (Sudiartini et al., 2020).

In addition to having an impact on the social and economic life of Palu residents, the Covid-19 pandemic also had an impact on the effectiveness of local law products. This can be seen when the Local Regulation of Spatial Planning of Palu City for 2010-2030 feels ineffective in providing legal certainty guarantees for Creative Street Vendor (PKL) to access public space areas. More than that, the same thing also happens to the project for reconstruction and rehabilitation of the coastal area of Palu Bay (SILEBETA area) while running, it is traced to favour big capital owners. Meanwhile, economic actors in the informal sector, particularly PKL, have received less attention in the reconstruction and rehabilitation project plans for the SILEBETA area.

Although the authorities have not been able to confirm when the Covid-19 pandemic will end, there is still hope and optimism that Creative Street Vendor (PKL) will face a more conducive economic situation. The problem lies only in the policy of the City Local Government in providing public space for PKL to earn sustenance. Therefore, now and in the future, the continuity of the PKL businesses depend on the Local Regulation which regulates the allocation or provision of public space for PKL. On that basis, the material discussed in this article rests on the following problems: (1) why Creative Street Vendor (PKL) can continue to exist in the public space of Palu after they were hit by the earthquake and tsunami that hit Palu on September 28, 2018? (2) what is the ideal responsive local law product (Local Regulation) in order to protect the economic rights and interests of Creative Street Vendor (PKL) after the end of the Covid-19 pandemic?

RESEARCH METHOD

The substance of the study of this article is based on the result of legal research. In this legal research, the author use a statutory approach, conceptual approach, omparative approach, and field study approach. The statutory approach focuses on regulations related to Street Vendors and regulations related to spatial planning. While the conceptual approach is related to the concept of Creative Street Vendor (PKL) in the Local Regulation of Palu Number 3 of 2012. Then, the comparative study approach refers to controlling street vendors in several countries. Then, the case approach refers to street vendors cases that were revealed in several regions (districts/cities) in Indonesia. The last is the field study approach, namely by distributing questionnaires, observing the Creative Street Vendor (PKL), and at the same time interviewing several Creative Street Vendor (PKL).

The materials used in this article consist of primary legal material, namely all laws and regulations related to street vendors and spatial planning, as well as secondary legal materials sourced from books, articles in journals, and research results. Furthermore, all legal materials that underlie the study are analyzed using the method of interpretation and legal reasoning.

REVIEW OF THE LITERATURE

1. Changes in the Term: From "Street Vendors" to "Creative Street Vendors"

The name PKL or commonly abbreviated as "Street Vendors", is familiar to Indonesian citizens. Every time someone mentions a "Street Vendors", then the impression immediately arises that what is meant is a "figure of a trader" selling food and/or drinks on the side of the highway, on the sidewalk or in empty public spaces.

In 2001, Palu Government has regulated the existence of Street Vendors (PKL). The term "Street Vendor" (Pedagang Kaki Lima) at that time was an acronym for PKL. This is based on the Palu Local Regulation Number 30 of 2001 concerning the Regulation and Development of Street Vendors. Then, because the Local Regulation was not effective for about a decade, the Mayor of Palu together with the Local House of Representatives (DPRD) of Palu replaced Palu Local Regulation Number 30 of 2001 with the Palu Local Regulation Number 3 of 2012 concerning the Guidance and Control of *Creative Street Vendors*, which is also abbreviated as PKL. This is where the initial use of the term "*Creative Street Vendors*" (PKL = Pedagang Kreatif Lapangan) as a substitute for the previous term, namely: "Street Vendors" (PKL = Pedagang Kaki Lima). With the change of the term "*Street Vendors*" (PKL) to "*Creative Street Vendors*" (PKL) through Local Regulation Number 3 of 2012, Palu is the only city in Indonesia that uses the term "*Creative Street Vendor*". Local Regional regulations in regencies/cities in Indonesia, all use the term "Street Vendors" (PKL).

Mari Elka Pangestu - Minister of Trade of RI 2004-2009 and 2009-2011, once banned the mention of Street Vendors (PKL) as an acronym for "Pedagang Kaki Lima". She prefers to call "Creative Street Vendors" on the grounds that they are very creative, both in terms of selling the types of goods and the way they trade. Therefore, as Creative Street Vendors (Pedagang Kreatif Lapangan = PKL), they must be given a proper place. Because if not, the street vendors will take up spaces in public facilities such as sidewalks to be used as trading place (Aminuddin Kasim, at. al, 2019).

2. The Right of PKL to Urban Public Spaces

Constitution of the Republic of Indonesia has affirmed that "Every citizen has the right to work and a living that is decent for humanity" (Article 27, paragraph 2). If the provisions of Constitution of Indonesia are seen in the context of the existence of PKL, then the choice to become a PKL is a right that cannot be violated arbitrarily by the government. Some citizens choose street vendors only because they have no other work to rely on to fulfil their personal and family needs.

The existence of PKL as one of the economic actors in the informal sector is not only in the dimension of the rights of every citizen of the 1945 Constitution of the Republic of Indonesia), but also becomes part of human rights that are universal (The Universal Declaration of Human Rights, and Law Number 39 of 1999).

Choosing a job as a PKL is a choice of steps to maintain life and life in a situation of intense economic competition and have a competitive character. The existence of PKL cannot be viewed as a burden on urban development. They are also actors of development who have the right to access public spaces in urban areas in order to earn a living. Ideally, PKL should be given the opportunity to play an active role in building the city. The existence of a city is a space for the people and for the people (*cities by and for the people*) (Cabannes, et.all, 2018). The right to the city doesn't only refer to access to the city, but also to the right to transform the city (Barrett, F.D. Brendan, et al, 2020, Itikawa, et. all, 2014).

A study conducted by *Sally Roever* and *Carolina Skinner* shows that Street Vendors contribute to urban life. From the consumer's point of view, Street Vendors greatly add to the convenience of the general public, by providing goods that are used daily at relatively cheaper prices. This is a very important role for the urban poor who cannot afford to shop in supermarkets (Roever & Skinner, 2016).

The Right to the City which was once popularized by *Henri Lefebvre* -French Sociologist (King, 2019), has developed into an issue of human rights. In the National Human Rights Cities Conference on December 9, 2014, a number of urban problems related to the human rights dimension were revealed.

With regard to human rights concerns in urban contexts, the Government through the Ministry of Law and Human Rights has stipulated Regulation of the Minister of Law and Human Rights Number 25 of 2013 concerning Criteria for Districts /Cities to Care for Human Rights. In this regulation a number of criteria have been established for cities/districts that care about human rights, namely: the right to life, the right to develop self, rights to welfare, rights to security, and rights to women.

RESULTS AND DISCUSSION

1. Reasons for Choosing a Job as Creative Street Vendors

Choosing a job as a civil servant has a moral foundation from a human rights perspective. Choosing a job as a street vendor is a choice of steps in order to fulfill the life of a street vendor family. In an economic condition with a competitive character, not everyone has the space and opportunity to get a job. Even if there are job opportunities available, job seekers do not necessarily seize the opportunity. This is because, in general, there are several factors that can affect the loss of a person's opportunity to get a job, including: job providers usually require certain skills or expertise for the type of work provided, the salary set by the job provider is not in accordance with the expectations of job seekers, type and the nature of the work available is only limited to men (men), and vice versa, there are types and types of work that require only women (women). On the basis of all that, Creative Street Vendors (PKL) is one of the job options to meet the needs of daily life.

Apart from the aforementioned factors, there are some residents who choose to work as street vendors not because they do not have other jobs (permanent work), but because of reasons to get additional income to meet the needs of family life. This Creative Street Vendors (PKL) category already has a permanent job. However, because the income they get from a permanent job is not enough to meet the needs of their family, they are forced to choose street vendors as a side job.

The research findings reveal that 52 (fifty-two) out of 75 (seventy-five) respondents revealed that they chose Creative Street Vendors (PKL) as a side job in order to increase their income.

Table 1: Reason for Choosing Job as a Creative Street Vendors

Reason	Amount
No Another Work	20
Additional income	52
No answer	3

Although only 20 (twenty) respondents stated that they chose Creative Street Vendors (PKL) for reasons of not having other jobs (Table 1), this number (20 respondents) is still meaningful in addressing the problem of job scarcity in Palu.

It must be admitted that the earthquake and tsunami that hit the city of Palu (28 September 2018), not only claimed thousands of lives and collapsed many houses (including Creative Sstreet Vendors (PKL)), but also caused hundreds of people to lose their jobs. The impact of the disaster has conditioned many Palu residents choosing Creative Street Vendors (PKL) as a side job to overcome the economic crisis experienced after the disaster.

Before the earthquake, liquefaction, and tsunami disasters occurred in Palu, the Office of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) and the Office of Industry and Trade of Palu Government estimated that there were around 3,000 to 3,500 Creative Street Vendors (PKL) and MSMEs operating in Palu. After the earthquake, liquefaction, and tsunami disasters, that number is increasing. In the estimation of the Office of Cooperatives and MSMEs and the Office of Industry and Trade of the City Government of Palu, the additional figure is around 20 percent (20%) of the estimated number of PKL and MSME before earthquake, liquefaction, and tsunami disaster occurred. Table 2 below shows the respondent's statement when to choose a job as a Creative Street Vendor (PKL).

Tabel 2: When Choosing to be a Creative Street Vendors

Time	Amount
After The Earthquake, Liquefaction, and Tsunami	34
Since 2012	31
Since 2001	10

A study conducted by *Timothy and Wall (1997)* related to Street Vendors (PKL) in Indonesia, revealed that the presence of economic actors in the informal sector in urban areas is basically related to the problem of job scarcity. Palu city has been instrumental in supporting government or regional government programs in overcoming job scarcity. Facts in the field show that PKL also use labor to help Creative Street Vendors (PKL) businesses. The number of workers employed by Creative Street Vendors (PKL) is shown in Table 3 below.

Number of Workers	Amount
1 Person	31
2 Person	30
3 Person	7
Without Labor Assitence	5
Own Family	2

2. Responsive Legal Needs of Creative Street Vendors.

Problems faced by Creative Street Vendor (PKL) are not only in the aspect of economic problems by the Covid-19 pandemic. The future, the principal problem faced by Creative Street Vendor (PKL) is the uncertainty regarding the allocation of public space for them (rights to the city). This is because the locations of PKL in several areas in Palu city (in the City Forest) are only temporary. The location of the Creative Street Vendors (PKL) occupied now days is the relocation from the coastal areas of Palu Bay (SILEBETA).

The relocation policy of Creative Street Vendors by the government in Palu City is due to the impact caused by the earthquake and tsunami disaster. Therefore, the central government of several ministries together with the regional governments agreed on the stipulations of the coastal areas of Palu Bay (SILEBETA) as the Disaster-Prone Zone (Red Zone Area). Furthermore, the results of the agreement were followed up by the Governor Regulation of Central Sulawesi Province Number 10 of 2019 regarding Post-Disaster Rehabilitation and Reconstruction Plans, and the stipulation of the Decree Number 650/374/DBMPR-G.ST/2019 regarding Determination of the SILEBETA Area (Silae, Lere, Besusu Barat, and Talise) as a Disaster Resilient Area.

After the establishment of the SILEBETA area as a Red Zone and as a Disaster Resilient Area, the Government of Palu City has prepared the drafts of the Academic Manuscript and draft of Local Regulation regarding Amendments to Local Regulations in Palu City Number 16 of 2011 regarding Regional Spatial Planning of Palu City 2010-2030. The Amendments to draft of Local Regulations Number 16 of 2011, the designation of Regional Spatial Planning of Palu City for the 2020-2040 period.

The draft regional regulation, does not read any legal provisions governing the allocation of public space for Creative Street Vendors (PKL). The draft of the Local Regulation of Regional Spatial Planning of Palu City in 2020-2040 is no longer based on the "Souraja" architecture philosophy. Philosophy of Architecture *Souraja* was adopted from the architecture of the House of Kings (*Banua Madika*) of the Kailiness who lived in Palu hundreds of years ago. The architectural of *Souraja* divides the building

patterns of houses based on the three structures of space, namely *Gandaria*, *Tatangana*, and *Poavua* (refer: Yasin Nahar, et. al, 2020:24).

The "*Gandaria*" room in the philosophy of *Souraja* is the front that functions as a resting room for the family at the front (terrace of the house). While "*Tatangana*" is the middle room that functions as a place for family members to do activities. Furthermore, "*Poavua*" is the backroom that functions as the kitchen room. The philosophy of architecture of *Souraja* was the basis for the formulation of Local Regulations Number 16 of 2011. The implementation of the architecture of *Souraja* is read in the provisions of Article 52 paragraph (1) and Article 55. These provisions allocate public space for entrepreneurs in the informal sector and include Creative Street Vendors (PKL).

By leaving the philosophy of architecture of *Souraja* in the formulation of the draft of Regional Spatial Planning of Palu City in 2020-2040, then there is no longer legal certainty for PKL to access public spaces in the SILEBETA area. Then, if draft that stipulated as the new Local Regulations as a substitute for the old Local Regulations Number 16 of 2011 (Regional Spatial Planning of Palu City in 2010-2030), the draft of Regional Spatial Planning of Palu City in 2020-2040) not responsive to the legal needs of Creative Street Vendors (PKL). The new draft of Local Regulation, neglect to protect the rights and interests of Creative Street Vendors (PKL), and closes the rights of Creative Street Vendors (PKL) to access urban public spaces.

The allocation of public space for Creative Street Vendors (PKL) is not only for Creative Street Vendors (PKL), but is also part of the economic interests of the Government. Therefore, the penetration of the law into the economic problems of Palu City is a necessity. According to Satjipto Rahardjo, in a planned economic model, the law is a tool for translating development goals into applied norms. The more laws can be used effectively to mobilize human behaviour, the more successful development will be (Rahardjo, 1980).

The allocation of public space to protect the rights and interests of Creative Street Vendors (PKL), ideally should be accommodated under-responsive laws. According to *Nonet* and *Selznick*, responsive law is one that reinforces how openness and integrity can mutually support each other's opinions of both. Responsive institutions start from the assumption that social pressures are a source of knowledge and opportunities for self-correction (Nonet and Selznick, 2017: 77). Therefore, the draft of Local Regulations about Regional Spatial Planning of Palu City in 2020-2040), should ideally have a responsive legal character to protect the rights and interests of PKL towards the use of public spaces. And then, ideally before the draft of Regional Spatial Planning of Palu City in 2020-2040 was stipulated as a Local Regulation, the Local of House Representative (DPRD) together with the Mayor of Palu City needed to involve the Creative Street Vendors (PKL) through discussion forums or socialization, or even involving the Creative Street Vendors (PKL) in the discussion for draft of Regional Spatial Planning of Palu City in 2020-2040. Such a mechanism reinforces the essence of democracy because the Creative Street Vendors (PKL) are involved in the decision-making process. Decision-making processes that involve public participation are concerned with deliberative democracy. *Ressa Fitriana*, et. al, have analyzed the arrangement of Street Vendors from a deliberative policy perspective. Deliberative democracy is rooted in the conception of *public space*, which consists of making deliberative decisions and exploring problems through dialogue with stakeholders (Fitriana, et al, 2020).

The involvement of Creative Street Vendors (PKL) in the process of making public decisions related to spatial planning derives legality from Law Number 26 of 2007 concerning Spatial Planning. In the law, it is stated that: *everyone has the right to know about spatial planning, as well as to enjoy the added value of space as a result of spatial planning*" (Article 60). Then, Government Regulation No. 15 of 2010 on the Forms and Procedures for the Role of the Community in Spatial Planning, mentioned: *it is stated that the community plays a role in spatial planning, spatial use, and spatial use control by the rights and obligations stipulated in statutory regulations* (Article 2). Therefore, Law Number 26 of 2007 and Government Regulation Number 15 of 2010 explains that the Mayor Palu City together with the Local House Representative (DPRD) must be able to articulate the aspirations and legal needs of Creative Street Vendor (PKL).

CONCLUSION

- (1) Decided to be Creative Street Vendors (PKL) is a rare step of choice taken to fulfil the needs of life. That choice has a moral basis from the perspective of human rights especially the right to choose a job.
- (2) Legal arrangements regarding the existence of Creative Street Vendors (PKL) are not solely aimed at the interests of Creative Street Vendors (PKL) alone but are aimed at the interests of the Government. On that basis, Creative Street Vendors (PKL) not only have the right and interest to access public spaces in the city but may contribute to change and to advance the city's economy.
- (3) Creative Street Vendors (PKL) in Palu city need responsive laws to ensure legal certainty to access public spaces in the city Post- Covid-19 pandemic. Responsive law required is local regulation of Spatial Planning that provides legal certainty towards the PKL regarding the use of city space. Therefore, the decision-making process related to urban spatial planning must involve Creative Street Vendors (PKL).
- (4) The involvement of Creative Street Vendors (PKL) in the public decision-making process in drafting regulations on city spatial planning, not only confirms the existence of Creative Street Vendors (PKL) rights as citizens living in cities, but also is a prerequisite for the planning process and the formation of responsive legal rules, especially legal regulations that related to urban spatial planning.

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Aminuddin Kasim
Faculty of Law, Tadulako University
Jl. Soekarno-Hatta Km 9 Palu, Sulawesi Tengah, Indonesia
Email: aminuddinkasim@untad.ac.id

Nursiah Moh. Yunus
Faculty of Law, Tadulako University
Jl. Soekarno-Hatta Km 9 Palu, Sulawesi Tengah, Indonesia
Email: nursiah.m.yunus@untad.ac.id

Andi Intan Purnamasari
Faculty of Law, Tadulako University
Jl. Soekarno-Hatta Km 9 Palu, Sulawesi Tengah, Indonesia
Email: andi.intanpurnamasari@untad.ac.id

Supriyadi
Faculty of Law, Tadulako University
Jl. Soekarno-Hatta Km 9 Palu, Sulawesi Tengah, Indonesia
Email: supriyadi@untad.ac.id