

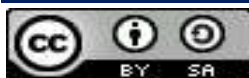
## IMPACT OF THE COVID-19 PANDEMIC ON LAW ENFORCEMENT OF VIOLATIONS FOR VIOLATIONS OF PUBLIC OBLIGATIONS IN THE CITY OF DENPASAR

I Ketut Sukadana, Ni Made Sukaryati Karma, I Nyoman Utama  
Universitas Udayana, Bali, Indonesia  
Email: sukadanaketut1966@gmail.com, sukariati64@gmail.com,  
sutamainyoman62@gmail.com

### ABSTRACT

*The purpose of this study is to examine and understand violations of public order during the covid-19 pandemic and to find policies carried out in law enforcement against violators. The economic impact of the COVID-19 pandemic has been felt by the community. People try to make a living with various businesses such as selling by choosing strategic locations on the roadside. Selling on the roadside, if it is associated with existing regulations, can be subject to sanctions for violating public order. The research method is carried out with the type of empirical legal research, with data collection techniques through interviews and recording. Based on the results of the study, during the Covid-19 period which had a very broad impact on the lives of residents, many people lost their source of livelihood because their workplace was unable to operate. In order to make a living, many people end up selling various kinds of merchandise on the side of the road. In Denpasar City, selling cars on the side of the road is prohibited in accordance with the provisions of Article 22 paragraph (1) of Denpasar City Regional Regulation Number 1 of 2015 concerning Public Order. The maximum penalty is 3 (three) months in prison or a maximum fine of Rp. 25,000,000, - (twenty five million rupiah) as stipulated in the provisions of Article 60 paragraph (2) of Denpasar City Regulation Number 1 of 2015. Law enforcement against violators cannot be carried out optimally because there is a special policy from the Mayor during the period of the pandemic is pursued in persuasive ways and emphasizes humanitarian considerations*

**KEYWORDS** COVID-19 pandemic, violations, law enforcement, public order, humanity



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## INTRODUCTION

To achieve national goals, sustainable, comprehensive, directed, integrated development efforts are carried out covering various fields, including health. Life is a human right and one of the elements that must be realized according to national ideals.

The health sector entering 2020 felt excited with the corona virus pandemic in various countries. Initially the virus known as Corona Virus Disease 2019 (COVID-19) appeared in Wuhan (China) at the end of 2019 (Amin et al., 2020). Not long ago this virus finally spread to all corners of the world including developed countries such as Italy in Europe and the United States, Indonesia is no exception. The rapid spread of the deadly virus is caused by the very high rate of human migration as tourists between countries (Ter-Haar, 1960).

In Indonesia, the spread of the virus is also so widespread, data as of August 29, 2022, in Indonesia there were 6,349,173 infected with Covid-19, with a cure rate of 6,191,452, and 157,173 people died. Bali as a world-famous tourist destination has not been spared the Covid-19 pandemic because it is visited by many foreign tourists. Even though in terms of the quantity of Balinese affected by COVID-19, it is not so large, namely around 2.7% of the sufferers nationally, the social impact it causes is very broad, especially in the tourism sector which is almost totally not operating (Windia & Pramana, 2018).

As a result of the COVID-19 pandemic, from an economic point of view, it is felt by the community. To be able to ease the burden of meeting the needs of people's lives, the government is trying as much as possible by making a policy such as direct cash assistance. The assistance was felt to be insufficient to meet the needs of the community. People try to make a living with various businesses such as trading (Wiranata & SH, 2005).

Trading as an impromptu profession is very mushrooming with various types of merchandise for the community's basic needs. Selling is mostly done by choosing a strategic location on the side/shoulder of the protocol road in Denpasar City. Selling/trading by utilizing the shoulder of the road based on the Denpasar City Regulation Number: 1 of 2015 is categorized as an act that violates the law because it disturbs public order (Suartha, 2015).

Starting from this background, we conducted a study entitled: "Law Enforcement for Violators of Public Order Regional Regulations during the COVID-19 Pandemic in Denpasar City"

## RESEARCH METHOD

This study uses normative legal research, using a legal-statutory approach, historical approach, and contextual approach. The technique of collecting legal materials is carried out using library techniques. There are several good sources of secondary legal material, namely legal data or regulations obtained through observation of the literature which contains books on legal rules, scientific journals and websites containing articles related to the subject matter. Primary legal materials which include the Criminal Code; Law Number 4 of 1984 concerning

Outbreaks of Infectious Diseases (State Gazette of the Republic of Indonesia of 1984 Number 20, Supplement to State Gazette of the Republic of Indonesia Number 3273); Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Management of Coronavirus Disease 2019 (COVID-19) (State Gazette of the Republic of Indonesia of 2020 Number 91, Supplement to State Gazette of the Republic of Indonesia Number 6487); Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning Stipulation of Non-Natural Disasters with the Spread of Coronavirus Disease 2019 (COVID-19) as a National Disaster

## **RESULT AND DISCUSSION**

### **1. Influential Factors in Law Enforcement**

Law as a rule is a benchmark regarding the attitude of action or appropriate behavior. The effectiveness of the law in action or legal reality can be known if someone states that a rule of law succeeds or fails to achieve its goal, then it is usually known whether its influence has succeeded in regulating certain attitudes or behavior so that it is in accordance with its objectives or not (Ardanari & Tanaya, 2021). Legal effectiveness means that the effectiveness of the law will be highlighted from the objectives to be achieved, namely the effectiveness of the law (Soekanto, 1988). One of the efforts that are usually made so that the community obeys the rule of law is to include the sanctions. These sanctions can be in the form of negative sanctions or positive sanctions, the purpose of which is to generate stimulation so that humans do not take despicable actions or take commendable actions.

Certain conditions are required that must be met so that the law has an influence on attitudes or human behavior (Soekanto, 1988). If what is communicated cannot reach the problems that are directly faced by the target of legal communication, difficulties will be encountered. The result is that the law has no effect at all or even has a negative influence. This is because their needs cannot be met and understood, resulting in frustration, pressure, or even conflict (Romli Atmasasmita, 2017).

According to Soerjono Soekanto, there are at least 4 factors that influence law enforcement, as follows:

- a. The law
- b. Law enforcer
- c. Facility
- d. The legal culture of society.

The diversity of discussions about the effectiveness of law in terms of the optics of the sociology of law is not surprising considering that sociologists' thinking about law includes a number of approaches that are more diverse than uniform. A general title is deliberately given to sociological views which in reality are not necessarily the same, but based on the consideration that legal sociologists study the effects of law and society on a reciprocal basis. The general theme is to use the approach that law is an empirical phenomenon, whose nature can only be understood if the law is viewed in relation to society. A

perception of the legal form needs to be tested to what extent it is effective or not. (Ali, 1998).

In modern society, the rule of law is distinguished from social and moral rules. This is because modern society has an organized government, judicial institutions and administrative machinery, where compliance with the rule of law is guaranteed through the threat of sanctions. On the other hand, in a simple and primitive society, namely and such societies have in fact existed even now, aka a society that not only existed but still exists today, such a society does not have a political organization, the law cannot clearly distinguish the social rules that govern it. based on its ability to guarantee compliance. (Anwarul, 1996)

The character of the rule of law that distinguishes it from other rules found in society as said by Leopold Pospisil (Ali, 1998) who named it an attribute of law. There are four legal attributes that are not shared by other social rules as follows:

1. attribute of authority, namely that the law is a decision of the parties in power in society, the decision is intended to overcome the tensions that occur in society;
2. Attribute of intention of universal application, namely decisions that have a long reach for the future;
3. Attribute of obligation, is a feature where supervisory decisions must contain the obligations of the first party to the second party and vice versa;
4. Attribute of sanctions, which stipulates that decisions from the ruling party must be issued with sanctions based on real community power.

#### Classification of Crime

The Criminal Code (KUHP) has classified criminal acts or offenses into two major groups, namely in the Second and Third Books, they are classified as crimes and violations. Crimes are placed in the Second Book and Offenses in the Third Book, only there is no explanation of what crimes and violations are. Everything is left to science to provide the basis. (Teguh Prasetyo, 2019)

Crime is a *rechtsdelict* or legal offense and a violation is a *wetsdelict* or statutory offense. Legal offenses are violations of the law that are felt to violate the sense of justice, for example acts of murder, molesting, stealing and so on. Meanwhile, the offense of law violates what is determined by law, for example the requirement to have a driver's license (SIM) for motorists on public roads.

Offenders can be punished if there is a relationship between criminal acts (criminal act) without justification and criminal/criminal responsibility (criminal responsibility) without forgiving reasons. A criminal act is an act that has been implemented in legislation, which is against the law so that it is outside the perpetrator.

According to MvT, there are two reasons for eliminating criminals, namely those outside the perpetrator and inside the perpetrator.

#### Justifying Reason

The justification or *rechtsvaardigingsgrond* reason is to abolish the nature of being against the law and acts which are stated in the Criminal Code as prohibited acts. Because the unlawful nature is abolished, the act that was originally against

the law can be justified so that the perpetrator is not punished. The justification for this can be found in:

- 1). Acts that constitute an emergency defense (Article 49 paragraph 1 of the Criminal Code);
- 2). The act to carry out the order of the law (Article 50 of the Criminal Code);
- 3). The act of carrying out an office order from a legitimate authority (Article 51 paragraph 1 of the Criminal Code).

b. Forgiving Reason

The excuse for forgiveness or schulditsluitingsgrond concerns a person's responsibility for the criminal act he has committed or criminal responsibility. This forgiving reason eliminates the guilt of the person who committed the offense on the basis of several things. This reason can be found in the case that the person performs the action in the following circumstances:

- 1). Not accounted for (ontourenkeningsvaatbaar);
- 2). Noodweer excess;
- 3). Forced power (overmacht).

c. Reason for Elimination of Claims

Except for the justification that eliminates the unlawful nature of the act and the excuse of forgiveness that eliminates the criminal responsibility of the perpetrator thereby eliminating the punishment of the perpetrator, there are also reasons that precede the reason for the abolition of the crime. If this reason is accepted, the prosecutor cannot prosecute.

Those reasons are the reasons for the place where the Criminal Code (locus delicti) applies. This is to answer the question of whether the actions committed by the suspect are within the scope of the Criminal Code area in relation to Articles 2-8 of the Criminal Code, so prosecution cannot be carried out.

d. Reason for Criminal Eraser

MvT asserted that there are two reasons for the abolition of the crime, namely:

- 1). The reason cannot be accounted for by someone who is not in that person (inwending).

The reason that a person cannot be held responsible for a criminal act lies in the person, as regulated in Article 44 of the Criminal Code, and according to this article a person cannot be punished, because his soul is seized by a disease or his soul does not grow perfectly.

- 2). The reason can not be accounted for by someone who lies outside that person (uitwendig).

Things that can cause a person to be unable to be held accountable for his actions are outside the perpetrator, which can be found in:

- 1). Article 48 of the Criminal Code (overmacht)

A person who commits an act that can be punished because it is motivated by coercion, that person cannot be punished.

- 2). Article 49 of the Criminal Code (noodwer),

Paragraph 1 for being forced to act in defense because of an attack or threat of attack at that time which was against the law against oneself or others, against the honor of decency or property of oneself or others, shall not be punished.



Paragraph 2 of the defense that exceeds the limit which is directly caused by the great shock of the soul due to the attack, is not punished.

3). Article 50 of the Criminal Code: explaining the law

People who commit acts to enforce the law, are not punished.

4). Article 51 of the Criminal Code: carry out office orders

Paragraph 1 commits an act to carry out an office order given by the competent authority, not being punished;

Paragraph 2, an order of office without authority does not result in the abolition of a criminal unless the one who is ordered with good etiquette thinks that the order was given with authority and its implementation is included in his work.

### 2.3 Law Enforcement against violators of Public Order during the COVID-19 Period

Legal certainty is a *Sicherheit des Rechts selbst* (certainty about the law itself). There are four things related to the meaning of legal certainty as follows: (Ali, 1998) First, that the law is positive, meaning that it is legislation (*gesetzliches recht*); Second, that the law is based on facts (*tatsachen*), not a formulation of an assessment that will later be made by the judge, such as good will, decency,; Third, that the facts must be formulated in a clear way so as to avoid mistakes in meaning, while also being easy to implement; and Fourth, the positive law should not be changed frequently.

Certainty as the fourth element that positive law should not change frequently implies that certain provisions must be tied to moments that are not easily interpreted beyond their grammatical or authenticity. There are several figures who have important views related to legal certainty, including Gustav Radbruch and Fuller, followed by Indonesian scholars. Gustav Radbruch and Fuller both touched on the issue of the implementation of legal certainty. Gustav Radbruch talks about *geltung des positive rechts*, while Fuller says there must be a match between rules and daily implementation.

According to Fuller, there are 8 (eight) principles that must be fulfilled by law, otherwise the law fails to be called law. The eight principles are:

1. a legal system consisting of regulations, not based on instantaneous decisions on certain matters (*ad-hoc*);
2. the regulation is announced to the public;
3. does not apply retroactively, because it will damage the integrity of the system;
4. made in a formula that is understood by the public;
5. there should be no conflicting regulations;
6. must not demand an action beyond what can be done;
7. should not be changed frequently;
8. there must be a match between the rules and daily implementation.

Satjipto Rahardjo examines legal certainty using a sociological perspective as quoted by Achmad Ali as follows:

Everyone will see the function of modern law to produce legal certainty. Society, especially modern society, really needs certainty in various interactions between its members and this task is placed on the shoulders of the law. Law is also preoccupied

with legal issues. Legal certainty has become a kind of ideology in legal life, so a critical understanding of the word is needed. By becoming an ideology there will be a tendency to confuse the statement with the truth. Legal certainty as commonly understood by people is also not an automatic product of the law. With a state of law does not necessarily appear certainties in society. Processes other than juridical are needed for legal certainty to occur.

What was expressed by Satjipto Rahardjo above cannot be denied considering the facts that occurred in the courts between judges who decided disputes or cases based on their competence which depended on legal reasoning by judges in their decisions. Therein lies the essence of the independence of a judge who may be free to have a dissenting opinion or a concurring opinion. The judge as the spearhead in the judicial process is expected to be able to provide legal certainty in every decision. Courts typically work to minimize status differences between individuals and to achieve a degree of certainty in their decisions (Davidson et al., 2010)

Legal certainty is very much needed by modern society today because of the impact if the expected certainty turns into uncertainty and the vulnerability of life faced by society makes it impossible for them to involve themselves in searching for or believing in anything outside of themselves (Scott, 2012)

In general, the law was made to provide benefits for humans, namely the protection of human interests, therefore so that human interests are protected, the law must be implemented (Mertokusumo, 2006).

In this regard, during the COVID-19 pandemic, based on the results of research, many community members were selling on protocol roads around Denpasar City. According to I Made Poniman (Head of Enforcement Local Regulation of the Denpasar City Government Civil Service Police Unit) admitted that there was an increase in car traders around strategic main roads as an economic impact. The rise of traders selling on the side of the protocol road is the economic impact of the COVID-19 pandemic, especially for residents who previously worked in the tourism sector. Before the COVID-19 pandemic, this condition was very rare because officers often carried out patrols or supervision and applied strict sanctions against violators.

As the implementation of the main tasks and functions, the Denpasar City Civil Service Police Unit during the COVID-19 period continues to carry out its duties and always responds to complaints from the public, but according to the policies and directives of the Government and the Central Government, the implementation of tasks is more focused on raids (enforcement) of health protocols. together with other relevant agencies, including conducting raids on the company's opening hours and crowds of residents. Sanctions for violators of health protocols (not wearing masks) are imposed with a fine of Rp. 100,000.00 (One hundred thousand Rupiah) and for violators who do not use masks properly, guidance is carried out in accordance with the provisions of Denpasar Mayor Regulation Number: 48 of 2020 concerning Enforcement of Discipline and Health Protocol Law Enforcement.

According to Anak Agung Bagus Jimnantara, S.H (Head of the Investigation, Investigation and Enforcement Section of the Denpasar City Government Civil Service Police Unit), law enforcement during the COVID-19 pandemic against

violators of the prohibition on selling on public roads as regulated in the provisions of Article 22 paragraph (1) of Regulation Denpasar City Region Number: 1 of 2015 concerning Public Order, cannot be implemented optimally. This is due, among other things, to: first, everything is focused on preventing and handling the transmission of COVID-19; and second, there is a directive from the leadership (Mayor) so that law enforcement or controlling street vendors that occur during the pandemic is carried out in patterns that prioritize the humanitarian element because the person concerned has lost his job. On the basis of the (oral) direction from the Mayor, the policing officer (SatPol-PP) only provides guidance and solutions to street vendors by directing and recommending that they sell in places that have been provided or in wider places so as not to disturb order. common on the road.

Based on the description above, it can be said that although legally residents who sell on public roads meet the criteria for violating the provisions of Denpasar City Regulation Number: 1 of 2015 concerning Public Order, strict action is not taken in order to control them. This means that legal certainty is set aside for the benefit of the community.

## CONCLUSION

During the COVID-19 pandemic, many people who were affected in the economic field traded to meet the needs of their family's life. Temporary trading activities on public roads have increased drastically and are easily found compared to the period before the COVID-19 pandemic. This proves that during the COVID-19 pandemic, there was an increase in violators of public order, especially violators of the prohibition on trading on public roads.

Law enforcement against violators of public order during the COVID-19 pandemic cannot be carried out optimally because it is more concentrated on the problem of preventing and handling the transmission of COVID-19 and the existence of policies so that control is carried out by paying attention to humanitarian factors. Law enforcement for violators of public order during the pandemic prioritizes the benefit factor, rather than creating legal certainty.

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