

**SADD DZARIYAH REVIEW OF LOCAL REGULATION NUMBER 8 OF 2007
CONCERNING THE PROHIBITION OF BUYING FROM HAWKERS AND GIVING
MONEY TO BEGGARS**

Muhammad Iqbal Almuwafiqi

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta

almuwafiqi99@gmail.com

M. Junaidi

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta

mj122@ums.ac.id

ABSTRACT

The DKI Jakarta Regional Government has issued a regulation related to public order, namely article 40 point C of DKI Jakarta Regional Regulation Number 8 of 2007. The article states that it is prohibited for any person or business entity to become a beggar or instruct others to beg. In addition, article 40 on point c of the DKI Jakarta Regional Regulation also stipulates that it is prohibited for anyone or business entity to forbidden from hawkers and give a certain amount of money to beggars and the like, with the aim of reducing the number of beggars in DKI Jakarta. In this study the author formulates a problem, namely *Sadd Dzariyah* Analysis of the Prohibition of Giving Alms to Beggars in DKI Jakarta Regional Regulation Number 8 of 2007 This regulation is studied using the concept of Saddu Dzari'ah which explains that an act that is initially permissible, if done will cause bad consequences (al-mafsadah).

Keyword : Sadd Dzariyah; Hawkers; Beggars; Alms; Local Regulations

ABSTRAK

Pemerintah Daerah DKI Jakarta telah menerbitkan suatu regulasi terkait tata tertib umum, yaitu pasal 40 Peraturan Daerah DKI Jakarta Nomor 8 tahun 2007. Pasal tersebut menyatakan bahwa dilarang bagi siapa pun atau badan usaha untuk membeli pada pedagang pengemis atau menginstruksikan orang lain untuk mengemis. Selain itu, pada Pasal 40 huruf C Peraturan Daerah DKI Jakarta juga mengatur bahwa dilarang bagi siapa pun atau badan usaha memberikan sejumlah uang kepada pengemis dan sejenisnya, dengan tujuan mengurangi jumlah pengemis di DKI Jakarta. Tujuan dari penelitian ini adalah untuk mengetahui analisis Sadd-Dzariah Terhadap Larangan Membeli pada Pedagang Asongan dan Larangan Memberi Uang pada Pengemis dalam Perda Provinsi DKI No.8 Tahun 2007. Penelitian yang telah dilakukan sebelumnya adalah mengkaji Perda tersebut menggunakan Tinjauan Hukum Islam serta Hukum Positif yang berlaku di Indonesia, sedangkan dalam

penelitian ini adalah mengkaji menggunakan Kaidah Saddu Dzariyah yaitu menutup jalan sesuatu yang dilarang agar suatu yang dilarang tersebut tidak berjalan. Tujuan penggunaan Sadd-Dzariah adalah untuk mewujudkan kemudahan dalam berkehidupan manusia. Karena dasarnya suatu hukum ditetapkan berdasarkan sesuatu yang disukai dan dikenal oleh masyarakat. Dilihat dari sudut yang ditimbulkan semata mata tanpa meninjau motif pelaku. Penelitian ini penulis merumuskan suatu masalah yaitu Analisis Sadd Dzariyah terhadap larangan Membeli pada pedagang asongan dan Pemberian Uang pada Pengemis dalam Perda Provinsi DKI Jakarta Nomor 8 Tahun 2007. Perda ini dikaji menggunakan Konsep Sadd Dzariyah yang menjelaskan bahwa suatu perbuatan yang pada mulanya boleh, jika dilakukan akan menimbulkan akibat perbuatan yang buruk (al-mafsadah). maka perbuatan tersebut bertentangan dengan syariat Islam.

Kata Kunci : *Sadd Dzariyah; Pedagang Asongan; Pengemis; Sedekah; Peraturan Daerah*

INTRODUCTION

Indonesia is classified as a developing country or developing country, which generally has a low per capita income of its population, whose facilities and infrastructure both physically and non-physically fall into the underdeveloped category and has a high level of human resources that depend on nature. The main cause of the high poverty rate in Indonesia is the lack of job opportunities that are not balanced with the number of job seekers. Until now, the government has not been able to find the best solution for its people. This is attributable to disparate economic growth across different provinces, which is a significant contributing factor to the prevalence of economic inequality. In both urban and non-urban areas where economic development has been suboptimal, the availability of employment opportunities is severely limited.

This imbalance causes an imbalance between employment and job seekers, resulting in many informal sector workers, such as hawkers and beggars, until problems arise related to public order that are not in accordance with the DKI Jakarta Regional Regulation as follows. In Article 40 of DKI Jakarta Provincial Regulation No.8 of 2007 which reads:

“Every person or entity is prohibited:

- a. Becoming beggars, buskers, hawkers and car windshield polisher;*
- b. Ordering other people to become beggars, buskers, hawkers, and car windshield polisher;*
- c. Buying from hawkers or giving money or goods to beggars, buskers, and car windshield polisher.”*

The regulation seems to contradict Islamic principles, which call for giving money with the intention of alms to the needy and the poor. Because of the apparent contradiction between the national law and Sharia law, people have various questions and responses to the issuance of the regulation. Either in the form of negative feedback or vice versa. With this problem, the author feels interested and needs to conduct a more in-depth study and research. The author will examine this issue with the title “*Sadd Dzariyah Review Of The Regulation Of The Provision Of The Capital Region Of Jakarta Number 8 Year 2007 Concerning The Prohibition Of Buying From Hawkers And Giving Money To Beggars*”. The government has endeavored to establish public order by endeavoring to eradicate the presence of beggars and hawkers at traffic lights, corners of intersections, public vehicles, terminals, and toll roads. Despite the regulation having been in effect since 2007, a considerable number of traffic lights in Jakarta continue to be occupied by hawkers and beggars, thereby disrupting public order.

Based on the studies described above, the problem used in this research is the *Sadd Dzariyah* Analysis of the prohibition of buying from hawkers and the prohibition of giving money to beggars. As well as providing knowledge as a reference for the development of knowledge related to the causes of the enactment of related regional regulations. This research also intends to understand the view of the *Sadd Dzariyah* Rule on the prohibition of buying from hawkers and the prohibition of giving money to beggars in the *DKI Jakarta Provincial Regulation Number 8 of 2007* ¹.

The legal study used in this research is juridical normative legal research, which is carried out by discussing various formal regulations such as laws and literature sources in the form of theoretical concepts which are then associated with gaps that are the subject of discussion related to the method used in this study is to use the Normative Law method.² So the prohibition in the DKI Jakarta Provincial Regulation No.8 of 2007 point C analyzed with the *Sadd Dzariyah* rules is in accordance with the laws and regulations. Finally, the regulation will be associated with the contents contained in the Qur'an which prohibits begging and in the Criminal Code it is prohibited to carry out activities to buy from hawkers and give money to beggars. So, *Sadd Dzariyah* blocks the path of something that is prohibited so that something that is prohibited is not done. The benefit of this research is to understand the

¹ Waluyo B. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika; 2002.

² Muhammad A. *Hukum dan Penelitian Hukum*. Cet. 1. Bandung: PT. Citra Aditya Bakti; 2004. 52 p.

meaning of the prohibition of *DKI Jakarta Provincial Regulation No.8 of 2007* concerning the prohibition of buying from hawkers and the prohibition of giving money to beggars reviewed in the *Sadd Dzariyah* Rule.

METHOD

The methodology of legal studies is a scientific activity, which is based on methods, systematics and special teachings, with the aim of studying and studying one or several certain legal symptoms by analyzing them.³ Legal studies are an academic activity based on a certain order, way of thinking and systematics with the intention of answering.⁴ The legal study used in this research is through Normative Juridical legal research, which is carried out by trying to understand and describe various regulations that are formal in nature, such as laws and legal sources that are the final result associated with the main subject matter. The study used in this research is to use the Normative Law Research method ⁵ where the source used is normative, namely in the form of legal products and behavior. The essence of this analysis is that the law is conceptualized for norms and rules used in society and guides the behavior of every human being. Indeed, Normative legal studies center on the data collection of positive law and legal doctrine as well as legal discovery in a case in concerto, structured regulations, the level of synchronization, legal considerations and legal history⁶.

The data referred to in this paper is secondary data, namely library material, in the form of official documents, library books etc. Legislation, scientific papers, articles, documents related to primary legal research materials, namely all legally binding data / legal materials.⁷ The main legal materials consist of laws and regulations related to the research and secondary legal materials, namely the main legal materials related to and describing the problem in the form of materials or materials, including books and documents related to the research conducted.⁸ Where secondary legal records are intended as supporters that function

³ Dimiyati K, Wardiono K. *Metode Penelitian Hukum*. Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta; 4 p.

⁴ Juwana H. *Legal Education Reform in Indonesia*. *Asian Journal of Comparative*. 2006;1(1).

⁵ Wignjosoebroto S. *Hukum; Metode, dan Dinamika Masalahnya*. Jakarta: ELASAM dan HUMA; 2002.

⁶ Abdul Kadir, *Hukum dan Penelitian Hukum*, (Bandung: PT. Citra Aditya Bakti. 2004), h.

⁷ Azmar S. *Metode Penelitian*. Yogyakarta: Pustaka Pelajar; 2001.

⁸ Fajar ND M, Achmad Y. *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar; 2009. 34 p.

to provide understanding related to the main legal sources, such as for example the framework of laws, results of previous research, written essays from legal research, and so on.

In this study, the technique of analyzing data was carried out in a qualitative way. The approach is applied to data sources that are cases that cannot be made into one group. The analysis process involves collecting material, qualifying the data, and relating it to the theory related to the gap being studied. The results of this research are used to determine conclusions. Therefore, this qualitative analysis method is suitable for handling a limited number of documents, so it does not require statistical tools in the process.

DISCUSSION

The DKI Jakarta Regional Government has issued a Regional Regulation regarding public order, namely article 40 of the DKI Jakarta Provincial Regulation No.8 of 2007 which contains a prohibition on every person or entity to become a beggar and order others to beg, as well as in article 40 in point c of the DKI Jakarta Provincial Regulation that individuals are prohibited for every person or entity to buy from hawkers and are prohibited from giving money to beggars and the like with the aim of reducing the number of beggars who are increasingly beggars in Jakarta. *Asongan* seller in *Kamus Besar Bahasa Indonesia (KBBI)*, *Asongan* is a noun that has several meanings: Goods sold on the move, usually by small traders who carry merchandise in baskets or other places. People who sell goods on the move.⁹

One of the justifications for the prohibition of purchasing from hawkers is to maintain order in the surrounding environment, which has an impact. Additionally, many individuals perceive themselves to be disadvantaged by the presence of hawkers. One such consequence is the emergence of public inconvenience caused by the existence of hawkers who engage in hawker trading activities in locations that are not designated for such activities. Whereas Beggar means an individual who gets money by asking in public places in various ways with the excuse of getting compassion from others. One of the Government's efforts in creating public order is to eradicate the existence of beggars and hawkers at road intersections, red

⁹ Kamus Besar Bahasa Indonesia. Definition Pengemis. <https://kbbi.web.id/emis>.

lights, toll roads, public vehicles, and terminals.¹⁰ Although the regulation has been in effect since 2007, many traffic lights in Jakarta are still often found with hawkers and beggars disrupting public order.

Islamic law has four foundations as arguments for scholars, namely: The first is the Holy Qur'an, the desecration of the Qur'an, which no one denies. Thus, the meaning of the Qur'an has led to multiple interpretations and different meanings.¹¹ Sunnah is the second source of law after the Qur'an. Hadith are all the words and actions and decisions of the Prophet, so that the hadith is divided into three types, namely qauliyah hadith, fi'ilyah hadith and taqririyah hadith.¹² Third, *Ijmâ'* is the unanimous agreement of the *Mujtahids* in deciding cases related to Islamic law. *Ijma'* is divided into two types of *ijmâ'*, namely *Ijmâ' Sharîh*, an agreement reached by *Mujtahid* in deciding a case, either in *Fatwa* or decision. *Ijmâ' Sukûti*, namely some *Mujtahids* agree on opinions while others disagree in deciding the law.¹³

مَا تَمُّمُ الْوَجِبِ بِأَلَّا فَهُوَ وَاجِبٌ

“Everything that completes an obligatory action is also obligatory.”

One of the rules often used in Islam that is used to be able to determine one of the actions or behaviors that are not yet known or need more reasoning is to use the *Sadd Dzariyah* rule, which is the determination of the law on an act that is generally permitted or prohibited with the aim of preventive efforts from other prohibited acts.¹⁴ Paths or actions that lead to things that are prohibited in Islam and need prevention, closed (*Sadd Dzariyah*). The path or action that leads to something that is permitted by Islam, the law is permissible or allowed. Where an obligation that cannot be carried out unless it is mandatory to be carried out (*Fathu Al Dhariah*).¹⁵ So it can be concluded from some of the above definitions that *Sadd Dzariyah* is the determination of the prohibition of something against a specific action

¹⁰ Arifuddin, Alfian. Psikologi Pengemis: Menguak Misteri Pengemis Receh. Jakarta: Gunung Samudera, 2017

¹¹ Abdullah, Sulaiman. Sumber Hukum Islam. Jakarta: Sinar Grafika; 1995.

¹² Dahlan Abdr. Ushul Fiqh. Jakarta: AMZAH; 2014.

¹³ Al-Zuhayli W, az- Zuhaili W. Al-Wajiz fi Ushul Al-Fiqh. Damaskus: Dar Al-Fiqr; 1999.

¹⁴ Abdurrahman Y. Al-Farat, Al-Tatbiqat Al-Mu'asirat Li Sadd Ad Dzari'ah. Kaherah: Dar al-Fikr Arabi; 2003.

¹⁵ Arifin M, Haq AF. Ushul Fiqh: Kaidah-Kaidah Penetapan Hukum Islam. Surabaya: Citra Media; 1997.

that in principle can be accepted or criticized, with the aim of preventing other actions that are forbidden. Actions that lead to what is prohibited are haram, and this must be avoided and stopped. Actions that lead to what is permissible are permissible or permissible. Actions that are necessary to fulfill an obligation are obligatory, and these actions must be carried out (*fathu al-dhari'ah*).¹⁶

If the DKI Jakarta Provincial Regulation No. 8 of 2007 concerning the prohibition of buying from hawkers and the prohibition of giving money to beggars is studied using the *Sadd Dzariah* Rule, then in fact the purpose of the prohibition to buy from hawkers is to create public order and maintain comfort and aesthetics in DKI Jakarta itself and also the existence of the hawkers themselves disturbs the eye view for some people and hampers the traffic flow of road users.

The prohibition contained in DKI Jakarta Provincial Regulation No.8 of 2007 Article 40 point C. Namely the prohibition of a person to buy from hawkers and give money to beggars, which reads as follows “*c. Buying from hawkers or giving money or goods to beggars, buskers, or car windshield polisher*”. With the existence of these regulations, it is stated that activities that support and lead to someone buying from begging hawkers are prohibited. Furthermore, in Article 504 of the Criminal Code (KUHP), the first is Article 504 paragraph (1) which reads: Whoever begs in a public place shall, being guilty of begging, be punished by a maximum light imprisonment of six weeks. Then the second in Article 504 paragraph (2) which reads: Begging committed by at least three or more persons over the age of sixteen years shall be punished by a maximum light imprisonment of three months.¹⁷ Explained in the article above, buying from hawkers is actually not allowed because the activities of hawkers themselves are not in accordance with DKI Jakarta Provincial Regulation No.8 of 2007. Likewise with giving money to beggars. Thus, everything that leads to what is regulated must also be stopped. An example of this prohibition is the prohibition of every individual to buy from hawkers and give a penny to beggars. This is because if everyone always gives money to the beggar, it will make the beggar himself become a lazy individual and will not progress. So the two prohibitions are related to each other.

¹⁶ Abdurrahman, Yusuf, al-Farat, al-Tatbiqat al-Mu'asirat Li Sadd Ad Dzari'ah, (Kaherah: Dar al-Fikr Arabi, 2003). Hlm. 11.

¹⁷ Kitab Undang-Undang Hukum Pidana. Criminal Code, Article 504 paragraph (1).

Sadd-Dzariah Analysis of the rules prohibiting buying from hawkers and giving money to beggars in the DKI Jakarta Provincial Regulation No.8 of 2007. *Dzariah* according to Islamic law experts is all matters that lead to actions that are legalized and forbidden. An example of a method in *istinbath* law that is entrusted with its existence and used by scholars in determining a law that has no *nashnya* is to use *Sadd Dzariyah*. The purpose of using *Sadd Dzariyah* is to facilitate the life of Muslims. Basically, a law ensures everything that is liked and known by the community. Judging from the angle caused without reviewing the motive of the perpetrator. This is seen in terms of *Maslahah* and *Mufسادah*. If the action causes more benefit, then the law is obligatory or *sunnah*. Meanwhile, if the action causes more harm, the law is *haram* or *makruh*. When viewed with a review of *Sadd Dzariyah* in terms of actions. Directs to the thing that gets the reward or sin for those who do it. On the other hand, in the second analysis, the act of *dzari'ah* has produced a *qadha'i* ruling that allows the court to determine whether the act is legitimate or illegitimate, and even to determine whether it is prohibited or permitted. It comes down to whether the act of *dzari'h* is good or bad, taking into account the intention of the perpetrator in doing the good or bad thing.

In the previous discussion, the legal basis of legislation and Islamic law have an appropriate relationship because both prohibit buying from hawkers and giving money to beggars. If the prohibition in DKI Jakarta Provincial Regulation No.8 of 2007 point C is analyzed with the *Sadd-Dzariah* rules, it is in accordance with the laws and regulations. This is because the prohibition will be linked to the arguments in the Qur'an which do not allow begging and in the Criminal Code it is prohibited to buy from hawkers and give money to beggars. So *Sadd-Dzariah* blocks the path of something that is prohibited with the intention that it is not done. Given that in Islam itself the prohibition of begging has been regulated in Surah Al Baqarah verse 273 which reads as follows “*Other people do not know or think they are actually among the rich because they can keep from asking for money.*”

Thus, it can be concluded that a person is also prohibited from buying from hawkers in order to maintain order and maintain aesthetics in Jakarta and is prohibited from giving money to beggars in order to prevent begging. According to Labor Law No. 13/2003, Informal Workers refer to people who work without work relations, which means that they do not have ties that must be obeyed in the elements of work, wages and power.¹⁸ The purpose is

¹⁸ Law Number 13 Year 2003 on Manpower.

to discuss Trade Business Institutions, hawkers are one of the trade businesses included in the informal sector. The existence of informal sector activities can be considered as an economic reality that plays an important role in community development and national development, and is not a negative symptom.¹⁹ The informal sector becomes a substitute for employment opportunities for job seekers when development programs are less able to provide employment opportunities for the workforce.²⁰ Furthermore, in Law (UU) Number 1 of 2023 concerning the Criminal Code, namely in Article 425 of Law No.1 of 2023 which reads: Every person who gives or hands over to another person a child who is under his power who is not suitable and has not reached the age of 12 years, who actually knows that the child will be used for begging or for doing dangerous work and endangering his health, shall be punished with imprisonment for a maximum of 4 (four) years or a maximum fine of class IV, namely IDR 200 million. Furthermore, the second Law No.1 of 2023 which reads: Every person who accepts a child to be used as referred to in paragraph (1), shall be punished with the same punishment. Because in the end, the activities of buying from hawkers and giving money to beggars will lead to the realization of an act that ends in an act that has been prohibited from the beginning if there is no one who buys merchandise and gives money to them.²¹

CONCLUSION

The 2007 Jakarta Provincial Regulation No. 8 concerning the prohibition of purchasing from hawkers and the prohibition of giving money to beggars is examined through the lens of the *Saddu Dzariah* Rule. The underlying rationale for the prohibition of purchasing from hawkers is to foster public order and maintain the aesthetic appeal of DKI Jakarta, as well as to address concerns related to the visual impact of hawkers on traffic flow. This is evident in terms of *Maslahah* and *Mufsadah*. If the action results in greater benefit, then it is obligatory or recommended. Meanwhile, if the action causes more harm then the law is *haram* or *makruh*. When viewed with a review of *Sadd Dzariyah* in terms of actions. Directs to the thing that gets the reward or sin for those who do it. On the other hand, in the second analysis, the act of *dzari'ah* and has produced *qadha'i* legal provisions that allow the court to

¹⁹ Wauran PC. Strategi Pemberdayaan Sektor Informal Perkotaan di Kota Manado. Jurnal Pembangunan Ekonomi dan Keuangan Daerah. 2012;7(3).

²⁰ DKI Jakarta Provincial Regulation No.8 Year 2007 on Public Order.

²¹ Law Number 1 Year 2023 on the Criminal Code.

determine whether the act is classified as valid or invalid, and even determine the law that prohibits or permits.

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