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Juridical Provisions on Government Policies Towards Marginal Economic Actors in Indonesia in the Perspective of Islamic Law

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Abstract: This study investigates the legal provisions for dealing with street vendors in Banda Aceh and Yogyakarta, utilizing the *Qanun* no. 3/2007 and the Mayor Regulation no. 26/2002, respectively. It investigates the variables that constitute the basis for the creation of policies for dealing with street sellers and evaluates policy formulations for dealing with street vendors in the two provincial capitals in a more accommodating and comprehensive manner. This is a normative legal research that examines legal data in the form of the rule of law by evaluating statutes and Islamic law. The results indicated that the *Qanun* for the City of Banda Aceh and the *Perwal* Yogyakarta were legally designed to govern and control street vendors in compliance with the urban planning and aesthetics of the city. However, the Banda Aceh *Qanun* addressing street vendors must be tied to the Mayor's Regulation 44 of 2016 about the role and function of Wilayatul Hisbah (WH) and Satpol PP (Civil Police), which reflect Islamic *shari'a* standards. Although the Mayor of Yogyakarta Regulation No. 26/2002 on street vendors has been designated as a source and tourist attraction that must be managed responsibly, this has a positive impact on street vendors. The regulation has included cultural issues with such care that it has a favorable effect on their economic earnings. Although other aspects, such as the issuance of business licenses, impartial spatial layouts, and coercive measures against street vendors, still need to be developed. Nevertheless, the Banda Aceh government's comprehensive WH policy integrates Islamic law and the Yogyakarta *Perwal*, which accommodates local and cultural values in accordance with the rule of law that governs and disciplines the society.

Keywords: juridical provisions, government policies, marginal economic actors, Islamic law

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Abstrak: Penelitian ini bertujuan untuk mengetahui posisi PKL dalam ketentuan hukum penanganan PKL di Banda Aceh dengan Qanun No. 3/2007 dan Yogyakarta dengan Peraturan Walikota No. 26/2002, mengkaji faktor-faktor yang menjadi dasar rumusan kebijakan penanganan PKL tersebut, dan menganalisis formulasi kebijakan penanganan PKL di kedua ibukota provinsi tersebut secara lebih akomodatif dan komprehensif. Studi ini merupakan penelitian yuridis normatif, yaitu penelitian yang mengkaji data-data hukum berupa aturan hukum dengan menggunakan analisis perundang-undangan dan hukum Islam. Hasil penelitian menunjukkan bahwa formulasi Qanun Kota Banda Aceh dan Perwal Yogyakarta secara yuridis bertujuan untuk mengatur, menertibkan PKL agar sesuai dengan tata ruang dan keindahan kota. Meskipun demikian faktor yang menjadi dasar Qanun Banda Aceh tentang PKL harus dikaitkan dengan Peraturan Wali Kota Nomor 44 Tahun 2016 tentang peran dan fungsi Wilayatul Hisbah dan Satpol PP yang mencerminkan nilai-nilai syari'at Islam. Sedangkan Peraturan Wali Kota Yogyakarta No. 26/2002 tentang PKL telah ditempatkan sebagai sumber dan daya tarik wisata yang harus ditata dengan baik yang berdampak positif pada PKL. Peraturan tersebut telah mempertimbangkan aspek budaya dengan baik sehingga berpengaruh baik terhadap peningkatan pendapatan ekonomi mereka. Meskipun beberapa aspek masih perlu peningkatan misalnya masalah izin usaha, pengaturan tata ruang yang tidak berpihak dan tindakan represif kepada PKL. Namun demikian secara komprehensif kebijakan pemerintah Banda Aceh yang melibatkan WH mengandung nilai syariat Islam dan Perwal Yogyakarta yang mengakomodir nilai lokal dan budaya sejalan dengan aturan hukum yang berfungsi untuk mengatur dan menertibkan masyarakat.

Kata Kunci: ketentuan yuridis, kebijakan pemerintah, pelaku ekonomi marjinal, hukum Islam

Introduction

The economy within the macro, micro, formal, and informal contexts is one of the most important determinants of a nation's success, failure, development, and advancement. The informal economy is the outcome of a set of material conditions that lead to the subordination of all classes of individuals, as well as a symptom of the subalterns' willingness to evade the shackles of legislation and social hierarchies.¹ The informal economy can be characterized as production that

¹Pietro Saitta, "Practices of Subjectivity: The Informal Economies and the Subaltern Rebellion," *International Journal of Sociology and Social Policy* 37, no. 7–8 (2017): 400–416.

circumvents formal norms, so avoiding both costs and advantages,² It can also be understood as a proxy for institutional quality.³

The informal economy is a global phenomenon that affects the majority of nations, particularly in terms of tax collection, formal job creation, productivity, and corporate efficiency.⁴ From a neoliberal standpoint, however, employment in the informal economy is the result of high taxation, public sector corruption, and state intervention in the free market.⁵ The informal sector is viewed as a vestige of the existing economic order that must be methodically diminished and eliminated. Innovations in exclusive exchange rates, scalability, and extensive commercialization are progressively ignoring the informal sector.⁶

According to a 2013 informal economy survey conducted in six European countries, tax noncompliance occurs when the official laws and regulations of formal institutions are not in line with the norms, values, and beliefs of citizens, necessitating a realignment between public formal and informal institutions.⁷ Participation in the informal sector in Croatia is a result of the asymmetry between citizens' norms, attitudes, and beliefs (informal institutions), laws, and formalized regulations (formal institutions).⁸ In addition, in the African continent, particularly in Uganda, the positive contribution of the informal economy to urban economic development—as the foundation of Africa's future economic development—is pursued with a more receptive policy stance.⁹ In Nigeria, beyond

²Janis N. Kluge and Alexander Libman, “Sticks or Carrots? Comparing Effectiveness of Government Informal Economy Policies in Russia,” *Comparative Economic Studies* 60, no. 4 (2018).

³Minsoo Lee, Joseph D. Alba, and Donghyun Park, “Intellectual Property Rights, Informal Economy, and FDI into Developing Countries,” *Journal of Policy Modeling* 40, no. 5 (2018).

⁴Uquillas Casalombo Carlos Alfredo, “Relationship between the Size of the Informal Economy and the Business Sector in Ecuador. Evidence of Cointegration and Granger Causality,” *Revista de Metodos Cuantitativos Para La Economia y La Empresa* 25 (2018): 215–43.

⁵Colin C. Williams, “Tackling Employment in the Informal Economy: A Critical Evaluation of the Neoliberal Policy Approach,” *Economic and Industrial Democracy* 38, no. 1 (2017): 145–69.

⁶Fayaz Ahmad Sheikh, “Undervaluation of Informal Sector Innovations: Making a Case for Revisiting Methodology,” *African Journal of Science, Technology, Innovation and Development* 11, no. 4 (2019): 1–8.

⁷Colin C. Williams and Ioana A. Horodnic, “Tackling the Informal Economy in Southeast Europe: An Institutional Approach,” *Journal of Southeast European and Black Sea* 15, no. 4 (2015): 519–39.

⁸Colin C. Williams and Josip Franic, “Explaining Participation in the Informal Economy in Post-Socialist Societies: A Study of the Asymmetry between Formal and Informal Institutions in Croatia,” *Journal of Contemporary Central and Eastern Europe* 24, no. 1 (2016): 51–65.

⁹Nandini Dasgupta and Tony Lloyd-Jones, “Heterogeneity and Vulnerability in the Urban Informal Economy: Reworking the Problem in the Current Context. The Case of Uganda,” *World Development Perspectives* 10–12 (2018): 64–72.

the regulatory burden or the needs of a survivalist economy, corporate culture in the informal economy is also determined by socio-cultural and normative environment-driven criteria that are part of the cognitive process underlying the emergence of entrepreneurship in a typical institutional context.¹⁰

Public policy is a decision (outline) made by public authorities that binds many individuals at a strategic level.¹¹ Thus, public policy entails the laws, rules, governance processes, and general management principles that aid the government in an area or country's performance.¹² The lens of public authority uncovers micropolitical practices conducted by non-state and state actors in the bureaucracy, court, politics, and market who remotely control all those practices.¹³ Regarding the market, the regulation governing the sale of street sellers must promote their incorporation into the formal sector.¹⁴ Based on the concept of legal awareness, street vendors' disobedience to the law is not only a coping mechanism to participate in the economic system, but also a weapon for the weak to express their ideas and opinions about the injustice of their political and economic system.¹⁵

In India, the Draft Law on Street Sellers does not include a crucial element in the national policy for street vendors, hence the rights of street vendors are not safeguarded.¹⁶ In Colombia, street sellers' noncompliance stems from their lack of faith in the formalization agenda designed to integrate them into the formal economy.¹⁷ Although the law cannot prevent the improper use of public space for commercial purposes in Latin American cities, it may undoubtedly limit the

¹⁰Isaac A. Ogunsade and Demola Obembe, "The Influence of Informal Institutions on Informal Sector Entrepreneurship: A Study of Nigeria's Hand-Woven Textile Industry," *Journal of Small Business and Entrepreneurship* 28, no. 6 (2016): 413–29.

¹¹Saiful Deni, Julhija Rasai, and Zubair Saing, "Public Policy Analysis on Disaster Threat Due to Geo-Environmental Condition of Tugurara River in Ternate City, North Maluku Province," *International Journal of GEOMATE* 17, no. 60 (2019): 211–18.

¹²Andriansyah Andriansyah, Taufiqurokhman Taufiqurokhman, and Ismail Suardi Wekke, "Responsiveness of Public Policy and Its Impact on Education Management: An Empirical Assessment from Indonesia," *Management Science Letters* 9, no. 3 (2019): 413–24.

¹³Dolf J.H. te Lintelo, "Enrolling a Goddess for Delhi's Street Vendors: The Micro-Politics of Policy Implementation Shaping Urban (in)Formality," *Geoforum* 84 (2017): 77–87.

¹⁴N. Wongtada, "The Ecology of Street Vending: A Review with Policy Implications," in *Interdisciplinary Behavior and Social Sciences - Proceedings of the 3rd International Congress on Interdisciplinary Behavior and Social Sciences, ICIBSoS 2014*, 2015, 131–36.

¹⁵Ana Maria Vargas and Rustamjon Urinboyev, "Everyday Forms of Resistance to the Law: An Ethnographic Study of Street Vendors in Bogotá," *Droit et Societe*, 2015, 632–38.

¹⁶Sharit Bhowmik, "Legal Protection for Street Vendors," *Economic and Political Weekly*, 2010, 12–15.

¹⁷Vargas and Urinboyev, "Everyday Forms of Resistance to the Law: An Ethnographic Study of Street Vendors in Bogotá," 632–38.

repetition of other illicit activities.¹⁸ In addition, concessions secured by women in the Philippines under particular legislation have enabled them to capture urban places,¹⁹ so consolidating their access to livelihood.²⁰ In Bangkok, as a result of the district administration's "managed informality" policy, the more established informal vendors controlled the less established ones.²¹

Law enforcement is viewed as a crucial link in the cycle of protection and survival.²² Social discourse that contributes to law enforcement norms and expectations.²³ Resistance or compliance with the law is a mirror of the mediators created by the mediators involved in the mediation process.²⁴ In this context, the formation of legal technicians as law enforcement actors is intended to provide institutional actors and legal users with opportunity to discuss their daily experiences with law, including how laws are produced and comprehended.²⁵ As law enforcement pursues greater control rights, which generates citizen worries, there will be a rapid increase in public discourse.²⁶ Therefore, it is vital to transform the legal culture, which formerly prioritized rational principles, into

¹⁸Rodrigo Meneses-Reyes, "(Un)Authorized: A Study on the Regulation of Street Vending in Latin America," *Law and Policy* 40, no. 3 (2018): 286–315.

¹⁹Elizabeth Alejo and Amy Schoenecker, "Policies of Exclusion: Space, Time, and the Informal Economy in Chicago," *Space and Culture* 23, no. 4 (2020).

²⁰B. Lynne Milgram, "Reconfiguring Space, Mobilizing Livelihood: Street Vending, Legality, and Work in the Philippines," *Journal of Developing Societies* 27, no. 3–4 (2011): 261–93.

²¹Quentin Batréau and Francois Bonnet, "Managed Informality: Regulating Street Vendors in Bangkok," *City and Community* 15, no. 1 (2016): 29–43.

²²Aaron B. Klassen et al., "A Descriptive Analysis of Care Provided by Law Enforcement Prior to EMS Arrival in the United States," *Prehospital and Disaster Medicine* 33, no. 2 (2018). S. Muchtar and A. Yunus, "Environmental Law Enforcement in Forestry Crime: A Disjunction between Ideality and Reality," in *IOP Conference Series: Earth and Environmental Science*, vol. 343, 2019; Arlyne Johnson et al., "To Protect or Neglect? Design, Monitoring, and Evaluation of a Law Enforcement Strategy to Recover Small Populations of Wild Tigers and Their Prey," *Biological Conservation* 202 (2016): 99–109.

²³Sara E. McClellan and Bryon G. Gustafson, "Communicating Law Enforcement Professionalization: Social Construction of Standards," *Policing*, 2012, 104–23.; Flavio Pechansky, Aruna Chandran, and Tanara Sousa, "Bridging a Historical Gap: Can Changes in Perceptions of Law Enforcement and Social Deterrence Accelerate the Prevention of Drunk Driving in Low and Middle-Income Countries?," *Revista Brasileira de Psiquiatria* 38, no. 2 (2016): 161–66.

²⁴Ning Ye, "Institutional Interaction in Traffic Law Enforcement in China: Resistance and Obedience," *Semiotica* 2017, no. 216 (2017).

²⁵Louise Munkholm, "Creating a New Type of Labour Law Enforcer: The Law Technician in Prato," *Journal of Law and Society* 45, no. 4 (2018): 538–62.

²⁶Jyri Rajamaki et al., "How Transparency Improves the Control of Law Enforcement Authorities' Activities?," in *Proceedings - 2012 European Intelligence and Security Informatics Conference, EISIC 2012*, 2012.

legal conduct based on transcendent ideals.²⁷ To bring justice to every person, progressive judges must also go beyond the linguistic boundaries of the law by paying constant attention to the concept of obligation and the principle of prudence.²⁸

In the Malaysian state of Selangor, law enforcement against SME entrepreneurs has a significant impact on the Muslim business community's compliance with zakat payments.²⁹ Ideal transportation law enforcement should enable authorities to detect, identify, and take action against unauthorized road users with minimal interference to the usual flow of traffic.³⁰ The benefits of the banking system on economic growth are much more obvious in China, where law enforcement is more effective.³¹ In the United States, police enforcement personnel are frequently the first to respond to medical situations, including overdoses.³² However, female law enforcement agents in the United States are more attuned to stereotypically masculine behavior.³³

In Indonesia, the humanistic criminal law is implemented through the establishment of a criminal code that incorporates the religious and community-friendly Pancasila ideology's human values and principles.³⁴ Almost all provinces and regencies/cities in Indonesia have regulatory regulations that bind both major and small commercial actors, such as street sellers.

Due to the fact that Banda Aceh is a region that has implemented the Islamic law, the rules governing the control of street vendors and the implementation of legislation should also be influenced by *sharia*. Similarly, the

²⁷Muhammad Amin Hanafi et al., "Law Enforcement of Fisheries Crime in North Maluku Province through Transcendental Paradigm," *Journal of Transcendental Law* 2, no. 1 (2020): 45–60.

²⁸Helmi Helmi et al., "Documenting Land-Combustion and Progressive Law Enforcement in Indonesia," *Library Philosophy and Practice* 2019 (2019): 26–75.

²⁹Mohd Rahim Khamis and Norliza Che Yahya, "Does Law Enforcement Influence Compliance Behaviour of Business Zakat among SMEs?: An Evidence via Rasch Measurement Model," *Global Journal Al-Thaqafah* 5, no. 1 (2015): 19–32.

³⁰Alwyn Jakobus Hoffman and Albertus J. Pretorius, "SmartRoad: A New Approach to Law Enforcement in Dense Traffic Environments," in *IEEE Conference on Intelligent Transportation Systems, Proceedings, ITSC*, vol. 2015-October, 2015, 598.

³¹Yu Xia and Xianliang Tian, "Banking Efficiency, Law Enforcement and Chinese Provincial Economic Growth," in *Proceedings of the 2012 National Conference on Information Technology and Computer Science, CITCS 2012*, 2012, 758–62.

³²Traci C. Green et al., "Law Enforcement Attitudes toward Overdose Prevention and Response," *Drug and Alcohol Dependence* 133, no. 2 (2013): 677–84.

³³Clare L. Barratt, Mindy E. Bergman, and Rebecca J. Thompson, "Women in Federal Law Enforcement: The Role of Gender Role Orientations and Sexual Orientation in Mentoring," *Sex Roles* 71, no. 1–2 (2014): 21–32.

³⁴Maroni and Nenny Dwi Ariani, "Humanistic Criminal Law Enforcement to Achieve Spiritual Justice," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 2 (2018).

city of Yogyakarta is rich in culture; hence, the implementation guidelines for governing street sellers must reflect the city's culture. As a result, weak economic players are empowered by the creation of order and the ability to guarantee their revenue.

This is a normative juridical study, examining legal data in the form of the rule of law through analyzing legislation and Islamic law.³⁵ The Qanun on Regulation and Arrangement of Street Vendors, which was enforced in Banda Aceh City, and the Yogyakarta Regional Regulation on Structuring Street Vendors served as the basis for the analysis of legislation and Islamic law in this study's key legal materials. While secondary data is comprised of relevant publications and articles, documentation procedures were used to acquire data, including the acquisition of local regulatory documents pertaining to street sellers in the two provinces.

Governmental Approach to Economic Actors

In accordance with Article 28 A of the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 pertaining to Human Rights, the government completely guarantees the right of Indonesian citizens to acquire employment and an acceptable standard of life. In actuality, however, governments at all levels create unproductive policies. One of these is the policy on structuring Street Vendors (PKL), for which there are major changes in the substance of the policy in different regions of Indonesia. In fact, the Government of the Republic of Indonesia already has a clear legal basis for the arrangement of street vendors, namely Presidential Regulation of the Republic of Indonesia Number 125 of 2012 Concerning Street Vendors,³⁶ but the language is so vague as it opens a wide range of interpretations. This interpretation is what makes the implementation of this policy inconsistent between regions. There are regional policies that are more accommodating of street sellers, as well as those that tend to be more confrontational.

Essentially, street vendors are economic activities that try to fulfil daily needs. Article 1 point 1 of the Presidential Regulation No. 125 of 2012 on Coordination of Arrangement and Empowerment of Street Vendors defines street vendors as business actors who conduct trading business using movable or immovable business facilities, city infrastructure, social facilities, public facilities, temporary/non-permanent land and buildings owned by the government and/or the private sector. This formulation appears to be a prototype for local

³⁵Salim and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Tesis Dan Disertasi* (Jakarta: Rajawali Press, 2017), 1–19.; Jonaedi Efendi and Johnny Ibrahim, *Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Kencana, 2016), 123–46.

³⁶Presidential Regulation of the Republic of Indonesia Number 125 of 2012 concerning Coordination of Arrangement and Empowerment of Street Vendors.

regulations when it is passed down. This, however results in the construction of regional regulations to become rigid. As a consequence, the regulation initially meant to help the underprivileged improved their economic status turns to be the barrier that restricts their economic mobilities.

Generally, the legal basis for street sellers in each region of Indonesia results in distinct policies. Obviously, this results in great difficulty for street vendors in regions with restrictive rules. Moreover, street sellers engage in these commercial activities to meet their daily needs, not to accumulate riches or possessions. Therefore, it is crucial to do this research and study in order to understand the policy formulation framework for dealing with street sellers in various Indonesian regions.

This article reviews the policies governing the management of street vendors in Banda Aceh City, as stated in the *Qanun* of Banda Aceh City Number 3 of 2007 concerning the Regulation and Guidance of Street Vendors,³⁷ and the policies governing the management of street vendors in Yogyakarta, as stated in the Mayor of Yogyakarta Regulation Number 2 of 2006 concerning the Management of Street Vendors.³⁸ The objective of this research is to determine the position of street vendors in the two regional regulations in the two cities, to examine the factors that form the basis for the formulation of the PKL structuring policy, and to analyze the ideal formulation of the PKL policy so that it can deal with street vendor issues more flexibly and comprehensively. It is anticipated that policymakers will consider the findings of this study when revising or updating legislation pertaining to street sellers and directing them in a direction that will accommodate and thrive marginal economic actors such as street vendors.

Theoretically, diversity of influence on policy practices is feasible when there are conceptual challenges, ideological foundations in formulation, and synergies with other policies with the same objective to achieve a greater impact. Theoretically, the PKL structuring policy will be met with less resistance and have a broader impact if a) PKL is conceptualized as a potential for developing community independence, b) the locality dimension is used as the basis for policy formulation, and c) PKL policies are placed as part of integrative regional development, necessitating special treatment in both formulation and law enforcement.

Policy Perspectives on Street Vendor Organization in Banda Aceh and Yogyakarta

³⁷Banda Aceh City Qanun Number 3 of 2007 concerning Regulation and Guidance of Street Vendors

³⁸Regulation of the Mayor of Yogyakarta Number 2 of 2006 concerning the Arrangement of Street Vendors.

1. Legal Formulating Conceptualization

It is difficult to structure street sellers since they exist in two realms that sometimes contradict one another. On the one hand, the development of street vendors is strongly tied to attempts to promote the micro-informal economy's potential and independence within the context of people's economic development. However, street sellers are also associated with urban planning and ecology concerns. Consequently, a policy framework accommodating these two interests is required. To examine this, an analysis of two policies for structuring street vendors in two Indonesian cities, the City of Yogyakarta and the City of Banda Aceh, will be presented, namely the Yogyakarta Mayor's Regulation No. 26/2002 concerning the Arrangement of Street Vendors and the Qanun of Banda Aceh City Number 3 of 2007 concerning the Regulation and Guidance of Street Vendors, focusing on definition, licensing, and supervision. These two policies were selected because they elicited distinct responses and consequences in practice.

Table
Comparison of the Concept of the Rule of Law about street vendors
in Banda Aceh and Yogyakarta

Conceptualization	Qanun Banda Aceh	Yogyakarta City Regulation
Definition/ asumption	Economic safety regulation	An integral part of Yogyakarta as Comfortable city (Perdakot 1/1992).
Permission	Legal Aspect, permission granted only by the mayor	Legality Permission granted by the mayor or appointed officials. Implementing rules with the delegation of part of the authority with the delegation of permits given to the sub-district head Consumer protection
Monitoring and enforcement	Market office street vendors association	Camat (the sub-district head) Disperindagkop Residential and infrastructure Department of Transportation Department of Tourism and Culture street vendors association
Juridical consideration	Qanun No. 3, 2007	a. Yogyakarta City Regional Regulation No. 26/2002,

		<p>b. Yogyakarta Mayor Decree No. 84 of 2004 concerning Structuring Street Vendors Using Vehicles,</p> <p>c. Yogyakarta Mayor Regulation No. 45 of 2007 concerning Guidelines for the Implementation of the Yogyakarta City Regional Regulation No. 26/2002 on Structuring Street Vendors,</p> <p>d. Mayor Regulation No. 37 of 2010 concerning the Arrangement of Street Vendors in Special Malioboro Areas – A. Yani</p> <p>e. Yogyakarta Mayor Regulation No. 8 of 2016 concerning the Delegation of Part of the Authority of the Mayor to the Camat to Carry out some Regional Government Affairs.</p>
Consideration	<p>With the adoption of Banda Aceh City Qanun No. 13 of 2004 about Market Management, it is deemed necessary to govern the regulation and development of street vendors in the city of Banda Aceh in order to produce order, comfort, and beauty.</p>	<p>a. The existence of street sellers is a fundamental right of the community in order to fulfill life's necessities.</p> <p>b. For efforts to preserve, empower, control, and promote street sellers in the city of Yogyakarta, as well as the protection of the rights of other parties</p>

Data Source: Banda Aceh City *Qanun* 2007 and Yogyakarta *Perdakot* 2004.

The regulation of the Mayor of Yogyakarta Number 45 of 2007 regarding Guidelines for the Implementation of Regional Regulation of the City of Yogyakarta Number 26/2002 regarding the Structuring of Street Vendors (hereinafter abbreviated as *Perdakot* 45/2007), PKL are sellers of goods and or services who are individually engaged in economic activities that use areas belonging to roads and public facilities and are temporary/non-permanent by using mobile equipment. In Banda Aceh City, Qanun Number 3 of 2007 concerning Regulation and Guidance of Street Vendors (henceforth referred to as Qanun No. 3/2007), street vendors are defined as: "Traders who in their business use business premises or facilities or business equipment that is easily dismantled,

re-installed/removed and occupies land controlled by the city government and/or other parties." Both municipal administrations believe that PKL activities are essentially an economic activity carried out by the community. Due to the fact that this activity takes place in a public area, it is necessary to establish measures to ensure that it does not interfere with other public interests.

Within the context of the description, there is a fundamental distinction. In *Perdakot* (City regulation) 45/2007, the business of structuring street sellers is placed within the context of the 'Yogyakarta a Comfortable City' strategy, which aspires to make Yogyakarta a comfortable city for its people and visitors. In this setting, street vendors are no longer merely an economic issue, but also a cultural one and a crucial component of Yogyakarta's infrastructure for fostering tourist comfort. This differs with *Qanun* 3/2007, which views street sellers primarily from an economic standpoint. In this view, street vendors function as economic safety valves that enable excluded people to engage in the national economy. Therefore, the PKL structural policy is subject to a number of other policy conditions pertaining to the usage of public infrastructure.

2. Aspects of Enterprise Licensing

On the licensing issue, Article 9 paragraph (1) of *Qanun*, No. 3 of 2007 is severely regulated: "to utilize the site of business as described in Article 2 paragraph (1), every street vendor must first get written permission from the mayor." This article does not mention that the applicable agency, such as the Market Service, can issue a business license. While in the Yogyakarta City Regional Regulation No. 26/2002, Article 3 paragraph (1) states that "every street vendor who will engage in business activities and use the location referred to in Article 2 paragraph (2) of this Regional Regulation, must have a permit to use the location and an identity card from the mayor or local official". The Yogyakarta City Regional Regulation No. 26/2002 states that every street vendor who will engage in business activities and use the location referred to in Article 2 paragraph (2) of this distinction is essential because the mayor can refer this licensing issue to the agencies responsible for the regulation and oversight of street vendors. In the two clauses cited above, the licensing procedure is indeed governed by the principle of legality, but the absence of implementing rules as guidelines for implementing *Qanun* No. 3 of 2007 has resulted in the licensing process being carried out only by the mayor. Due to its precise implementation measures, Regional Regulation No. 26/2002 makes it easier for street sellers to obtain a business license, allowing them to obtain the certainty of a site to earn a living.

3. Aspects of Supervision and Criminal Justice

Regarding the operation of street vendors, *Qanun* No. 3 of 2007 stipulates that the city government is responsible for supervision, as stated in Article 17

paragraph (1): "The City Government is obligated to collect data, develop, and supervise street vendors in the city;" (2) "The Market Service is responsible for the guidance and supervision referred to in paragraph (1)." (3) The data collection, advice, and oversight referred to in paragraph (1) may be carried out with the participation of the street vendor organization. This *qanun* is supervised by the Market Service and the association of street vendors, who are familiar with the market's actual conditions and the sites where street sellers conduct business. Article 11 of Regional Regulation No. 26/2002 states, "The mayor or other designated official is responsible for supervising the execution of this Regional Regulation." The regulations under it then further regulate the supervision and functions carried out by the *Camat*, as the head of the sub-district with authority over his sub-district area. The *Camat* then participates in supervising the Department of Industry, Trade, and Cooperation, the Department of Settlements and Regional Infrastructure, the Department of Transportation, and the Department of Tourism, Culture, and Associations of street merchants.

Formulation of PKL Arrangement Policies in Banda Aceh and Yogyakarta

1. Economic and Cultural Considerations

The City Government plainly asserts that *Qanun* No. 3 of 2007 is a continuation of the implementation of Banda Aceh City *Qanun* No. 13 of 2004 regarding Market Management, and that the existence of this *qanun* would generate order, comfort, and beauty in the city. To increase the effectiveness of the Banda Aceh City *Qanun's* implementation, the mayor authorizes Article 21-mandated repressive actions by the relevant agencies. In the meantime, Yogyakarta Regional Regulation No. 26/2002 incorporates the following considerations: a. The existence of street sellers in the city of Yogyakarta is fundamentally the community's right to meet its basic needs. b. that in addition to possessing rights, street sellers are required to maintain cleanliness, tidiness, and order and to respect the rights of other parties in order to create a "pleasant" Yogya city. c. in the context of expanding efforts to protect, empower, regulate, and nurture street sellers in Yogyakarta, along with the protection of the rights of other parties. With this Regional Regulation, all approaches for regulating, controlling, and developing street vendors are softer, with an emphasis on discussion and persuasion, and the PKL association is primarily responsible for addressing street vendor issues. In Yogyakarta, the cultural factor plays a larger role in the management of street sellers, yet respect for street vendors' enterprises remains a priority and street vendors must still comply with any legislation. As a result of this *qanun's* authorization, repressive acts carried out by affiliated parties in Banda Aceh could hurt street sellers as economically vulnerable business players whose assets and capital were confiscated by the appropriate agencies.

2. Considering Population and Employment

The city government of Banda Aceh is only concerned with traffic flow, store accessibility, foot traffic, and business operating time. In accordance with Article 2 of the city's RTRW (regional spatial plan), the municipal authority of Banda Aceh regulates street sellers in accordance with the city's RTRW (regional spatial plan). As a result of the application of *Qanun* No. 3 of 2007 in Banda Aceh City, the marginalized economic community was unable to run business properly, and the government did not provide equal opportunities for this economically disadvantaged stratum of society, as the Mayor of Banda Aceh has not yet determined the locations permitted for street vendors, as required by Article 3, paragraphs 1, 2, and 3. While in the Regional Regulation no. 26/2002 concerning the Arrangement of Street Vendors, the Yogyakarta City Government establishes detailed policies to ensure that the regulation and guidance process is carried out step-by-step through regulations that can ensure that all marginal business actors are well protected as long as they have taken the following steps: the legal approach as specified in the formal legal regulations, however the legal policy established in establishing the Yogyakarta Regional Regulation does not include population and employment issues.

Policies in Banda Aceh and Yogyakarta for the Accommodation and Comprehensive Management of Street Vendors

1. Policy to Reduce Poverty

The fact that the *Qanun* No. 3 of 2007 stipulated that the street vendors were not given a business location that was legally regulated in the Mayor's Regulation as it should have been mandated in Article 2 and Article 4, the Banda Aceh City Government's policies have put pressure on this economically disadvantaged community, despite the mayor's best efforts to regulate street vendors' businesses in public places, not only on the roadside and overhang the sidewalk. Inasmuch as local governments are required by law to increase the welfare of the community, this commitment must be met. In the City of Yogyakarta, however, the government regulates street vendor's business activities in Article 2, particularly paragraph 3, through which the street vendors are given specific locations for commercial activities in accordance with regional government objectives. PKL can use existing facilities, particularly roadsides, and other public locations to run business, which is governed by the above-mentioned mayor's regulation. Nevertheless, this regulation is followed by effective supervision, which is carried out without the use of harmful forces against street vendors.

2. Policies to Overcome Chaos

The legal provisions provided by the Mayor of Banda Aceh are incomplete because, following the release of *Qanun* No. 3 of 2007, no other *Qanun* or *Perwal* were issued to regulate implementation procedures. This increases complexity in its execution and is extremely open to multiple interpretations. However, in the legal provisions made by the Mayor of Yogyakarta, he is able to resolve all aspects of the chaos in the areas used by street vendors, namely the Decree of the Mayor of Yogyakarta No. 84 of 2004 concerning Structuring Street Vendors Using Vehicles, Yogyakarta Mayor Regulation No. 45 of 2007 concerning Guidelines for the Implementation of the Yogyakarta City Regional Regulation No. 26/2002 on Structuring Street Vendor.

3. Strategies for Overcoming PKL Issues

The government's legal products are intended to promote social order and stability. With the adoption of this *qanun*, the city's order will become tidier and more organized. In the meantime, for the community, particularly the marginal economy traders, income stability is crucial for their families' well-being. As it is still difficult for the community to earn a living wage, all legal means are pursued in order to generate a sufficient income. The street vendors, who continue to struggle to make a living, continue to use public facilities to sell their items in order to meet their basic requirements, although being aware that doing so is contradictory to the rules governing the use of public facilities. Law enforcement must treat the community as a subject, rather than merely an object; when a legal product is adopted, its impact on society must be analyzed. Some Acehnese are angered by the government's consistent enforcement of lenient downhill but strict upward laws. The legal goods that result prioritize regulating people's behavior and do not create opportunity for weak economic entrepreneurs to generate wealth. In the meantime, the municipal government of Yogyakarta is seeking facilities in accordance with Chapter VI concerning Facilities/guidance, Article 10 from paragraph (1) to paragraph (2) and (4). With the existence of extensive laws, part of the anarchy that occurred in Yogyakarta can be resolved. The towns of Banda Aceh and Yogyakarta also take action against unlicensed street vendors so that they do not generate difficulties among their peers.

4. Between Government and Merchants' Interests

Even while the goal of the regulation itself is to discipline and regulate so as to provide benefits for everybody, the government is confronted with two competing interests, namely those of the government and merchants, when it comes to regulating street vendors. This is due to the fact that this public policy is designed to guarantee public good to a certain province. Even in accordance with the duty of public policy to bind numerous parties, compliance with these regional order policies is required. In terms of establishing regional regulations,

the two provincial capital governments classify street vendors as informal workers; in *Perda* (Provincial Regulation) 26/2002, street vendors are defined as sellers of goods and/or services in certain areas, such as roads and other public facilities, in order to generate income. According to Qanun 3/2007, informal traders who occupy territories controlled by the city government and/or other parties are squatters. With this definition, street vendors are given a clear space to use the road or land without interfering with the interests of other parties. This is because, in principle, many parties have an interest in roads for traffic as *haq al-murur* (right to traffic), which is inherent in every citizen, as well as other land controlled by the government as *milk al-daula* (state property) which is used for public purposes such as parks for recreation and others. As roads and parks are public spaces, it is easier for street sellers to get clients. The existence of street vendors as actors in the informal economy is a subordinate inclusion for the entire surrounding community, as their existence is required for the consumer to acquire the object of their merchandise, despite the fact that their existence is still subject to government-imposed regulations.³⁹

In its regulations, the government must stipulate that by allowing street vendors to run business in public locations, it becomes simpler for them to generate money without disrupting other parties that utilize the facility but have different interests. The government should foster street vendors so that they have economic capacity and are able to exist and establish themselves as new economic actors who have succeeded in escaping poverty, so that gradually these traditional economic actors can be systematically eliminated from the traditional economic order.⁴⁰

The Banda Aceh City Government and the Yogyakarta City Government still refer to the legal aspect when granting permits, but the licensing procedure is given differently. In Banda Aceh, the mayor grants the permit, whereas in Yogyakarta, the sub-district head, whose authority was delegated by the mayor with *Perwal* No. 8 of 2016, can grant the permit. This difference in the licensing system causes a stark contrast in effectiveness. In Yogyakarta, the level of regularity of the jurisdictional system in the development of street vendors has allowed them to become one of the city's tourist attractions, along with supervision from agencies relating to the quality of service and the quality of street vendors' merchandise. Better still, even as a tourist site, the City Government has devised a protective framework for customers against numerous potentials that may be carried out by responsible street vendors. In Banda Aceh,

³⁹Saitta, "Practices of Subjectivity: The Informal Economies and the Subaltern Rebellion," 400.

⁴⁰Georgina M. Gómez, Suthida Chawla, and Jan Franssen, "Exploring the Entrepreneurial Ecosystem within the Informal Economy with a Multifactor Framework," in *Urban Book Series*, 2020, 181–202.

which has not mobilized this potential as a source of maximum income for the community, they can use and mobilize street vendors as a higher quality informal business, so in the city of Yogyakarta, the level of quality of products sold by street vendors, despite the fact that some are traditional and home-made handicrafts, must still be improved according to Indonesian National Standards (SNI).

Government Policy on Banda Aceh and Yogyakarta Street Vendors Islamic Law Viewpoint

Banda Aceh Qanun No. 3 of 2007 regarding the regulation of street vendors is related to Mayor of Banda Aceh Regulation No. 44 of 2016 regarding the WH's (the *Shariah* police) duties and responsibilities. The function of the WH, namely ensuring the implementation of policies for the implementation of public order and public peace; implementing coordination of the enforcement of Qanun, Mayor Regulations, and Islamic *Shari'a* and public peace. While the functions of the WH is maintaining the Public Order and Public Peace are specified, namely: Controlling hawkers and street vendors in line with existing rules.⁴¹

The Banda Aceh Qanun addressing street vendors cannot be viewed from a single angle, however this law has a close relationship with the Banda Aceh Mayor's Regulation regarding the WH's duties and responsibilities. The function and role of the WH in implementing Islamic law in Aceh, particularly in providing instruction and socializing Islamic law. In addition, the purpose is to ensure order, public tranquillity, and management of hawkers and street sellers in accordance with existing law.

In addition, the existence of the WH within the extent of its responsibilities as part of the enforcement of *amar makruf nahi munkar* implies a broader rule of law. Namely Legislation No. 44 of 1999 pertaining to the Implementation of Aceh's Privileges, which was later enhanced by the Aceh Government Law of 2006 as a law that allows the Acehnese to implement Islamic *Shari'a* kaffah.⁴²

As an example, the monitoring of street vendors by WH employees and the Civil Service Police Unit of Banda Aceh City in the Gampong Jawa neighborhood in the direction of Ulee Lheu Beach. This check was conducted thirty minutes prior to the Maghrib call to prayer. This is done to implement the

⁴¹Banda Aceh Mayor Regulation Number 44 of 2016 concerning the Structure, Position, Duties, Functions, Authorities and Work Procedures of the Civil Service Police Unit and the Wilayatul Hisbah.

⁴²Muhibbuthabary, "Kelembagaan Wilayatul Hisbah Dalam Konteks Penerapan Syariat Islam Di Provinsi Aceh," *Jurnal Ilmiah Peuradeun: International Multidisiplinary Journal* 11, no. 2 (2014): 61–82.; Samsul Bahri, "Wilayatul Hisbah Dan Syariat Islam Di Aceh: Tinjauan Wewenang Dan Legalitas Hukum," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 9, no. 1 (2017): 24–47.

application of Islamic law and the WH and Satpol PP's portions, responsibilities, and roles.⁴³ The WH is attempting to enforce Islamic law in accordance with the rule of law and the vision and objective of Banda Aceh City as a promising region within the Syariah Framework by prohibiting street sellers from selling from sunset until evening.

The Banda Aceh government's policy on street vendors, which is linked to other legal restrictions, including the involvement of the WH, demonstrates the government's determination to conform with Islamic legal standards. Not only do the ideals of Islamic law in issue allow traders to engage in economic activity, but they also block the door and prevent people from undertaking immoral conduct. Because night-time community activities in coastal and tourist locations provide an opportunity to engage in conduct that is opposed to the norms of Islamic law and local knowledge that are so firmly held by the people of Aceh.

The Yogyakarta Regional Regulation No. 26/2002 concerning street vendors, although it does not contain a sociological basis with cultural elements, is very thick with local cultural elements in the regulations stipulated, so that the content of the Yogyakarta City Regional Regulation No. 26/2002 and Yogyakarta Mayor Regulation No. 62 of 2009 is more lenient in regulating and fostering street vendors, even though the Yogyakarta City Government clearly states in Article 1 that street vendors are not prohibited from selling so that this street vendor business becomes an integral part of Yogyakarta's tourism industry.

The regional regulation stipulates that a systematization of supervision must be carried out by the Camat as the primary entity with authority from the mayor. The Camat also supervises the Department of Industry, Trade, and Cooperation, the Department of Settlements and Regional Infrastructure, the Department of Transportation, the Department of Tourism and Culture, and the Association of Street Vendors. The established framework is adequate enough to allow integration between the informal and formal economic sectors. As mentioned by Wongtada regarding the necessity of integrating street vendors into the formal sector, this is beneficial in providing street vendors with color so that they can share their experiences and thrive in their business.⁴⁴

The government policy of Yogyakarta takes into account cultural factors that are adaptive to the society. According to the provisions of Perwal No. 26/2002, which states, "The existence of street vendors in the city of Yogyakarta is essentially the right of the community in order to meet its basic needs", the increase in population who also require a means of subsistence justifies the

⁴³Enforcing Islamic Sharia, Satpol PP Closes Gampong Java Coast Path-Ulee Lheu Jelang Magrib, <https://aceh.inews.id/lite/berita/tegakkan-syariat-islam-satpol-pp-tutup-jalur-pantai-gampong-jawa-ulee-lheu-jelang-magrib>, diakses 30 Juli 2022.

⁴⁴Wongtada, "The Ecology of Street Vending: A Review with Policy Implications," 131–36.

existence of street vendors. This demonstrates the government's obligation to the macroeconomic elements of the city. Conceptually, the informal economy does not need to be blocked or eradicated, as its sector substantially supports the expansion of formal employment prospects, productivity, and company effectiveness.⁴⁵

Experiences in other *qanun* that promote customary norms should serve as a model for Banda Aceh's regulation of street vendors, which must also prioritize cultural values because Acehese culture is highly functional in bringing order to society. As the Acehese saying “adat bak poeteumeureuhom hukum bak syiah kuala, qanun bak putroe phang reusam bak laksamana”. In this term, law and custom must complement one another, particularly in dealing with street sellers, who occupy a position of economic dependency and take political and legal sides. According to Ogunsade, the emergence of the informal economy, such as street sellers, is driven by the sociocultural and normative context that is an integral component of the cognitive process.⁴⁶

After the tsunami that damaged areas of Aceh, particularly West Aceh, Aceh Jaya, and Banda Aceh, and the conclusion of the armed struggle, the city of Banda Aceh grew swiftly and became a destination for migrants from various regions of Indonesia. This encourages street sellers to set up shop in locations that do not have a license to operate a company.

The economic difficulties of the street vendors stem from their intrinsic poverty. People are compelled to become street vendors because they lack the financial resources and are not involved in the formal economy. It is quite difficult for most street vendors to overcome poverty and despair, as the majority of them operate just to meet their fundamental requirements. The Mayor of Yogyakarta has structured this street vendor company as a modern enterprise that must be carried out and expanded in order to generate a sufficient income. When seen as a totality, the Banda Aceh City government has also implemented the rule of law and Islamic values, particularly if they are interconnected. This is because Banda Aceh's economic growth index is rising and the proportion of poor people is falling. Even under the conditions of the Covid-19 epidemic, the unemployment rate might fall from 7.22% in 2019 to 6.90% in the first quarter of 2020. Banda Aceh is the region in Aceh with the lowest rate of poverty.⁴⁷

⁴⁵Carlos Alfredo, “Relationship between the Size of the Informal Economy and the Business Sector in Ecuador. Evidence of Cointegration and Granger Causality,” 215–43.

⁴⁶Ogunsade and Obembe, “The Influence of Informal Institutions on Informal Sector Entrepreneurship: A Study of Nigeria’s Hand-Woven Textile Industry,” 413–29.

⁴⁷Wali Kota: Angka kemiskinan di Banda Aceh Menurun, <https://www.merdeka.com/peristiwa/wali-kota-angka-kemiskinan-di-banda-aceh-menurun.html>, diakses pada 30 Juli 2022.

In the meantime, in Yogyakarta, the City Government's cultural approach and delegation of authority to the relevant apparatus have made this informal sector a tourist attraction, so that the success of organizing the city and street vendors has ignited the passion of the tourism industry in the city of Sultan. Therefore, the people must be able to comprehend the construction of legal substances and instruments by incorporating its goals. Citizens' compliance with the law must be based on the necessity of the law itself, so that legal awareness may serve as a means of achieving rewards. If this condition is not met, resistance will develop and intensify when law enforcement strengthens its repressive control function.

However, regulations and procedures pertaining to street vendors continue to generate issues, including the disorderliness of municipal streets, market buildings, and other public facilities, for which awareness and continual oversight from all relevant agencies are required. As an example, the commotion on the road is produced not only by the numerous stalls of street sellers, but also by automobiles parked in violation of statutory restrictions. Similarly, market conditions are chaotic due to a multitude of variables; thus, all players in the cities of Banda Aceh and Yogyakarta must collaborate to guarantee that everything is organized and in line with its designation.⁴⁸ In this instance, legal provisions must be based on cultural values and customary law, such that community compliance is governed by religious beliefs, traditions, customs, and culture. To bring justice to every person, this law enforcement civil apparatus must be able to escape the textual and prioritize the precautionary principle.⁴⁹ A cultural and religious approach will be able to diminish PPNS (Civil Servant Investigators) legal actions since Islamic law contains the idea of *al-'adat al-muhakkamah*, which states that *adat* becomes the applicable law in the society.

In a number of large cities, the problem of street sellers has become one of the classic issues that the government has not yet totally tackled. The coercive tactics adopted did not remedy the community's fundamental concerns, particularly its economic necessities. If the community makes independent efforts to obtain halal income, then the community's legal compliance with Qanun and Regional Regulations is carried out voluntarily, it is questionable because problem solving has not been found so that compliance is repressive which does not solve substantively, only as a conditional compliance which will lead to abandonment of the dictum. Therefore, *qanun* and regulations must be able to fulfil the fundamental requirements of the regulated parties. In this instance, the

⁴⁸Muh Wali Kota: Angka kemiskinan di Banda Aceh Menurun, <https://www.merdeka.com/peristiwa/wali-kota-angka-kemiskinan-di-banda-aceh-menurun.html>, diakses pada 30 Juli 2022 ammad Amin Hanafi, et.al., *Law enforcement for fisheries*,

⁴⁹Helmi et al., "Documenting Land-Combustion and Progressive Law Enforcement in Indonesia," 26–57.

mayor must enact legislation that can collect essential elements of the protection and survival chain of these small merchants.⁵⁰

The repressive methods performed are a poor choice since they merely alleviate superficial problems, while the substantive ones, such as poverty, remain unaddressed, leaving the government with the fundamental problems of its inhabitants. The *Perwal* 26/2002 rules have been able to accommodate the fundamental difficulties of the community; however, their execution must be better regulated so that there is no friction between different levels of traders operating in the same landscape. Attention and modifications to regulations and policies must constantly be supervised and evaluated thoroughly.

Conclusion

The legal formulation of the handling of street sellers in Banda Aceh is based on *Qanun* No. 3/2007, and *Perwal* Yogyakarta No. 26/2002 is a government policy intended to regulate and control street vendors. These two restrictions not only prevent turmoil and enhance urban spatial planning, but also raise street sellers' income. However, the Banda Aceh *Qanun* must be evaluated holistically and in conjunction with other legal norms. Specifically, Banda Aceh Mayor Regulation Number 44 of 2016 pertaining to the tasks and functions of the WH as an institution that provides instruction, socialization, and discipline and ensures that Islamic sharia qanun can operate effectively on the field. Therefore, the qanun on street vendors in Banda Aceh City cannot stand alone, but must be viewed in conjunction with other municipal, provincial, and state regulations. Although coercive tactics must be accepted to safeguard street sellers and offer room for them to seek sustenance and earn a living in practice. Then, in Yogyakarta, the Mayor's Regulation No. 26/2002 has used a cultural approach and accommodated the basic interests of street vendors as well as cultural and customary values, so that citizens' legal compliance is more based on their needs and awareness of the law's significance to the community. The access and protection of street vendors in the city of Yogyakarta are ensured by the regulation-based legal guidelines. The employment of legal provisions without incorporating local wisdom is insufficient to resolve the core of the problem. Therefore, the government's policy on street vendors that is linked to other legal rules in Banda Aceh that accommodate Islamic *sharia* values, particularly the involvement of the WH and *Perwal* in Yogyakarta that accommodates cultural and local values, becomes a legal guarantee for street vendors to have a more decent life and economic outlook nicely. Although some aspects of the

⁵⁰Klassen et al., "A Descriptive Analysis of Care Provided by Law Enforcement Prior to EMS Arrival in the United States."; Muchtar and Yunus, "Environmental Law Enforcement in Forestry Crime: A Disjunction between Ideality and Reality."

implementation of these regulations, such as the ease of obtaining business permits and spatial planning issues, still require cooperation from the government and all elements of society in order to preserve the beauty of the city and small-scale traders such as street vendors.

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- Peraturan Walikota Banda Aceh Nomor 44 Tahun 2016 Tentang Susunan, Kedudukan, Tugas, Fungsi, Kewenangan dan Tata Kerja Satuan Polisi Pamong Praja dan Wilayahul Hisbah.