

THE ROLE OF CRIMINAL LAW IN MAINTAINING PUBLIC ORDER: A STUDY OF HOMELESS PEOPLE AND BEGGARS

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Abstrac

This research discusses the application of criminal sanctions against vagrants and beggars in Gorontalo City based on the provisions of Articles 504 and 505 of the Criminal Code and other related regulations. The phenomenon of the increasing number of vagrants and beggars in the city poses challenges in law enforcement, especially in terms of the effectiveness of the implementation of criminal sanctions and the socio-economic obstacles behind it. This study aims to analyze the implementation of criminal provisions against homeless people and beggars and identify factors that hinder their enforcement. This research uses a qualitative method with an empirical legal approach, which is obtained through a literature study and interviews with relevant agencies. The results show that the application of criminal sanctions has not been running optimally due to weak inter-agency coordination, the absence of specific regional regulations, and cultural factors of the community that still tolerate the practice of begging. Therefore, an integrated legal approach is needed to create a more just and sustainable repressive, preventive, and rehabilitative solution.

Keywords: Criminal Law; Homelessness; Public Order; Beggars.

INTRODUCTION

Criminal law is essential in maintaining public order and preventing various crimes, including social problems such as vagrancy and begging. The purpose of the law is to ensure legal certainty in society, and the law must be based on justice, namely, the principles of justice in society. In addition, every crime or offense, regardless of its form, must be enforced so that it does not become a bad precedent for such actions. The public interest must also be prioritized in criminal law. (Basri, 2021) .

Amid rapid social and economic development, the phenomenon of homelessness and begging remains a serious challenge for many cities, including Gorontalo City. According to reports from the Social Affairs Office, in

the last 5 years, there has been a significant increase in the number of homeless people and beggars recorded. Reflecting various underlying social problems, such as poverty, unemployment, and lack of access to education. This shows that the problem of homelessness and begging is not just an individual issue, but also a reflection of broader social conditions.

Based on the recap of Gorontalo City PMKS data, there were many homeless people and beggars in Gorontalo City in 2019-2023.

Such conditions must be troubling and concerning to the community, because beggars and vagrants are considered a social disease. In addition, they are not by the principles of Pancasila and the character of the Indonesian



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nation, are detrimental to human dignity, have the potential to increase the number of accidents, and cause security and public order disturbances (Najih, 2014). There are still many road users who give money or goods to vagrants and beggars, this is one of the reasons why the number of vagrants and beggars, especially in Gorontalo City, is increasing every day, and one of the strongest drivers for them to roam still and insist on being beggars is because they get "support" from the surrounding community.

People who are homeless are those who live in conditions that are below the standard of living of the local community, do not have a place to live or work, but wander in public areas. Although emitters earn money by begging in public places for various reasons, it is not reasonable to expect compassion from others. (Idza, 2023) .

Articles 504 and 505 of the Criminal Code regulate the application of criminal sanctions against vagrants and beggars, which threaten perpetrators with imprisonment. (Priyanto, 2004) . Juridically, begging and vagrancy are regulated in Articles 504 and 505 of the Criminal Code (KUHP), threatening the perpetrators with imprisonment. However, applying these articles in Gorontalo City still causes many obstacles in their implementation. Although legal norms are in place, the effectiveness of their implementation is questionable, as they often clash with human rights principles and do not address the root causes of the underlying social problems. (Pangestuti & Dewi, 2023) .

The main problem in this research is how criminal sanctions against vagrants

and beggars are implemented in Gorontalo City and what factors become obstacles to their implementation. Therefore, this research not only discusses normatively the criminal law provisions that regulate this issue but also analyzes from an empirical legal perspective, namely, how the law is implemented in the field. This research is essential to see how criminal law effectively maintains public order amid social dilemmas.

Using Lawrence M. Friedman's legal system theory and sociological juridical approach, this research will examine the application of Articles 504 and 505 of the Criminal Code in the context of Gorontalo City and explore the structural factors, legal substance, and legal culture of the community that affect the success or failure of law enforcement efforts against vagrants and beggars.

RESEARCH METHODS

The research location was at the Gorontalo City Social Service Office and the Gorontalo City Police. This research is divided into empirical/sociological legal research. (Ali, 2021) . Because the target of this research is law or rules (norms), which in this case are in the provisions of articles 504 and 505 of the Criminal Code (Irwansyah, 2020) .

In this research, we used two approaches. The approaches used in empirical legal research are juridical analysis and cultural analysis. The legal sources used in this research are divided into primary and secondary, where primary sources come from legislation and the Criminal Code. Secondary sources come from legislation, literature books, scientific journals, and the results

of legal scientific works. (Benuf & Azhar, 2020) .

RESULTS AND DISCUSSION

Implementation of Criminal Sanctions Against Homeless and Beggars in Gorontalo City

Various parties and groups need to solve the problem of handling people experiencing homelessness and beggars, because the number of people who become homeless and beggars shows that the handling of these issues by various parties and groups has not been integrated into the central vision of eradicating homelessness and beggars. (Wikananta et al., 2023) .

As a state of law, the government sets rules that punish those who violate them (Hadjon, 2017). This is also a consequence of Indonesia's status as a state of law, as stated in Article 1 Ayati (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "Indonesia is a state of law. "i But regulations made by the government must be based on provisions that are compelling, binding, and violations of these provisions will have sanctions (Hamzah, 2014).

Then, Utrecht explained again that the law is a set of instructions or directions for life that contains orders and restrictions that regulate order in society. Community members should obey these provisions, and violators face action from the Government. (Khakim & Aji, 2021) .

In Gorontalo City, the number of homeless people and beggars increased significantly from 17 in 2019-2020 to 167 in 2020-2023. Beggars in this city use various methods, including looking

shabby, showing sad expressions, utilizing body injuries, carrying children, singing, wearing silver costumes (silver man), and dressing as clowns.

From a legal perspective, the acts of emission and vagrancy are regulated in the Criminal Code (KUHP), Pasal 504 and 505, as violations against public order. Although there is a clear legal basis, law enforcement against vagrancy and emission in Gorontalo City is still not optimal. The police tend to use a persuasive approach and leave the handling to the Social Service for guidance, even though these cases should be criminally prosecuted.

Article 504 of the Penal Code states that:

"(1) Any person who publicly begs shall, being guilty of begging, be punished by a maximum light imprisonment of six weeks. (2) If he uses trickery, seduction, or devices to arouse public pity, he shall be punished by a maximum of three months."

Article 505 of the Penal Code states that:

"(1) Any person who loiters without a livelihood and has no place to stay shall be punished by a maximum of three months ' imprisonment. (2) If a person repeatedly commits such an act after being punished, additional punishment may be imposed at the judge's discretion."

The contents of these two articles clearly qualify begging and vagrancy as offenses against public order. However, despite being explicitly regulated in the Criminal Code, law enforcement officials often do not strictly apply this article, especially in Gorontalo City. The approach tends to be persuasive or

rehabilitative; in many cases, no legal action is taken.

There are complexities in applying the law due to the overlap between local regulations and the Criminal Code. Based on legal principles, the Criminal Code has a higher position than regional regulations (*lex superior derogat legi inferiori*) (Efritadewi, 2020). However, handling this issue more often involves a social approach rather than criminal law enforcement. This happens because of the police's discretionary policy in handling cases. (Puluhulawa et al., 2020) .

In practice, there is an overlap between the Criminal Code, a national law, and the Gorontalo City Regional Regulation (Perda) No. 1/2018 on Public Order. The Criminal Code has a higher position (*lex superior derogate legi inferiori*). *Still, in practice, local regulation is more often used as the basis for guidance by the Social Service. This creates normative confusion because the provisions in the Perda do not have criminal penalties as strict as those in the Criminal Code.*

As a concrete example, in one of the interviews conducted by the researcher, an officer from the Social Affairs Office stated that when beggars are caught in raids, they are only taken to social institutions for guidance without further legal proceedings. This shows that despite articles 504 and 505 of the Criminal Code, criminal action is not taken due to weaknesses in the coordination structure between agencies and the absence of strong administrative sanctions in the local regulation.

This analysis shows that legal indecision and disharmony cause legal uncertainty in society. Beggars and

vagrants do not feel threatened by the applicable law, while law enforcement officials are in a dilemma between applying criminal provisions or social approaches. In this context, steps are needed to harmonize regulations and strengthen legal instruments so that the application of Articles 504 and 505 of the Criminal Code can run in harmony with social development efforts by local governments.

Law enforcement needs to be done, both under regional regulations and under criminal laws. (Alin, 2017) . Nonetheless, it is noted that there are no regulations governing these vagrants and beggars, and that the social service organizations do not have the appropriate civil servants responsible for implementing the regional regulations. In that case, regulations are just unenforceable regulations. As a result, people who beg will not feel deterred or threatened. (Fadri, 2019) .

To create legal certainty, clarity, and consistency in the application of sanctions is needed, as well as a good understanding from the public of the applicable regulations (Safa'at, 2016) . It is also essential to consider aspects of legal protection for homeless people and beggars as vulnerable groups, while still enforcing the applicable law. An integrated approach involving various stakeholders, including government, law enforcement officials, non-governmental organizations, and communities, is needed to address this issue effectively. (Anggriana & Dewi, 2016) .

The Gorontalo City Social Service can enforce violations against this public order, such as vagrants and beggars. Still, if the action is not carried out and/or ineffective, then investigators from the

police can enforce the law to overcome the acts of emission that disturb the community by Law No. 12 of 2002 about the Indonesian National Police, it is said that the Police, as investigators, are officers who are given special authority by law to conduct investigations. POLRI has a primary task, which is regulated in Chapter III Pasal 13, namely (Wikananta et al., 2023) :

- a. Maintaining community security and order
- b. Enforce the law; and
- c. Provide protection and services to the community.

The first review, *Lexi superior derogati legii inferiorii*, between local regulations and the Criminal Code, shows that the Criminal Code is higher than the Regional Regulation of Gorontalo City Number 1 of 2018 on Public Order in Batam City. This means that for its applicability in determining the law's applicability, the position of the Criminal Code is higher than the local regulation. The Criminal Code also does not contain the rules below in handling criminal offenses against Article 504 of the Criminal Code, which can be determined to be the authority of the lower-level legislation, namely, local rules. The interview results explain this; the existence of a discretionary or diversionary attitude from the police in handling any case can still be resolved by providing a policy for handling the perpetrators of acts without going through the criminal law. (Asmara & Yusrizal, 2020) .

Secondly, *Lexi specializes in derogati legii generalis*, where the Regional Regulation of Gorontalo Municipality Number 1 of 2018 on Public Order in

Gorontalo Municipality is not a special regulation so that it can override the Criminal Code. Due to this principle, the provisions of the *lexi specialisi* must be equal to the provisions of the *lexi generalisi* (law with). The Perda and the KUHP do not have the same level, and the Perda and the KUHP do not have the same scope. Third review, The principle of *lexi posteriori derogati legii priori*, The newer rule of law overrides or negates the older rule of law required to have the same level. This is not fulfilled because the Criminal Code is not at the same level as regional regulations, even though the regional rules are newer than the Criminal Code. (Fatmawati.L et al, 2021) .

Therefore, applying criminal sanctions against vagrants and beggars in Gorontalo City must consider the theory of legal certainty by ensuring legal certainty through clear and consistent rules. Legal certainty also requires periodic evaluation and revision of regulations. If existing laws are ineffective in dealing with the problem of vagrants and beggars, then there needs to be changes to create a better system (Mawaza & Zaenuddin, 2020). Articles 504 and 505 of the Criminal Code must still be enforced appropriately when individuals violate them. Regional regulations cannot cover or obstruct law enforcement against the criminal act of emitting in public.

Obstacles in Implementing Criminal Sanctions Against Homeless and Beggars in Gorontalo City

Various factors hinder the effectiveness of criminal sanctions in Gorontalo City's effort to handle the

problem of gelandangan dani pengemisi. This analysis uses the legal system theory of Lawrence M. Friedmann and the factors that influence law enforcement according to Soerjono Soekanto, which include aspects of law, law enforcement, supporting tools, society, and culture. (Soekanto, 2008) Understanding these inhibiting factors is essential to formulating a more effective solution to the problem of vagrants and beggars in Gorontalo City.

Forced eviction measures are considered unable to comprehensively address the problem of homelessness and begging, and address the root of the problem. Forced eviction measures are only carried out to maintain public peace and order. Meanwhile, the root causes of homelessness and begging cannot be resolved. Based on the interview results, the Head of the Gorontalo City Social Service said that the root of social problems, such as economic factors, helplessness in accessing various fields, and instability in obtaining employment, must be overcome. Evictions without understanding the driving characteristics of why people become homeless and beggars tend to have a temporary impact. If the root causes are not resolved, then homeless people and beggars will recur and return to seek money to fulfill their basic needs by begging and becoming homeless.

In this context, the handling of homeless people and beggars is only at the surface level. This phenomenon is not just a law violation but a symptom of a larger social system failure. Relying on criminal sanctions alone without addressing the root of the problem will create a false deterrent effect, not a long-

term solution. Therefore, it is not enough for the state to be present only in law enforcement, but also in concrete socio-economic empowerment.

In terms of legal structure, the performance of law enforcement officials is still not optimal. Gorontalo City Police tends to avoid taking firm action for fear of being perceived as arrogant by the community and prefers to leave the handling to the Social Service Office. Although the Social Affairs Office has conducted coaching covering religious, psychosocial, and skills aspects, this effort has not effectively reduced the number of vagrants and beggars.

The indecisiveness of law enforcement officials is not only due to policy factors, but also reflects weak inter-agency synergy. If clear technical guidelines do not strengthen coordination between the police, Social Affairs Office, and Satpol PP, then the delegation of responsibilities creates confusion in enforcement. This can be seen without joint reporting and evaluation mechanisms between agencies.

Regarding legal substance, Gorontalo City does not yet have a Regional Regulation that regulates countermeasures and criminal sanctions against vagrants and beggars. As a result, when caught in raids, they are only given guidance without any strict sanctions. This causes many of them to return to the streets because they consider begging an easy way to earn money.

The absence of specific local regulations also shows that this issue has not been a policy priority at the regional level. The existence of specific local regulations can provide legal certainty and a strong basis for administrative

action. In addition, local laws can bridge national legal norms (KUHP) and regional needs, making them more responsive to community dynamics.

Legal cultural factors also play a significant role, where the values of humanity and brotherhood in society indirectly support the existence of beggars. Especially on religious holidays, people tend to give more alms to beggars because it is considered a form of worship. This creates a dilemma between the desire to share and the indirect impact of supporting the practice of begging. (Susi et al., 2024) .

This dilemma puts people in an ambiguous position: on the one hand, they want to do good, but on the other hand, it strengthens social dependency. Therefore, there is a need for massive legal and social education through the media, schools, and community leaders to change the perspective that "sharing" is not always synonymous with giving money to beggars.

In terms of regulations, the absence of a special regional regulation is an obstacle for the Social Affairs Office and Satpol PP in implementing the begging handling program, unlike other cities such as Makassar, which has a special regional regulation that regulates sanctions not only for beggars but also for people who give money to them.

Gorontalo City can use other regions, such as Makassar, as a policy reference. Progressive local regulations target offenders (beggars) and passive participants (people who give), thus creating a two-way preventive effect. If implemented, the policy can be more effective because it targets the entire chain of problems.

A comprehensive approach is needed to improve the effectiveness of handling this problem. This includes improving the legal structure, making clear regulations, increasing public legal awareness, and better coordination between stakeholders. Applying the *ultimum remedium* principle (criminal law as a last resort) must be considered while considering aspects of humanity and justice. (Asyhadie et al., 2022) In addition, the programs' effectiveness needs to be periodically evaluated to ensure that the goal of reducing the number of homeless people and beggars in Gorontalo City is achieved.

The improvement of the legal structure includes several aspects. *First*, a Regional Regulation (Perda) needs to be established that specifically regulates the handling of vagrants and beggars, including mechanisms for enforcement, rehabilitation, and roles and responsibilities between agencies. This regulation should be designed to be in line with the Criminal Code, but also responsive to the social conditions of the local community.

Second, a stronger coordination mechanism must be established between the police, Social Service, Satpol PP, and rehabilitation institutions, supported by a strict and integrated SOP (Standard Operating Procedure). This is important so that there is no overlapping of authority and each agency knows its role and limits.

Third, institutional strengthening is also needed through increasing the capacity of human resources in the Social Service and Satpol PP, both regarding social handling training and legal understanding. Without adequate

implementation tools, regulations will not run effectively.

Fourth, improving the legal structure also involves providing an adequate budget to support the implementation of coaching, skills training, and health and psychosocial services for homeless people and beggars. Without fiscal support, these programs will remain on paper.

By improving the legal structure from the regulatory, institutional, and funding aspects, law enforcement against vagrants and beggars will not only be repressive, but also touch the root of the problem and be oriented towards sustainable social recovery.

CONCLUSION

Based on the results of the above analysis, this study has two conclusions, namely:

1. The results show that applying criminal sanctions against vagrants and beggars in Gorontalo City shows significant complexity. Although there are regulations governing the handling of vagrants and beggars, their implementation often does not run effectively. The application of criminal sanctions aims to maintain public order and provide education to violators, but there are still challenges in its implementation in the field. This research shows that applying criminal sanctions against vagrants and beggars in Gorontalo City aims to maintain public order and provide a deterrent effect. The police have an important role in law enforcement against vagrants and beggars, but they currently face obstacles in transferring cases to the court. The police play an important role in law

enforcement, but the approach used tends to be repressive and needs to be reviewed to achieve better results. Law enforcement that is carried out is more repressive and has not been maximized, so there is a need for evaluation and capacity building in handling this case. With a more integrated and humanist approach, it is hoped that the police can contribute more effectively to creating order and providing long-term solutions for homeless people and beggars in Gorontalo City.

2. Factors that hinder the application of criminal sanctions against vagrants and beggars in Gorontalo City are diverse and complex. First, there are obstacles in terms of policies that prioritize persuasive and rehabilitative approaches rather than repressive actions. This reflects the police's consideration of the public's view, thus often avoiding the case submission process to the Court.

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