

LEGAL PROTECTION TO THE PEDESTRIAN RIGHT

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Abstract

Walking is one of the main modes of human transportation before the emergence of various other means of transportation that support the movement or movement of humans. In the midst of the rapid development of transportation, safety from pedestrians began to be overlooked by the increasing percentage of traffic accidents involving pedestrians as victims. The neglect of pedestrian protection is a form of violation of human rights that is the basic right of the pedestrian itself as the weakest mode of transportation. The neglect of the protection of pedestrian human rights is caused by several factors such as the availability of inadequate facilities such as the conversion of pedestrian lines by street vendors, the lack of awareness from the public regarding law enforcement on pedestrian protection to the lack of government role in it. The purpose of writing this topic is to raise public awareness about the importance of protection of pedestrian rights by not escape the existence of cooperation from the government so that the rights can be fulfilled as stated in the Act.

Keywords: Citizen Right; Legal Protection; Human Rights.

A. INTRODUCTION

Walking is human effort to do something as subject of pedestrian, mobilitation from point of stand to a different place, it also natural means of transportation before the modern means of transportation emergence which makes easier moving. Along with the development of the era which is accompanied by technological advances that increasingly rapidly causing the passage of human transportation from natural means of transportation that is walking into a modern means of transportation one of them motorcycles and cars. Various advantages and convenience offered, making humans choose to use it and has become a requirement that cannot be eliminated at this time.

Pedestrian as subject on foot is someone who goes by walking or at least, half of the implementation is

using pedestrian track ¹. The subject means included everyone does unlimited by age, gender, tribe and race. Pedestrian path distance depends on the destination that leads replacement. Relatively, looking at nowadays condition are majorities through half of path and then riding other means of transportation such us public or private transportation.

Doddy Dharmawan, explained pedestrian comes from Latin language, it word pedestres–pedestris is people who walking ². Spiro Kostof opinion's, for the first time pedestrian path known in 6000 BC at Khirokitia, Cyprus, in the form of path from limestone which have

1 Word Health Organization, 2013, *Keselamatan Pejalan Kaki: Manual Keselamatan Jalan Bagi Pengambil Keputusan Dan Praktisi*.

2 Purwantiasning Wafinil Alqi Mauliani, Lily, Ary Wiyawati, 'KAJIAN JALUR PEDESTRIAN SEBAGAI RUANG', 2013 <<https://doi.org/10.24853/nalars.12.2.>>.

higher surface toward land and every specific interval made ramp on both sides for go to residential groups.³ The other general term as pedestrian path is sidewalk that comes from French language *trottoir* as known as footpath has width 1,5-2 meters, lengthwise along main roads. There are differences between them, the word "track" connoted as pedestrian's infrastructure with fulfillment of means, while the word "pedestrian" is description of subject as each person who doing displacement by walking.

The path or as known as pedestrian segment, whether integrated or separated by road, which is aim for infrastructure pedestrian and also connecting activities center and/or modal change activities, it is meaning of pedestrian network⁴. The provision of specific treatment for people on foot with the main purpose to increase pedestrian in Indonesia and using public transportation rather than private transportation as alternative.

Nowadays, appears community organization KoPK (Pedestrian Coalition) proclaiming aspiration of protection and fulfillment of pedestrian rights that are perceived to be ignored by various groups, especially in the capital city of Jakarta.⁵ Lack of facilities fulfillment, even not feasible to the lack of law enforcement against street vendors (PKL) and riders are misapply sidewalk for avoid traffic jam being polemic. Even though, it has been formally written in the Regulation of the

Minister of Public Work of the Republic Indonesian no: 03/PRT/M/2014 Guidelines for Planning, Provision and Utilization of Infrastructure and Pedestrian Network Facility in Urban Areas.

Director of Land Transportation Safety Directorate General of Land Transportation Ministry of Transportation Gede Pasek Suardika said based on World Health Organization (WHO) data, deaths from traffic accidents occurred by pedestrian have presentation of 27%. While the victims rate as pedestrian in the country have presentation approximately 30% from 3.675 traffic accident cases in 2013.⁶ Most victims come from children and elderly. The data presented that safety of pedestrian have not priority in the state. Even though they are in the most weakness position as modes of transportation when do replacement as stipulated in Act No. 22 of 2009 on Traffic and Land Transport (hereinafter referred to as Act No. 22/2009). It can not be deny, there are some aspects develop, both from public or government about reality that have been presented before. however, the main study is space of the human right fulfillment scope according to Act No. 39 of 1999 on human right (HAM) and the 1945 constitution. Fulfilled or unfulfilled is influenced by various factors later giving point of bright againts weak pedestrian protection, there are law, economic, social and culture factors. This paper will discuss: What is the function of the pedestrian path as a pedestrian right. How legal protection for pedestrian rights.

3 *Ibid.*

4 Minister of Public Works Regulation No. 03 / PRT / M / 2014 concerning Guidelines for Planning, Provision, and Utilization of Pedestrian Network Infrastructure and Facilities in Urban Areas.

5 Maryati, 2017, '*Fasilitas Pejalan Kaki Di Ibu Kota Masih Memprihatinkan*'.

6 MG Novianzal Fernandes, '*Angka Kecelakaan: Pejalan Kaki Sumbang 30% Korban Laka Lintas*', 2014.

B. DISCUSSION

1. Pedestrian Path Function as a Pedestrian Right

Each city has a different spatial arrangement tailored to the needs. Spatial arrangement is intended to create a safe, comfortable, productive and sustainable area of space based on Insight of Nusantara and National Resilience.⁷ The space of the territory created should form a harmonious relationship between the natural environment and the artificial environment, in this case also tailored with human resources. The artificial environment is a tangible manifestation of human intervention as a means for fill it needs effectively and efficiently and general or used by many people. In contrast with the natural environment which is basically a creation of a god by nature and actually has existed before humans exist and the formation process of the natural environment without human intervention. The natural environment becomes the forerunner of the formation of an artificial environment used for the benefit of humans.

Road is one manifestation of the artificial environment to fulfill human needs as a land transportation infrastructure that functioned according to it is use. Pedestrians path shall constitute a form of road benefit space only in the designation of pedestrians as regulated in Article 34 paragraph (1) and (2) of Government Regulation No. 34 of 2006 on Road. Besides, essentially the arrangement of road benefit space is distinguished between road users by vehicles or public

transport and pedestrians. Certainly in the formulation of these rules have been thought of from all aspects underlying by the government with a desired purpose, especially equitable justice for the community to enjoy the facilities and infrastructure provided by the government without any discrimination.

The word pedestrian is often interpreted as a sidewalk or path for pedestrians by one side and on the other side is also interpreted as the subject of the pedestrian.⁸ Most Indonesians are familiar with the word, a path that is designed in such a way as the needs of the local community with the established standards. The pedestrian path is an important element in the plan for the provision and utilization of pedestrian infrastructure and facilities as set forth in Article 1 no. 5 and 6 of the Minister of Public Work Regulation of the Republic Indonesia Number: 03 / PRT / M / 2014 on Guidelines for Planning, Provision and Utilization of Infrastructure and Pedestrian Network Facilities in Urban Areas (hereinafter referred to as President Regulation/Permen Number: 03 / PRT / M / 2014).

Pedestrian facilities and infrastructure serve to facilitate the movement of pedestrians from one place to another easily, smoothly, safely, comfortably, and independently including pedestrians with physical limitations. Easy and fast-moving in a barrier-free way of any kind, safe and comfortable with regard to the situation or condition experienced by pedestrians when doing the movement. They as part of a vulnerable mode of transportation have the public right to

7 Ministry of Public Works and Public Housing, 2007, "UU No. 26 Tahun 2007 Tentang Penataan Ruang", the Government of the Republic of Indonesia, p.1-107.

8 *Ibid.*, p. 7.

be able to enjoy public facilities provided by the government with more special treatment and protection. Here is a more complete explanation of the function of pedestrian network facilities and infrastructure:

- a. Interconnection lanes between centers of activity, blocks to blocks, and parcels to parcels in urban areas;
- b. The inseparable part of the other shifting modes of movement system;
- c. Social interaction space;
- d. Supporting the beauty and comfort of the city;
- e. Disaster evacuation route.⁹

The dominant function of pedestrian paths in points above in letters a and c, as connecting lanes located in crowded pedestrian areas close to various centers of gathering centers, shopping centers, public transportation or shelters, schools, and governments within the scope of urban areas and usually the available facilities more complete so it can meet the element of security and comfort. Public rights are fulfilled, in terms of the right to enjoy public facilities and have the same position in government. All pedestrians have the same rights without discrimination based on color, race or race, gender and even class. Children, the elderly, women, and the rich and the poor have no public gulf.

Indirectly, there have also been social interactions between individuals related to the application of social norms that grow in society. People held meetings, talked, or waited for public transport in an orderly manner on the pedestrian path. Generally everyone will keep their behavior while in the public

environment, especially courtesy and appreciation that has been imprinted in the norms of Indonesian society, for example when we are in the pedestrian lane area connected to the bus stop, of course we will queue up and take turns to go inside bus.

Many of the benefits gained from the provision of pedestrian facilities and infrastructure obtained when applied properly such as can reduce congestion, improved positive activities, help keep the environment in order not polluted and especially the benefits of social terms that is shared prosperity. The existence of cooperation between the community and the government in realizing it is still a job that has not been completed, because in the reality facilities are still abused that impact on the lack of sense of justice in terms of pedestrians themselves.

Often the pedestrian path that should be functioned for walking activities used street vendors (PKL) to hold merchandise. It is not a new scene anymore if we see the authorities are authorized to perform forced evictions on them, especially the city area. Coupled with the problem of motorcycle riders who use pedestrian pathways to avoid congestion.

The function of the pedestrian path has not been achieved on target anymore at this time, of course it cannot be separated from the adjustment of environment or culture and understanding of society that still less about respect other people's rights especially pedestrians who have equal position in a governance.

If we look from the point of view of administrative law there is a concept known as good governance related to the activities of the implementation of functions to organize the public

9 *Ibid.*

interest. Good governance with respect to the implementation of three basic tasks of the government are¹⁰:

- a. to guarantee the security of all persons and society itself;
- b. to manage an effective framework for the public sector, the private sector and civil society;
- c. to promote economic, social and other aims in accordance with wishes of the population.

The government as a captain in a country includes provinces and districts/municipalities become drivers in the fulfillment of human rights to pedestrians through policies or regulations relating to facilities for the pedestrian path. So there is no social gap between pedestrians with street vendors (PKL) as a form of realization of the three points above.

The authors argue, the understanding of street vendors (PKL) about respecting human rights from pedestrians is deemed necessary in addition to the discipline or discipline of the authorities as a form of realization of cooperation between government and society, so that they can understand each other and make it as a norm in society. If it has provided an understanding to street vendors (PKL), the government should not forget to provide a solution to keep them trading by providing allocations of places to trade with low rental fees and supported by strategic places, so they are not lonely buyers.

Providing education to the public on the importance of respecting pedestrian rights should be intensively undertaken by, for example, displaying posters on

every pedestrian track on respecting pedestrian rights and the prohibition of opening merchandise along with supervision of relevant officers in the area. If the violation will be subject to fine sanction. Besides that, inserting practice practices on the use of pedestrian paths and pedestrian rights to the school environment from an early age also required the younger generation of Indonesia as agents of change.

2. Legal Guarantee for Pedestrian Rights

Humans develop an immaterial means that can become a connected in the life of the community is a love and togetherness that shows the existence of aggregation that is cooperative-associative, and the desire to still be able to live social life.¹¹ Theory is not enough if not in sync with practice, in fact every human being has a different desire and mindset, especially the things that are personal such as the desire to choose the appropriate place to live, the appropriate job, the established economy, the position or a good position and much more. They certainly want good things to come to them and achieve happiness while living in the world.

The question is whether there are people who want to live miserable life, in fact people do not want it. The principle of self-interest in every human being sometimes encourages them to bring up the evil side of human nature that exemplifies self-interest above the interests of others or call it public interest. To prevent it requires a material means that binds many heads or human thoughts to become one,

10 Muladi, 2005, *Hakekat, Konsep dan Impliasinya dalam Perspektif Hukum dan Masyarakat*, Bandung, Refika Aditama, p. 2.

11 Peter Mahmud Marzuki, *Op. Cit.*, p.43.

there must be a barrier on what is allowed and should not be.

The emergence of norms as a material means in the form of legal norms integrated in a legislation will be a reference in the movement of every human being in the life of society. A peaceful, secure and prosperous society is the goal of its emergence. Indeed, the nature is forced and has its own sanctions, behind it there are positive things obtained about how to respect, respect, and understand the rights of others, that is the strength of any regulation.

Indonesia's legislation protecting pedestrian rights as part of the transportation mode subject is not yet compatible with the conditions in the field currently focusing on the fulfillment of facilities only, of course, in the fulfillment of facilities for pedestrians have not been cultivated. Nowadays, legal protection against pedestrians is regulated in Law 22 of 2009 on Land Transport Traffic. The law outlines Pedestrian Rights and Obligations under Articles 131 and 132.

Article 131

- (1) Pedestrians are entitled to the availability of supporting facilities in the form of sidewalks, crossings, and other facilities.
- (2) Pedestrians deserve priority when crossing the Road at the crossing.
- (3) In the event that the facility is not yet available as referred to in paragraph (1), Pedestrian shall have the right to cross in the selected place with due regard to their own safety.

Article 132

- (1) Pedestrians shall: a. using the section of the Road reserved for the most Path Pedestal or Road; or b. crossing in the designated place.

- (2) In the absence of a designated crossing point as referred to in paragraph (1) letter b, Pedestrians shall pay attention to the Safety and Smoothness of Traffic.

- (3) Disability Footers shall wear special marks that are clear and easily recognizable to other Road User.

The fulfillment of pedestrian facilities in Article 131 has been realize in urban areas with decent conditions largely, but there are some facilities that are less well maintained and not feasible plus the problems of street vendors (street vendors) who open the store in some areas of pedestrian paths. Article 13 paragraph (2) of the Ministerial Regulation Number: 03 / PRT / M / 2014 states that one of the utilization of pedestrian infrastructure is intended for formal small business activities. But that does not mean that small traders are free to open their stalls along the pedestrian path.

Several places are provided to accommodate insignificant vendors side by side with pedestrian paths or people gathering places in the form of food courts, not only that by multiplying home industry community among street vendors (PKL) with the provision of financial aid, counseling and notification about the standard adequate home industry can also be a solution. Besides helping to fulfill pedestrian rights, the government can also reduce the number of street vendors (PKL) and can increase the level of the economy.

it is different with the priority of road crossing and the obligation to pay attention to the safety and smoothness of traffic in Article 132 above which is not well oriented, it is proven based on data of World Health Organization (WHO) deaths from traffic accidents experienced by pedestrians occupy

27% presentation. While the number of accidents with victims of pedestrians in the country has a percentage of about 30% of 3,675 cases of accidents that occurred in 2013.¹² The motive factor accidental casualties with pedestrian victims comes from the selfish behavior of transport drivers, especially motorcyclists and cars who do not comply with good traffic regulations.

Edo Rusyanto, Coordinator of Road Safety Action Network (Safe Distance), asserted that the pedestrian rights are still torn apart by the behavior of super-selfish riders by plundering pedestrian facilities in addition to the economic motive is also a motive factor.¹³ The imbalance of the Indonesian economy encourages individuals to commit acts that deviate from predetermined rules on basis of self-interest as the author has previously explained. Instead of reducing criminalization in society as the goal of providing pedestrian facilities however becomes a separate boomerang for pedestrians.

The results of the survey of researchers also stated there are various factors that resulted in high traffic accidents involving pedestrians as victims and it is evident that most of the pedestrians who were victims in traffic accidents come from the lower socio-economic status.¹⁴ Those are being the subject of walking in the urban areas tend to come from the lower socio-economic status, especially developing country Indonesia with poverty problems that have not been completed. The reason for walking in the city area is influenced by the presence of public transport and

affordable rates, with the hope to get to the destination they want.

Pedestrians have highest risk of traffic accidents as victims of the behavior of modern transport drivers such as the accident at Tugu Tani, Central Jakarta, killing nine pedestrians and four injured. Some of the victims were children and women. Proven in this case the driver while driving his car in a state has been taking drugs at speeds up to 100 km/hour.¹⁵ The perpetrator in the case is indeed in jail with the greatest punishment and get social punishment from the people of Indonesia. But based on the case sometimes we forget the human rights of victims of pedestrians who experienced death, injury and even disability.

Some perpetrator are responsible for providing compensation in the form of money or others form but cannot guarantee the survival of the disabled or wounded and the family life left behind. There is no concrete treatment of the victim in the fulfillment of the rights of the victim as a human being who has the right to live and continue his life from the perpetrator. As if not learning from mistakes it does not create a deterrent effect for other drivers who still ignore the protection of pedestrians inhuman, whereas there has been a legal instrument that regulate, one of which is often the case today is the use of sidewalks by riders to avoid congestion. Pedestrians do not get the space to walk safely and comfortably.

One of Hart's theories in the minimum content of natural law is the limited understanding and strength of

12 MG Novianzal Fernandes.Op.cit.

13 F. Rio Winto, 'Pejalan Kaki Masih Rentan Kecelakaan', *Hijauku.com*, 2017.

14 Word Health Organization.

15 Anonim, 'Kasus Xenia Maut, MA Tetap Hukum Afriyani 15 Tahun Penjara', 2013.

will or the lack of comprehension and will power states that making the rules respect the person's personality, wealth and promises necessary in social life simple and obviously bring together benefits.¹⁶ This content that has not been understood by some of the people of Indonesia who in the legal instruments has been set very clearly. Some people are obedient to the rules because they understand the importance of obeying the rules to bring about common welfare, but on the one hand some people do not feel obligated and obedient to the rule based on self-interest motivations that do not benefit.

If every human being in doing things not only uses logic but also uses the conscience as the creature of God Almighty. Indirectly as a human being from birth has the right to live and sustain his life contained in Article 9 of Act No. 39 Of 2009 on Human Rights will not be disorganized by an attitude that emphasizes the interests of individuals who only benefit themselves alone. Legal laws on the safety and comfort of pedestrians against their right to life and to retain their right to life will not be applied properly if there is no public concern about how valuable a life for a victim's family is.

C. CONCLUSION

Based on the discussion that has been described, the authors give the following conclusions: Pedestrian Path is a form application of pedestrian network facilities and infrastructure as further described in Regulation of Minister of Public Worker Number: 03/PRT/M/2014 About Guidelines for

Planning, Supply and Utilization of Infrastructure and Pedestrian Network Facilities in Urban Areas. It should be main function as a means of interconnection between centers of activity and social interaction designed in such a way with the purpose of fulfillment of security, peace and safety of pedestrians and increase the volume of the pedestrian with careful planning. In fact the theory is always less correlated with the practice, the function of the pedestrian path turned into a place of street vendors (PKL) coupled with a breakthrough by riders to avoid congestion. The disfunction of pedestrian pathways causes the exclusion of pedestrian human rights, where they as citizens of Indonesia have a public right in terms of enjoying the facilities and infrastructure provided by the government for the ease of their activities.

Legal protection against pedestrians is deemed less particularly in the aspect of the fulfillment of their right in transferring with the security and safety that comply regulated in Act No. 22 Of 2009 About Traffic Land Transportation. The regulation only explains the rights and obligations of pedestrians with unfair sanctions, one of which is the fulfillment of compensation to victims of pedestrians who injure the human rights of pedestrians namely the right to live and preserve their life in Act No. 39 Of 2009 on Human Rights. The absence of concrete steps by the government to overcome it and cause deterrent effect for riders and lack of understanding to respect pedestrian rights by the public.

Suggestion

The author's suggestion on the legal protection of pedestrian rights with the

16 Peter Mahmud Marzuki, *Op.Cit*, p.61

pedestrian path is as follows: The Government must give education to the public about the protection of human rights of pedestrians evenly through the curbing, poster-posters, counseling conducted in the neighborhood of RT / RW, and inserting learning especially about the orderly traffic and rights pedestrian-practice is not just a theory in school. The younger generation has better knowledge in order to appreciate pedestrians. Establishment of special law on pedestrian protection is also deemed necessary that contains strict sanctions so that more deterrent effect to the perpetrator. Counseling to street

vendors (PKL) by multiplying the establishment of home industry with product standardization, quality, and clear capitalization. Besides, the allocation of appropriate allocation to them also needs to be in the right place. Expand pedestrian facilities, especially more modern and advanced public transport, making pedestrian access easier and increase the volume of pedestrians, followed by the imposition of vehicle tax which should also be increased to reduce the volume of vehicles. In addition, it can reduce congestion and global warming.

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