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GOOD SAMARITAN LAW IN INDONESIAN LEGAL PERSPECTIVE

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ABSTRACT

This study uses legal interpretation and analyzes the meaning in statutory regulations. Legal interpretation is used to analyze good Samaritan in the context of law in Indonesia which is also related to customs in international law and uses case analysis. This research is important because when there are restrictions on good Samaritan, good will actually turn into evil. Good Samaritan in a legal perspective is not something that must be regulated because goodness is a natural thing in humans. However, regulation cannot be used as the main reason because when goodness is allowed, human behavior will actually appear. Good will become evil influenced by artificial power. In this context, Indonesia must understand the meaning of good Samaritan by making good as a way to prevent evil. This means that restrictions still need to be carried out so that arbitrariness doesn't occur.

KEY WORDS

Good Samaritan, legal, interpretation.

In every statutory regulation, there are always criminal sanctions and administrative sanctions. When there are sanctions, the legal question that arises is how is the ability of the community as legal subjects to comply? The imposition of sanctions can be in the form of capital punishment, imprisonment, which is contrary to current legal developments that lead to humanism. When a legal subject is expected to obey it, a law also requires a person to "do good" but not with sanctions (Pardun, n.d.).

Referring to the Black's Law Dictionary it is known that a person who is injured while trying to aid another in imminent danger, and who then sues the one whose negligence created the danger, will not be charged with contributory negligence unless the rescue attempt is an unreasonable one or the rescuer acts unreasonably in performing the attempted rescue. A statute that exempts from liability a person (such as an off-duty physician) who voluntarily renders aid to another in imminent danger but negligently causes injury while rendering the aid.(Garner, 2004) The essence of good Samaritan becomes a separate legal problem because he has immunity the law when they do good purely but do not know what they are doing.(Knopf, 2016) Ignorance is done because when they help, the cause is whether it violates the law or not. As an analogy when researchers do good by not thinking about who is being helped and the cause. C Niek Van Dijk gives an explanation from the point of view of someone's competence in doing good. When we make a diagnosis, we establish a doctor–patient relationship and cannot share information with civilians, like an airplane's purser or captain. We will help, when we are asked. This also applies in the air. The big act—and similar acts across Europe and other continents—state that we should only do what we are competent to (van Dijk, 2020).

Good Samaritan becomes important because goodness cannot be defined by a norm. Comparing the meaning of crime which can be interpreted as two different points of view, namely juridical and sociological. R Soesilo said that juridically crime is an act of behavior that is contrary to the law and sociologically it is an act that in addition to harming the sufferer is also very detrimental to society. Harming society is the loss of balance, peace and order.(Soesilo, 1985) Crime is always related to two parties, namely the perpetrator and those who receive its effects. Do the actors related to Good Samaritan also have an effect on those who receive it?

This study uses legal interpretation and analyzes the meaning in statutory regulations (Fajar Sugianto, Tomy Michael, n.d.). Legal interpretation is used to analyze good Samaritan



in the context of law in Indonesia which is also related to customs in international law and uses case analysis. This research is important because when there are restrictions on good Samaritan, good will actually turn into evil.

Good Samaritan Is Against the Law? Good Samaritan is enforced to make everyone do good. This relates to the human nature of helping others during an emergency without compensation. This means that the legal consequences resulting from any act or omission (if the person acts well) are purely self-inflicted.

The researcher took the first 2 (two) case examples. Head of the Sub-Directorate for Guidance and Law Enforcement at the Polda Metro Jaya Traffic Police, AKBP Argo Wiyono, explained the reason why civilian drivers are prohibited from escorting ambulances on the highway. This follows a viral video showing a motorcyclist being ticketed by the police while escorting an ambulance. The video that went viral after being uploaded to the TikTok account @sennulvc became a public conversation. "If the rules are actually not allowed, of course," said Argo when contacted by Liputan6.com, Sunday (12/19/2021). Argo explained that the reason for the prohibition of civilian motorcyclists from escorting ambulances was because they violated driving rules, such as the use of rotators and sirens as regulated in Article 59 of Law Number 22 of 2009 concerning Road Traffic and Transportation. In addition, potential violations in escorting can also occur by seeking profit in the midst of misfortune, without humanitarian intentions. "If it's intentional, let alone looking for profit from these activities, of course, it's very unfortunate," he said. Then if there is a traffic accident due to escort, of course the police can determine it as a traffic violation according to Article 283 because it disturbs concentration or endangers other road users. "Because when the motorbike is carrying out escort activities, there are many potentials that can be dangerous," explained Argo. Argo reminded that ambulances have been regulated as a type of vehicle that has the main right or priority, based on Article 134 of Law No. 22 of 2009 concerning Road Traffic and Transportation. Ambulances are said to be able to get priority at intersections without any coordination. Ambulances can also request a priority route. "Police officers can coordinate using a handy talkie and in terms of discretion, it is their duty to do so," he explained. (*Polisi Jelaskan Alasan Pengendara Sipil Dilarang Kawal Ambulans - News Liputan6.Com*, n.d.)

Analysis of the first case where there is a rejection of the motorcyclist with the assumption that the escort is due to fear of illegal levies. However, the police could not prove this. Referring to Article 59 of Law Number 22 of 2009 concerning Road Traffic and Transportation where the use of signal lights and sirens are:

- blue signal lights and sirens are used for Motorized Vehicles for Indonesian National Police officers;
- red signal lights and sirens are used for motorized vehicles for prisoners, Indonesian National Armed Forces escorts, firefighters, ambulances, red cross, *rescue*, and corpses; and
- Yellow signal lights without sirens are used for motorized vehicles for toll road patrols, supervision of traffic and road transportation facilities and infrastructure, maintenance and cleaning of public facilities, towing vehicles, and special goods transportation.

The article only regulates how the vehicle passes technically and is actually also related to good Samaritan because there are vehicles that take precedence. The arrangement will not work if other riders don't have the awareness to do good in him. The Good Samaritan reflected in the first case makes someone who wants to help not a real human being – not have a good race in him.

The second case example as follows. The police allowed the community to escort the ambulance, but there was a condition. You must have seen an ambulance escorted by several motorbikes while on the road. Usually the ambulance escorts help clear the road, so the ambulance can go faster to the hospital. But even so, the Directorate of Traffic (Ditlantas) of the Metro Jaya Regional Police gave several conditions to the community who escorted the ambulance. That is not to be reckless to disturb other road users. People escort ambulances, for example, I have seen that sometimes there are communities guarding them. For me in the future, the important thing is that the escort is not arrogant, then it doesn't



disturb other road users," said the Director of Lantas Polda Metro Jaya, Kombes Pol Sambodo Purnomo Yogo, quoted from *Tribun Jakarta* (25/3/2021). Sambodo added, ambulance guards should not act as if the road owner stopped other motorists at will. "Don't hesitate to escort an ambulance, then become the owner of the road. Other people ordered to get out of the way, who didn't want to step aside, their rearview mirror was smashed. If that happens, of course it is a violation of the law and we will enforce the law," he explained. (*Polisi Izinkan Komunitas Untuk Mengawal Ambulans, Tapi Ada Syaratnya - Motorplus*, n.d.)

The second case that occurred before the first case shows the ability of the Police to escort the ambulance. When there is an escort, the emphasis is on maintaining an attitude. This assumption actually shows that kindness is also followed by a power relation factor when someone does a job suddenly. The definition of sudden is the inability of the ambulance driver to overcome the shortcomings he faces. The inability to be overcome by alienating the ambulance escort so that the right is fully in a short time.

Whether good Samaritan is against the law cannot be answered yes and no. There are various legal implications in it. Every legal relationship created by law always has two aspects whose contents are on the one hand "rights" while on the other hand "obligations". There are no rights without obligations, on the other hand there are no obligations without rights. (Sarif, 2019)

Do Good Things Need to Be Legalized? Making laws and regulations is actually to anticipate chaos between legal subjects and the state. Legislation also requires clarity of meaning and clarity of phrases so that none of them can be interpreted arbitrarily. In Indonesia, if the explanation has been declared accepted, then in the explanation section it is written "sufficiently clear". This "sufficiently clear" essence contradicts one's thinking but these limitations need to be given so that interpretation is well-defined.

Research conducted by Stuti Verma on Good Samaritan related to aid states that highway crimes have been reported majorly in recent years, and one rarely finds people coming forward to help the victims even for hours at a stretch irrespective of the fact that most of the victims are usually families with women and children involved. As the movement of public is scanty at such deserted stretches, police patrolling is something that needs to be present. Police personnel themselves admitted that about 41.66% are afraid of being robbed of belongings followed by the safety of female counterparts, and 7% believed that lack of highway patrolling teams on the national highways make people reluctant to stop and help the victim. (Gupta et al., 2020) This means that it requires a different understanding of what the duties of security officers actually are. In the legislation that is often contained is a prohibition that begins with the phrase "whoever" or "forbidden" which actually breaks down from the 10 Commandments in the Bible. This is a question because why good things are not explicitly regulated in the legislation.

CONCLUSION

Good Samaritan in a legal perspective is not something that must be regulated because goodness is a natural thing in humans. However, regulation cannot be used as the main reason because when goodness is allowed, human behavior will actually appear. Good will become evil influenced by artificial power. In this context, Indonesia must understand the meaning of good Samaritan by making good as a way to prevent evil. This means that restrictions still need to be carried out so that arbitrariness doesn't occur.

REFERENCES

1. Fajar Sugianto, Tomy Michael, A. M. (n.d.). *Konstelasi Perkembangan Hermeneutika dalam Filsafat Ilmu sebagai Atribusi Metode Penafsiran Hukum (The Constellation of Hermeneutics' Development in Philosophy of Science as Attribution of Legal Interpretation Method)*. *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 12(2), 307–328. <https://doi.org/10.22212/jnh.v12i2.2188>.



2. Garner, B. A. (2004). *Black's Law Dictionary*, Eight Edition. West Publishing Co.
3. Gupta, S., Verma, S., & Tadia, V. K. (2020). Awareness amongst Different Strata of Society Regarding the "Good Samaritan Law." *International Journal of Research Foundation of Hospital and Healthcare Administration*, 7(2), 75–84. <https://doi.org/10.5005/JP-JOURNALS-10035-1108>.
4. Knopf, A. (2016). Good Samaritan laws undercut by prosecutions. *Alcoholism & Drug Abuse Weekly*, 28(3), 3–5. doi:10.1002/adaw.30440. <https://scihub.se/10.1002/adaw.30440>.
5. Pardun, J. T. (n.d.). Good Samaritan Laws: A Global Perspective. *Loyola of Los Angeles International and Comparative Law Review*. <http://digitalcommons.lmu.edu/ilr/vol20/iss3/8>.
6. Polisi Izinkan Komunitas Untuk Mengawal Ambulans, Tapi Ada Syaratnya - Motorplus. (n.d.). Retrieved January 17, 2022, from <https://www.motorplus-online.com/read/252618388/polisi-izinkan-komunitas-untuk-mengawal-ambulans-tapi-ada-syaratnya>.
7. Polisi Jelaskan Alasan Pengendara Sipil Dilarang Kawal Ambulans - News Liputan6.com. (n.d.). Retrieved January 17, 2022, from <https://www.liputan6.com/news/read/4789696/polisi-jelaskan-alasan-pengendara-sipil-dilarang-kawal-ambulans>.
8. Sarif, A. (2019). Implikasi Hukum Klausula Asuransi Jiwa dalam Perjanjian Kredit Perbankan. *Halu Oleo Law Review*, 3(2), 299. <https://doi.org/10.33561/holrev.v3i2.8649>
9. Soesilo, R. (1985). *Kitab Undang-Undang Hukum Pidana Eerta Komenta-Komenta Lengkap Pasal Demi Pasal*. Penerbit Politeia.
10. van Dijk, C. N. (2020). Good samaritan law: Is there a doctor on board? In *Journal of ISAKOS* (Vol. 5, Issue 5, pp. 261–263). BMJ Publishing Group. <https://doi.org/10.1136/jisakos-2020-000549>.