



Criminal Sanction Policy in Law No. 8 of 1999 on Consumer Protection

Siti Nur Aisyiah^{1*}, Emilia Rusdiana²

¹ Faculty of Law, State University of Surabaya, Indonesia

² Faculty of Law, State University of Surabaya, Indonesia

* siti.174040704007@mhs.unesa.ac.id

Article	Abstract
Keywords: UUPK; Purpose of UUPK; Criminal sanctions	<p><i>Consumer protection is regulated in Law No. 8 of 1999 concerning Consumer Protection, hereinafter referred to as UUPK, this law aims to guarantee legal certainty to provide protection to consumers. It regulates sanctions, including criminal sanctions contained in Article 61 to Article 63. These criminal sanctions are considered imperfect because they should focus more on consumer protection and recovery of losses than criminal prosecution of business actors and are more oriented towards repair and recovery so that they can be more effective in repair losses suffered by consumers. These sanctions are also still not in accordance with the goals of reform in the politics of criminal law. This research aims to be able to optimize the goals in realizing order and justice through law enforcement and provide information regarding the accuracy of the formulation and implementation of criminal law in relation to the purpose of drafting the UUPK. This study aims to analyze legislation in the field of consumer protection associated with the formulation and implementation of criminal law. The research method used in this research is normative juridical research, using a statutory approach (statute approach) and a conceptual approach (conceptual approach). The legal materials used are primary and secondary legal materials. The analysis technique used in this study uses prescriptive analysis techniques. The results of the discussion prove that the formulation and implementation of criminal law in violations in the field of consumer protection shows that the principle of reasonable loss that can be described by the criminal act is not met, the principle of subsidiarity that criminal law is only ultimum remedium), the principle of proportionality in the form of a balance between losses and the purpose of punishment. the principle of legality in the principles of lex certa and lex stricta, and the principle of their practical use and effectiveness related to their enforcement, while the principle that is fulfilled is the principle of tolerance towards the formulation of criminal acts.</i></p>

INTRODUCTION

The introduction should be clear and provide for the issue to be discussed in the manuscript. Before the objective, authors should provide an adequate background, and very short literature survey in order to record the existing conditions, to show which is the best of previous researches, to show the main limitation of the previous

researches, to show what you want to achieve (to solve the limitation), and to show the scientific merit or novelties of the paper. At the end of the paragraph, the author/s should end with a comment on the significance concerning identification of the issue and objective of the research.

The manuscript written by the author whose English is the second language needs to be proofread. Ignore to this requirement results in the rejection of the manuscript. For this part to reference, please use Garamond, 12, with 1.15 spaces. The Articles section must have lengths of 4000-6000 words with a minimum of 20 references and 50 footnotes (each of them 80% from journal articles).

Rapid economic development has produced a wide variety of goods and/or services. With the support of technology and information, the expansion of space, movement and transaction flows of goods / and or services has crossed the boundaries of the State. Consumers are ultimately faced with a wide selection of types of goods and/or services offered variatively. Such conditions, on the one hand, benefit consumers because the needs for the desired goods and/or services can be met with a variety of choices.

To protect the interests of consumers in consuming goods and / or services, the government issued a policy of regulating consumer rights through the establishment of the law is part of the implementation of as a welfare state, because the 1945 Constitution of the Republic of Indonesia (1945) states that consumers are entitled to the rights of consumers. Welfare state, because the 1945 Constitution, in addition to being a political constitution, can also be referred to as an economic constitution that contains the following idea welfare state (Zulham 2016).

Consumer protection is a matter of human interest; therefore, it is a hope for all nations in the world to be able to realize it. Realizing consumer protection is to realize the relationship of various dimensions that are interrelated and interdependent between consumers, entrepreneurs, and the government. The regulation of consumer protection is carried out with the aim of: (Rajagukguk 2000)

- a. Creating a consumer protection system that contains elements of open access and information and ensure certainty.
- b. Protect the interests of consumers and the interests of all business actors.
- c. Improve the quality of goods and services.
- d. Provide protection to consumers from deceptive and misleading business practices.
- e. Integrating, organizing, developing and regulation of consumer protection with areas of protection in other fields. (Syawali, Husni & Imaniyati 2000)

Consumer protection in Law No. 8 of 1999 concerning Consumer Protection, hereinafter referred to as UUPK, is all efforts that ensure legal certainty to provide

protection to consumers. In some cases, there are many violations that harm consumers (Muladi 2002).

Based on the Law on Consumer Protection, the public must receive protection of their most basic rights, namely, obtaining information and security about what is purchased in the market. To achieve the objectives of the GCPL, various legal norms are compiled in it that are intended to achieve these objectives. The GCPL systematically consists of 15 chapters and 65 articles. Starting from general provisions, principles and objectives, consumer rights and obligations, rights and obligations of business actors, prohibited acts for business actors, provisions for the inclusion of standard clauses, responsibilities of business actors, guidance and supervision, national consumer protection agency, on-governmental consumer protection agency, dispute resolution, consumer dispute resolution body, investigation, sanctions, transitional provisions and closing provisions. What will be discussed in this case is the criminal provisions in the GCPL.

The criminal witness provisions in Law No. 8/1999 on Consumer Protection are contained in Articles 62 and 63 Article 62 of the GCPL states as follows:

"(1) Business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17, paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with a maximum imprisonment of up to three years. 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).

(2) Business actors who violate the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and f shall be punished with imprisonment of 2 (two) years or a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

(3) For violations that result in serious injury, serious illness, permanent disability or death, the applicable criminal provisions apply."

Article 63 of GCPL states as follows:

"Criminal sanctions as in article 62, may be imposed additional penalties, in the form of:

- a. Forfeiture of certain goods.*
- b. Announcement of the judge's decision.*
- c. Payment of compensation.*
- d. An order for the cessation of certain activities that caused the consumer harm.*
- e. Obligation to withdraw goods from circulation; or*
- f. Revocation of business license."*

Criminal sanctions are a type of punitive sanction that is threatened or imposed on acts or perpetrators of criminal acts or criminal acts that can interfere with or endanger the interests of the law, as well as the process of national development. But we also realize that criminal sanctions are ultimum remedium or ultimate weapon, or

in the language of policy or management is "the last resort taken, from various solutions or other alternative solutions. From the brief explanation above, implicitly there is a conclusion, namely that there must be efficiency in the use of criminal sanctions. Prof. Moeljatno once said. (broadly speaking) "that the use of criminal sanctions against the criminalization of certain acts requires consistency in its enforcement, so that the authority of the law is maintained".

The relationship between criminal sanctions and the purpose of the preparation of this GCPL Law is about a more in-depth study of the purpose of providing criminal sanctions for the fulfilment of legal provisions that protect the interests of consumers in Indonesia that are not yet adequate. So that based on these considerations, a set of laws and regulations is needed to realize the balance of protection of the interests of consumers and business actors to create a healthy economy that will be accepted. Reviewing the sanctions contained in Law No. 8 Year 1999 on Consumer Protection is related to the existence of criminal law politics which means that it is necessary to review the actual criminal law legislation issues Criminal Law Politics is commonly referred to as Criminal Law Policy (Penal Policy) or Criminal Law Reform. Implementing Criminal Law Policy means Effort realizing criminal legislation that is in accordance with the circumstances and situation at a time and for the future. When viewed from the aspect of 'Politics of Law', it means that 'Criminal Law Politics' implies how the state seeks or makes and formulates a good criminal legislation for the present and the future. So, in general, the Politics of Criminal Law is a crime prevention policy with criminal law, or the Politics of Criminal Law is an effort to overcome crime through the making of criminal laws. (Arief 1996). The urgency of legal politics is expected in the development of legislation products to be more sensitive to the development of Indonesian society. Legal products are used as guidelines for regulating all aspects of life in the political, social, cultural, security and economic fields. Of course, with a good reference from the legislation, it is hoped that it can overcome the problems or dichotomies experienced by the community. So that this legal politics must see the phenomenon of changes that occur in society. According to Himes and Moore, social change has three dimensions, namely: structural dimensions, cultural dimensions and interactional dimensions. (Harianto 2017). Based on the above problems, the author is interested in examining issues related to criminal sanctions in the Consumer Protection Law in terms of the principles and norms of criminal law formation. With the formulation of the problem as follows:

1. Does the criminal sanction of imprisonment have met the criteria in the formation of criminal law norms?

METHOD

The research method used in this research is normative juridical or normative legal research. with the approach and legislation, political concept approach to criminal law,

The statutory approach is carried out by search the concept approach is carried out with doctrine and views in legal science. With this, the author is expected to find an idea that gives birth to concepts, notions, and legal principles that are relevant with the research conducted.

The sources of legal material used can be divided into three, namely primary, secondary, and non-law sources (Ali 2009). Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, the Criminal Code, and Law No. 8 of 1999 concerning consumer protection.

While secondary legal materials consist of books, texts, legal dictionaries, theses, theses, dissertations, and judges' decisions related to the legal issues discussed (Ali 2009). Non-legal materials are legal materials that support primary legal materials and secondary legal materials so that they can provide understanding and understanding of other legal materials (Ibrahim 2008).

Legal material collection techniques are divided into two, namely primary legal material collection techniques and secondary material collection techniques and nonlegal materials (Diantha 2016). Primary legal material collection techniques are carried out by classifying laws based on the principle of preference while secondary legal and non-legal material collection techniques are carried out by literature study. The technique of analyzing legal materials carried out in this research uses the prescription method, namely identifying legal facts and eliminating materials that have no relation to the research problem, searching for answers to problem formulations based on legal materials that have been collected, then drawing conclusions as an answer to the problem formulation.

RESULTS AND DISCUSSION

The existence of the establishment of Law Number 1999 on Consumer Protection is intended as a law that regulates some of the rights and obligations of consumers. Consumer protection law in addition to having civil aspects also has criminal aspects. Therefore, consumer protection law is also part of criminal law. This means that the actions of producers that harm or violate consumer rights that are contrary to the norms of criminal law can be categorized as criminal acts, therefore they are resolved by criminal law and use criminal instruments such as criminal law principles.

Legal principles are abstract legal principles that generally underlie concrete regulations and legal implementation. Concrete regulations (such as laws) must not conflict with legal principles, as well as in judicial decisions, legal implementation and the legal system. If there is a conflict in the legal system, then legal principles will appear to overcome the conflict. For example, there is a conflict between one law and another law, then we must look back at legal principles as the basic principles underlying a universally applicable legal regulation (Mas 2004).

According to Prof. Mardjono Reksoduputro, there are several principles that should be considered to determine how criminal law is formulated and organized, namely:

- a. The principle of reasonable harm that can be described by the act (can be a moral aspect, but should be a public issue) In essence, the law contains ideas or concepts that can be classified as abstract. Into the abstract group include ideas about justice, legal certainty and justice. social benefits. Seeing from the moral aspect that is caused but is a problem faced in general which can be seen from Law No. 8 of 1999 concerning Consumer Protection in the article that regulates criminal sanctions in article 62 and article 63 of the GCPL.

The purpose of imposing criminal sanctions is aimed at business actors and / or their management who violate the provisions of Article 8, Article 9, Article 10, Article 13, paragraph (2), Article 15, Article 15, Article 15, and Article 13. Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18. The article contains actions that are prohibited for business actors. These actions, if they occur, will harm consumers in terms of financial and material losses suffered to threaten the stability of the economy and the integrity of the financial system, but also can jeopardize the joints of society, nation, and state. Life of society, nation, and state. Looking at the losses incurred, criminal sanctions are still considered ineffective to protect consumer rights and obligations and only provide a deterrent effect to business actors.

- b. The principle of tolerance for such acts (assessment of the occurrence of harm, is closely related to the presence or absence of tolerance; tolerance is based on respect for individual freedom and responsibility. Tolerance is based on respect for individual freedom and responsibility. When viewed from a juridical perspective, the scope of acts that can be categorized as administrative crimes are violations of administrative, obligations, licensing, requirements and standards set, while the criminal sanctions for these violations are given to business actors.
- c. The principle of subsidiarity

This principle states that before an act is declared a criminal offense, it is necessary to consider first whether the legal interests violated by the act can still be protected in other ways, because criminal law is only the ultimum remedium. So, the statement of the principle above is also related to this principle where in Indonesia itself the use of imprisonment and fines is only a little and does not touch the full nominal loss of business actors.

The policy of overcoming crime in the economic sector by using criminal law must be carried out carefully. Criminal sanctions themselves

according to Barda Nawawi Arief have several weaknesses, including in its operationalization requires more varied supporting facilities such as various laws, institutions / implementing agencies and more demanding high costs. The use of criminal sanctions is only symptomatic not causative because the causes of the crime itself are far beyond the reach of criminal law.

The politics of criminal law in the criminal offense of GCPL should be oriented towards restoring the losses felt by consumers through the stage of providing compensation. To maintain consumer welfare and punish business actors, the formulation of criminal fines against criminal offenders is the main sanction (*premmum remedium*), while criminal imprisonment is formulated as an *ultimum remedium* sanction. is formulated as an *ultimum remedium* sanction.

d. Principle of proportionality

This principle emphasizes that there must be a balance between the losses described by the limits provided by the principle of tolerance and the reaction or punishment given, meaning that there must be a balance between the severity of the punishment imposed and the severity of the same loss so that it is feasible to be said to be an ideal law. In criminal law, this principle means that the punishment given to the perpetrator needs to be adjusted to the crime and should not be excessive. In this case, the sanctions applied in the GCPL Law are not balanced and not ideal and it can be concluded that the harm has not been fulfilled.

e. The principle of legality

The principle of legality is an important and main principle in criminal law. This principle is contained in Article 1 Paragraph (1) of the Criminal Code which states

"An act cannot be punished, except based on the power of the provisions of the existing criminal legislation".

This principle aims to impose punishment in criminal law, where every punishment that will be imposed by the judge must be a legal consequence of a statutory provision with the aim of guaranteeing the rights of everyone. This principle is a protection for individuals, especially for perpetrators of criminal acts in ensuring justice and legal certainty.

According to Barda Nawawi Arief (Arief 2003), the provisions of Article 1 paragraph (1) of the Criminal Code contain the principle of "formal legality" or "*lex scripta*", the principle of "*lex certa*", the principle of "*lex temporis delicti*" or the principle of "non- retroactivity". Basically, the principle of legality contains 3 important aspects, namely: *Lex Certa* means that the provisions of *Lex Certa* means that the provisions of criminal legislation must be clear and clear (leading to the principle of legal certainty *Lex Stricta* means

that the provisions of criminal legislation must be strict and limited in scope. *Lex Scripta* means that there must be written criminal law rules that make the act punishable.

The field of consumer protection is an administrative field case by expecting the fulfillment of the obligations of business actors to consumers who are the main targets in carrying out business interests and economic progress.

f. The principle of practical use and effectiveness.

This principle focuses on the possibility of enforcement and its impact on general prevention. Arrangements regarding criminal sanctions that will be imposed on the perpetrators of the offense are reformulated so that they can include formal crimes such as confinement and fines and informal crimes. In addition, the legislator must consider the imposition of different sanctions for corporations and individuals. The benchmark of criminal sanctions is ultimately the effectiveness of criminal sanctions to prevent the occurrence of an offense (this refers to the theory of prevention in the context of penitentiary law) or to restore the situation as before. (MURNIATI 2007).

Based on this description in the Consumer Protection Law there are several principles in criminal law that may not be fully in accordance with the characteristics of criminal law. The principle that is fully met is the principle of tolerance for criminal acts where the principle refers to the general nature of criminal sanctions and applies to all similar violations of the law. Although the principle is applied in criminal law in general, in the more specific context of GCPL, there is a need to further consider the specific aspects of consumer protection.

By paying attention to these principles, the strategy for formulating criminal law will approach the needs of its formation and enforcement strategy. For this reason, the politics of legislation in Law No. 8/1999 on Consumer Protection must always be directed at efforts to overcome various problems in the implementation of consumer protection as a legal system and politics which includes problems related to legal structure, legal substance and legal culture which are closely related to this enforcement policy.

The formulation and implementation of criminal law on violations in the field of consumer protection shows that several principles formulated to fulfill the provisions of the formation of criminal sanctions are not fulfilled. The first is the principle of reasonable harm that can be described by the criminal act, the principle of tolerance of the act is fulfilled based on indications of the high value of violations committed by business actors. The third principle is subsidiarity that criminal law is only the ultimum remedium, this principle is not fulfilled because the formulation of acts in the GCPL Law uses administrative and criminal sanctions cumulatively so

the *utimum remedium* principle is not fulfilled. The principle of proportionality in the form of a balance between losses and punishment in the form of losses in the absence of fulfillment of community obligations, community conditions are associated with sanctions based on the purpose of punishment, it is stated that there is no connection between losses and the purpose of punishment. The principle of legality of the rules in the field of consumer protection by imposing criminal sanctions in the form of criminal sanctions is inappropriate because it is not based on the principles of criminal law formulation, so only the principle of *lex scripta* is fulfilled, while the principles of *lex certa* and *lex stricta* are not fulfilled. The principle of practical use and effectiveness related to its enforcement is not fulfilled because the enforcement of criminal law in the economic sector is inadequate

This paper proceeds to the issue of what is the legal politics of the Consumer Protection Law from the point of view of basic policy and enforcement policy. from the point of view of basic policy and enforcement policy. Which is to answer the problem politics to answer the problem of the politics of statutory law from the point of view of basic policy by using applicable norms and principles and to answer the problem of what is the legal politics of the enforcement policy of Law No. 8 of 1999 using existing norms on the objectives of the formation of criminal law.

The urgency of the presence of criminal law with the character of firmness and coercion and the repressive nature of legal sanctions, as *primum remedium* synergized with other legal norms, is a necessity to reduce the increasingly phenomenal number of problematic food products. This is stated in Article 62 paragraph 1 of Law No. 8 of 1999 concerning Consumer Protection, which emphasizes that *"For violations that result in serious injury, serious illness, permanent disability or death, the applicable criminal provisions shall apply."*

As stated above, it is necessary to be able to distinguish clearly, the formulation of criminal sanctions in offenses and crimes in the formulation of the GCPL and other related laws. This is because it is closely related to the purpose of punishment which, among others, is projected to reduce the quantity of various food crimes aimed at deterrence. In the conception of KUHAP, offenses and crimes are distinguished because they have consequences for the severity of the sanctions to be imposed. Still in this context, it should also be possible to distinguish the qualifications of criminal sanctions against individual business actors (*natuurlijke persoon*) and business actors categorized as legal entities (corporations).

The existence of criminal sanctions on the implementation of consumer protection has been running but has not been effective so that it needs to be maximized, meaning that it can be seen in settlement case that experienced by consumers, the approach involves all elements in the implementation of consumer protection.

Consumers, the approach involves all elements in the case. The criminal justice system is essentially a process of enforcing criminal law intended to provide public protection, public welfare, or protect the community. In the sustainability of criminal sanctions, the implementation of consumer protection includes three obstacles, namely: First, supervision of the implementation of sanctions, by law enforcement officials has not been maximized in imposing sanctions and should be serious. Second, responsibility, the absence of responsibility of business actors who usually lead to embezzlement or fraud. Third, knowledge and understanding of the law, which is still lacking so that this weakness is usually abused by business actors.

CONCLUSION

Imposition of criminal sanctions in consumer protection law There are several principles that should be considered to determine how criminal law is formulated and organized to achieve perfect effectiveness and can create a balance between rights and obligations to each other. In the consumer protection law only fulfills aspects of the principle of tolerance for these acts.

Suggestion

To the public who become consumers and business actors to pay more attention to the rights and obligations that must be fulfilled with the main objective of maintaining order, justice, security, and protecting individual rights in society. To policy makers and policy makers and law drafters, in this case the DPR and the President, are expected to be an input in making and reviewing the rules governing criminal penalties in the consumer protection law so that they are in the consumer protection law to be more observant and prioritize legal certainty in every rule made and must ensure principles such as proportionality, nondiscrimination, and legal certainty are fulfilled

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