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## **The Politics Of Criminal Law Regarding Criminal Sanctions To Businessman Who Violate Halal Product Warranties**

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## **Abstract**

Businessman who have obtained a halal certificate are required to maintain their business production process so that it remains halal for consumption or use by Muslims. Businessman who do not maintain the halalness of Products that have obtained Halal Certificates as referred to in Article 25 letter b shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). The method used in this research is normative legal research. Primary legal materials are authoritative legal materials. The primary legal materials in this study include the 1945 Constitution, Law Number 33 of 2014 concerning Guarantees for Halal Products the Criminal Code. Secondary legal materials are all publications on the law that are not official documents. Based on the political study of criminal law, the relatively severe criminal threat to Businessman who do not maintain the halalness of the goods production process is still inappropriate, because it is not in accordance with the principle of balance in criminal law, which does not protect the victim. Lawmakers are expected to review criminal sanctions that are imprisonment for business actors, because they do not provide justice to victims. Victims should also receive restitution due to the mistakes of Businessman who ignore halal obligations in the process of producing goods.

## **Keywords**

Criminal Law Politics, criminal sanction, businessman, halal product

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## **Introduction**

The 1945 Constitution of the Republic of Indonesia guarantees the freedom of each citizen to embrace their own religion and to worship and carry out the teachings of their religion and belief. In matters relating to Muslims, the state is obliged to provide protection and guarantees for the halalness of a product consumed. So the protection of Muslim consumers is the obligation of the state.

This protection is related to advances in science and technology in the fields of food, medicine and cosmetics which are developing very rapidly at this time. others, from what was originally simple and natural to processing and utilizing raw materials engineered by science. Processing of products by utilizing the advancement of science and technology allows the mixing between what is lawful and what is unlawful, whether intentional or unintentional. Therefore, to know the purity and halalness of a product, it is necessary to

guarantee the halalness of the product. In the current food industry, food ingredients are processed through various new processing techniques and methods by utilizing scientific and technological developments.

Businisman who will include a halal label on their packaging must first obtain a certificate. Determination of halal certification is very necessary as the principles of Islam that halal and haram are the most important things in Islamic law, and are also included in the substance of Islamic law. This requires the public to know the clarity of information about the level of halal food itself, as a form of guaranteeing the safety of Muslims. Halal certification is an activity or process carried out to meet or achieve certain standards. The ultimate goal of this halal certification is a formal legal acknowledgment that the products issued have complied with halal provisions.

Businisman who have obtained a halal certificate are required to maintain the production process of their business so that they are halal for consumption or use by Muslims. Law Number 33 of 2014 concerning Halal Product Guarantee in Article 25 Letter b confirms that: Businismanwho have obtained Halal Certificates are obliged to: maintain the Halalness of Products that have obtained Halal Certificates. The obligation of Businismanto maintain halal products aims to provide comfort for Muslims in consuming or using these products. Therefore, if the perpetrator violates the provisions that have been regulated, he will be subject to criminal sanctions. Article 56 of Law. No. 33 of 2014 determines: Businismanwho do not maintain the halalness of Products that have obtained Halal Certificates as referred to in Article 25 letter b shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

The use of criminal law as an approach to legal compliance is common practice by the government, considering the legal culture of society at that time was still low. However, not all problems should be solved using a criminal law approach. Criminal law has the nature of retaliation in it, so that "misery" becomes part of the short-term goal of imposing a sentence. On the other hand, current government policies place more emphasis on economic development to open up broad job opportunities for job seekers, so that if a crime occurs in the economic sector, it must pay attention to the interests of the sustainability of a business.

Likewise with regard to halal guarantees for a product, of course it has implications for the survival of a company or business actor, so that the use of imprisonment for Businismancan kill the business concerned. Based on the description on the background of the problems above, the problem is how is the politics of criminal law against sanctions against producers who violate the Halal Product Guarantee under Law Number 33 of 2014 Criminal law functions to protect and maintain the balance of various interests, namely society, the state, perpetrators of crimes and victims of crimes. Therefore, in the formulation of the criminal system it is time to pay attention to the interests of the victim in order to achieve equal distribution of justice so that the rights of the victims of acts can be protected. Criminal law may not be solely oriented towards human action (daad straf recht) because it makes criminal law inhumane and prioritizes retaliation. Conversely, it is also not true that criminal law only pays attention to the perpetrators (daderstrafrecht)

because the application of criminal law will greatly indulge the perpetrators and pay less attention to broad interests, namely the public interest, the interests of the state, and the interests of victims of crime. Based on the description of the background of the problem above, the problem is how is the politics of criminal law against sanctions to producers who violate the Halal Product Guarantee?

The method used in this research is normative legal research. Primary legal materials are authoritative legal materials. The primary legal materials in this study include the 1945 Constitution, Law Number 33 of 2014 concerning Guarantees for Halal Products the Criminal Code. Secondary legal materials are all publications on the law that are not official documents.

## **A. Politics of Criminal Law Regarding Criminal Sanctions To Businisman Who Violate the Guarantee of Halal Products**

### **a) Obligations of Businisman to Produce Goods Halal**

The activity of producing goods is an aspect of the economy that is very much needed by the community in order to meet their life needs. Goods production runs if Businisman have creativity in doing business. Business continuity is largely determined by the presence of Businismanin carrying out their business, it is the Businisman who determine whether or not business activities are productive. The life and death of a business is very dependent on the business actor, so that if the business actor cannot be present at his place of business, his business continuity is threatened with bankruptcy.

Businisman must also comply with all rules relating to the production process of the goods they produce, so that their business activities run well. Businisman are required to produce goods in a halal manner by including a halal label on a product. The obligation for halal certification for all food and beverage products is regulated in Article 4 of Law Number 33 of 2014 concerning Guaranteed Halal Products, which reads that products that enter, circulate and trade in the territory of Indonesia must be halal certified. This means that it is clear that Businisman who produce and trade food products in Indonesia must be halal certified. Producers benefit from this law, namely by having legal certainty for all goods produced, so that this law will have a positive impact on the Entrepreneurship

Halal product guarantees for each product can also provide benefits for companies, considering that products that are halal certified will be preferred and favored by consumers so that they can increase sales. This is not only of interest to Muslims but also non-Muslims, because non-Muslims think that halal products are of proven quality and very good for the health of the human body. For producers, this halal label functions to build consumer trust and loyalty towards their products. Halal certification for food products aims to provide certainty about the halal status of a product, so as to appease consumers.

According to Burhanuddin, this halal certificate is a requirement for obtaining permission to put a halal label on product packaging from an authorized government agency. As for what is meant by halal products are products that meet halal requirements

in accordance with Islamic law. The halal requirements for a product that have been determined by the Indonesian Ulema Council (MUI) include:

- 1) Does not contain pork DNA and ingredients derived from pigs.
- 2) Does not contain ingredients that are prohibited. Such as materials derived from human organs, animal blood, feces, and so on.
- 3) All materials derived from halal animals slaughtered according to Islamic sharia procedures.
- 4) All places of storage, sale, processing, management and transportation must not be used for pigs. If it has ever been used for pork or other non-halal items, it must first be cleaned in a way that is regulated according to Islamic law.
- 5) All foods and drinks that do not contain khamr.

Halal certification is an obligation imposed on Businisman so that halal products must comply with the provisions of the standards that have been set. The processing industry of production facilities must ensure that there is no cross-contamination with unhygienic products, production facilities can also be used interchangeably to produce certified products and ensure that cross-contamination does not occur in processing procedures. In addition, the Company must have written procedures regarding the implementation of critical activities, namely activities in the production chain that can affect the halal status of the product.

Based on the provisions of Article 25 of Law Number 33 of 2014, Businisman who already hold a halal certificate are required to maintain product halalness, in this case means that the business actor must guarantee that the products they sell do not contain prohibited ingredients. If later evidence is found that there is non-halal (haram) content in a product that has been certified halal, the business actor concerned can be sentenced to a maximum of 5 years in prison or a maximum fine of IDR 2 billion.

## **B. The Politics of Criminal Law Against Criminal Sanctions To BusinismanWho Violate the Provisions for Halal Product**

Criminal law politics is part of criminal politics. In other words, from the point of view of criminal politics, the politics of criminal law is synonymous with the understanding of crime prevention policies with criminal law. According to Sudarto, carrying out criminal law politics means trying to realize criminal laws and regulations that are in accordance with the circumstances and situation at a time and for the future. Mahmud Mulyadi and Feri Antoni argue that the politics of criminal law is an attempt to determine the direction in which Indonesian criminal law will be enforced in the future by looking at its current enforcement.

The term sanction is a punishment, which means a legal burden that is imposed, given, or imposed on people who commit acts that are prohibited or contrary to law, whether they are crimes or violations. Sanctions also contain a core in the form of criminal threats to those who commit violations of norms that have a duty to adhere to and implement established norms.

Criminal sanctions are an inseparable part of a policy, without strict sanctions the law is only limited to norms that can be violated. The distinctive characteristics make criminal sanctions seen as having a hard and cruel character. Therefore, criminal law is used to support certain programs. One of them is the provision in the law on halal product guarantees which is an example among the many laws and regulations which insert in one of its articles regarding "Criminal Provisions". Criminal provisions are none other than to support the state's duties in certain fields.

Regarding sanctions to Businessman who do not heed the halalness of their products, in other words, Businessman who are inconsistent in maintaining the halalness of products that have obtained halal certificates are regulated in the Halal Product Guarantee Act The law is intended as a legal basis for the regulation, guidance and supervision of activities or processes for the production, distribution, and or trade of a product in Indonesia.

Businessman who do not heed the halalness of products that have obtained a halal certificate as referred to in article 25 letter (b) regulated in article 56 of the UUJPH may be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000.000000 (Two Billion Rupiah). The relatively severe criminal threat for violating halal products to Businessman who do not maintain the halal production process of goods is still inappropriate based on the study of criminal law politics. The enforcement of economic criminal law is essentially a mixture of two values, namely the purpose of criminal law and the purpose of creating conducive economic conditions, for that criminal law must be able to balance and harmonize these two values and at the same time act as an ultimium remedium. Economic control that solely uses criminal law can result in overcriminalization and at the same time can have a negative impact on the economy. The existence of criminal sanctions should only function as a guard so that the existing rules are obeyed.

With regard to the issue of punishment, what is demanded by the principle of balance is that punishment must accommodate the interests of society, perpetrators, and also victims. Punishment should not only emphasize one interest. Or as Roeslan Saleh said, punishment cannot only pay attention to the interests of the community, or only the interests of the maker, or also only pay attention to the problems of the victim or his family. Criminal law must not be solely oriented towards human action (daad strafrecht) because it makes criminal law inhumane and prioritizes retaliation. On the other hand, it is also not true that criminal law only pays attention to the perpetrators (daderstrafrecht) because the application of criminal law will greatly spoil the perpetrators and pay less attention to broad interests, namely the public interest, the interests of the state, and the interests of victims of crime. Sentencing is based on the principle of balance, based on the interests of the community, perpetrators and victims. If punishment only emphasizes the interests of the community, it will give a criminal figure that places the perpetrator only as a mere object. On the other hand, if you only care about the interests of the perpetrators, you will get a very individualistic picture of punishment that only pays attention to the rights of the perpetrators and ignores their obligations. Meanwhile, overemphasizing the interests of the victim alone will lead to a criminal case that only reaches very limited

interests, without being able to accommodate the interests of the perpetrators and society in general.

Sentencing in the perspective of balance must be directed so that the perpetrator is not only seen as an object, but must be placed as a complete legal subject who carries out the rights and obligations as an individual, as a guilty person, and as a citizen of the community at the same time. This is the starting point for the Indonesian people's view of life, which according to Soediman Kartohadiprojo is the belief that humans are created in togetherness with each other. The individual and the social unit of his life (society) is a duality. Therefore, togetherness with others or the association of life is an essential element in human existence.

## References

- Burhanuddin. 2011. *Pemikiran Hukum: Perlindungan Konsumen dan Sertifikasi Halal*. Malang: UIN Maliki Press.
- Dwidja Priyatno, 2009. *Kebijakan Legislasi Tentang Sistem Pertanggung jawaban Pidana Korporasi di Indonesia*, Bandung : Utomo.
- Ma'ruf Amin. 2010, *Fatwa Produk Halal Melindungi dan Menentramkan*, Jakarta: Pustaka Jurnal Halal.
- Mahmud Mulyadi dan Feri Antoni Surbakti, 2010. *Politik Hukum Pidana Terhadap Kejahatan Korporasi*, Jakarta, Sofmedia.
- Roeslan Saleh, 1988. *Hukum Pidana*, Jakarta: PT. Alumni.
- Ruben Achmad, *Hakekat Keberadaan sanksi pidana dan Pemidanaan dalam sistem hukum pidana*, Legalitas, Edisi Desember 2013 Volume V Nomor 2
- Sopyan Hasan, 2014. *Sertifikasi Halal dalam Hukum Positif*, Yogyakarta Aswaja Presindo.
- Subektidan Tjritosoedibio, 2008. *Kamus Hukum*, Jakarta: PT Pradaya Paramata.
- Wantu, F. M. & Wiwoho, J. (2020). Orientation of the Aim of the Punishment seen from Ius Constituendum of Criminal Law and Local Wisdom Value in Gorontalo Correctional Institution. *Journal of Critical Review*, 7(19)
- Zulham, 2013. *Hukum Perlindungan Konsumen*, Jakarta: Kencana.
- May Lim Charity, 2017. *Jaminan Produk Halal di Indonesia*, *Jurnal Legislasi Indonesia*, Vol. 14 N0. 01 - Maret 2017.
- Sulaiman. (2018). *Paradigma dalam Penelitian Hukum*. *Kanun Jurnal Ilmu Hukum*. 20(2)
- Syaufi, A. & Haiti, D. (2018). *Policy of Criminal System Formulation Oriented to Rape Crime Victims*. *Sociological Jurisprudence Journal*, 1(2)