



## **Dimensions Of Consumer Protection In Criminal Law Perspective And Islamic Economic Law Perspective**

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### **Abstract**

Indonesia has a function as an organizer of public welfare, one of which is an effort to realize consumer protection. The purpose of this study is to determine consumer protection from the perspective of criminal law and the perspective of Islamic economic law. This research uses a normative juridical method, to answer the main problem, namely how consumer protection in the KHUP perspective and Islamic economic law. This research found the definition of consumers regulated in the Law on consumer protection has a narrower meaning than the meaning of business actors (unbalanced). A balanced understanding of both will bring a positive influence on consumer coverage that must be protected as regulated in Islamic law. Islamic law and the Criminal Code both regulate the problem of consumer protection to create benefit, justice, balance, security and safety and guarantee legal certainty. The difference is that Islamic law reveals the values of religiosity by not putting aside social and humanitarian values (vertical and horizontal relations / *habibum minallah wa hablum minannas*), while the Criminal Code shows more social and humanitarian values (horizontal relations / *hablum minannas*) so that provide legal certainty.

**Keyword:** Consumer Protection; Criminal Law; Islam Economic Law

### **INTRODUCTION**

A country has a function as an organizer of public welfare, one of which is an effort to realize consumer protection. The government actually holds a central role, namely the party that can seek the interests of consumers by making a conducive business climate (Wulandari, 2018).

In Indonesia, consumer protection is now getting a good attention because it involves rules for creating prosperity. With the balance between business actors and consumers can create a prosperous and prosperous people (Hakim, 2018). Countries which are now called developed countries have taken their development through three levels of unification, industrialization and welfare states. At the first level, a serious problem is how to achieve political integrity to create national unity and unity. The second level is the struggle for economic development and political modernization. Finally at the third level the main task of the state is to protect the people from the negative side of industrialization, correct mistakes in the previous stage by emphasizing the welfare of the community (Setyawati, Dahlan, & Rasyid, 2017).

Consumer protection issues are increasingly being discussed. This problem will never run out and will always be a matter of conversation in the community. As long as there are still many consumers who are harmed, the problem will never be resolved (Putra, 2014). Therefore, consumer protection issues need to be considered. Consumer rights that are ignored by business people need to be examined carefully. In the current era of globalization and free trade, there are many kinds of goods / service products that are

marketed to consumers in the country, both through promotions, advertisements, and direct item offers (Ja'far, 2014).

If consumers are not careful in choosing the desired product / service, consumers will only be the object of exploitation by irresponsible business actors. Without realizing it, consumers receive just the goods / services they consume. The problems faced by consumers are not just how to choose goods, but far more complex than that which concerns the awareness of all parties, both employers, governments and consumers themselves about the importance of consumer protection. Entrepreneurs realize that they must respect consumer rights, produce quality goods and services, are safe to use or consume, follow applicable standards, at appropriate prices. The government realizes that laws and regulations are needed in all sectors related to the movement of goods and services from entrepreneurs to consumers. The government also has the duty to monitor the implementation of the regulations and laws properly (Setiandoro, Putri, Novitarani & Njatrijani, 2018).

The planned implementation, development and regulation of consumer protection is to increase consumer dignity and awareness, and indirectly encourage business actors to carry out their business activities with full responsibility, therefore, consumers need to be aware that they have rights protected by law (Devanto & Kholil, 2018).

Realizing a conducive climate by paying attention to consumer rights. So that the government can make good regulations to implement and supervise every behavior of business actors. The regulations in question can be both public and private.

Generally, what is meant by public law are all legal regulations that contain and contain norms for the public interest. Public law in Indonesia includes criminal law, state administrative law and constitutional law (Palilati, 2016).

Whereas private law is understood as a regulation that contains and contains the norms of individual interests, or also referred to as individual laws. Private law that only regulates personal interests is civil law, commercial law and customary law. Currently also added to the provisions contained in Islamic law relating to the relationship of people with individuals such as marriage law and Islamic economics. So that currently transactions based on the provisions of Islamic law have been implemented in several sectors.

## **METHOD**

The research method used in this research is doctrinal, that is, using normative legal research. The specification of this research is descriptive analytical, which describes the problems of the object under research and a number of factors that affect the data obtained are collected, compiled, explained, then analyzed and finally concluded (Salim & Nurbani, 2014).

The data used in writing this research are data obtained from secondary data, namely data obtained indirectly from the source, in the form of: 1). Primary legal material, namely legal materials that have juridical binding power; 2). Secondary legal material, namely legal material that provides an explanation of primary legal materials such as books, magazine and newspaper articles, internet articles, and papers related to the topic of this writing; and 3). Tertiary legal material, namely legal material that provides an explanation of primary legal material and secondary legal material because the legal materials can clarify an issue or a term found in primary and secondary legal materials such as legal dictionaries and other language dictionaries (Suteki & Taufani, 2018).

To collect data in solving the problems of this research carried out by library research (library research) or documentary studies by compiling materials that have been collected, into a legal writing that can answer the problems that have been previously formulated (Salim & Nurbani, 2014). In this normative legal research, the data analysis technique used is qualitative analysis, where the material or legal materials will be studied later and provide descriptions of research topics so that the author makes a correct conclusion (Salim & Nurbani, 2014).

## **RESULT AND DISCUSSION**

### **Dimensions of Consumer Protection in the Criminal Law Perspective**

Public law is a law that regulates the relationship between the State and its equipment or relations between the state and individuals. Including public law within the legal framework of consumers are State administrative law, criminal law, criminal procedural law and international law especially international civil law (Poenomo, 2019).

Various regulations relating to consumer protection efforts are basically the same as other regulations whose provisions contain ideas or concepts that may be classified as abstract, which ideally include ideas about justice, certainty and usefulness as expressed by **Gustav Radbruch** (Muthiah, 2018).

The issue of consumers to obtain protection as part of a legal system will be related to efforts to realize these ideas. In fact, often the state must intervene because of the power of influence that demands such matters so that the operation of the law can be effective, especially in this case is the implementation of legal structures in the form of law enforcement agencies as a means for disadvantaged parties to obtain justice. Thus it is expected that the public legal system in the effort to protect consumers can run well (Faizah, Retnaningsih, & Purwoko, 2015).

The involvement of the state or government alone cannot guarantee the fulfillment or running of a legal system because in a legal system according to **Lawrence M. Friedman** includes three things, namely legal substance, legal structure and legal culture (Muthiah, 2018).

In relation to the function of law as a means of social engineering so that the law (including Law Number 8 of 1999 concerning consumer protection) can determine the lifestyle of the community (which in this case the style of life of the community as consumers and business people) is not easy, because many factors influence it, besides that in each individual will depend on individual choices rationally to obey or disobey the applicable legal provisions (Law No. 8 of 1999) (Nurmasyitahzianudin, 2017).

In order for law to function as a means of social engineering for the consumer and business community, the approach can also be used by taking **Robert Seidman** theory, namely that the operation of law in society involves three basic components, namely lawmakers / lawmakers, implementing bureaucrats and role holders (Muthiah, 2018).

The operation of the law can be said to be a good clan effective if it involves three basic components, namely lawmakers, implementing bureaucrats and role holders. Every member of the community (consumers and business actors) as the role holders, their behavior is determined by the pattern of roles expected of them, but the operation of these expectations is determined by other factors (Poermono, 2019). These factors are: a). Sanctions contained in regulations; b). Activities of legal implementing agencies or agencies; and c). All social, political and other forces work on the role holders (Haryono, 2016).

Positive legal arrangements in the field of criminal law are generally found in the Criminal Code (KUHP). This criminal law itself belongs to the category in public law, because criminal law regulates the legal relationship between the State and society. Criminal law also functions to enforce consumer protection law, but in the Criminal Code itself the consumer does not say, but only implicitly. In criminal provisions consumer protection issues also receive attention as stipulated in Article 204 and 205 of the Criminal Code (KUHP). This provision is primarily related to the right of consumers to obtain information correctly. Article that provides protection for consumers for example:

Article 204 of the Criminal Code. *“Barang siapa menjual, menawarkan, menyerahkan, atau membagi-bagikan barang, yang diketahui bahwa membahayakan nyawa atau kesehatan orang, padahal sifat berbahaya itu tidak diberitahukan, diancam dengan pidana penjara paling lama lima belas tahun. Jika perbuatan mengakibatkan matinya orang, yang bersalah dikenakan pidana penjara seumur hidup atau pidana penjara selama waktu tertentu paling lama dua puluh tahun”*. The meaning is “Anyone who sells, offers, hands over, or distributes goods, which is known to be happy for the life or health of people, even though the dangerous nature is not notified, is threatened with a maximum imprisonment of fifteen years. If the act results in the death of a person, the guilty is subject to life

imprisonment or imprisonment for a certain period of twenty years at the most”.

Article 204 of the Criminal Code. “*Barang siapa karena kealpaannya menyebabkan bahwa barang-barang yang berbahaya bagi nyawa atau kesehatan orang dijual, diserahkan atau dibagi-bagikan, tanpa diketahui sifat berbahayanya oleh yang membeli atau yang memperoleh, diancam dengan pidana penjara paling lama Sembilan bulan atau kurungan paling lama enam bulan atau denda paling banyak tiga ratus juta. jika perbuatan mengakibatkan matinya orang, yang bersalah dikenakan pidana penjara paling lama satu tahun empat bulan atau kurungan paling lama satu tahun. Barang-barang itu dapat disita.*” The meaning is “Whosoever, because of his negligence, causes goods which are dangerous to the life or health of a person to be sold, handed over or distributed, without being known to be dangerous by those who buy or obtain, are threatened with imprisonment for a maximum of nine months or a maximum of six months or a fine of at most three hundred million, if the act results in the death of a person, the guilty person is liable to a maximum of one year four months imprisonment or a maximum of one year imprisonment”.

The actions of business actors categorized as criminal offenses must cause harm to consumers in certain levels of complexity with a dimension of crime, namely the actions of business actors to harm and violate consumer rights that are contrary to the norms of criminal law, therefore this action must be solved by criminal instruments in the form of criminal sanctions penalty and imprisonment .

There are many criminal provisions regarding consumer protection outside of the Criminal Code such as food laws, health laws, and other laws relating to business people and consumers. Arrangements regarding criminal matters are specific and sectoral in accordance with their respective fields.

This specialization is very important because in criminal law the prohibition on analogies is different from the understanding of extensive interpretation. In extensive interpretation the meaning of a formula is given an understanding according to the needs of the community at the time, which is different from the meaning when the formulation was made by the legislators. So there are still rules, only a broader interpretation is given. On the contrary, the analogy is no longer relying on a regulatory framework. Only the core of the rule is still maintained. In essence the extreme and analogous interpretations are the same, there are only differences in *gradual* (Nurhafni & Bintang, 2018).

As a result, law enforcement officials (*in this case in particular the judges*) cannot freely determine new crimes outside the formulation of the law. If done, it means that it is against the principle of legality. Another result is that in interpreting illegal acts (*wederrechtelike daad*) in the field of criminal law is not as broad as in the field of civil law. Court decisions relating to the expansion of interpretations of illegal acts affect the thinking of criminal law experts such as a person named **Vost**, he adheres to the idea that in criminal law this element of lawlessness can be interpreted broadly, so that it is not allowed by the community, not just what is prohibited by law (Muthiah, 2018).

The criminal sanctions applied by consumer protection law are found in articles 61 and 62. Article 61 of the consumer protection law. “*Penentuan pidana dapat dilakukan terhadap pelaku usaha dan/ atau pengurusnya*”. The meaning is Criminal prosecution can be carried out against business actors and / or their administrators.

Article 62 of the consumer protection law. “1). *Pelaku usaha yang melanggar ketentuan sebagaimana dimaksud dalam pasal 8, pasal 9, pasal 10, pasal 13 ayat (2), pasal 15, pasal 17, ayat (1), huruf a, huruf b, huruf c, huruf e, ayat (2) dan pasal 18 dipidana dengan pidana penjara paling lama 5 (lima) tahun atau denda paling banyak (Rp. 2.000.000.000,00 (dua milyar rupiah); 2).Pelaku usaha yang melanggar ketentuan sebagaimana dimaksud dalam pasal 11, pasal 12, pasal 13, ayat(1), pasal 14, pasal 16, dan pasal 17 ay at (1), hurufd dan huruff dipidana dengan pidana penjara paling lama 2 (dua) tahun atau pidana denda paling banyak Rp. 5.00.000.000,00 ( lima ratus juta rupiah); dan 3). Terhadap pelanggaran yang mengakibatkan luka berat, cacat tetap atau kematian diberlakukan ketentuan pidana yang berlaku*”. The meaning is “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 5 (five) years or a maximum fine (Rp. 2,000,000,000.00 (two billion rupiah); 2). Business actors who violate the provisions referred to in article 11, article 12, article 13, paragraph (l), article 14, article 16, and article 17 at (1), letter and huruff are punished with the longest imprisonment 2 (two) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah); and 3). For violations resulting in serious injury, permanent disability or death, the applicable criminal provisions apply.

Outside the Criminal Code (KUHP) there are many criminal provisions that affect consumer protection. The most extensive field of arrangement related to consumer protection law is in the health sector. Included in this group are Law Number 7 of 1996 concerning Food. The provisions in the field of health law can be said to be the most extensive legal institutions but do not mean adequate in regulating consumer rights compared to other legal fields (Setiawan, Yodo & Korompot, 2018).

In addition to regulating intellectual property rights such as copyrights, patents, trademarks receive considerable attention, especially in terms of applying criminal sanctions. Criminal acts in the form of copyright piracy are now changed from complaints to complaints to ordinary offenses (Rohendi, 2015). The protection that is given the most portion is precisely to individuals or entities that become rights holders, not to consumers as the largest part of Indonesian society (Mansyur & Rahman, 2015).

The application of criminal law to overcome the misbehavior of business actors is a necessity so that consumers feel protected. Consumers also feel that their rights as consumers will be carried out by business actors. Criminal sanctions aim to limit the behavior of business people so that in carrying out their business they will not harm consumers.

### **Dimensions of Consumer Protection in the Perspective of Islamic Economic Law**

As we know that Islam is a universal study, teaches anything related to human life on this earth, one of which teaches about the relationship between humans and humans in the realm of economic life. In terms of economics as well as other fields of science it certainly will not escape the study of Islam, which aims to guide humans to always be on a straight path (Syaichoni, 2015). Economic activity in an Islamic perspective is a guide to life, besides that it is also a suggestion that has this dimension of worship in accordance with the word of God in verse 10 of the Al-araf, “*Sesungguhnya kami telah menempatkan kamu sekalian di muka bumi dan kami adakan bagimu di muka bumi itu sumber penghidupan. Amat sedikitlah kamu bersyukur*”. The meaning is “We have placed you all on the earth, and we have made for you on earth the source of livelihood. You are very little grateful”.

In Islam wealth is a very important part of the life of a Muslim, because Islam does not want his people to live in underdevelopment and economic backwardness. In line with the expression in a *hadits*, “*truly fidelity is close to disbelief*”. Islam does not want its people to become an economic machine that gives birth to a culture of metaphorism, so that Islamic economic activities are not merely material, but are more than just material, namely world life is used as a provision to lead the afterlife, so of course having economic activities a rule which this rule must not harm one party (Yusri, 2009).

In the *Qur'an*, a verse is related to property in trade between consumers and business actors, namely in surah An-Nisa verse 29 “*Hai orang-orang yang beriman, janganlah kamu saling memakan harta sesamamu dengan jalan bathilkecuali dengan jalan perniagaan yang berlaku dengan suka sama suka di antara kamu dan janganlah kamu membunuh dirimu sesungguhnya Allah adalah Maha Penyayang kepadamu*”. The meaning is “People who believe, do not eat each other's treasures by the way of evil except in the way of commerce that applies with the liking of you, and do not kill yourself, Allah is the Most Merciful to you”.

The message of this verse is “*do not eat each other's treasures with the path of*” the editorial of the verse containing the meaning of cooperation that does not harm each other if one partner loses so that the other partners must feel loss, because in business the

assets should be illustrated amidst partners. Isn't something between two parties supposed to be in the middle. This is because the traits of trade make the first party tend to draw something in the middle towards it, even if it can, it will be withdrawn as much as possible to its position, as well as the second party. So that the drawn is not broken, or so that the interesting one is not dragged, it is necessary to extend the willingness of each. Even the best is if each one is happy and happy with what he gets (Nurhalis, 2015).

While the "*bhatil*" meaning in this verse is a violation of the provisions of Islamic law or agreed conditions. In this context the Prophet Muhammad said: "*the Muslims are in accordance with (must obey) the conditions they agree to, as long as they do not justify the forbidden or forbid the lawful*". Furthermore, this verse emphasizes also the necessity of the willingness of both parties, or what is termed "*anta radhin minkum*" the willingness of the parties. Although the willingness of the parties is something hidden in the heart, indicators and signs can be seen. *Ijab* and  *kabul*, or anything known in custom as handover are forms that are used by law to show willingness.

Harmonious reciprocal relations between business actors and consumers, in the form of binding regulations, *shari'at* and sanctions awaiting, are three things that are always related to business, and these three things are ethics that make business people not only demanding material benefits alone (Issamsudin, 2018).

Property has a position under life, even sometimes lives are at stake to obtain or defend it, so the final message of this verse is not to kill yourself or kill others, the message of this verse states that in obtaining property should not harm other parties or even risking the lives of others. Fraud activities in trade often occur especially in the present. It is not uncommon for businesses to produce goods not to pay attention to the quality of their products, which sometimes endanger the health of consumers, which in turn will also endanger their lives.

Next is the rule of adab how to be a good businessman, which is written in Sura Hud verses 84 and 86, namely: "*Dan kepada (penduduk) Madyan (kami utus] saudara mereka, Syu'aib. Ia berkata: "Hai kaumku sembahlah Allah, sekali-kali tiada Tuhan bagimu selain Dia, dan janganlah kamu kurangi takaran dan timbangan, sesungguhnya aku melihat kamu dalam keadaan yang baik (mampu) dan sesungguhnya aku khawatir terhadapmu akan azab yang membinasakan (kiamat)." Dan Syu'aib berkata: "Hai kaumku, cukupkanlah takaran dan timbangan dengan adil, dan janganlah kamu merugikan manusia terhadap hak-hak mereka dan janganlah kamu membuat kejahatan dan membuat kerusakan"*". The meaning is "And to (the people) Madyan (we sent) their brother, Shu'aib. He said: "To my people worship Allah, there is no Lord for you but Him, and do not reduce the measure and the scales, verily I see you in a state the good and the truth, I fear that you will destroy (doomsday)." And Shu'aib said: "to my people, just measure and measure justly, and do not harm men against their rights and do not make evil and make damage".

This verse is still related to a number of lessons that can be taken from the story of the Prophet Allah, which is the story of the Prophet Syu'aib and the Madyans is the sixth story told in this surah. The Madyans are a group of Arabs consisting of polytheists. Their life behavior deviates from the teachings of the Prophets of Allah, namely that cheating in commerce has been regarded as normal and routine behavior. Furthermore, Allah sent the Prophet Syu'aib to convey the command of Allah SWT not to reduce the measure and the scales, because Allah will bring down the punishment to them due to the wrongdoing they did (Sumirat, 2015).

Based on the explanation above, this verse is one of the bases of Islamic law that we can make a guideline in conducting business, namely fulfilling consumer rights properly without having to reduce the rights of the consumer, not doing wrong to consumers and conducting trade fairly (Yusri, 2009). The consequence of violating this verse is a sin that someday must be paid with the punishment of Allah, while the consequences of the world are of course consumers will not believe in these business people who ultimately consumers are reluctant to interact with them which will ultimately lead to at least profit to be obtained.

The Islamic economic legal system includes the way and implementation of business

activities based on Islamic law. Islamic economic law respects the values of the legal will of the Creator of man listed in the Koran which is then implemented by the Prophets of Allah SWT up to the Prophet Muhammad who in social life both when he lived in the city of Makkah and at the time of Medina. We can learn about this implementation in the *nubuwwah* characteristics of the Prophet Muhammad, these qualities he practiced every day as well as when he became a business actor. So that he is a business actor that many consumers like.

In every activity related to the economy, it must always cling to divine norms (Islamic law). The obligation to adhere to divine norms as an effort to protect the rights of each party in carrying out economic activities. Briefly these divine norms are summarized in the basic principles of *muamalah fiqh* (Kahpi, 2018).

The study of jurisprudence *muamalah* is a variety of transactions that are theoretically from the book of jurisprudence and also complemented by the prevailing legal perspective in Indonesia, namely the Compilation of Sharia Economic Law (KHES). The characteristics of *muamalah fiqh* in Islamic law are also called sharia economics, namely: 1). Source from God; 2. Has a divine purpose; 3). Integration between things that are static and those that accept change; 4). Moderation between matter and immateriality; 5). Moderation between individual benefit and collective benefit; 6). Contextual; and 7). Natural.

## CONCLUSION

The definition of consumers regulated in the Law on consumer protection means that it is narrower than the meaning of business actors (unbalanced). A balanced understanding of both will bring a positive influence on consumer coverage that must be protected as regulated in Islamic law.

Islamic law and the Criminal Code both regulate the problem of consumer protection to create benefit, justice, balance, security and safety and guarantee legal certainty. The difference is that Islamic law reveals the values of religiosity by not putting aside social and humanitarian values (vertical and horizontal relations / *habibum minallah wa hablum minannas*), while the Criminal Code shows more social and humanitarian values (horizontal relations / *hablum minannas*) so that provide legal certainty.

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