

Implementation of Criminal Sanctions Against Business Actors In The Sale of Toys Not With Indonesian National Standards

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Abstract

Toys are products that are compulsorily enforced by SNI. This application can ensnare business actors who sell non-SNI toys with criminal sanctions, such as in the decision Number 172/Pid.Sus/2017/PN Skt. The issues raised are the legal arrangements related to toys that are enforced by SNI compulsorily, the application of sanctions against business actors who trade non-SNI goods, and the analysis of judges' considerations in the application of crimes against business actors who sell non-SNI toys. This research is a normative law that uses secondary data. The data collection method is in the form of literature study, with the data sources used in the form of primary, secondary, and tertiary materials. Toys that meet SNI can be proven by having the SPPT-SNI issued by LSPro and the SNI logo on the product. Business actors who sell toys without SNI can be sentenced to imprisonment or a fine. However, in this decision, the judge decided that the defendant was on probation. The results of the study show that the implementation of mandatory SNI toys is regulated in the Regulation of the Minister of Industry 24/M-IND/PER/4/2013. Business actors who sell toys without SNI may be subject to sanctions as regulated in Article 62 of Law no. 8 of 1999 concerning Consumer Protection and Article 113 of Law no. 7 of 2014 concerning Trade. The application of the sanctions contained in the decision 172/Pid.Sus/2017/PN Skt is in accordance with the applicable law but does not provide a deterrent effect on the defendant. It would be better if the probationary sentence was applied to a fine. The legal process must also be carried out to the toy supplier to the defendant so that there is justice.

Keywords: Business Actors, Indonesian National Standards.

1. Introduction

One of the goals of the development of the Indonesian state is to improve the welfare of the Indonesian people, both materially and spiritually, by providing adequate basic needs. 1 To obtain a decent life for humanity in the context of realizing prosperity and intelligence, it is necessary to provide goods and services in sufficient quantities, of good quality, and at prices affordable by the community.² In addition, economic growth as a process of improvement from time to time is an important indicator in measuring the success of a country's development. 3 Therefore, the role of trade as the main driver of national economic development must be given great attention, especially in producing goods and/or services that can result in losses for consumers.

Consumers as final users⁴ often become the aggrieved party both in terms of quality assurance, quantity, and safety of the goods provided by business actors. Losses experienced by consumers other than the financial side in the form of expenses due to the use of products that are lacking or of poor quality, also from the moral side such as being disabled or even having to lose a family member, so that protection of consumers is a must. Moreover, protecting consumers is the same as protecting the whole nation.

One type of product that may cause harm, especially in terms of safety of use, is children's toys. Children's toys are

objects to be played with and have an important role in the learning process for children to get to know the world and grow up. 6 For children aged 4-6 years who are included in the preschool category, motor development is one aspect that is experiencing very rapid development, so that the selection of the right toys can stimulate children's fine motor and gross motor skills.

On the other hand, toys also have a close relationship with children's health, many accidents occur due to children's ignorance in using toy products, or the toys are made with dyes or other chemicals that are harmful to health. 8 For example, a squishy toy that is played by squeezing and forming a toy will return to its original shape, it is made of cancer-causing chemicals.⁹ Squishy toys can also explode if heated until the inner foam melts.¹⁰ In addition to squishy toys, slime toys that are popular among children, are actually made of hazardous materials, especially borax, where borax can cause burns when touched many times and can irritate the respiratory tract.

For example, in the decision 172/Pid.Sus/2017/PN Skt regarding a special criminal case in the city of Surakarta, the chronology is briefly as follows. On October 12, 2016 at 11.00 WIB at the SJP 2 shop owned by David Hutanto. The shop was visited by the police with the aim of conducting a search because of information from someone who did not want to be identified, that the shop was trading goods in the form of toys that did not have SNI. The results of the search found evidence in the form of children's toys that were not equipped with SNI

based on the Regulation of the Minister of Industry Number 55/M-IND/PER/11/2013 concerning Amendment to the Regulation of the Minister of Industry Number 24/M-IND/PER/4/2013 concerning Mandatory Indonesian National Standards for Toys, toy products must meet SNI and must be affixed with the SNI mark before being traded for both local and imported products. In addition, the results of a lab test of one of the items found did not match the test parameters in the form of a plastic layer from the packaging of the item.

2. Literature Review

2.1. Definition of Application

The word application in the Big Indonesian Dictionary (KBBI) has the meaning of process, method, act of applying. In addition, the word application has the meaning of installation or use, about practicing.

Sanctions according to the KBBI can be interpreted as dependents (actions, punishments, and so on) to force people to keep agreements or obey the law. In addition, sanctions can also be interpreted as negative rewards, in the form of burdens or suffering specified in the law.¹⁶ The word sanction is taken from the Dutch language *sanctie* which means the threat of punishment, is a coercive tool to obey a rule, law, legal norms.¹⁷ In the black's law dictionary, sanctions or sanctions in English are defined as punishments obtained from failure to comply with laws or rules or orders.

The term criminal comes from a word in Sanskrit, which literally means suffering, torment, misery.¹⁹ Crime according to the KBBI is a crime (about murder, robbery, corruption, and so on); criminal.²⁰ Criminal or *straf* in Dutch means punishment. Indonesian legal expert, Moeljanto gives the meaning of criminal law as part of the applicable law in a country that determines how a crime is carried out if someone violates the rule.

Criminal sanctions can be given if the criminal event is contrary to positive law, which is without rights which causes consequences that are prohibited by law with the threat of punishment. An essential element for a criminal event is the nature without rights, where there are no elements without rights, then there is no criminal event.²⁴ In addition, there is an aspect of error, namely an unwanted consequence of the law, which was committed by the perpetrator.

2.2. Definition of Business Actor

Producers are often defined as entrepreneurs who produce goods and services, this definition includes manufacturers, wholesalers and retailers professional,²⁶ who participate in the provision of goods and services up to into the hands of consumers.

In Law No. 8 of 1999 concerning Protection Consumers Article 1 point 3, business actors are defined as:

Every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various economic fields. From the above understanding, business actors, including companies in all the form of business fields, such as BUMN, cooperatives, and private companies, both in the form of manufacturers, importers, retailers, and distributors²⁸ only domiciled in the jurisdiction of the Republic of Indonesia. nature of interest typical memory of producers or business actors in producing or trading, is to increase revenue.³⁰ However, the nature of these interests sometimes has the potential to produce goods that are detrimental to the health and safety of

consumers. Consumers here are people or companies who buy certain goods or use certain services.

2.3. Definition of Toys

Toys can be interpreted as a tool or playing facility that is intended to fulfill and/or contain elements of education, interaction media, and creative development. Toys that provide entertainment also have an educational role, develop cognitive behavior, stimulate creativity, and can develop physical and mental abilities that will certainly be needed in the future.³⁴ The definition according to the KBBI itself is a tool to play.

2.4. Definition of Indonesian National Standardization (SNI)

The word standard comes from the English "standard" which is a translation of the French "norme" and "etalon", where the term "norme" is a standard in document form, while "etalon" is a standard measurement.³⁶ In Indonesian, the standard word is a document that contains certain requirements that are compiled based on consensus by interested parties and approved by have been mutually recognized.³⁷ According to the Big Indonesian Dictionary, the meaning of standard is a certain size that is used as benchmark. Meanwhile, according to Gandhi, standardization is:

The process of formulating and implementing rules in a regular approach to certain activities for the benefit and with the cooperation of all interested parties, in particular to increase overall savings in an optimum manner by taking into account the functional conditions and safety requirements. It is based on the consolidation of the results (science) technology and experience.

Standardization according to Law No. 20 of 2014 about Standardization and Conformity Assessment, Standardization is a process plan, formulate, determine, implement, enforce maintain, and supervise Standards that are carried out in an orderly and cooperate with all Stakeholders. Thus, standardization serves to help bridge the interests of consumers and business actors by setting appropriate product standards and can meet the interests and aspirations of both parties,⁴⁰ and protect the rights of the consumers themselves, namely the right to obtain security and the right to obtain goods and/or services in accordance with the exchange rate provided,⁴¹ improve the dignity of consumers by opening access to information about available goods and/or services, and fostering an honest and responsible attitude from business actors.⁴² In addition, the standardization and quality control program for Indonesian merchandise is one of the efforts made to increase competitiveness in supporting exports in the international market and also to protect consumers from low-quality products.⁴³ However, there are still many products, both electronic, cellular phones, and children's toys that are still below the standards set by the Indonesian National Standards Agency.

3. Method of Research

This research is descriptive research, which means research that describes certain objects and explains things related to or systematically describes facts factually and carefully. The type of research used is normative legal research. This legal research uses secondary data obtained from statutory regulations, court decisions 172/Pid.Sus/2017/PN Skt, Ministerial Regulations, and various literatures related to this paper.

Based on the type of research conducted, the data collection method used is literature study. The method of collecting data is by identifying secondary data that is in accordance with the problems discussed, analyzing court decisions 172/Pid.Sus/2017/PN Skt, citing literature and laws related to research material.

Based on the type of research conducted, the data used are secondary data, namely legal materials sourced from the law, court decisions 172/Pid.Sus/2017/PN Skt, Ministerial Regulations, books, legal journals, articles published on the internet, legal dictionaries, and large Indonesian dictionaries.

After the data is collected, the data will be selected according to the type and its relationship to the research problem. The selected data are then placed in each of the discussion areas. The next stage, the data will be described in the form of sentences per sentence which are arranged in detail, logically, and systematically so that conclusions can be drawn according to the formulation of the problems discussed.

4. Analyze and Result

4.1. Problems with Decision Number 172/Pid.Sus/2017/PN Skt

In this sub-chapter, it will be explained what are the problems in the court decisions that are appointed, the laws and regulations that are violated, and what are the demands of the public prosecutor.

Based on Court Decision Number 172/Pid.Sus/2017/PN Skt, there is a problem where David Hutanto as the defendant, is the owner of the SJP 2 shop which is engaged in selling children's toys in Surakarta City. The defendant was reported by R. Husein Nasution SH who served as an investigator for economic crimes and specifically for the National Police Criminal Investigation Agency. Investigators received reports that the SJP 2 shop had been used as a place to import, produce and/or trade goods in the form of children's toys that were not in accordance with the Indonesian National Standards or SNI. There are 2 problems that exist in this decision, namely:

- a. The toys traded by the Defendant did not have an SNI mark.
- b. The defendant was unable to show the SPPT-SNI for the products the defendant traded.

4.2. Violated Laws and Regulations

There are 2 (two) laws and regulations proposed by the public prosecutor in his indictment. The first is that the defendant violated Article 57 Paragraph 2 of Law Number 7 of 2014 concerning Trade. Violation of Article 57 Paragraph 2 may be subject to criminal sanctions as regulated in Article 113 of Law Number 7 of 2014 concerning Trade. The second statutory regulation is that the defendant violated Article 8 Paragraph 1(a) of Law Number 8 of 1999 concerning Consumer Protection. Against violation of Article 8 Paragraph 1(a), the defendant may be subject to criminal sanctions in Article 62 Paragraph 1 of Law Number 8 of 1999 concerning Consumer Protection.

4.3. Demands from the Public Prosecutor

Based on the problems contained in Decision Number 172/Pid.Sus/2017/PN Skt, the public prosecutor gave demands against the defendant. The demands filed by the public prosecutor against the defendant are as follows:

Stating the defendant guilty and committing a crime in trading with a criminal threat in accordance with Article 113 of

Law Number 7 of 2014 concerning Trade.

- a. Stating imprisonment for 6 months with a probationary period of 10 months.
- b. The evidence is seized for destruction.
- c. Determine the defendant to pay court fees of Rp. 2.500, - (two thousand five hundred rupiah).

Against the demands of the prosecutor or public prosecutor, the defendant asked for leniency on the grounds that he was sorry for his actions and was the backbone of the family. However, the public prosecutor remained in his demands, as well as the defendant remained in his application.

4.4. Chronology of Decision Case Number 172/Pid.Sus/2017/ PN Skt

The chronology of the discovery of toys that do not comply with SNI standards in the defendant's SJP 2 shop can be explained as follows:

- a. It started with information that the SJP 2 shop belonging to the defendant David Hutanto had been used as a place to import, produce and/or trade goods in the form of children's toys that were not equipped with SNI.
- b. Then on Wednesday, October 12, 2016 at approximately 11.00 WIB, witness R. Husein Nasution, SH and Witness Marudut Hutahaeon, SH who are members of the Criminal Investigation Unit of the Police conducted a search at the SJP 2 shop belonging to the Defendant, and found evidence in the form of children's toys. without being equipped with traded SNI.

4.5. Analysis of Decision Making by Judges

In this case, the Public Prosecutor submitted evidence in order to prove his charge against the defendant. The evidence submitted is in the form of:

- a. Witness testimony totaling 4 people
- b. Expert testimony totaling 1 person
- c. Letter in the form of test results on confiscated toys
- d. Defendant's statement

The evidence that has been submitted by the Public Prosecutor shows several legal facts obtained during the trial, namely:

- a. The defendant as the owner is fully responsible for the activities of the SJP 2 store.
- b. A non-SNI toy that became evidence was found in the defendant's shop. Where there are toys that have SNI but there are still those that do not.
- c. The toys were obtained from other business actors and local craftsmen domiciled in Indonesia.
- d. The defendant was unable to show the SPPT-SNI of the toy traded so that the defendant feels guilty and has regretted his actions.

Based on the explanation above, the author will explain based on the legislation in force in Indonesia. panel of judges can decide a crime against the defendant, if there are at least two valid evidence that appears in court and the judge believes that the defendant has legally committed a crime. It is written in Article 183 of the Criminal Procedure Code which reads:

The judge may not impose a sentence on a person unless there are at least two valid pieces of evidence so that the judge obtains the belief that a criminal act has actually occurred and the defendant is guilty of committing it.

The legal evidence is written in Article 184 Paragraph 1 of the Criminal Procedure Code which reads:

- (1) Legal evidence is:
 - a. Witness testimony
 - b. Expert description
 - c. Letter

- d. Instruction
- e. Defendant's statement

In Decision Number 172/Pid.Sus/2017/PN Skt, there are 4 pieces of evidence presented in the trial, namely witness testimony, expert testimony, letter, as well as the defendant's statement. The evidence presented in the trial has convinced the judge that the defendant has committed the crime of trading non-SNI toys. Therefore, judge can impose a sentence against the defendant in accordance with the indictment given by the public prosecutor.

Proof that the defendant has violated Article 57 Paragraph 2 of Law Number 7 of 2014 concerning Trade must meet the elements contained in the article, namely:

- a. Businessmen.
- b. Trade goods in the country.
- c. Does not meet the SNI that has been enforced obligatory.

According to the author, the judge's decision making is appropriate

with the applicable laws and regulations and in accordance with the legal facts found during the trial. In this case, the author agrees with the application of the rules in Law Number 7 of 2014 concerning Trade rather than Law Number 8 of 1999. The reason the author agrees with the application of Law Number 7 of 2014 concerning Trade is because the Act is explained in detail it is clear and specific that it is prohibited to trade in goods that are not SNI, while in Law Number 8 of 1999, it is only stated that the standards are regulated in the provisions of the law so that it seems general and less specific.

Generally, problems regarding SNI are mostly associated with the Consumer Protection Act. However, this decision shows that apart from the Law on Consumer Protection, there are other laws that regulate SNI, namely Law Number 7 of 2014 concerning Trade. Writer also found that Law Number 3 of 2014 concerning

The industry has a prohibition related to the sale of products not SNI.

The prohibition is regulated in Article 53 Paragraph 1(b), which reads:

Everyone is prohibited from producing, importing, and/or distributing Industrial goods and/or services that do not comply with SNI, technical specifications, and/or statutory guidelines that are enforced obligatory.

For violations of this Article, criminal penalties are also regulated, namely:

Article 120 which reads:

(1) Any person who intentionally produces, imports, and/or distributes Industrial goods and/or services that do not meet SNI, technical specifications, and/or statutory guidelines that are compulsorily enforced in the Industrial sector as referred to in Article 53 Paragraph 1(b) , shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

(2) Any person who due to his/her negligence produces, imports, and/or distributes Industrial goods and/or services that do not meet SNI, technical specifications, and/or procedure guidelines that are compulsorily enforced in the Industrial sector as referred to in Article 53 Paragraph 1(b) , shall be sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 1.000.000.000,00 (one billion rupiah).

The author is of the opinion that Article 120 of Law Number 3 2014 concerning Industry is suitable to be applied to perpetrators.

3. Analysis of the Implementation of Sanctions Against Business Actors Selling Toys Not In Accordance With SNI

Based on the evidence that has been carried out, the Panel of Judges tried the defendant with a prison sentence of 4 months and there is no need to carry out the crime unless in

the future there is a judge's decision that states otherwise because the defendant committed a crime before the probationary period ended or there were special conditions that were not fulfilled within that period. which have been specified. The punishment given by the Panel of Judges is a probation or conditional penalty where there is a condition given by the Panel of Judges to the defendant.

The author gets an explanation that the determination of conditional punishment or probation is regulated in Article 14a Paragraph 1 of the Criminal Code, which reads:

If the judge imposes a maximum sentence of one year or imprisonment in which the confinement is not a substitute imprisonment, then the judge's decision may order that the sentence does not need to be served, unless later there is a judge's decision that determines otherwise, because the convict has committed a criminal act. before time the trial is completed, or the convict does not meet the special conditions specified in the order.

From the statement in Article 14a Paragraph 1 of the Criminal Code, the judge own The authority to order a crime does not need to be carried out by the defendant if the sentence received by the defendant has a term of one year or less or imprisonment where the imprisonment is not a confinement sentence replacement. The special conditions written in Article 14a Paragraph 1 of the Criminal Code are limited on compensation for losses arising from criminal acts and apply special conditions regarding behavior that must be met by the convict, but only applies to violations regulated in Article 492 of the Criminal Code concerning drunkenness in public which disturbs order,⁵⁰⁴ about begging in public, about wandering without searching, about profiting from a woman's obscene acts, and about being drunk on a public road.

The limitation of special conditions on conditional punishment can be seen in Article 14c Paragraph 1 and Paragraph 2 of the Criminal Code, where:

(1) With the order referred to in Article 14a, unless a fine is imposed, in addition to stipulating general conditions, the judge may stipulate a special condition that the convict, within a certain period shorter than his probationary period, must compensate partly or all of the losses incurred by the crime.

(2) If the judge imposes a prison sentence of more than three months or imprisonment for one of the offenses based on articles 492, 504, 505, 506, and 536, other special conditions may be applied regarding conduct that the convict must fulfill during the probationary period or for part of the sentence. from the probationary period.

The probation of the defendant was also based on the consideration of the Panel of Judges. In Decision Number 172/Pid.Sus/2017/PN Skt it is explained that the criminal imposition of the defendant is not for retaliation, but as an educational act and a warning to the defendant so that in the future, the defendant will not violate the laws and regulations. Based on the previous explanation, the author is of the opinion that the application of the criminal sanctions given to the defendant is actually in accordance with the legal facts in the trial and has been based on consideration and justice according to the Panel of Judges.

However, the effectiveness of giving probationary criminal sanctions against perpetrators of criminal acts is deemed to have less deterrent or educational effect. Sanctions given to perpetrators of criminal acts can be a lesson that provides a deterrent effect not only on the perpetrators themselves, but also on the general public so that people will be more careful in their actions. In this case, the defendant is subject to criminal sanctions as regulated in Article 113 of Law Number 7 of 2014, where the sanctions can be in the form of imprisonment and/or fines. If a probationary sentence is applied, it would be better if it was followed by a criminal fines so that criminal sanctions

will continue to run against defendants who have violated the law. In addition to the criminal sanctions given in the form of conditional punishment, there is a statement from the defendant that the goods traded by the defendant came from other business actors and local craftsmen.

According to the author, there is a need for further investigations into other business actors who are suppliers of children's toys to the defendant. If not, there will be injustice where the defendant as the seller is legally processed for trading children's toys that do not have SNI, however, suppliers of goods to the defendant who can be importers or producers as the basis for children's toys that do not have SNI are not legally processed. For local craftsmen, it is better if there is assistance from the government so that the toys produced by local craftsmen can meet SNI. Assistance can be in the form of socialization of the SNI ISO that applies to toys or the ease of registering SNI for toy products made by local craftsmen.

5. Conclusions

Based on the discussion in the previous chapters, conclusions can be drawn as answers to answer the problems posed as follows:

1. Legal regulation of toys is regulated in the Regulation of the Minister of Industry of the Republic of Indonesia Number 55/M-IND/PER/11/2013 concerning Amendments to the Regulation of the Minister of Industry Number 24/M-IND/PER/4/2013 and Regulation of the Minister of Industry of the Republic of Indonesia Number 111 /M-IND/PER/12/2015 Regarding the Second Amendment to the Regulation of the

Minister of Industry Number 24/M-IND/PER/4/2013. Goods that have been compulsorily enforced by SNI and have complied with the requirements of SNI, must be affixed with an SNI mark that is not easily lost after obtaining the SPPT SNI from LSPro and business actors are required to have a photocopy of the SPPT SNI for traded goods.

2. Business actors who sell toys that do not have the SNI mark and are unable to show the applicable SNI SPPT for toys sold may be subject to sanctions in Article 62 of Law Number 8 of 1999 concerning Consumer Protection, Article 113 of Law Number 7 of 2014 concerning Trade and additional sanctions Article 63 of Law Number 8 of 1999 concerning Consumer Protection. If the use of the item causes disability or death, it can be subject to sanctions in accordance with Article 204 and Article 205 of the Criminal Code.

3. The criminal conviction of the defendant in Decision Number 172/Pid.Sus/2017/PN Skt was in accordance with the legal facts revealed at the trial, namely the defendant violated Article 57 Paragraph 2 by being subject to criminal sanctions in accordance with Article 113 of Law Number 7 of 2014 with a prison sentence of 4 (four) months and the defendant does not need to serve a sentence unless the convict commits a crime before the probationary period ends, in accordance with Article 14a of the Criminal Code. However, the probationary sentence given to the defendant did not provide education both to the defendant and the public about the consequences of the crime committed. If a probationary sentence is applied, a minimum of a penalty in the form of a fine is imposed on the defendant, so that the application of sanctions from Article 113 of Law Number 7 of 2014 concerning trade continues.

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