

**ANALYSIS OF RESPONSIBILITY OF CRIMINAL ACTIONS BY
INTENTIONALLY CIRCULATING WILL KEY HERBAL MEDICINE
THAT DID NOT HAVE A DISTRIBUTION PERMIT
(Study Decision Number 673/Pid.Sus/2022/PN.Tjk)**

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Abstract

The criminal act of deliberately distributing will key herbal medicine which did not have a distribution permit regarding Health was decided by the Tanjungkarang District Court through Decision Number 673/Pid.Sus/2022/PN.Tjk. The results of the research show that the factors that caused the perpetrator to commit a criminal act by deliberately distributing key will herbal medicine which did not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk, among others, consisted of social values in the form of personality factors, namely negligence, perpetrator wanting to avoid the obligations that have been determined, the long process of obtaining permits, minimal socialization regarding laws and regulations and weak law enforcement. Furthermore, the responsibility of the perpetrator of the criminal act of intentionally distributing key herbal medicine which does not have a distribution permit is based on Decision Number 673/Pid.Sus/2022/PN.Tjk with imprisonment for 1 (one) month and 15 (fifteen) days and a fine of 1 (one) month and 15 (fifteen) days. IDR 5,000,000.00 (five million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 1 (one) month.

Keywords: *Criminal Act; Distribution Permit; Herbal Key to Wills; Responsibility of the Perpetrator.*

I. INTRODUCTION

Crime in the drug and food sector poses a serious risk to public health and safety.³ So criminal acts related to drugs and food are a problem that must be handled seriously, although sometimes there are obstacles that cause law enforcement to be ineffective and inadequate when compared to the risks posed.⁴

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³Rastika, D. G. B., Giritikawati, N., & Pramudita, A. W. (2023). Peran Industri Logistik terhadap Keamanan Peredaran Obat dan Makanan. *Eruditio : Indonesia Journal of Food and Drug Safety*, 3(1), 17–28. <https://doi.org/10.54384/eruditio.v3i1.152>

⁴Putri Suprianto, N., Malarangan, K., & Awaliah, A. (2022). Penegakan Hukum Pidana Terhadap Peredaran Produk Kosmetik Ilegal Di Wilayah Hukum Kepolisian Daerah Sulawesi Barat. *Tadulako Master Law Journal*, 6(2), 209–219. Retrieved from <http://jurnal.untad.ac.id/jurnal/index.php/TMLJ/article/view/19175>

In principle, the purpose of making medicines and their function is to cure all kinds of disease complaints in humans or animals. This is in accordance with what is intended in the Decree of the Minister of Health of the Republic of Indonesia No.125/Kab/B.VII/1971, dated 9 June 1971 concerning medicine, namely a substance or combination of substances intended to be used in establishing a diagnosis, preventing, reduce, eliminate, cure diseases or symptoms of diseases, injuries or physical and spiritual disorders in humans or animals, beautify the body or parts of the human body.

Business actors' indifference to the losses caused to society is not only limited to the production process which does not meet the registration requirements for finished drugs and pharmacopoeial requirements, but more than that also to the distribution system which often does not go through official (legal) channels, of course. This is proven by the widespread circulation of medicines that are not officially registered with the Ministry of Health of the Republic of Indonesia.

The emergence of pharmaceutical industry products in the form of chemical drugs that endanger the health and lives of consumers, in the legal view, is an act that is prohibited as regulated in the applicable statutory provisions, both in the provisions of Law Number 36 of 2009 concerning Health and those contained in the provisions of Law Number 8 of 1999 concerning Consumer Protection. In this law, the articles and clauses contain provisions that regulate the implementation of criminal sanctions against business actors who are proven to have committed criminal violations of procurement, storage, sale of dangerous drugs without a permit and drugs without a distribution permit whose manufacturing process does not meet drug registration standards. so and pharmacopoeial terms.

The regulation of criminal sanctions is strictly regulated in provision 197 of Law Number 36 of 2009 concerning Health. Other provisions are contained in regulations that regulate and protect the rights of the public as consumers against losses that may arise as a result of the use of medicinal products as regulated in the provisions of Article 4 of Law Number 8 of 1999 concerning Consumer Protection.

One case of a criminal act that was intentionally circulated but did not have a distribution permit, namely the distribution of key will herbal medicine, was carried out by a resident of Bandar Lampung City who has now been named a defendant.

Based on the description above, the problem in this research can be formulated as follows:

- 1) What was the factor that caused the perpetrator to commit a criminal act by deliberately distributing key herbal medicine that did not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk?

- 2) What is the responsibility of criminals who intentionally distribute key herbal medicines that do not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk?

II. DISCUSSION

Factors That Caused the Perpetrator to Commit Criminal Acts By Deliberately Distributing Will Key Herbal Medicine That Did Not Have a Distribution Permit Based on Decision Number 673/Pid.Sus/2022/PN.Tjk

The criminal act of deliberately distributing key herbal medicine that does not have a distribution permit is a crime in the pharmaceutical sector carried out by individuals, groups of people, or companies/foundations with legal entities whose operations do not have permission from government agencies in accordance with applicable regulations, which is a threat Criminal sanctions for anyone who by mistake violates this prohibition may be subject to corporal punishment or a fine. The occurrence of a criminal act of deliberately distributing key will medicines that do not have a distribution permit is of course driven or caused by several factors. The factors that cause the criminal act of deliberately distributing key herbal medicine that does not have a distribution permit have been collected by the author in the research below.

Based on the results of an interview with Dwi Handoko as Assistant Investigator for the Lampung Regional Police, it was stated that the factors causing the criminal act of deliberately distributing will key herbal medicine that did not have a distribution permit included personality factors (negligence). Negligence here means that the perpetrator deliberately offered bottled herbal medicine on the Marketplace on a Facebook account. Then at the defendant's house 100 boxes of bottled herbal medicine were obtained and each box contained 12 (twelve) bottles of herbal drink with a total of 1200 (one thousand two hundred) bottles which were ready to be sold and the Kunci Wasiat brand bottled herbal medicine confiscated was carried out. does not have a distribution permit.

Based on the results of an interview with Kandra Buana as Public Prosecutor at the Lampung High Prosecutor's Office, it was stated that the factors causing the criminal act of deliberately distributing will key herbal medicine which did not have a distribution permit can be seen from the cultural aspects that grow in society, such as:

- 1) The perpetrator wants to avoid the obligations that have been determined

One of the factors in the criminal act of deliberately distributing key herbal medicine that does not have a distribution permit is because the perpetrator wants to avoid the obligations that have been determined by the Ministry of Trade. The obligations here are that pharmaceutical distributors and manufacturers must have valid permits to produce and trade pharmaceutical supplies and medicines.

2) Minimal socialization regarding laws and regulations

Socialization is a form/container for conveying a goal to be achieved and is a form of understanding for the community. In this case, socialization of pharmacy to the community, so that people understand about pharmacy. The people of Lampung do not receive socialization regarding the law regarding the distribution of medicines/herbal medicine that do not have a distribution permit. If you look at the regulations regarding the distribution of drugs/herbal medicine, there are criminal provisions. This must be socialized first by the Regional Government and local law enforcement officials for the benefit of the people of Lampung.

With the socialization, the people of Lampung are more careful in distributing medicines/herbal medicine, because the regulations for the distribution of medicines/herbal medicines regulate a lot about permits and in these regulations violators of permits can be punished. Lack of understanding of the laws regarding the distribution of drugs/herbal medicine results in losses for the people of Lampung itself. Socialization of the law on the distribution of drugs/herbal medicine is the obligation of the Regional Government and law enforcement officials.

Based on the results of an interview with Hendro Wicaksono as Judge of the Tanjungkarang District Court, he stated that one of the factors causing the criminal act of deliberately distributing will key herbal medicine which does not have a distribution permit can be seen from structural aspects such as:

1) Weak law enforcement

Weak law enforcement is a contributing factor to the criminal act of deliberately distributing key herbal medicine that does not have a distribution permit. Weak supervision and law enforcement give the impression of giving freedom and not deterring perpetrators of drug/herbal medicine distribution. This is due to the low number of criminal cases being resolved by intentionally distributing key herbal medicines that do not have a distribution permit.

2) The length of the process of obtaining permits

It is suspected that the licensing process takes a long time to be a contributing factor to the criminal act of deliberately distributing key will herbal medicine that does not have a distribution permit. The length of the process of obtaining permits for the production and distribution of pharmaceutical products and medicines/herbal medicine. The long process of obtaining this permit has an impact on the widespread distribution of medicines/herbal medicine in the field.

According to J.E. Sahetapy⁵ that another approach that explains the causes of crime is the social approach, which is an acronym for social values, cultural aspects, and structural factors which are elements found in every society.⁶ Cultural aspects and structural factors are two elements that influence each other in society. Therefore, these two elements are dynamic in accordance with the dynamics in the society concerned. This means that these two elements cannot be avoided from external influences such as science, technology and so on. These two elements mutually influence the social values found in society. In this way, social values will be dynamic in accordance with the development of cultural aspects and structural factors in the society concerned.⁷

The factors causing the criminal act of intentionally distributing key herbal medicine that does not have a distribution permit can be analyzed based on J.E.'s theory. The Sahetapy mentioned above and the incident that occurred related to social values factors such as the negligence factor, which is closely related to the negligence of the perpetrator who deliberately sold the testament brand medicinal/herbal products on the Marketplace on his Facebook account, so that the defendant's actions could be known by law enforcement and After being investigated, evidence was finally found in the defendant's house, namely 100 boxes of herbal medicine bottles and each box contained 12 (twelve) bottles of herbal drink with a total of 1200 (one thousand two hundred) bottles which were ready to be sold.

Furthermore, the factor that causes the criminal act of deliberately distributing key herbal medicine that does not have a distribution permit is seen from the lack of socialization regarding the Legislation as a manifestation of the cultural aspects that grow in society. The absence of socialization will have an impact on the low level of public knowledge. The level of public knowledge regarding the criminal act of deliberately distributing key herbal medicine that does not have a distribution permit will increase when the government does not provide outreach to the public. On the other hand, the perpetrator wants to avoid the obligations that have been determined, which is also sociologically related, especially the obligation to take care of permits and fees for drug/herbal medicine distribution activities.

Furthermore, there are weak law enforcement factors and the long process of obtaining permits. The factor of weak law enforcement is the weakness of the Police, Prosecutor's Office and Judiciary in maximizing law enforcement against drug/herbal medicine traffickers who have violated mining regulations as a

⁵Sahetapy, J. E. (1991). Hukum dan Keadilan. *Jurnal Hukum & Pembangunan*, 21(1), 11-16.

⁶Abdullah, R. H. (2019). Tinjauan Viktimologis Terhadap Tindak Pidana Perdagangan Orang (Human Trafficking). *Jurnal Yustika: Media Hukum dan Keadilan*, 22(01), 55-63.

⁷Muharam, N. A. (2024). Pertanggungjawaban Pelaku Tindak Pidana Pemalsuan Surta Keterangan Catatan Kepolisian Yang Dilakukan Secara Bersama-Sama. *Innovative: Journal Of Social Science Research*, 4(2), 4628-4641.

manifestation of structural factors. Weak law enforcement is of course also based on the norms or laws and regulations that apply and regulate the distribution of drugs/herbal medicine itself. The result of weak law enforcement has an impact on the deterrent effect it will have in the future. The low number of sentences handed down will have an impact on the public's deterrence from committing similar crimes. Furthermore, the long process of obtaining a valid permit will ultimately cause people to commit criminal acts by deliberately distributing key will herbal medicine that does not have a distribution permit.

Based on the description above, it can be analyzed that the factors that caused the perpetrator to commit a criminal act by deliberately distributing key will herbal medicine which did not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk include social values in the form of personality factors, namely negligence, the perpetrator wants to avoid predetermined obligations, the lengthy process of obtaining permits, minimal socialization regarding statutory regulations and weak law enforcement. The most dominant factor related to the criminal act of deliberately distributing key herbal medicine that does not have a distribution permit is the personality factor (negligence).

Thus, the factors causing the perpetrator to commit a criminal act by deliberately distributing key herbal medicine that did not have a distribution permit in this research are in line with the theory put forward by J.E. Sahetapy said that another approach that explains the causes of crime is the sobural approach, which is an acronym for social values, cultural aspects and structural factors which are elements found in every society.

Responsibility for Criminal Perpetrators Who Deliberately Distribute Will Key Herbal Medicine That Did Not Have a Distribution Permit Based on Decision Number 673/Pid.Sus/2022/PN.Tjk

Based on the results of an interview with Dwi Handoko as the Lampung Regional Police Investigator, it was stated that the responsibility of the perpetrator of a criminal act by deliberately distributing key herbal medicine that does not have a distribution permit is an act that must be held accountable for having been committed, namely an act that is disgraceful to the public and that is held accountable by the maker. In other words, the awareness of a person's soul that can judge and determine his will regarding criminal acts committed based on decisions that have permanent legal force.

In relation to the accountability of a person who commits a criminal act, especially a criminal act, by intentionally distributing key herbal medicine that does not have a distribution permit, in the Criminal Code, it is generally determined in a negative way, namely in the provisions regarding exceptions to punishment. Exemption from punishment itself means that people who commit criminal acts are not sentenced or excluded from punishment. To prove whether a criminal act occurred or not, investigations and inquiries are carried out which are

useful for searching and collecting evidence which in the first stage, based on sufficient preliminary evidence, must be able to provide confidence, even though it is still temporary, to the Public Prosecutor about what actually happened or about the perpetrator of the crime. The crime of intentionally distributing key will medicines that did not have a distribution permit was carried out and the suspect was arrested.

At the investigation stage of the case, the perpetrator of a criminal act intentionally distributed key herbal medicine which did not have a distribution permit. If it is true that there are reports and complaints or indications are found that the perpetrator of a criminal act is deliberately distributing the key herbal medicine that does not have a distribution permit, then the Police Investigator will take the necessary steps to reveal the criminal act that occurred, especially the perpetrator of the criminal act intentionally distributing the key herbal medicine. wills that do not have a distribution permit. These steps include the police, after receiving a report that the perpetrator of a criminal act deliberately distributed key herbal medicine that did not have a distribution permit, immediately carried out an investigation and investigation into the report. If the data from the report is about a criminal act, the police will carry out a further process. This further process involves asking for information regarding the suspect's identity and data and documents, then carrying out further investigations regarding the methods used by the perpetrator. After the evidence and witnesses show indications of a criminal act, the suspect is arrested and detained.

Furthermore, at the investigative level, Dwi Handoko stated that the duties and authority of Police Investigators are as follows:

- 1) Prepare an Investigation Report (BAP) regarding the results of the investigation.
- 2) According to Article 8 of Law Number 8 of 1981 concerning Criminal Procedure Law, when the investigation has been completed, the investigator is obliged to immediately submit the case files to the Public Prosecutor. The submission of the case files is carried out in two stages, namely:
 - a) Investigators only submit case files.
 - b) If the investigation stage is considered complete, the investigator hands over responsibility for the suspect and evidence to the Public Prosecutor.

Based on the results of an interview with Kandra Buana as Public Prosecutor at the Lampung High Prosecutor's Office, he stated that the responsibility of the perpetrator of a criminal act by intentionally distributing key herbal medicine for the will which did not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk is a person's ability to take responsibility. because of his mistake of committing an act that is prohibited by law, is against the law and is not justified in the opinion of society. The act of the perpetrator of a criminal act by intentionally distributing key herbal medicine that does not have a distribution

permit is punishable by a criminal offense as regulated in Article 197 of Law Number 36 of 2009 concerning Health.

The Public Prosecutor in his demands is that the Tanjungkarang District Court Panel of Judges who examined and tried this case decide: To declare the defendant Syarifudin bin Romli legally and convincingly guilty of committing a criminal act by intentionally producing or distributing pharmaceutical preparations and/or medical devices that do not have a distribution permit. , as regulated and punishable in the second indictment of Article 197 of Law Number 36 of 2009 concerning Health, sentenced the defendant Syarifudin bin Romli to prison for 2 (two) months minus the time the defendant was in temporary detention and a fine of IDR 5,000,000, - (five million rupiah) subsidiary 1 (one) month, determines that the defendant remains in detention and charges the defendant a court fee of Rp. 2.000.- (two thousand rupiah).

Based on the results of an interview with Hendro Wicaksono as Judge of the Tanjungkarang District Court, it was stated that the responsibility of the perpetrator of a criminal act by intentionally distributing key herbal medicine for the will which did not have a distribution permit means that the punishment of the perpetrator is not sufficient if the person has committed an act that is contrary to the law or is against the law. So even though the act meets the definition of an offense in the law and is not justified, it does not meet the requirements for imposing a crime. The imposition of criminal sanctions still requires the condition that the person who committed the act is guilty or guilty.

Hendro Wicaksono as Judge at the Tanjungkarang District Court, added that because the Defendant's actions had been legally and convincingly proven, the Defendant must be declared guilty and given a sentence commensurate with his guilt. After hearing the Public Prosecutor's demands, the panel of judges gave Decision Number 673/Pid.Sus/2022/PN.Tjk, considering Article 197 of Law Number 36 of 2009 concerning Health, Law Number 8 of 1981 concerning Criminal Procedure Law and other statutory regulations, with the main contents adjudicating:

- 1) Declare that the Defendant, Syarifudin bin Romli, has been legally and convincingly proven guilty of committing a criminal act by intentionally distributing pharmaceutical preparations that do not have a distribution permit in the Public Prosecutor's Second Alternative Indictment.
- 2) Sentence the Defendant to imprisonment for 1 (one) month and 15 (fifteen) days and a fine of IDR 5,000,000.00 (five million rupiah) with the provision that if the fine is not paid it is replaced by imprisonment for 1 (one)) month.
- 3) Determine the period of arrest and detention that has been served by the Defendant to be deducted from the sentence imposed.
- 4) Order the defendant to remain in custody.

- 5) Determine the evidence in the form of: 1 (one) unit of blue Android cellphone from the Infinix brand, 100 boxes of herbal drink with the key to the will circulation brand, each box containing 12 (twelve boxes) of herbal drink bottles for a total of 1200 (one thousand two hundred) bottles (returned to the Public Prosecutor to be used in the case in the name of Teguh Ristiawan bin Sauji).
- 6) Charge the Defendant to pay court costs in the amount of Rp. 2.000.00 (two thousand rupiah).

W.J.P. Pompe in Wirjono Projodikoro stated that a person's criminal responsibility is related to mistakes. There are 2 (two) types of errors in criminal law, namely:⁸

- 1) Intentional (dolus/opzet)
In the theory of intention (opzet), namely wanting and knowing (willens en wettens) the actions carried out consist of 2 (two) theories, namely:
 - a) The theory of will (wilstheorie) is the desire to realize the elements of criminal acts in the law.
 - b) Theory of knowledge or imagining (voorstellings theory), the perpetrator is able to imagine the consequences of his actions.Most criminal acts have an element of intent or opzet. This intentionality has 3 (three) types, namely:
 - a) Deliberation to achieve something deliberately intended/goal/dolus directus.
 - b) Deliberation which does not contain a goal but is accompanied by the realization that a result will definitely occur (deliberation with certainty).
 - c) Intentional as in the sub above, but accompanied by the realization that there is only a possibility (not certainty), that something as a result will occur (intentional with possibility/dolus eventualis).
- 2) Not being careful (negligence/culpa)
Lack of caution/negligence/culpa is a mistake in general, in science it has a technical meaning, namely a type of mistake by the perpetrator of a criminal act which is not as serious as intentional, namely being careless, resulting in unintentional consequences.⁹

The responsibility of the perpetrator of the criminal act of intentionally distributing key herbal medicine which does not have a distribution permit is based on Decision Number 673/Pid.Sus/2022/PN.Tjk carried out by Syarifudin Bin Romli, in accordance with the theory put forward by W.J.P Pompe in Wirjono

⁸Roihan, I. *Pertanggung Jawaban Pidana Atas Penganiayaan Yang Menyebabkan Kematian Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam (Analisis Putusan No. 124/Pid. B/2014/Pn. Mme)* (Bachelor's thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta).

⁹Projodikoro, W. (2003). *Tindak-tindak pidana tertentu di Indonesia*.p. 65-72

Projodikoro, that responsibility a person's punishment is related to a mistake. There are 2 (two) types of errors in criminal law, namely deliberate (*dolus/opzet*) and careless (*negligence/culfa*).¹⁰

The element of guilt inherent in the perpetrator of a criminal act by deliberately distributing key will medicines which do not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk is that they can be held accountable by the maker, there is a psychological link between the maker and the act, namely the existence of intentionally or by mistake, as well as the absence of a basis for eliminating a criminal offense that eliminates the accountability of an act to the maker. It can be said that mistakes have the mark of being disgraceful which in essence does not prevent behavior that is against the law. Then it is also explained about the nature of not preventing behavior that is against the law in the formulation of positive law, here it means having intention and negligence which leads to the nature of being against the law and the ability to be responsible.

The responsibility of the perpetrator of the criminal act of deliberately distributing key will medicines which did not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk was declared legally proven and guilty, because the actions carried out by the perpetrator were clearly contradictory and violated legal provisions in force or what is known as an offense (*strafbaarfeit*). Offense (*strafbaarfeit*) is behavior that is punishable by crime, which is against the law which is related to wrongdoing and is carried out by someone who is capable of taking responsibility. This means that there is a psychological link between the perpetrator and the action, namely that there is an element of error committed by the perpetrator, where the perpetrator deliberately distributed the herbal key to the will which did not have a distribution permit.

Based on the description above, it can be analyzed that the responsibility of the perpetrator of the criminal act of deliberately distributing key herbal medicine which did not have a distribution permit is based on Decision Number 673/Pid.Sus/2022/PN.Tjk that the Defendant Syarifudin Bin Romli was legally and convincingly proven guilty of committing the crime. the crime of deliberately distributing pharmaceutical preparations that do not have a distribution permit and punishing the Defendant therefore with imprisonment for 1 (one) month and 15 (fifteen) days and a fine of IDR 5,000,000.00 (five million rupiah) provided that if Non-payment of fines shall be replaced by imprisonment for 1 (one) month. This is in accordance with the error theory by W.J.P. Pompe, because there is intention or mistake, and there is no basis for eliminating the crime which eliminates the ability to be held accountable for an act to the maker. The prison sentence decision is considered to have fulfilled the sense of justice for the Defendant, when

¹⁰Putra, E. L. (2022). Analisis Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Pencurian Dengan Pemberatan (Studi Putusan Nomor 1043/Pid. B/2020/PN. Tjk).

compared with the Public Prosecutor's demands, namely a prison sentence of 2 (two) months reduced by the time the defendant was in temporary detention and a fine of IDR 5,000,000 (five million rupiah) subsidiary 1 (one month).

III. CONCLUSION

The factors that caused the perpetrator to commit a criminal act by deliberately distributing key will herbal medicine which did not have a distribution permit based on Decision Number 673/Pid.Sus/2022/PN.Tjk, among others, consisted of social values in the form of personality factors, namely negligence, the perpetrator wanted to avoid obligations- predetermined obligations, the length of the process of obtaining permits, the lack of socialization regarding laws and regulations and weak law enforcement.

The accountability of the perpetrator of the criminal act of intentionally distributing key will medicines which did not have a distribution permit is based on Decision Number 673/Pid.Sus/2022/PN.Tjk that the Defendant Syarifudin Bin Romli was legally and convincingly proven guilty of violating Article 197 of Law Number 36 of 2009 concerning Health and punish the Defendant therefore with imprisonment for 1 (one) month and 15 (fifteen) days and a fine of IDR 5,000,000.00 (five million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 1 (one month).

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