

Review Article

Formulation of Criminal Law Policy against Drug Users without a Distribution License

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Abstract: Regarding drugs that do not have a distribution permit, it is necessary to understand the drugs in question beforehand. Medicine itself means that it is made from ingredients obtained directly from natural Indonesian ingredients, processed based on experience and used in medicine. In principle, drugs can benefit human health, but if the drugs do not have a distribution permit, of course, the drug will cause human disease. Drugs that do not have a distribution permit under the Health Act are widely circulated in the community, including hard drugs. Several drugs are prohibited from circulation, namely thalidomide, meclizine, and phenmetrazine.

Keywords: Legal Certainty, Drugs without Permission License, Crime in the Pharmaceutical Sector.

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INTRODUCTION

The State of Indonesia, in guaranteeing the health of everyone, has regulated it in the rule of law, namely Law Number 36 of 2009 concerning health (from now on referred to as the Health Law); in the provisions of the law, what is meant by health is a healthy condition, physically sound, everyone can live socially and economically productive [1]. In addition to the meaning of health as referred to in the provisions of the Health Law, there are other explanations related to Health, namely Health, which includes physical, social and spiritual health, and not only a condition free from disability and weakness [2]. The non-departmental state agency, namely the Food and Drug Supervisory Agency from now on referred to as The Indonesian Food and Drug Authority (BPOM), is regulated in Presidential Regulation no. 3 of 2013 concerning the Seventh Amendment to Presidential Decree no. 103 of 2001 concerning the Position, Functions, Authorities, Organizational Structure, and Work Procedures of Non-Departmental Government Agencies. Article 67 states that the Food and Drug Supervisory Agency carries out

government duties in drug and food supervision by the applicable laws and regulations [3]. With the existence of The Indonesian Food and Drug Authority (BPOM), the Indonesian government can easily monitor drugs that can be misused to threaten human health. The existence of the Indonesian Food and Drug Authority (BPOM) agency provides prevention efforts against the destruction of human health because it is undeniable that drugs circulating in the community often have an impact that can interfere with everyone's health. Even someone often uses them for drunken purposes, resulting in a decline in health somebody.

The Indonesian state has guaranteed Human Health with the Health Law, so it is necessary to maintain health. Health maintenance efforts are a series of efforts to protect a person consisting of various types of service activities that are health promotion (promotive), disease prevention and cure (preventive

¹The Republic of Indonesia, Article 1 number 1 of Law Number 36 of 2009 concerning Health; State Gazette of the Republic of Indonesia Year 2009 Number 144.

²CST, Kansil, Introduction to Indonesian Health Law, (Jakarta: PT. Rineka Cipta, 1991), p. 1.

³Ezra Amanita Pratama, "Criminal Law Enforcement Against Drugs That Do Not Have a Circulation Permit from the Food and Drug Supervisory Agency (Case Study of the Food and Drug Supervisory Agency of Palembang City)", Journal of the Faculty of Law, UNSRI, Indralaya, 2014, p.3.

and curative), and health recovery (rehabilitative) [4]. Some of these actions aim to ensure the health of everyone. So in the Health Law, it is clear that it does not only regulate the use of drugs but also the prevention of drugs that can damage human health, from drugs that have a distribution permit to drugs whose distribution is prohibited. There are many Health Laws circulating in the community, including hard drugs. Several drugs are prohibited from circulation, namely thalidomide, meclizine, and phenmetrazine. The rampant circulation of drugs banned from circulating, especially the Somadril brand, has caused the police to carry out eradication efforts. The impact of hard drugs that are prohibited from circulating if used,

In Indonesia itself, drugs that do not have a distribution permit only regulate those related to distribution and production. However, users of the said drugs it is not further regulated by the law. The State of Indonesia regulates the distribution and production of drugs that do not have a distribution permit contained in Article 197 of Law Number 36 of 2009 concerning Health. Based on the provisions of Article 197 of the Health Law that have been published, the circulation or selling of drugs that do not have a distribution permit is a criminal act. Whereas in Indonesia, drug users who do not have a distribution permit are often victims of the use of the said drugs. Several cases occurred in Indonesia related to the distribution of drugs that do not have a distribution permit. If viewed in-depth, the perpetrators of criminal acts who distribute drugs that do not have a distribution permit are also actors who consume actively to intoxicate. However, because there are still no regulations regarding drug users who do not have distribution permits, users of these drugs cannot be charged with the rule of law.

Based on the Ngawi District Court Decision Number: 167/Pid.Sus/2021/PN. A new person named RIF was tried and examined based on the provisions of Article 196 in conjunction with Article 98 Paragraph (2) and paragraph (3) of Law Number 36 the Year 2009 concerning Health Jo Article 55 Paragraph (1) 1st of the Criminal Code. The Panel of Judges Examining the case sentenced RIF to a prison sentence of 10 (ten) months with the consideration that RIF's brother had circulated pharmaceutical preparations that did not have a distribution permit. However, if it is understood that in the case, there is an active actor as a drug user that does not have a distribution permit, RN's brother, who is a friend of the Defendant, RN was not arrested. Of course, this is because the regulations in Indonesia still do not regulate the perpetrators who consume drugs that do not have a distribution permit. Because Indonesia still has not regulated the perpetrators who use pharmaceutical preparations that do not have a distribution permit, the perpetrators of drug users who

do not have a distribution permit still cannot be held criminally accountable. Those who can be held criminally accountable are only those who distribute them as stipulated in Article 196 and Article 197 of the Health Law.

DISCUSSION

Use of Drugs that do not gave a Circulation License is categorized as a Crime

According to Health Law, drugs are materials or combinations of materials, including biological products, used to influence or investigate physiological systems or pathological conditions to establish a diagnosis, prevention, healing, recovery, health promotion, and contraception for humans [5]. So in the above explanation, it is clear that the primary purpose of the drug itself is to provide healing, recovery, and improvement of health. The classification of drugs is regulated by the Minister of Health of the Republic of Indonesia Number 917/Menkes/Per/X/1993 into three: over-the-counter drugs, limited over-the-counter drugs, hard drugs and psychotropics. In the use of over-the-counter and limited over-the-counter drugs, the rules are clear if these drugs must be based on a doctor's prescription, including psychotherapy drugs. Psychotropic drugs are sometimes used to cure or as therapeutic drugs whose purpose is to reduce pain, with notes that a doctor must supervise. But what about the use of hard drugs? Hard drugs used to have a distribution permit. However, the distribution permit was withdrawn because its content is unsuitable for human health. These drugs are finally said to be drugs that do not have marketing authorization. These unlicensed drugs have intoxicating side effects, just like drugs, and they are loved by young and old alike for seeking peace.

Law Number 36 of 2009 concerning Health explains in article 1 number 8 related to the definition of drugs. Article 2 regulates the granting of distribution permits, Regulation of the Minister of Health Number 10 of 2008 concerning drug registration; article 4 regulates drugs that have distribution permits must meet several criteria; article 2 of the Regulation of the Head of The Indonesian Food and Drug Authority (BPOM) Number 3 of 2013 concerning Amendments to the Regulation of The Indonesian Food and Drug Authority (BPOM) No. HK.03.1.23.10.11.08481 of 2001 confirms the criteria and procedures for drug registration. So it is clear from the meaning of medicine, the drug distribution permit must meet several criteria, and it is emphasized by the law on the drug and food regulatory agency that there are rules that must be met first so that the drug can be widely circulated in the community and consumed as a healing solution. However, none of these laws and regulations regulates the use of hard drugs;

⁴ Hadiati Koeswadji, Hermien, *Law for Hospitals*, (Bandung: PT. Citra Aditya Bakti, 2002), p. 20.

⁵The Republic of Indonesia, Article 1 point 8 of Law Number 36 of 2009 concerning Health

these regulations are only for people who produce and distribute them. Based on the provisions in Article 197 of Law Number 36 of 2009 concerning Health, it is stated that: "Everyone who intentionally produces and distributes pharmaceutical preparations and medical devices that does not have a distribution permit as referred to in Article 106 paragraph (1) shall be subject to criminal sanctions. Imprisonment for 15 (fifteen) years and a maximum fine of Rp. 1,500,000,000. 00 (one billion five hundred million rupiahs)." Meanwhile, the provisions of Article 106 of Law Number 36 of 2009 state: "Pharmaceutical preparations and medical devices can only be circulated after obtaining a distribution permit."

In many cases, in this case, users are only used as victims; if allowed to continue, these actions can damage generations or the nation's successors and even hinder the country's development. In this case, the author has examined several cases of drug users categorized as victims who do not have distribution permits. An example of a case is the first one, based on the Ngawi District Court Decision Number: 167/Pid.Sus/2021/PN. A new person named RIF was tried and examined based on the provisions of Article 196 in conjunction with Article 98 Paragraph (2) and paragraph (3) Law Number 36 of 2009 concerning health in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code. The Panel of Judges Examining the case sentenced RIF to a prison sentence of 10 (ten) months with the consideration that RIF's brother had circulated pharmaceutical preparations that did not have a distribution permit. However, it is understood that in this case, there is an active perpetrator as a drug user that does not have a distribution permit, namely RN's brother, who is a friend of the Defendant, but RN's brother was not arrested. Of course, this is because regulations in Indonesia still have not regulated the perpetrators who consume drugs that do not have a distribution permit. The second case occurred at the Surabaya District Court with Decision Number: 2999/Pid.Sus/2019/PN. Say,

In the example above, drug users who do not have permission circulate only made as a victim if it is understood in the case that there is an active perpetrator as a user of drugs who does not have permission circulate the purpose of use drug for drunkenness as well as the effects of drug use. In this case, arrests cannot be made for drug users who do not have permission in circulation because there are no regulations or regulations related to this matter. Strafbaarfeit is human behaviour which at a particular time, has been rejected in a specific life association and is considered a behaviour that must be abolished by criminal law by using the means of coercion contained

in it [6]. Based on the provisions of Health Law, which prohibits the production of drugs that do not have a distribution permit and have criminal sanctions against the perpetrators, then drug users who do not have permission circulation should be categorized as a criminal. According to the definition of criminalization theory, according to Soedarto, criminalization can also be interpreted as determining that all actions of a person can be punished by the process of making regulations or laws so that these actions can be threatened with criminal sanctions [7]. The value perspective can also be interpreted as criminalization, namely the change in value caused by an act that was previously blameless and not criminally prosecuted, which turns into a disgraceful act and can be punished; it is evident in Article 196 and Article 197 that the distributor of pharmaceutical preparations who does not have permission have criminal sanctions, but for drug users who do not know have permission Circular is only said to be a victim. Based on the theory, criminalization is a material criminal law thought process which is the object of study to determine an action as an offence or a criminal act with a particular criminal threat. Uncommendable acts not initially included in the prohibited acts are qualified as offences with the threat of criminal sanctions. If researched carefully that there are active actions carried out by users of these drugs, where the purpose of using drugs that do not have permission the circular is looking for a drunken sensation like case drugs. So that the actions of users of these drugs cannot be said only as a victim but as a criminal acts.

Regulation of the Use of Drugs that do not have a Circulation License Based on the Principle of Legal Assurance

In Indonesia, drugs that do not have a distribution permit are only regulated those related to distribution and production. However, for users of the said drugs it is not further regulated in the law. The State of Indonesia regulates the distribution and production of drugs that do not have a distribution permit contained in Article 197 of Law Number 36 of 2009 concerning Health. Based on the provisions of Article 197 of the Health Law that have been published, the circulation or selling of drugs that do not have a distribution permit is a criminal act.

Undeniably, the Health Law provisions only regulate someone who distributes drugs that do not have a distribution permit but do not regulate someone who actively consumes the drug intended to intoxicate. Several cases occurred in Indonesia related to the distribution of drugs that do not have a distribution

⁶ Erdianto Effendi, *Indonesian Criminal Law An Introduction*, Bandung: PT. Refika Aditama, 2011., p. 97.

⁷ Sudarto, *Capita Selecta Criminal Law*, (Bandung: Alumni, 1986), 31.

permit. If viewed in-depth, the perpetrators of criminal acts who distribute drugs that do not have a distribution permit are also actors who consume actively to intoxicate. However, because there are still no regulations regarding drug users who do not have distribution permits, users of these drugs cannot be charged with the rule of law.

Several cases occurred in Indonesia related to the distribution of drugs that do not have a distribution permit. If viewed in-depth, the perpetrators of criminal acts who distribute drugs that do not have a distribution permit are also actors who consume actively to intoxicate. However, because there is still no regulation regarding drug users who do not have a distribution permit, users of these drugs cannot be charged with the rule of law, and this act is contrary to the Health Act. Law No. 36 of 2009 defines medicine as a substance or combination of materials, including biological products, that are used to influence or investigate physiological systems or pathological conditions in the context of determining diagnosis, prevention, healing [8].

Legal certainty is a form of effort to realize the law. According to the term, legal certainty is a condition that is a specific, not vague, precise, stipulation and is stipulation. The law itself must be fair and specific so as not to cause multiple interpretations; the exact meaning is a guide to behaviour, while the meaning of fair behaviour must prioritize an order with reasonable value. Only because it has a just nature and is implemented with certainty can the law carry out its functions. Legal certainty is a question that can be answered normatively and cannot be answered sociologically [9]. Another argument was born from the German philosopher Gustav Radbruch who proposed three legal bases. Some legal theorists and legal philosophers identify with the three goals of the law, namely legal certainty, justice and expediency. Legal certainty is a guarantee to carry out the law using a reasonable and appropriate way, as well as the most crucial goal in law, if there is no legal certainty, then the law will lose its identity, and the implication is that if the law has lost its identity, then everyone will not be guided anymore to the law and prioritizes the will outside the law itself. Gustav Radbruch also views law into three values of identity, namely as follows: legal certainty (*rechtmatigheid*) is reviewed from a juridical point of view; legal justice (*gerechtigheid*) is viewed from a philosophical perspective, meaning that justice is seen as equal rights for all before the court, and legal expediency (*zweckmatigheid*) or *doelmatigheid* or utility. Legal certainty is a guarantee of justice. The

regulated norms must be strictly adhered to. Gustav Radbruch believes that legal certainty and justice are the consistency of the law itself. According to him, legal certainty must be maintained for security and order in a country, so positive law must be obeyed. Based on this, what is to be achieved is justice and happiness [10].

The emergence of modern law makes the birth of a teaching of legal certainty; this teaching is a teaching that is still new. However, the value of justice and expediency has traditionally existed since before modern law. This teaching comes from a Juridical-Dogmatic teaching that was born from positivist thoughts in the legal world, which always assumes the law as an autonomous view because, for adherents of this teaching, the law is seen only as a collection of rules. For adherents of this teaching, the purpose of the law is not to realize benefits and justice but to create legal certainty [11].

The existence of legal certainty as an effort to protect justice seekers from arbitrary actions from law enforcement officers who are sometimes arrogant in carrying out law enforcement duties (in this case, it is not focused on the enforcement of the regulations themselves but the prohibition of activities carried out which have a negative impact). Bad), legal certainty provides an opportunity for the public to know more about the clarity of an act that is allowed to be done and an act that is prohibited by law. Without legal certainty, people are blind to the law or lay people about the law, which implies ignorance of people in behaving whether right or wrong, prohibited or not prohibited by law [12].

Legal certainty is a form of effort to realize the law. According to the term, legal certainty is a specific condition, not vague, precise, and a stipulation. Article 197 jo 106 of Law Number 36 the Year 2009 concerning health clearly states that the article is a criminal provision stipulating that anyone who distributes drugs without a distribution permit will be subject to criminal sanctions. Drug users who do not have permission to distribute are not subject to criminal sanctions. The use of drugs that do not have permission circulation is contrary to the Health Act because in-destination drug users who do not have permission circulation only have an impact harmful and contrary to understanding drug-medicine according to the Health Act. There is a need to regulate these actions so that there is no disharmony or legal vacuum. A regulation is not used as retaliation for actions considered inadequate by the community but as a prevention effort.

⁸The Republic of Indonesia, Article 1 point 8 of Law Number 36 of 2009 concerning Health; State Gazette of the Republic of Indonesia Year 2009 Number 144.

⁹Dominikus Rato, (2010). *Philosophy of Law Seeking: Understanding and Understanding Law*, Laksbang Pressindo, Yogyakarta, p.59

¹⁰Achmad Ali, (2002). *Uncovering the Veil of the Law (A Philosophical and Sociological Study)*, Toko Gunung Agung, Jakarta, p. 82-83

¹¹Riduan Syahrani, (1999). *Summary of the Essence of Legal Studies*, Citra Aditya, Bandung, p. 23.

¹²Ibid.

CONCLUSION

Based on the theory, criminalization is a material criminal law thought process which is the object of study to determine an action as an offence or a criminal act with a particular criminal threat. Uncommendable acts not initially included in the prohibited acts are qualified as offences with the threat of criminal sanctions. If it is carefully examined that there are active actions carried out by users of these drugs, the purpose of using drugs that do not have a distribution permit is to seek the sensation of getting drunk like drugs. So the actions of drug users cannot be said to be victims only but as criminal acts.

Legal certainty is a form of effort to realize the law. According to the term, legal certainty is a condition that is certain, not vague, clear, stipulation and is a stipulation. Article 197 jo 106 of Law Number 36 the Year 2009 concerning health clearly states that the article is a criminal provision stipulating that anyone who distributes drugs without a distribution permit will be subject to criminal sanctions. The perpetrators of drug users who do not have a distribution permit are not subject to criminal sanctions. The use of drugs that do not have a distribution permit is contrary to the Health law because the purpose of the perpetrators of drug users who do not have a distribution permit only has a negative impact and is contrary to the understanding of drugs according to the Health Act. There is a need to regulate these actions so that there is no disharmony or legal vacuum. A regulation is not used as retaliation for actions considered harmful by the community but as a prevention effort.

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