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Juridical Analysis of the Position of Actors "*Participating in Carrying Out*" in the Distribution of Illegal Drugs Based on Law Number 36 of 2009 Regarding Health (Study Decision Number 210/Pid.Sus/2023/PN Kwg)

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Abstract: The purpose of this research is to determine the regulations regarding Medeplegen's participation in Indonesian criminal law and to analyze criminal penalties for perpetrators of participation in the distribution of pharmaceutical preparations of illegal drugs. illegal in District Court Decision Karawang Number 210/Pid.Sus/2023/PN Kwg. Indonesia is a legal country that prohibits the circulation of pharmaceutical preparations or drugs forbidden without permission especially drugs the enter into the Psychotropic and Narcotics categories. But in reality, there are many distributors of pharmaceutical preparations in the form of drugs classified as psychotropics and narcotics without permits or illegally. Most of them do it not alone but in collaboration. This is included in the act of participation (Delneming), and then the party participating is called Medeplegen, as is the case in Decision Number 210/Pid.Sus/2023/PN Kwg. Qualitative and normative legal approaches are used as research methods taken from literature or material obtained from library research, and research specifications use analytical descriptive. The results of the research are: (1) That the distribution of pharmaceutical preparations with inclusions violates Article 197 of Law Number 36 of 2009 concerning Health, "taking part" or "participation" (Medeplegen) is regulated in Article 55 of the Criminal Code, and in terms of the element "inclusion" namely in the form of conscious cooperation (bewuste samenwerking). (2) There is a difference between the application of the law and the reality of the verdict in Decision Number 210/Pid.Sus/2023/PN Kwg, where the amount of the fine is less than that stated in Article 197 of the Health Law, but the author sees and appreciates the considerations The Panel of Judges and pay attention to considerations regarding mitigating circumstances for the Defendant.

Keyword: Criminal Inclusion; Preparation Pharmacy; Drugs.

INTRODUCTION

Indonesia itself is a legal country that prohibits the circulation of pharmaceutical preparations or illegal drugs without a permit, especially since these drugs fall into the category of Psychotropics or Narcotics. Drugs are a common problem in Indonesia. Narcotics are substances, both synthetic plants and non-plant substances, which can cause disturbances or changes in consciousness, loss of taste, reduce and eliminate pain, and can cause addiction.¹ This is in accordance with the definition of narcotic substances in Article 1 number 1 of Law Number 35 of 2009 hereinafter referred to as the Narcotics Law which states "that Narcotics are synthetic or non-synthetic plants or substances or drugs derived from plants that cause loss of consciousness or disturbance , can reduces or even eliminates pain and causes addiction."

It can be concluded from the explanation above, that the effects of illegal drugs which are included in the narcotics class can provide certain effects, including providing calm for the user. Usually the reason users use narcotics is to get a "calm" sensation. However, the "calm" sensation referred to is not a good sensation, because the side effects can make the wearer or user addicted, even leading to a withdrawal effect due to the use of the substance.

Drug crime is also a violation of law and organized crime, narcotics crime is also an international crime that can involve other countries. Narcotics addiction rehabilitation is seen as an effective solution to reduce withdrawal from narcotics and illegal drugs. When handling criminal cases initiated against narcotics addicts or victims of narcotics addiction, the final decision in the case is based on the rehabilitation sentence. This aims to prioritize correctional aspects with rehabilitative punishment when handling narcotics abuse cases involving narcotics users or victims of narcotics addiction.²

So what is the position of the perpetrator "participating" in the distribution of pharmaceutical preparations or illegal drugs? The questions in the initial narrative will be the subject of discussion in this scientific article, where the author will examine through a conceptual study the decision on perpetrators who "participated" in the distribution of illegal (illegal) drugs .

Participation in the commission is part of the inclusion (participation), the person in the commission is called *Medeplegen* , which requires the presence of several people in the crime, whose relationships develop rapidly due to the increase in crimes that are considered within the scope of participation. The changes in concepts and practices known so far are a logical consequence of the development of many things and the result of the freedom or independence of judges, because they do not always follow the case in question.

The changes made by Muhammad Ainul Syamsu and the explanation by Hazenwinkel-Suringa, that there has been a change in the involvement of Criminal Law for a long time, this is an interesting and important phenomenon but not a new phenomenon. The theory and doctrine of inclusion has developed from time to time, especially in special criminal acts, inclusion increasingly shows a new understanding regarding the status of special criminal acts, which can replace the status of general criminal acts in the Criminal Code (hereinafter referred to as the Criminal Code). Participating in committing several crimes is not clear enough , because sometimes it is associated with other crimes, for example forcing another person who is stronger for the crime so that the responsibility of the person being forced is related to the crime. Coercive power (*overmacht*) according to Memorie von Toelichting (MVT) is formulated as coercive power which exerts such

¹ Anton Sudanto, *Application of Narcotics Criminal Law in Indonesia* , Faculty of Law, University of 17 August 1945, Jakarta, p. 139.

² Muhammad Satrio Natigor Utomo and Sulistyanta, "Judicial Review of Narcotics Abusers with Rehabilitation and Prison Sentences (Case Study of Yogyakarta District Court Decisions)", *Recidive* , Vol. 11 No. 3, 2022, p. 259.

pressure on a person that it can be avoided by forcing him to carry out an act that is actually prohibited by law.³

In the Criminal Code regulates participation in Chapter V which regulates participation in committing acts that are punishable by crime, *Medeplegen* itself is an act that is together at least There is two person Which Where Wrong the only one do it and the other party also does it, and here the point is that you both do it, you can't just help with the preparations or actions that are only helpful.⁴

In Karawang itself, on March 9 2023, there was a case of "participating in" distribution drugs forbidden in a way *illegal* , Suspect Which named Wiko Parmono alias Wiko Bin Junaedi was investigated and ultimately made a defendant by the Public Prosecutor. In this case, it is suspected that there was a criminal act of participation (*Delneming*) in the *illegal* distribution of prohibited drugs . Pharmaceutical preparations or medicines distributed without a permit include Hexymer and Tramadol.

Hexymer is included in Class IV psychotropics require a doctor's prescription, while Tramadol is included in the category of dangerous drugs/one of the G or restricted list drugs which also requires a doctor's prescription. This shows the importance of oversight in the distribution and use of both. Tramadol is a drug used to relieve pain or soreness, especially after surgery or other illnesses. Even though Tramadol has a strong analgesic effect, it is not yet included in the narcotics group. However, because its potential effects can cause dependence, its use is still regulated and requires a doctor's prescription. The use of Tramadol should only be done for health or scientific purposes lawful, as determined by a doctor or authorized medical personnel. *Illegal* use of Tramadol , without a doctor's prescription or for criminal purposes, is unlawful and has the potential to harm the health of individuals as well as society in general.⁵

Decision No 210/Pid.Sus/2023/PN Kwg based on the Criminalistics Research Laboratory Number: 1172/NOF/2023 dated March 20 2023, there is evidence that the yellow tablets containing *trihexyphenid* and the white tablets containing *tramadol* are drugs, can affect the body's physiological functions by reducing complaints and treating symptoms of disease, which must not be sold freely without a doctor's prescription and must be dispensed by licensed pharmacies, health supplies or hospital pharmacies. Based on the explanation above, it can be concluded that the two types of drugs belong to the drug class.

Article 1 paragraph 1 of the General Regulations of the Food and Drug Supervisory Agency Number 7 of 2016 concerning Guidelines for the Management of Certain Drugs that are Often Abused, states that "Certain drugs that are often abused, hereinafter referred to as certain drugs, are drugs that have an impact on the central nervous system other than narcotics and psychotropics which, when used in *therapeutic doses* , can cause dependence and changes in the nature of mental function, including drugs containing *tramadol*, *trihexyphenidyl*, and/or *haloperidol* and so on, have permission to expand the sale and storage of Tramadol drugs. Health Law no. 36 of 2009 is the legal basis that regulates criminal acts related to the distribution of *illegal drugs* in Indonesia. This further emphasizes the importance of law enforcement in preventing the spread of illegal drugs which threaten public health.⁶

³ Adami Chazawi , *Lesson Law Criminal; Part 2*, RajaGrafindo Homeland, Jakarta, 2014, p. 29

⁴ R. Soesilo, *Book Constitution Law Criminal* , Poilteia, Bogor, 1993, p. 73.

⁵ Alian Setiawan, "Comparison Effectiveness Between Ketamine With Tramadol For Reduce Consequences of Rocuronium Injection", *Thesis* , Faculty of Medicine, Sebelas Maret University, Jakarta, 2010, p. 6

⁶ Andy Rahmah, Nurmiati and Nur Fahmi, "Judicial Review of Crimes in Pharmaceutical Preparations (Drug) Illegally in Makassar City (Study of Decision 1670/Pid.Sus/2021/PN.Mks)", *Pledoi* , Vol. 1 No. 2, 2023, p. 77.

The subject matter raised in this article is of concern. First, regarding what are the regulations regarding *Medeplegen's* participation in Indonesian criminal law? and Second, what is the juridical analysis of criminal penalties for perpetrators of participation in the distribution of pharmaceutical preparations of illegal drugs? *illegal* in District Court Decision Karawang Number 210/Pid.Sus/2023/PN Kwg?

METHOD

Qualitative approaches and normative law are used as research methods. This approach allows researchers to identify legal problems taken from literature or material obtained from library research. Thus, the research will focus more on analysis based on existing legal foundations and a deep understanding of the subject under study.

The specifications in this research use analytical descriptiveness, the aim is to provide a systematic description of the facts and characteristics of the object or subject being studied. Data collection carried out through library research allows authors to access secondary data from various sources, including primary legal materials such as statutory regulations and court orders, secondary legal materials such as books, scientific works, journals and websites. In this way, researchers gain a comprehensive understanding of the topic under study.⁷

RESULTS AND DISCUSSION

Regulations Regarding Medeplegen Participation in Indonesian Criminal Law

In the Criminal Code regulates "participation" in Chapter V, which regulates participation in committing acts that are punishable by crime. *Me depl e gene* is an activity carried out by at least two people, one of whom does it and the other party also does it, and in The point here is that we all do it together, we can't just help with the preparations or actions that are only helpful .

Participation is part of involvement (participation) , participation in commitment is called and known as *Me deple gen* , which means the participation of several people in crime which is growing rapidly in connection with the increase in crime, which is considered as the scope of crime. The changes in concepts and practices known so far are a logical consequence of the development of several cases and the result of the freedom or independence of judges, because they do not always follow the case in question.

In Indonesian criminal law, it is further regulated in Article 55 of the Criminal Code, in Article 55 point 1 that people who commit, order to commit , or participate in committing criminal acts can be punished.

A person's involvement in a crime which can be said to be part of " taking part " (*Delneming*) is regulated in the Criminal Code, but for greater clarity the author explains it as follows:

1. The person who does it (*Pleger*)

The perpetrator This person is a single person , who creates all the characteristics of the crime

2. The person who orders it to be done (*Doen Plegen*).

In here at least two people who give orders are called *Doen p legen* and the person who gives orders is called *pleger* . So the crime was not committed by the person himself, but rather he ordered other people, even though he was seen and punished as a criminal, but he gave orders to other people, or the order was an important instrument.

3. People who participate in doing it (*Medeplegen*)

⁷ Jasa Sudjana, Deny Guntara and Yuniar Rahmatiar, 2023, "Current Conditions For The Provident Of Civil Measures Contra Drogas Cntracting Class I Partielle On The Basis Of Legislation No. 35 Of 2009 On Drugs (Study of Judgment No. 446/Pid.Sus/2020/PN.Gpr)", *Justisi Journal* , Vol. 8 No. 2, p. 148-149.

The meaning of doing something together. As previously explained, there were at least two people who committed the crime together. The person who does this is called *Pleger* and the person who participates is called *Medeplegen*. In this case, both of them have to carry out the criminal incident, not just to help prepare it and only to help.

An example described by R. Soesilo is as follows: A intends to steal from B's house and C deliberately does it together. Both of them went into the house and took their things or C dug a hole, while A went inside and took his things. Here C is punished as *Medeplegen*, for committing theft. If C on at that time just standing in outside and monitoring or announcing someone's arrival, then C can be punished for his actions, which are regulated in Article 56 of the Criminal Code because there is only profit from his actions. Regarding this article, R. Soesilo believes that those who persuade must consciously convince other people. Meanwhile, you have to use one method to convince him that is mentioned in the article, such as power and so on, perhaps you cannot use other methods. When someone is induced to commit a crime, the convicted person can also be punished as a criminal. However, according to Chapter 55 paragraph (2) Criminal Code, the persuader's responsibility is limited to what he was persuaded to do and the consequences.⁸

From other literature it also explains that the conditions for the existence or occurrence of "taking part" *Medeplegen*, among others:

1. There is conscious cooperation that occurs (*bewuste samenwerking*), there is no need to always agree beforehand if you want it, if you have a common will then a criminal act is committed;
2. There is physical implementation (*gezamenlijke uitvoering/physieke samenwerking*), the realization of conscious goals (will).⁹

It can be concluded that there must be an element of "intentional" without any coercion, *Pleger* and *Medeplegen* must be equally aware. In Article 55 Paragraph (1) 2e that includes: in *Medeplegen* when providing opportunities to deliberately induce them to do so, contracts, abuse of power or influence, violence, threats or fraud.

If you look at Decision Number 210/Pid.Sus/2023/PN Kwg which contains a decision from the Panel of Judges at the Karawang District Court which discusses the criminal act of "participating" in the distribution of prohibited pharmaceutical preparations, it is explained that on month January 2023 You Wiko Permono alias Wiko As the defendant invited witness Rohyat to sell Tramadol and Hexymer type drugs, then the defendant and witness Rohyat went to Cikarang and bought Tramadol and Hexymer type drugs from Agus totaling 1000 (one thousand) Hexymer type drugs. and 100 (one hundred) drugs of the type Tramadol after they were sold out, in February 2023 the defendant gave witness Rohyat another 1000 (one thousand) drugs.

Hexymer type medicine and 100 (one hundred) pills of Tramadol type medicine with the aim of selling, and on Sunday, March 5 2023, the defendant gave witness Rohyat another 1000 medicines. (one thousand) item drug type Hexymer And 500 (five hundred) item drug type T Ramadol for sale.

If aligned with the examples given by R. Soesilo and several literatures in above, there are similar elements, that both of them committed the criminal incident together. So, Defendant Wiko and Witness Rohyat who are included in this decision have fulfilled the element of "participating" in selling supplies. pharmacy *illegal* form drugs type H exymer And Tramadol, Because they both sell, Wiko provides the goods and makes a profit And Rohyat Which keep as well as sell preparation pharmacy form drugs such as H exymer and T ramadol.

⁸ R. Soesilo, *Oh, Cit.*, p. 80.

⁹ m Hollyone N Singadimedja, Oci Twilight And Margo Hadipura, *Law Criminal Indonesia*, Adhi Sarana Nusantara Media, Jakarta, 2019. p. 163.

Juridical Analysis of Criminal Impositions Against Perpetrators of Participation in the Illegal Distribution of Pharmaceutical Preparations of Prohibited Drugs in Karawang District Court Decision Number 210/Pid.Sus/2023/PN Kwg

In the Karawang District Court Decision Number 210/Pid.Sus/2023/PN Kwg , the Judge sentenced the Defendant to 8 (Eight) Years in Prison and a fine of Rp. 100,000,000,- (one hundred million rupiah) with the provision that if the fine is not paid it will be reduced to 6 (six) months in prison. Article 113 regulates a minimum prison sentence of 5 years and a maximum of 20 years, as well as a minimum fine of 1 billion rupiah and a maximum of 10 billion rupiah for narcotics traffickers. And for witness Rohyat as *M edeplegen* turned to the prosecutor in this matter.

The author analyzes and summarizes the chronology of criminal events the. That the Defendant, who is now a convict , named Wiko invited Rohyat to sell drugs such as Tramadol and Hexymer , and on Sunday, March 5 2023 , The defendant gave Rohyat another 1000 (one thousand) Hexymer pills and 500 (five hundred) Tramadol pills which were both of which are types of drugs that cannot be distributed illegally for sale. When the witnesses named Irvan and Sunarta carried out the examination and also searched the defendant , there was no evidence was found, because evidence of drugs such as Hexymer and Tramadol belonging to the defendant, who is now a convict , was stored at witness Rohyat's house, when a search was carried out at Rohyat's house there were items proof form 3000 (three thousand) item Drug type H exymer in 3 (three) fruit jars, and 560 (five hundred and sixty) pills of Tramadol type medicine , which Rohyat kept in the chicken coop next to R Ohyat's house. Apart from that, 2 (two) empty clear plastic packs were also found and cash amounting to Rp. 300,000,- (three hundred thousand rupiah). That T he defendant Also No have Skills And skill in field pharmacy in distributing medicines or pharmaceutical preparations. In Here Rohyat sells medicines and gets a salary from Wiko of Rp. 500,000,- (five hundred thousand rupiah) per month, and Rp. 50,000,- (fifty thousand rupiah) per day from the Defendant Wiko.

Wiko's position in this decision is as the defendant because Rohyat is a witness because they participated together in selling the drugs. Wiko ordered it and Rohyat participated in selling it. Regarding Rohyat's own verdict , the decision was handed over to the Public Prosecutor to be followed up at another trial.

The question for the author is why not bring in the Narcotics Law as a criminal instrument, while Tramadol is included in the category of one of the Narcotics groups, even though H exymer is included in the in P sycotr o pica group IV. Narcotics and psychotropic P have differences, among others other:

1. Psychotropics are substances or drugs, plant or non-plant, which selectively affect the central nervous system and cause changes in mental function, whereas;
2. Narcotics, according to Article 1 number 1 of the Narcotics Law, narcotic substances are substances or drugs derived from plants or non-plants, both synthetic and non-synthetic which cause loss or change of consciousness, loss of taste, can reduce or even eliminate pain, and can cause addictions, which are legally divided into several groups.

However, the reason for not using the Narcotics Law is because these two types of drugs are still pharmaceutical preparations that are often used in the medical world. It's just that it is often misused by drug addicts.

The author analyzes the contents of the decision carefully, by elaborating between the verdict in the decision and the articles stated in the law used as the verdict. In the decision of the Karawang District Court Number 210/Pid.Sus/2023/PN Kwg , the judge considered that based on consideration of the indictment, witnesses, evidence and chronology, that the defendant and witness Rohyat together had distributed these drugs without permission. from the competent authority, the Panel of Judges considered that the third element was fulfilled

according to law, And weigh that all element on Chapter 197 Act Health Jo Article 55 paragraph (1) 1 of the Criminal Code has been fulfilled, therefore the defendant must legally and convincingly prove his guilt in committing the criminal act charged in the prosecutor's second indictment decision. In this decision, the defendant was only subject to a fine of Rp. 100,000,000 (one hundred million rupiah) whereas according to Article 197 of the Health Law itself the fine is Rp . 1,500,000,000.00 (one billion five hundred million rupiah). There is a difference between the application of the Law and the Decision of the Panel of Judges.

The panel of judges, in making their decision, must pay attention to the principles of justice, legal certainty and expediency. In Here, the Panel of Judges considers the factors that mitigate the charges against Brother Wiko , namely:

1. The defendant regrets it his actions;
2. Defendant Honest and admit his actions;
3. Defendant Not yet been convicted previously.

Three things will be taken into consideration by the Panel of Judges to lighten the sentence imposed on the Defendant .

Apart from being subject to sanctions under Article 197 of the Health Law, the crime committed by the defendant meets the conditions of involvement. In this decision, the judge will consider the factors that make, order, carry out and participate in a criminal act based on article 55 of the Criminal Code which regulates what acts are considered criminal acts, including acts that are a continuation of the criminal act, acts and other acts related to a particular crime, but also considered a crime. In this case, the following are considered crimes:

1. The act of "committing" a criminal act (*Plegen*), means giving rise to all the contents of the non-criminal formula regulated in the Law;
2. Participation in committing a crime (*Medeplegen*), that is intervene in the commission of a crime by collaborating closely with the perpetrators (*Plegen*) whose cooperation the crime can be committed;
3. Committing an action (*Doen plegen*), namely encouraging another person to commit the crime committed in this case in such a way that the perpetrator (lender) cannot be held criminally responsible;
4. Encouragement (*uitlokken*), is an act that encourages another person to commit a crime by giving or allowing something.

So, in the conclusion of the Panel of Judges in this case as "inclusion" (*Medeplegen*) in the distribution of pharmaceutical preparations in the form of Hexymer and Tramadol and in the Karawang District Court Decision Number 210/Pid.Sus/2023/PN Kwg, the Panel of Judges handed down a sentence to the Defendant in the form of verdict criminal Prison 8 (Eight) Year And fine as big as Rp. 100,000,000,- (one hundred million rupiah) with the provision that if the fine cannot be paid it will be replaced with 6 (six) months imprisonment. And the witness Rohyat as *Medeplegen* was returned to the Public Prosecutor in another case.

CONCLUSION

Based on results from discussion in on, writer concluded The results of the juridical analysis regarding Decision Number 210/Pid.Sus/2023/PN Kwg are:

1. That "participation" or "inclusion" (*Medeplegen*) is regulated in Article 55 of the Criminal Code, and in the case discussed in this research, the element of "inclusion" in the form of conscious cooperation occurring (*bewuste samenwerking*), does not always have to be an agreement first. In the past, because at the beginning you wanted to, the will came together, it happened quite smoothly and there was a physical implementation (*gezamenlijke uitvoering/physieke samenwerking*), a conscious realization of the goal (will). What Wiko and Rohyat did was in accordance with the elements of *Medeplegen*.

2. There is a difference between the application of the law and the reality of the verdict in Decision Number 210/Pid.Sus/2023/PN Kwg, where the amount of the fine is less than stated in Article 197 of the Health Law, but the author sees and appreciates the consideration of the Panel of Judges and paying attention to considerations regarding mitigating circumstances for the Defendant.

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