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Application of Pasal 98 Ayat (2) and (3) Jo Pasal 196 Undang-Undang No 36 of 2009 Concerning Health (Analysis of Decision No. 134/Pid.Sus/2023/Pn. Skb)

Eneng Raima Kordelina S¹, Ujuh Juhana²

¹ Universitas Muhammadiyah Sukabumi, Indonesia, enengraima@ummi.ac.id.

² Universitas Muhammadiyah Sukabumi, Indonesia, ujuhjuhana@gmail.com.

Corresponding Author: enengraima@ummi.ac.id¹

Abstract: This study aims to analyze the application of Pasal 98 ayat (2) and (3) jo Pasal 196 Undang-Undang No. 36 of 2009 concerning Health based on Decision No. 134/Pid.Sus/2023/PN. Skb. The phenomenon of the problem raised is the rise of criminal acts in the health sector, especially the circulation of pharmaceutical preparations without a distribution permit, which can endanger public health. This research uses a normative juridical method with a literature study approach and field studies, as well as the opinions of experts related to applicable UUs and regulations. The data collection techniques used are literature study and field study with a statutory approach and case approach. The results showed that the application of Pasal 98 ayat (2) and (3) in the case of the crime of distribution of pharmaceutical preparations without a distribution permit had been carried out appropriately. The defendant Fajar Kholif alias Babang bin Deden Surahman was sentenced to imprisonment for 1 year and 10 months and a fine of Rp. 5,000,000, with evidence in the form of 340 items of Tramadol HCI type drugs which were destroyed. The judge considered relevant and valid evidence, as well as aggravating and mitigating factors in handing down the verdict.

Keywords: Health Crime, Unlicensed Pharmaceutical Preparations, Criminal UU.

INTRODUCTION

Indonesia is a state of UU which can provide a social control in social life, where activities carried out by the authorities can be controlled so as not to commit acts of arbitrariness in carrying out their duties, and the public can more easily monitor activities carried out by the government whether the activities carried out by the government are in accordance with the UU or not. The Indonesian state adheres to the rule of UU in accordance with pasal 1 ayat 3 of the UUD NRI 1945, which states that the State of Indonesia is a State of UU, where the state of UU that is expected to be applied is the Pancasila state of UU, namely the state of UU based on the five precepts of Pancasila, namely: a. Belief in God Almighty; b. Fair and Civilized Humanity; c. Indonesian Unity; d. Democracy Led by

Wisdom in Consultation / Representation; e. Social Justice for All Indonesian People¹ .

In the fifth precept of Pancasila contains the word fair, which has a universal meaning, or real fairness, namely impartial fairness, and fair value that exists and can be felt by all Indonesians and the nation. The value in this principle is the goal of the Indonesian nation, which is to create equal justice for all Indonesian people and communities, not a differentiated justice. In addition, justice that is expected is justice that contains human sovereignty, recognition, and basic freedoms to be given to the people and nation of Indonesia. The value of justice is expected in the formation of UUs and policies carried out by the government to have a sense of justice and equality and in the implementation of UUs and government policies, as well as the implementation of judicial bodies is expected to be implemented equally, fairly and without discrimination.

The rule of UU requires that the UU is always enforced, obeyed, respected by anyone without any exceptions. This is to create security, order and prosperity in social life² . As stipulated in pasal 1 ayat 3 of the 1945 Constitution of the Republic of Indonesia that "the State of Indonesia is a State of UU". Along with the development of the times brings society to a fast-paced and practical life order. The progress of the times is also included in advances in the field of science and technology, but if an advancement in science and technology is not balanced with morals, morals and balance of someone who has this ability, it can affect human lust and desire to make profits in a fast way and violate applicable rules³ .

According to Pasal 25 ayat 1, everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing, and health care, as well as necessary social services, and is entitled to security in the event of unemployment, sickness, disability, widowhood, old age or any other circumstance resulting in lack of maintenance, which is beyond his control. Another fundamental statement guaranteeing basic rights in the field of health is ILO Convention No. 130 of 1969 (C. 130) on Medical Care and Sickness Benefits, 1969 (C. 130). This convention sets out the principles of health protection, minimum coverage, basic benefits, and health facilities for workers in each member state that ratifies this provision.⁴ .

Health is one of the basic human needs, therefore health is a right for every citizen protected by UU. Every country recognizes that health is the greatest capital to achieve prosperity. Therefore, improving health services is basically an investment in human resources to achieve a prosperous society. In developing countries such as Indonesia, to be able to improve the welfare of the community, it is necessary for the government to play a role through public services to be able to meet the basic needs of its people such as health, education, and other basic needs⁵ .

The right to health is a human right and obtaining health services that are safe, quality, and affordable. Rights, 1948. In Indonesia, the state philosophy and foundation of Pancasila, especially the 5th principle, recognizes the human right to health. This right is also included in Pasal 28H and Pasal 34 of UUD 45, and is regulated in UU No; 23 of 1992 which was later replaced by UU no 36 of 2009 concerning health. Everyone has the same rights in gaining

¹ Wijaya, 2015. *Karakteristik konsep negara hukum pancasila*. Jurnal Advokasi Vol. 5 No.2 September 2015. Hal 204-205

² Chainur Arasjid. *Dasar-Dasar Ilmu Hukum*, Jakarta:Sinar Grafika,2000,hlm.54

³ Emmy Sunarlin.2022. *Kajian hukum terhadap tindak pidana penjual obat tanpa izin edar pada masyarakat ditinjau menurut undang-undang nomor 36 tahun 2009 tentang kesehatan*. Jurnal IUS Vol.X No.02 September 2022.hal 137

⁴ Hubaib Alif Khariza, *Program Jaminan Kesehatan Nasional : Studi Deskriptif Tentang Faktor-Faktor Yang Dapat Mempengaruhi Keberhasilan Implementasi Program Jaminan Kesehatan Nasional*, Kebijakan dan Manajemen Publik 3 (2015): 1.

⁵ Adiyanta, 2020. *Urgensi Kebijakan Jaminan Kesehatan Semesta (Universal Health Coverage) bagi Penyelenggaraan Pelayanan Kesehatan Masyarakat di Masa Pandemi Covid-19*. Administrative Law & Governance Journal. Volume 3 Issue 2, June 2020. Hal 278-279.

access to resources in the field of safe, quality, and affordable health.

According to UU No. 36 of 2009 on Health, a drug is a material or a combination of materials, including biological products used to influence or investigate physiological systems or pathological conditions in the context of establishing diagnosis, prevention, healing, recovery, health improvement and contraception, for humans. In the Decree of the Minister of Health No. 2500/2011 concerning the National List of Essential Medicines, to improve the rational use of medicines, the use of essential medicines in health care facilities must not only be adjusted to the established treatment guidelines but also closely related to drug management. Effective drug management is needed to ensure the availability of drugs of the right type and quantity and meet quality standards⁶.

Along with the demands of the times, bringing society to a fast-paced and practical life order. Scientific progress is the determinant of a modern civilization. The success achieved in the field of science and technology certainly brings a country to the welfare and prosperity of its people. However, it cannot be denied that advances in technology and science are accompanied by increasing deviations and crimes in the health sector.

In this case it can be seen in developed countries or in developing countries, the types of deviations and crimes are increasingly diverse. The higher the civilization of a nation, the more advanced the science that develops in that nation. If the progress of science is not balanced with the spirit of humanity, it will have a negative impact.

Human life always requires various means that must be fulfilled to maintain and develop their lives. One of the needs of life is the fulfillment of health needs, namely to maintain and develop their lives. Health is the basis of intelligence, productivity and human welfare, and at the same time as an investment that determines the success of a nation's development; for this reason, it is necessary to organize development in the health sector in a comprehensive and sustainable manner with the aim of increasing awareness, willingness and ability to live a healthy life for everyone in order to realize a prosperous, just and prosperous society.

Health is one of the indicators to measure the level of success of human development. Without health, humans will not be productive to live a decent life economically and undergo a good education."⁷ The government has an obligation to fulfill and provide health needs for its citizens, as UUD 1945 in Pasal 34 ayat 3 states that the state is responsible for the provision of health care facilities and proper public service facilities.⁸

One of the steps taken by the Government to support public health is to ensure the availability of drugs. Drugs are materials or alloys 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, recovery, and health promotion and contraception, for humans.⁹

The provision of drugs for medical purposes is very important, so the government is obliged to ensure the availability of drugs for human safety. The availability of medicine costs a lot of money, so there are people who commit acts that benefit themselves and cause harm to others, which will harm the general public.

The emergence of new criminal offenses in the field of science that develops which causes disturbance of peace, tranquility and often causes material and immaterial losses to the

⁶ Yulia Indahri, *et al.* 2014. *ketersediaan obat di fasilitas pelayanan kesehatan dalam penyelenggaraan jaminan kesehatan nasional (studi di kota banda aceh, provinsi aceh dan kota jayapura, provinsi papua)*. Kajian Vol. 79 No.3 September 2014 hal. 203-204.

⁷ Sri Siswati, *Etika dan Hukum Kesehatan dalam Prespektif Undang-Undang Kesehatan*, Jakarta: Rajawali Pers, 2013, hlm. 2.

⁸ Muhamad Sadi Is, *Etika Hukum Kesehatan Teori dan Aplikasinya di Indonesia*, Jakarta:Prenadamedia Group, 2015, hlm. 7

⁹ Undang – Undang No. 36 Tahun 2009 Tentang Kesehatan.

community. Crime is a form of deviant behavior that lives in society. This means that criminal acts will always exist as long as humans are still on this earth.

UU as a means of solving this problem is expected to provide the right solution. Therefore, the development of UU, especially criminal UU, needs to be improved and pursued in an integrated manner. Codification, unification of certain areas of UU and the preparation of new UUs are needed to answer all the challenges of the increasing development of criminal acts. Health science is one of the fastest growing fields of science today.

The same applies to the development of criminal offenses in the field of health sciences. The criminal acts that occur in the field of health science include: malpractice, counterfeiting drugs, distributing drugs without a license and human organ transplantation. Health problems are a serious concern in every country, both developed and developing countries. This is because health is one of the factors that determine the progress of a country and is a human right. The state has an obligation to its people to provide health services and establish legal rules related to the interests of health protection.

In layman's terms, health can be defined as the absence of disease. According to the *World Health Organization* (hereinafter referred to as WHO), health is a state of well-being of body, soul and social which enables everyone to live a socially and economically productive life.¹⁰⁾ It can be concluded that health is very important in the survival of society. So if there is a criminal offense in the health sector, it will directly attack the community both materially and immaterially. So that people cannot live their lives properly.

Medical UU and health UU were introduced in Indonesia with the formation of a study group for Medical UU at the University of Indonesia on November 1, 1982 at Cipto Mangunkusumo Hospital by several doctors and legal scholars.¹¹⁾ This health UU has actually been introduced for a long time, but in its development this health UU still receives less attention by legal scholars in Indonesia. This can be seen from the rarity of books that discuss health UU.

One of the crimes in health UU that is rampant at this time is crime in the pharmaceutical sector. Pharmacy is a profession that deals with the art and science of providing natural and synthetic materials that are suitable and pleasant to distribute and use in the treatment and prevention of disease.¹²⁾ But if the pharmacy does not have a distribution license, it is a serious concern because it is feared that it contains dangerous ingredients that can interfere with a person's survival.

The case of Fajar Kholif Alias Babang Bin Deden Surahman who distributed pharmaceutical preparations without a distribution permit. He bought 400 (four hundred) pharmaceutical preparations in the form of Tramadol HCI type drugs which did not have a distribution permit from the Food and Drug Administration of the Republic of Indonesia from an unknown person to offer the Tramadol HCI type pharmaceutical preparation merchandise. Then Fajar Kholif Alias Babang Bin Deden Surahman resold the Tramadol HCI pharmaceutical merchandise to various people by carrying the Tramadol HCI pharmaceutical merchandise without a distribution permit.

As for efforts to overcome criminal acts that occur in the pharmaceutical sector, especially regarding the distribution of hard drugs carried out by pharmacies without a distribution license. Then criminal provisions are made that regulate the criminal act of distributing hard drugs without a distribution permit in the pharmaceutical sector as specified in the UU of the Republic of Indonesia Number 36 of 2009 concerning Health. Everything

¹⁰⁾ Titon Slamet Kurnia, *Hak Atas Drajat Kesehatan Optimal Sebagai HAM di Indonesia*, Cetakan ke-17, (Bandung: PT Alumni, 2007), hal. 13.

¹¹⁾ Amri Amir, *Bunga Rampai Hukum Kesehatan*, Cetakan ke-1, (Jakarta: Widya Medika, 1997), hal. 2.

¹²⁾ Moh. Anief, *Farmasetika*, Cetakan ke-4, (Yogyakarta: Gajah Mada University Press, 1993), hal. 11.

related to the procurement, storage, processing, promotion, distribution of pharmaceutical preparations and medical devices must be based on pharmaceutical service quality standards set by government regulations.

Consumers in Indonesia still tend to be passive despite the existence of UU No. 8/1999 on Consumer Protection (Consumer Protection UU) which regulates consumer rights, obligations of business actors and provides forms of legal protection given to consumers. Consumers are still not fully aware of their rights, while business actors have also not fully fulfilled their obligations. These conditions tend to encourage the birth of various forms of violations of business actors against consumer rights but the business actors concerned do not obtain binding legal sanctions. Therefore, the government as the party authorized to enforce consumer protection UU must be proactive in protecting consumer rights in Indonesia. In relation to pharmaceutical preparations that will be discussed by the author, the government's efforts to protect consumers are through the establishment of institutions whose task is to supervise a product and provide protection to consumers.

In order to realize the welfare of the nation and to regulate the implementation of pharmaceutical practices and prevent drug crimes in the community, Pasal 106 ayat (1) jo. Pasal 1 ayat (4) of Undang-Undang No. 36 of 2009 Concerning Health, hereinafter referred to as the "Health UU", which outlines that drugs, medicinal materials, traditional medicines, cosmetics and medical devices can only be distributed after obtaining a distribution permit. The intended distribution license comes from the Food and Drug Supervisory Agency hereinafter referred to as BPOM which was formed in 2001 which was later strengthened by Perpres No. 80 of 2017. BPOM is a Non-Ministerial government agency in charge of overseeing the circulation of products that are suitable or unfit for distribution such as medicinal products, traditional medicines, cosmetics, food supplements and food throughout Indonesia¹³.

In Indonesia, an agency has been established to oversee the circulation of drugs and food, namely the Food and Drug Supervisory Agency (hereinafter BPOM). BPOM was established based on Keputusan Presiden No. 166/2000 in conjunction with Keputusan Presiden No. 103/2001 on the Position, Duties, Functions, Authority, Organizational Structure and Work Procedures of Non-Ministerial Government Institutions (hereinafter referred to as Keppres LPNK) which regulates the establishment of non-departmental government institutions. LPNK is a central government institution established to carry out certain government tasks from the president and is directly responsible to the president.

BPOM is one of the LPNK that has duties related to the supervision of drugs and food. But the institution in charge of supervising has not been optimal in carrying out its duties, this is evidenced by the fact that there are still many drugs and foods that are not in accordance with health standards still circulating in the community. To achieve physical and spiritual healing from a disease, cannot be separated from an optimal and correct treatment.

The birth of BPOM is certainly a breath of fresh air to oversee the circulation and prevent drug crimes that are increasing. It is known that the problem of counterfeit drugs in Indonesia is a serious threat because the circulation is very wide, about 1,800 types of drugs are suspected of being counterfeit with a value of Rp. 2.5 trillion while BPOM is only able to handle about 1% of the total circulation of counterfeit drugs. In fact, data from the NGO Masyarakat Indonesia Anti Pemalsuan (MIAP) shows that state losses reached Rp 1.5 trillion due to the circulation of counterfeit drugs in Indonesia.

However, if the drugs that are distributed by those who are appointed by UU to distribute drugs, distribute drugs by committing irregularities, of course the drugs cannot be used in the healing process. Because it is possible that the drug does not meet the standards of

¹³ Siti Qona'ah, Heri Afianto, "Strategi BPOM dalam Upaya Mengatasi Pemberantasan dan Penyalahgunaan Obat Ilegal Melalui Gerakan Waspada Obat Ilegal", Jurnal Komunikasi Vol 11, No 1, Maret 2020.

drug concoction, expiration and usage rules. Such drugs, if used, can cause new illnesses for the user and can even cause death. An act that can cause pain to others or even cause death is a crime in UU.

Malicious conduct is an act that must be punished. In this case, the responsible party is the party appointed by the UU to distribute drugs and provide health services to the community. The public's need for health protection is non-negotiable, because it directly attacks the primary needs of society. It is the government's obligation to enforce the existing UUs and regulations to overcome this increasingly complex problem in health UU. Therefore, the title of this research is the application of Pasal 98 ayat (2) and (3) jo pasal 196 of Undang-Undang no. 36 of 2009 concerning health (Analysis of decision No. 134/Pid.Sus/2023/PN.Skb).

METHOD

In accordance with the title and problems to be discussed in this study and in order to provide useful results, this research was conducted with normative juridical research (normative legal research method).¹⁴ The method of approach used in this research is by using literature studies or document studies and the opinions of experts related to the UU. No. 36 of 2009 concerning health. Researchers will use literature data as secondary data. The data collection techniques used are literature studies and field studies. In this research, the author uses a *statute approach* and *case approach*, because this research focuses on Undang-Undang Number 36 of 2009 concerning Health and Decision No. 134/Pid.Sus/2023/PN.Skb.

RESULTS AND DISCUSSION

Interview Results

The results of interviews from judges provide a closer picture to the case, where the judge gives a direct decision on the case. The judge's point of view in this interview is aimed at finding out how the application of material criminal UU and the judge's consideration in passing a verdict on the crime of distributing pharmaceutical preparations without a distribution permit in Court Decision Number 134/Pid.Sus/2023/PN.Skb. The profiles of the interviewees are as follows:

- Eka Desi Prasetia, S.H.

The resource person is the Chief Judge in the deliberation session of the Panel of Judges of the Sukabumi District Court, on Wednesday, October 4, 2023 who is willing to assist in data collection in this study, the following are the results of interviews with Mrs. Eka Desi Prasetia, S.H.

The first question the author asked Ms. Anisa was about the choice of legal pasals used in the case she was handling. With strong conviction, Ms. Anisa stated that "the pasal chosen was appropriate and in accordance with the facts revealed in the investigation."¹⁵ According to her, the selection of the right pasal is a crucial first step in ensuring that the judicial process can run well.

When the author asked about the evidence found in the case, Ms. Anisa explained that the evidence met the standard required to support the charges. She emphasized that the existence of relevant and valid evidence is a major factor in ensuring the success of court proceedings.¹⁶

The author is also interested in knowing Ms. Anisa's beliefs in reaching a verdict. Ibu Anisa emphatically stated that she was confident in the strength of the evidence that had been

¹⁴ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), hlm. 13.

¹⁵ Interview with the Chief Judge of the Sikabumi District Court, Eka Desi Prasetia, S.H.

¹⁶ Interview with the Chief Judge of the Sikabumi District Court, Eka Desi Prasetia, S.H.

gathered. She underlined the importance of the role of witnesses and other material evidence supporting the case.

In terms of the consideration of the severity of the decision, Ms. Anisa provided a detailed explanation. She explained that "the decision-making process is not only based on the facts revealed, but also considers the history of the perpetrator and the objections of the evidence related to the case."¹⁷

Overall, this interview provided valuable insight into the UU enforcement process from the perspective of a practitioner with extensive experience. Ms. Anisa's understanding of the importance of valid evidence, proper procedures, and careful consideration provides a clear picture of the complexities of handling legal cases.

Application of Pasal 98 (2) (3) to the Crime of Circulating Pharmaceutical Preparations without a Distribution License

In Decision Number 134/Pid.Sus/2023/PN Skb, it was stated that the Sukabumi District Court which tried criminal cases with ordinary examination procedures in the first instance handed down the following decision in the case of the Defendant: Fajar Kholif alias Babang bin Deden Surahman, born in Sukabumi on August 21, 2002, aged 21 years. The defendant is male, Indonesian nationality, Muslim, and works as a student. His residential address is Cialu Pasir RT.003 RW.012, Cisarua Village, Cikole Sub-District, Sukabumi City.

The defendant was arrested on March 24, 2023 and detained in the custody of the State Detention Center with the following details: by the Investigator from March 25, 2023 until April 13, 2023; by the Investigator Extension by Public Works from April 14, 2023 until May 23, 2023; by the Investigator First Extension by the Chief of the District Court from May 24, 2023 until June 22, 2023; by the Investigator of the Second Extension by the Chief District Court from June 23, 2023 to July 22, 2023; by the Prosecutor from July 20, 2023 to August 8, 2023; by the District Court Judge from August 3, 2023 to September 1, 2023; and by the District Court Judge of the Extension by the Chief District Court from September 2, 2023 to October 31, 2023.

The defendant was accompanied by Ivan Faizal, S.H., M.M. et al, Legal Counsel from Posbakum Rasendriya Hara Keadilan with offices at Jalan Sudajaya No.124 RT.05 RW.03 Kelurahan Jaya Raksa Kecamatan Baros Kota Sukabumi, based on Judge Determination Number 134/Pen.Pid.Sus/2023/PN Skb, dated August 9, 2023; said District Court;

After reading: - Determination of the President of Sukabumi District Court Number: 134/Pid.Sus/2023/PN Skb dated August 3, 2023 concerning the appointment of a Panel of Judges; - Determination of the Panel of Judges Number: 134/Pid.Sus/2023/PN Skb dated August 3, 2023 concerning the determination of the day of the hearing; - Case files and other relevant documents; After hearing the testimony of witnesses and the Defendant and paying attention to the evidence of letters and evidence submitted at the trial; After hearing the reading of the criminal charges filed by the Public Prosecutor which are basically as follows:

- 1 Stating that the Defendant FAJAR KHOLIF Alias BABANG Bin DEDEDEN SURAHMAN was proven guilty of committing the crime of "Intentionally producing or distributing pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or usefulness, and quality", as referred to in Pasal 98 ayat (2) and (3), as in the Second Indictment of the Public Prosecutor violating Pasal 196 Jo Pasal 98 ayat (2) and (3) of UU No. 36 of 2009 concerning Health.
- 2 Sentenced the Defendant FAJAR KHOLIF Alias BABANG Bin DEDEDEN SURAHMAN to 1 (one) year and 10 (ten) months imprisonment, reduced while in temporary detention and with the order that the defendant remain in detention, and a fine of Rp. 5,000,000, - (five million rupiah) Subsidiary to 3 (three) months imprisonment.

¹⁷ Interview with the Chief Judge of the Sukabumi District Court, Eka Desi Prasetya, S.H.

- 3 Stating the evidence in the form of: 1. 1 (One) black sling bag in which there are: - 340 (Three hundred and forty) grains of Tramadol HCI type drugs 2. 1 (One) silver Xiaomi brand handphone unit; Confiscated for destruction.
- 4 Charged the defendant to pay court costs in the amount of Rp. 5,000 (five thousand rupiah).

In an interview with the Chief Judge Mrs. Eka Desi Prasetya, S.H. on June 10, 2024 at the Sukabumi City District Court Office she stated that the pasal used in the case was appropriate, as well as the elements contained in the pasal could be proven.

After hearing the written defense of the Defendant's legal counsel, which basically requested leniency; After hearing the oral request of the Defendant, which basically stated that he requested leniency in sentencing; After hearing the oral response of the Public Prosecutor to the defense of the Defendant's legal counsel and the request of the Defendant, which basically remained on the charges; Considering, that the Defendant was brought to trial by the Public Prosecutor charged based on the following indictment:

That the Defendant FAJAR KHOLIF Alias BABANG Bin DEDEN SURAHMAN on Friday, March 24, 2023 at approximately 14.30 WIB or at least at a certain time in March 2023 or at least at another time which is still included in 2023, located at Jalan Ciaul Pasir RT 001 RW 006 Subangjaya Village, Cikole Subdistrict, Sukabumi City or at another place which is still included in the jurisdiction of the Sukabumi District Court which has the authority to examine and try, "***Intentionally producing or distributing pharmaceutical preparations and/or medical devices that do not have a distribution license***", and/or "***Intentionally producing or distributing pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or usefulness, and quality***", the acts were committed by the defendant in the following manner:

- 1 That on Wednesday, March 22, 2023 at approximately 05.00 a.m. the defendant purchased 400 (four hundred) items of Tramadol pharmaceutical preparation at a price of Rp. 1,100,000 (one million one hundred thousand rupiah) in the Citayam area of Bogor, then on Thursday, March 23, 2023 at approximately 16.00 WIB the defendant arrived in Sukabumi, then the defendant sold / distributed the Tramadol pharmaceutical preparation to the witness AGUNG WIRA RISMAYA and from the sale of the Tramadol pharmaceutical preparation the defendant received a profit of Rp. 390,000, - (Three hundred and ninety thousand rupiah).
- 2 That on Friday, March 24, 2023 at approximately 2:30 p.m. on Jalan Ciaul Pasir RT 001 RW 006 Subangjaya Village, Cikole Subdistrict, Sukabumi City, precisely inside a boarding house, witnesses ADE ANSOR, AGUSIAN KARSA, and NINDO YUDA OKTOVI who were members of the Sukabumi City Police arrested the defendant, then searched and found evidence in the form of 1 (one) black sling bag containing 340 (three hundred and forty) Tramadol HCI drugs. After interrogation, the defendant admitted that 1 (one) black sling bag containing 340 (three hundred and forty) items of Tramadol HCI belonged to him, which he obtained by purchase and then distributed/sold to friends in Sukabumi, then the defendant and the evidence were taken to the Sukabumi City Police Station for further examination.
- 3 That based on the Minutes of Criminalistic Laboratory Examination Number LAB: 1655/NOF/2023 dated May 02, 2023 made and signed by examiner 1. TRIWIDIASTUTI, S.Si., Apt. Police Commissioner NRP. 76030928 2. DWI HERNANTO, ST. Organizer TK I NIP. 198505202008011001 and knowing the Head of Forensic Laboratory Division of Police Criminal Investigation PAHALA SIMANJUNTAK, S.I.K Police Commissioner NRP. 77010823 with evidence of 1 (one) plastic clip pack containing 1 (one) strip labeled "TRAMADOL HCI" containing 10 (ten) white tablets 0.9 cm in diameter and 0.3 cm thick with a total net weight of 2.1750 grams, given evidence number 0831/2023/PF; The above evidence was confiscated from FAJAR KHOLIF Alias BABANG Bin DEDEN

- SURAHMAN. after examination Laboratoris Kriminalistik concluded that the evidence with Number: 0831/2023/PF in the form of white tablets as mentioned above is true not including Narcotics or Psychotropic, containing the active ingredient Tramadol.
- 4 That the defendant did not have the expertise to determine the efficacy and usefulness of the Tramadol medicine and without a doctor's prescription and the defendant did not have a license from the competent authority to distribute it.
 - 5 The actions of the defendant are regulated and punishable in Pasal 197 Jo. Pasal 106 ayat (1) of UU No. 36 of 2009 concerning Health. The act of the defendant is regulated and punishable under Pasal 196 Jo. Pasal 98 ayat (2), and (3) of UU No. 36 of 2009 Concerning Health.

Judges' Considerations in Issuing Decision Number 134/Pid.Sus/2023/PN.Skb

In Decision Number 134/Pid.Sus/2023/PN Skb it is stated that in order to impose a punishment on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant; The aggravating circumstances of the defendant are as follows:

- 1 The defendant's actions may endanger the health of others;
- 2 The defendant did not support the government's program to eradicate drugs and narcotics;
- 3 In addition, there were also the following mitigating circumstances:
- 4 The defendant was frank, which facilitated the trial;
- 5 The defendant felt guilty and regretted his actions and promised not to reoffend;
- 6 The Defendant has never been convicted; Considering, that because the Defendant is sentenced, he must also be burdened to pay court costs;

In an interview with Mrs. Eka Desi Prasetia, S.H. as the Chief Judge in the deliberation session of the Panel of Judges of the Sukabumi District Court, she added that her consideration in imposing the severity or leniency of the decision can be seen from what the defendant's actions were like, when it has been proven then traced whether the defendant has been convicted either with the same case in this case drugs or cases with other types of crimes. Secondly, the amount of evidence, comparisons are made with previous cases as long as it is still within the applicable sentencing range.

Considering, that in order to impose a punishment against the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant; Aggravating circumstances:

- 1 The defendant's actions can endanger the health of others;
- 2 The defendant's actions did not support the government's program to eradicate narcotics and drugs;

Mitigating circumstances:

- 1 The defendant was frank, which facilitated the trial;
- 2 The defendant felt guilty and regretted his actions and promised not to reoffend;
- 3 The Defendant has never been convicted; Considering, that because the Defendant is sentenced, he must also be burdened to pay court costs;

Taking into account Pasal 196 Jo Pasal 98 ayat (2) and (3) of UU Number 36 of 2009 concerning Health and UU Number 8 of 1981 concerning Criminal Procedure and other relevant UUs and regulations;

1. The facts of witness testimony:
 - a) The defendant never sought permission from the Sukabumi City Health Office to distribute or trade pharmaceutical drugs without a distribution license.
 - b) The defendant did not know the function, use, dosage, and expiry date of these medicines.
 - c) The defendant did not have a doctor's license or prescription to purchase, consume and sell the aforementioned drugs.

- d) The defendant has never been convicted.
- e) The defendant admitted that the evidence shown in court belonged to him.
2. The judge considered the pasals proposed by the Public Prosecutor:
 - a. Pasal 196 Jo Pasal 98 ayat (2) and (3) of Indonesian UU Number 36 of 2009 concerning Health.
3. The judge considers the evidence and the proposed evidence as a case:
 - a) Minutes of Criminalistic Laboratory Examination Number LAB: 1655/NOF/2023 dated May 02, 2023 which contains information about the evidence of 1 (one) plastic clip pack containing 1 (one) strip labeled "TRAMADOL HCI" along with 10 (ten) white tablets.
 - b) Evidence in the form of 1 (one) black sling bag containing 340 (three hundred and forty) items of Tramadol HCI type drugs.
 - c) Evidence in the form of 1 (one) unit of silver Xiaomi brand cellphone.
 - d) The evidence was confiscated from the Defendant and planned to be confiscated and destroyed.
4. The judge considered the indictment of the public prosecutor (JPU) which was based on an alternative charge in the form of a criminal offense:
 - a) Intentionally producing or distributing pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or usefulness, and quality, as regulated in Pasal 196 Jo Pasal 98 ayat (2) and (3) of Indonesian UU Number 36 of 2009 concerning Health.
5. The judge considered the aggravating and mitigating circumstances of the accused.
 - a) Circumstances that aggravate the Defendant:
 - 1) The Defendant's actions can endanger the health of others.
 - 2) The actions of the Defendant do not support the Government Program in eradicating Narcotics and Drugs.
 - b) Mitigating circumstances for the accused:
 - 1) The defendant was frank, which facilitated the trial.
 - 2) The defendant felt guilty and regretted his actions and promised not to reoffend.
 - 3) The defendant has never been convicted.
6. The judge considered criminal responsibility, that the defendant was capable of taking responsibility.

"Considering, that because the Defendant is capable of being responsible, he must be found guilty and sentenced." (Page 19 of Decision Number 134/Pid.Sus/2023/PN Skb)
7. The judge considers the evidence presented at trial to be considered as evidence in the case.
 - 1) 1 (one) black sling bag in which there are 340 (three hundred and forty) items of Tramadol HCI type drugs;
 - 2) 1 (one) silver Xiaomi brand mobile phone;

Judge

1. Stating that the Defendant FAJAR KHOLIF Alias BABANG Bin DEDEDEN SURAHMAN mentioned above, is legally and convincingly proven guilty of committing the crime of "Circulating pharmaceutical preparations that do not meet the standards and/or requirements for safety, efficacy or usefulness and quality" as in the second alternative charge;
2. Therefore, the Defendant shall be sentenced to 1 (one) year and 6 (six) months imprisonment and a fine in the amount of Rp.5.000.000,- (five million rupiah) provided that if the fine is not paid, it shall be substituted with confinement for 2 (two) months;

3. Determining that the period of arrest and detention served by the Defendant shall be deducted in full from the sentence imposed;
4. Determine that the Defendant remains in custody;
5. Determining the evidence in the form of: - 1 (one) black sling bag in which there are 340 (Three hundred and forty) items of Tramadol HCI type drugs; - 1 (one) silver Xiaomi brand mobile phone unit; Confiscated for destruction.
6. Charges the Defendant with paying court costs in the amount of Rp. 5,000, - (five thousand rupiah);

CONCLUSION

After conducting the research, the author can draw the following conclusions:

1. The application of material criminal UU in the case of the crime of distributing pharmaceutical preparations without a distribution permit using Pasal 98 ayat (2) and (3) of UU No. 36 of 2009 concerning Health in Decision Number 134/Pid.Sus/2023/PN Skb, stated that the pasal used in the case was correct, as well as the elements contained in the pasal could be proven. FAJAR KHOLIF as the defendant was sentenced to imprisonment for 1 (one) year 10 (ten) months imprisonment minus the time in temporary detention and with the order that the defendant remain in detention, and a fine of Rp. 5,000,000, - (five million rupiah) Subsidiary to 3 (three) months confinement with evidence in the form of 1 (One) black sling bag in which there were: - 340 (Three hundred and forty) grains of Tramadol HCI type drugs, then 1 (One) silver Xiaomi brand handphone unit which is confiscated to be destroyed because it is proven to intentionally produce or distribute pharmaceutical preparations and / or medical devices that do not have a distribution permit.
2. In reaching a verdict against the defendant Fajar Kholif alias Babang bin Deden Surahman in a case of distribution of pharmaceutical preparations without a distribution license, the Panel of Judges of the Sukabumi District Court considered several important aspects:
 - a. Facts from the Indictment and Witness Statements: The defendant was found guilty of purchasing and distributing 340 items of Tramadol HCI without proper authorization, which was found in a black sling bag during his arrest. This is in accordance with Pasal 196 Jo Pasal 98 ayat (2) and (3) of UU No. 36 of 2009 on Health.
 - b. Consideration of Evidence: The Judge stated that the evidence presented by the Prosecution, including the laboratory results confirming the drug content, was sufficient and valid to support the charges.
 - c. Consideration of the Pasal of UU: The Panel of Judges chose and applied Pasal 98 ayat (2) and (3) in sentencing the Defendant, in accordance with the facts revealed during the trial.
 - d. Consideration of the Severity and Leniency of the Verdict: In considering the sentence, the judge considered that there were aggravating circumstances such as the potential health hazard to the public and non-compliance with government regulations related to medicines. On the other hand, the judge also considered the defendant's remorse, cooperation during the trial process, and the fact that the defendant had never been convicted before.
 - e. Judge's Decision: The Panel of Judges imposed a prison sentence of 1 year and 6 months and a fine of Rp. 5,000,000, with an order that the evidence be destroyed. The defendant was also required to pay court costs.

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