

## Law Enforcement On Circulation Of Traditional Drug That Does Not Have A Distribution Permit At The Investigation Level

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### Abstract

*The purpose of this research is to find out and analyze Law enforcement in the Circulation of Traditional Medicines That Do not Have a Circulation Permit at the Investigation Level. To find out and analyze the constraints Law enforcement On the Circulation of Traditional Medicines That Do not Have a Circulation Permit at the Investigation Level and the solution. This study uses a normative juridical approach method, with descriptive research specifications. The data used in this research is secondary data obtained from literature study. The results of this study are Law Enforcement on the Circulation of Traditional Medicines That Do not Have a Marketing Permit at the Investigation Level still felt less than optimal, even though in substance or the law has regulated the perpetrators of the crime of distributing traditional medicines as regulated in Article 179 of the Health Law with a maximum penalty of 15 years and 1.5 billion, law enforcement officials rarely apply the provisions of Article 197. Health Act. Internal constraints: the raid leaked the operational targets of the raid, knew that a raid would be held, the costs incurred as a result of eradicating and overcoming the illegal distribution of drugs. External obstacles occur if the community around the location does not provide good support to the Narcotics Satres, the community does not want to participate and even hides information when we (Satres Narkoba) conduct investigations and investigations. The efforts are: pre-emptive efforts: conducting religious studies in collaboration with the community and installing banners to eliminate someone's intention to commit a crime. Preventive Efforts: conducting socialization, counseling, and raids. Repressive efforts (actions) include; Investigation and investigation, arrest, rehabilitation of perpetrators of criminal acts of trafficking in traditional drugs.*

*Keywords : Law Enforcement, Distribution of Traditional Medicines, Distribution Permits, Investigations*

### 1. Introduction

Health is one of the basic human needs in addition to clothing, food and shelter, without a healthy life, human life becomes meaningless, because when a person is sick, it is impossible to carry out daily activities properly. In addition, people who are sick who cannot cure their own illness, have no other choice but to ask for help from health workers who can cure their illness and these health workers will do what is known as health efforts by providing health services.<sup>1</sup>

The ideals of the Indonesian people as stated in the Preamble to the 1945 Constitution are to protect the entire Indonesian nation and the homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice. In the context of advancing general welfare and educating the nation's life, development in the health sector is needed.

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<sup>1</sup> Wila Chandrawila, 2001, Medical Law, Mandar Maju Publishers, Bandung, p. 35.

Regarding the right to health for the community, it has been emphasized in Article 28 H paragraph (1) of the Second Amendment to the 1945 Constitution of the Republic of Indonesia which stipulates that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good living environment. and healthy and have the right to obtain health services". Getting health services is the right of every individual in society, where health is an abstract need but absolutely necessary.

The definition of Health in Indonesian regulations is regulated in Article 1 of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health that "Health is a healthy condition, both physically, mentally, spiritually and socially that allows everyone to live socially and economically productive"

Health is closely related to medicine. Humans who are sick, need medicine to get healthy again. Medicine is one of the human needs that is needed when experiencing health problems or suffering from diseases.<sup>2</sup>Suffering from illness occurs when humans feel complaints in the body or body, or is an abnormal condition of the body or mind that causes discomfort, dysfunction or the appearance of complaints that require healing, among others is with drugs.

Medicine is one of the most important parts in the world of health, where drugs can improve the quality of human health. Medicines are a part of pharmaceutical supplies that are used to treat certain symptoms, complaints, and illnesses caused. Other pharmaceutical supplies include medical devices, herbs, phytopharmaceuticals, cosmetics, reagents, X-ray films, and food supplements, which are needed by humans.

Drugs are substances or combinations of materials, including biological products, which are used to influence or investigate physiological systems or pathological conditions in the context of establishing diagnosis, prevention, healing, recovery and health promotion.<sup>3</sup>In addition, drugs are a part of pharmaceutical preparations.

Along with the times, the demands of human needs for drugs will continue to grow. Based on technological developments, the marketing process in the drug trade, the drug distribution process, the distribution or sale of drugs, or the process to obtain drugs undergo technological developments. Drug purchases do not have to bring together consumers and sellers directly. Drug sales are not limited to health service units such as pharmacies, health centers, hospitals or drug stores. The drug distribution process is facilitated directly into the hands of consumers through the internet. Business actors provide convenience and innovation so that consumers can easily make transactions through internet media.<sup>4</sup>

In distributing drugs, drugs must have a distribution permit because in fact there are still many drugs circulating in the community that do not have distribution permits

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<sup>2</sup> Elisabeth M. Sibuea, 2016, "Legal Protection of Consumers for Circulation of Drug Products That Do not Include Information and/or Instructions for Use in Indonesian in the City of Yogyakarta", Faculty of Law, Gadjah Mada University Yogyakarta, page 1

<sup>3</sup> Norma Sari, 2018, "Protection of Drug Consumers in Legislation in Indonesia", Dissertation: Doctoral Program in Law, Gadjah Mada University Yogyakarta, page 4

<sup>4</sup> Kristen Natalia, 2018, "Legal Protection of Cosmetic Conduits Sold Freely Online Based on Law No. 8 of 1999 concerning Consumer Protection", Thesis: Master of Health Law Study Program, Faculty of Law and Communication Soegijapranata Unika Semarang, page 31

or are not registered with BPOM (Food and Drug Monitoring Agency). The rampant circulation of drugs without distribution permits in Indonesia proves that Indonesia's defense is still weak from attacks that endanger the community. Allowing the circulation of drugs without a distribution permit is tantamount to letting the public face bad risks, drugs that are circulated, in addition to harming consumers, also harm the state from tax revenues.

The purpose of this research is to know and analyze law enforcement in the circulation of traditional medicines that do not have a circulation permit at the investigation level. To find out and analyze the constraints of law enforcement on the circulation of traditional medicines that do not have a circulation permit at the investigation level and the solution.

## 2. Research methods

This study uses a normative juridical approach method, with descriptive research specifications. The data used in this research is secondary data obtained from literature study.

## 3. Results and Discussion

### 3.1. Law Enforcement on the Circulation of Traditional Medicines That Do Not Have a Circulation Permit at the Investigation Level

Health is an important aspect in people's lives, the government creates adequate health development as an increase in the degree of poor health over the years.<sup>5</sup> The police are the first institution that must be passed in the criminal justice process, therefore the police are authorized to carry out investigations, investigations, detentions, confiscations, until criminal acts suspected of being committed are found.<sup>6</sup>

In addition to traditional medicines that are not registered as dangerous drugs, there are other types of traditional medicines that contain medicinal chemicals. Cases that occur in the community revolve around traditional medicines that do not include the chemical elements contained in these traditional medicines, and usually the healing process of traditional medicines containing these chemicals is very fast or in other words heals instantly. However, side effects or instant relief, indicate that the herbal medicine contains chemicals in the wrong dosage. Meanwhile, original traditional medicine (jamu) should contain original ingredients from nature which will have an effect or react for a long time on the body or the healing process is more slowly and gradually.

The implementation of law enforcement on the distribution permit of traditional medicines requires law enforcers who have good morality, are firm and always strive

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<sup>5</sup>Denny Kusuma, Widayati and Siti Rodhiyah Dwi Istianah, 2019, The Role Of Health Department Of Blora Regency In The Implementation Of Bpjs Based On Act No. 40 Of 2004 On The National Social Security System To Improve Health Service To The Society, in *Jurnal Daulat Hukum*, Volume 2 Issue 4, Unissula

<sup>6</sup>Lilik Purwoko and Siti Rodhiyah Dwi Istianah, 2020, Role of Police in Respecting Crimes on Prisoners Who Get Assimilation & Conditioned Delivery Due to Plague of Covid-19, in *Jurnal Daulat Hukum*, Volume 3 Issue 4, Unissula

to uphold justice and truth based on current regulation. According to Soerjono Soekanto, the factors that have a big influence on the enforcement of a policy are: rule is a law enforcement factor. This is because the application of a rule is carried out by law enforcers and law enforcement is considered a legal role model by the wider community. Soekanto's opinion is also supported by Achmad Ali who states that "a factor that greatly affects the effectiveness of a statutory regulation is the professional and optimal implementation of the roles, authorities and functions of law enforcers, both in explaining the duties imposed on them and in enforcing the legislation." Based on this description, it can be explained that law enforcement has a very important role in enforcing a rule.

The basic principle of conventional criminal law to realize reactive law enforcement (reactive law enforcement) is law enforcement which is intended after the deed of consequences for the victim and the community.<sup>7</sup> SaOne form of legal protection against human interests is the law regulating the existence of traditional medicines. Where the government through the Ministry of Health requires that every traditional medicinal product before being marketed to the public must have a distribution permit first. This is intended so that the circulating traditional medicines can be known both in terms of benefits and the composition of these traditional medicines so that they do not harm the user.

The presence of traditional medicine in the midst of people who are not healthy or sick is an alternative choice in curing the disease, although in fact traditional medicine is more intended for disease prevention, because traditional medicine is made from ingredients both from plants and animal materials, mineral materials, Sarian preparations, or mixtures of these ingredients which have been used for generations for treatment.

Where traditional medicine is more often known in the form of herbal medicine, both liquid and powder. Just as Jamu is used for health and beauty treatments, it is made from dried leaves, roots and spices. According to the traditional recipe handed down since ancient times, it is in the form of finely ground, pilisan or just dried. Its use as a traditional medicine can be taken by mouth, in the form of pills, balm or liniment. Variations of Indonesian spices, leaves and roots are currently being explored and developed to become the main competitors for chemical drugs.<sup>8</sup>

It is easy to find the circulation of traditional medicine in the midst of society, of course this shows that traditional medicine is already known by the community and almost certain groups of people can make and produce traditional medicine based on the expertise passed down from their parents from generation to generation.

The existence of traditional medicinal products is sold without a distribution permit and has violated the rules because it cannot show the requirements that the medicinal product is produced correctly and meets applicable standards. Illegal

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<sup>7</sup>Parikhesit and Gunarto, 2019, Corporate Conception in Terrorism Based on Act No. 5 Of 2018, in Jurnal Daulat Hukum, Volume 2 Issue 1, Unissula

<sup>8</sup>Zenni Hermanto, 2017, Combating Criminal Acts of Illegal Traditional Medicine Circulation by the Food and Drug Supervisory Agency (BPOM) in Yogyakarta, Faculty of Sharia and Law, State Islamic University Sunan Kalijaga Yogyakarta

traditional medicinal products also do not have distribution permits and many do not have industrial business permits. In terms of price, the existence of illegal traditional medicines is troubling because it will lead to unhealthy competition with quality guaranteed legal herbs.

Bagi Whoever produces or distributes traditional medicines that do not have a previous distribution permit is threatened with criminal penalties as regulated in Article 197 of Law Number 36 Year 2009 concerning Health, which reads:

Seany person who intentionally produces or distributes pharmaceutical preparations and/or medical devices that does not have a distribution permit as referred to in Article 106 paragraph (1) shall be sentenced to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 1,500,000,000. ,00 (one billion five hundred million rupiah).

Be Due to the circulation of traditional medicines without having a distribution permit in the community, of course it can endanger the safety of the lives of those who consume them, therefore it is necessary to enforce the law against perpetrators who distribute these traditional medicines.

From the aspect of structure or law enforcement officers, basically it has been fulfilled by the Civil Servant Investigator (PPNS). Against the occurrence of trade in traditional medicines without a distribution permit in the jurisdiction of the Surabaya Drug and Food Supervision Center (BBPOM), through the Civil Servant Investigator (PPNS). PPNS is a certain civil servant official who is given special authority by law to carry out criminal investigations according to the law which is the legal basis. In carrying out their duties, PPNS is under the coordination and supervision of investigators from the Police. Through the investigation, PPNS has enforced the law against the perpetrators of the traditional drug trade without a distribution permit that occurred in the jurisdiction of Magetan Regency in accordance with applicable regulations.

The lack of optimality in law enforcement is also due to the lack of PPNS personnel and other technical staff owned by the Surabaya BPOM when compared to the existing work area, which covers the East Java Province, besides that the facilities and infrastructure owned by BPOM are still lacking. And no less important is the culture of the community in this case the habits of the people who if they experience health problems prefer to use alternative medicine with traditional medicine on the grounds that traditional medicine is easy to obtain without having a doctor's prescription. This of course fosters the circulation of illegal traditional medicines from irresponsible actors.

Law Enforcement on the Circulation of Traditional Medicines That Do not Have a Distribution Permit at the Investigation Level in the Legal Territory of Magetan Regency is still felt to be less than optimal, even though in substance or the law has regulated the perpetrators of the crime of distributing traditional medicines as regulated in Article 179 of the Health Law with a maximum penalty of 15 years and IDR 1.5 billion, law enforcement officials rarely apply the provisions of Article 197. Health Act. And the action taken is only to confiscate traditional medicines that do not have a distribution permit to be destroyed.

### 3.2. Obstacles in Law Enforcement on the Circulation of Traditional Medicines That Do not Have a Circulation Permit at the Investigation Level

Unlimited human needs are always limited by the availability of resources to fulfill them.<sup>9</sup> Social policy is basically a rational policy or efforts with criminal law in essence also being part of the business of law enforcement. Therefore, it is often said that criminal law policy is part of legal policy.<sup>10</sup>

The formulation of law-making ideas as outlined in legal regulations will also determine how law enforcement is carried out. In reality, law enforcement culminates in its implementation by law enforcers. Community participation in enforcing the law is considered to be minimal. This is what often becomes an imbalance in law enforcement.<sup>11</sup>

This is where the task of the police which aims to protect the community is tested. The police will always try to carry out their duties in accordance with the provisions stipulated in the law. Community cooperation is needed so that the duties of the Police as community partners can go hand in hand and in balance.<sup>12</sup>

Law enforcement relating to the circulation of illegal traditional medicines, the legal rules that are usually applied by law enforcement officers are Law No. 36 of 2009 on Health and Law No. 8 of 1999 on consumer protection. Then, through BPOM Regulation Number 26 of 2017 concerning the organization and work procedures of BPOM, the Food and Drug Supervisory Agency (BPOM), becomes the spearhead of the government in terms of fostering and monitoring circulation, quality and licensing. However, BPOM does not have the authority to conduct justice against traffickers, for this reason, the National Police and BPOM cooperate in the context of eradicating illegal traditional medicines.<sup>13</sup>

In this investigation process, apart from collecting and determining suspects, there is also a determination of the legal instruments to be used. Nuryadi said, for the case of drugs using Law No. 36 of 2009 on Health. Nuryadi reasoned that because the law specifically discusses and regulates drugs.

Then after carrying out the investigation process and the investigation contained in the case file, the Magetan Police then submitted the next step to the prosecutor's office to assess its completeness. If it is not complete then the file will be returned to be completed or P19. Then, when the file is declared complete or P21, the next process is the trial.

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<sup>9</sup>Fakhrul Wildan and Gunarto, 2019, Law Enforcement On Agents Assignment/Transfer Tube Gas Subsidies To Non LPG Subsidies. In the Daulat Hukum Journal, Volume 2 Issue 3, Unissula

<sup>10</sup>Barda Nawawi Arief, 2003, Anthology of Criminal Law policies, Citra Aditya Bakti, p.56

<sup>11</sup>Satjipto Rahardjo, 2009, Law Enforcement A Sociological Review, Genta Publishing, Yogyakarta, p.24

<sup>12</sup>Priyantono and Jawade Hafidz, 2020, Implementation Of Criminal Enforcement In The Circulation Of VCD (Video Compact Disc) On The Level Of Investigations In Rembang Polres Area, in Jurnal Daulat Hukum, Volume 3 Issue 1, Unissula

<sup>13</sup>Angling Adhitya Purbaya, Supervise Circulation of Illegal Products, BPOM monitors Products sold Online, <http://m.detik.com/news/berita-jawa-tengah/d-4289687/awasi-peredaran-produk-ilegalbpom-pantau-produk- on line>,

Obstacles in Law Enforcement on the Circulation of Traditional Medicines That Do not Have Distribution Permits At the Investigation Level. Internal constraints: the raid leaked the operational targets of the raid, knew that a raid would be held, the costs involved in eradicating and overcoming the illegal distribution of tramadol drugs. External barriers are obstacles that arise from the environment or society. These obstacles occur if the community around the location does not provide good support to the Narcotics Satres, the community does not want to participate and even hides information when we (Drugs Satres) conduct investigations and investigations. Legal constraints,

The efforts are: pre-emptive efforts: conducting religious studies in collaboration with the community and installing banners to eliminate someone's intention to commit a crime. Preventive Efforts: conducting socialization, counseling, and raids. Repressive efforts (actions) include; Investigation and investigation, arrest, rehabilitation of perpetrators of criminal acts of trafficking in traditional drugs.

#### 4. Closing

Law Enforcement on the Circulation of Traditional Medicines That Do Not Have a Circulation Permit at the Investigation Level still felt less than optimal, even though in substance or the law has regulated the perpetrators of the crime of distributing traditional medicines as regulated in Article 179 of the Health Law with a maximum penalty of 15 years and 1.5 billion, law enforcement officials rarely apply the provisions of Article 197. Health Act. And the action taken is only to confiscate traditional medicines that do not have a distribution permit to be destroyed. Internal constraints: the raid leaked the operational targets of the raid, knew that a raid would be held, the amount of costs incurred as a result of eradicating and overcoming the illegal distribution of drugs. External barriers are obstacles that arise from the environment or society. These obstacles occur if the community around the location does not provide good support to the Narcotics Satres, the community does not want to participate and even hides information when we (Drugs Satres) conduct investigations and investigations. Obstacles from a legal point of view, in the criminal act of distributing traditional drugs that do not have a distribution permit that can be criminalized is when the perpetrator has distributed it, namely in the form of selling illegally, but if there is no element of distributing then it has not been said to be included in a criminal act and violates the provisions of the Health Act. The efforts are: pre-emptive efforts: conducting religious studies in collaboration with the community and installing banners to eliminate someone's intention to commit a crime. Preventive Efforts: conducting socialization, counseling, and raids. Repressive efforts (actions) include; Investigation and investigation, arrest, rehabilitation of perpetrators of criminal acts of trafficking in traditional drugs.

Investigators should take people who are around the house or traditional medicine stalls without distribution permits to serve as witnesses so that they can strengthen evidence of criminal acts and investigators should also carry out observations of the surroundings of traditional drug stalls without those who do not have a distribution permit to get stronger evidence . The police should also use the

Determination by the Health Service laboratory as evidence in court, so that it can strengthen the evidence process.

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