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Modus Of Operandi and Sanctions For Criminal Actions In The Health Field (Study Decision Number 90/Pid.Sus/2023/Pn Mks)

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Abstract: *The aim of this research is to determine the modus operandi of criminal acts in the health sector (study of decision Number 90/Pid.Sus/2023/PN Mks) and the judge's legal considerations in handing down decision Number 90/Pid.Sus/2023/PN Mks. This research was conducted using a type of normative legal research with the approach method in this research being the statutory regulation approach. The conclusions of this research are: 1) The modus operandi carried out by the defendant who was a distributor of pharmaceutical preparations without a distribution permit in Decision Number 90/Pid.Sus/2023/PN Mks was by buying the drug from his friend secretly or secretly, then hiding it. the medicines are taken to their home first and the aim is to distribute them to consumers and make a profit from selling pharmaceutical preparations without a distribution permit. 2) The judge's consideration in imposing a criminal sentence on the perpetrator in Decision Number 90/Pid.Sus/2023/PN Mks is based on both juridical and non-juridical considerations. The judge's imposition of sanctions is based more on the facts of the trial and valid evidence and takes into account demands of the Public Prosecutor. The sentence imposed in the form of imprisonment for 1 (one) year and 10 (ten) months on the defendant is sufficient to have a deterrent effect on the perpetrator so that he does not repeat his actions again.*

Keywords: *Modus Operandi; Penalty; Criminal; Health*

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia explicitly states that the Indonesian state is a state of law, not a state of power. This means that the law belongs to all Indonesian states, not to a few people, let alone the rulers. This situation also means that the supremacy of law must be upheld fairly and correctly, accountable, transparent, non-discriminatory and non-arbitrary. (Lumbantobing et al., 2020) Indonesia's positive law system consists of various sub systems. The criminal law system is a sub-system of the Indonesian positive law system which exists for public order.

Every citizen is obliged to "uphold the law" in everyday reality, if a citizen is negligent/deliberately not carrying out his obligations to the detriment of other people, it is said that the citizen is breaking the law, because these obligations have been determined based on

law. In reality there are always violations of the law. The condition of society today has become increasingly complex, so criminal acts in society have also become more diverse.

To achieve national goals, sustainable development efforts are being carried out which are a series of comprehensive, directed and integrated development, including development in the health sector. According to WHO, Health is a state of physical, mental and social well-being that enables every person to live a socially and economically productive life. (Kurnia, 2007)

Health problems are a serious concern in every country, both developed countries and developing countries like Indonesia. Because health is one of the factors that determines 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 health protection interests. Where all activities in implementing health efforts carried out by health resources are strictly regulated by medical, legal and moral principles, decency and decency. (Supriadi, 2001)

Starting from the idea that humans are wolves to other humans. Where you always put yourself first and don't care about other people on purpose so that the action harms other people and often violates the law, the mistake can be a criminal act (delict). One of the crimes committed by society is a crime where the perpetrator deliberately sells drugs that do not meet quality standards.

Medicine is a human need to fulfill the use of medicines to be used as a diagnosis, to prevent, reduce, eliminate and cure diseases in humans. In the Food and Drug Supervisory Agency regulation Number 4 of 2018 Article 1 paragraph (1) states that "*Drugs are materials or combinations 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. Health improvement and contraception for humans*".

One of the problems that often occurs in health law is crime in the pharmaceutical sector. Pharmacy is a profession related to the art and science of providing natural sources and synthetic materials suitable for distribution and use in the treatment and prevention of disease. One of the most common crimes in the pharmaceutical sector is the large number of drugs that are distributed or bought and sold without having a permit from the Food and Drug Supervisory Agency (BPOM).

BPOM is a Non-Departmental Government Institution which has duties in the field of drug and food supervision in accordance with the provisions of applicable laws and regulations. Supervision of medicinal products that is not strict and has not been comprehensive has also resulted in the continued proliferation of medicinal products that contain dangerous substances. The indecisiveness of law enforcement in providing legal sanctions also does not have a deterrent effect on perpetrators of criminal acts in the health sector.

Because there is a criminal act of distributing pharmaceutical preparations without a distribution permit in the pharmaceutical sector, criminal provisions have been made in Law Number 36 of 2009 concerning Health, as follows:

1. Article 196, states that "*Every person who deliberately produces or distributes pharmaceutical preparations and/or health devices that do not meet the standards and/or requirements for safety, efficacy or usefulness, and quality as intended in Article 98 paragraphs (2) and (3) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000,- (one billion rupiah);*
2. Article 197, states "*Any person who deliberately produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution permit as intended in Article 106 paragraph (1) shall be punished with a maximum imprisonment of 15 (fifteen) years and a maximum fine Rp. 1,500,000,000, - (one billion five hundred million rupiah)*".

The criminal provisions stipulated in these provisions are to avoid the procurement, misuse or storage of using pharmaceutical preparations/health equipment which can endanger

the public by irresponsible parties, distributing medicines without a distribution permit, of course the medicine may not be able to be used, due to not complying with the regulations. quality standards, not provided with containers or packaging according to the governing law.

One of the criminal cases in the Health sector that was tried at the Makassar District Court was Decision Number 90/Pid.Sus/2023/PN MkS where the Defendant distributed pharmaceutical preparations and/or Health devices that did not have a distribution permit in the form of 1 (one) Dos The carton contains 8 (eight) white plastic bottles containing white tablets bearing the logo Y, Schedule G Drugs, each bottle containing 1,000 (one thousand) tablets, and was declared proven and guilty by the Panel of Judges and the witness was given 1 (one) prison sentence. years 10 (ten) months and a fine of Rp. 10,000,000, - (ten million rupiah).

So it can be said that those who have the right to distribute pharmaceutical preparations and health devices are only certain people who already have permits and those who distribute pharmaceutical preparations and health devices without a distribution permit have been declared to have committed a criminal act.

METHOD

The type of research in this research is included in normative legal research as one of the research for future legal needs. Normative legal research or also called library legal research is a method or method used in legal research with existing library materials.(Soekanto, 2007) The approach in this research is the statutory regulation approach (*statue approach*). (Mahmud Marzuki, 2013)

RESULTS AND DISCUSSION

Modus Operandi of Criminal Offenses in the Health Sector (Study Decision Number 90/Pid.Sus/2023/PN MkS)

Criminal acts in the health sector, in this case illegal pharmaceutical preparations, can be said to be a serious threat to public health and the government in Indonesia itself. Economic reasons and weak legal sanctions do not provide a deterrent effect, they are exploited by pharmaceutical criminals looking for loopholes to make big profits. The circulation of illegal pharmaceutical preparations, including fake ones, is global and cannot be handled conventionally. Pharmaceutical preparations based on Law no. 36 of 2009 concerning Health are medicines, medicinal ingredients, traditional medicines and cosmetics. Pharmaceutical preparations have properties or benefits for humans if they are used in accordance with needs and regulations. As a result, not everyone has the authority or expertise to make, store, promote or distribute pharmaceutical preparations(Citra, 2023)

Perpetrators of criminal acts usually use various means or methods to commit crimes, this is usually called *modus operandi*. *Modus operandi* comes from Latin, which means procedure or way of moving or doing something. In short, *modus operandi* is the operating techniques used by criminals.

Modus operandi can be interpreted as the habits of a person or certain group regarding the way they work or operational methods in committing crimes. Criminals have certain patterns that will change over time once the police understand how they work.

There are simple and complex *modus operandi*, depending on the skill of the criminal. The more complex the *modus operandi* of a criminal indicates that the perpetrator has experience in committing crimes. From the *modus operandi* we can see the nature of a person who commits a crime, whether the person actually committed a crime or whether the perpetrator only committed a mistake that fulfills the elements of the law.(Kurniawan & Pujiyono, 2018)

There are various *modus operandi* carried out by the perpetrators, one of which is that illegal drugs are produced and distributed without permission. One of the health crime cases

that occurred within the scope of the Makassar District Court was where the defendant sold List G drugs to consumers without permission from the authorities.

The modus operandi of the perpetrator in the Health crime in Decision Number 90/Pid.Sus/2023/PN Mks is that initially the defendant obtained the List G drug from Lk. EDI (DPO) around December 2021 near a gas station on Jalan Dangko Makassar City, Lk. EDI (DPO) contacted the Defendant by telephone who wanted to entrust List G drugs to the Defendant. The Defendant agreed to meet near a gas station on Jalan Dangko, Makassar City. After meeting Lk. EDI, Lk. EDI then gave the Defendant 1 (one) cardboard box containing 8 (eight) white plastic bottles containing white tablets with the Y logo containing List G drugs, each bottle containing 1,000 (one thousand) white tablets with the Y logo List G drugs. G. After receiving the List G drug, the defendant took it home.

Where is the selling price of List G drugs entrusted to Lk. The EDI to the Defendant is IDR 700,000 (seven hundred thousand rupiah) per bottle, of which the Defendant plans to sell for IDR 800,000 (eight hundred thousand rupiah) and the Defendant will get a profit of IDR 100,000 (one hundred thousand rupiah) per bottle. The defendant sold Schedule G drugs to Lk. UMAR (DPO).

That the medicines sold by the defendant are medicines to treat Parkinson's symptoms, but if misused they can cause headaches, vomiting/nausea, drowsiness and result in death. Based on the results of the examination, the drug contains Trihexyphenidyl which is included in the List of Hard Drugs/List G.

The defendant's actions constitute a criminal act of distributing pharmaceutical preparations, in this case drugs that do not have a distribution permit as stated in Article 197 of Law Number 36 of 2009 concerning Health which reads:

" Any person who deliberately produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution permit as intended in Article 106 paragraph (1) shall be punished with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 1,500,000,000, - (one billion five hundred million rupiah) ”.

According to the author, the modus operandi used by the defendant who was a distributor of pharmaceutical preparations without a distribution permit in Decision Number 90/Pid.Sus/2023/PN Mks was by buying the drugs from his friend secretly or secretly, then hiding the drugs in his house first. and the aim is to distribute it to consumers who do not know that the drug has not been licensed and if used incorrectly it could result in death. All the methods carried out by the perpetrators were with the aim of reselling and making a profit while the defendant was not someone who had obtained a permit to sell/distribute these drugs.

Lack of information about illegal drugs makes people fall into the trap, for people who are people who distribute illegal drugs, the lack of information about the consequences caused by the distribution of illegal drugs and the sanctions they receive if they distribute illegal drugs also influences this action. This is a serious problem in the world of health. So it is hoped that law enforcers will pay more attention to this matter, especially the Panel of Judges in providing decisions for perpetrators of health crimes.

Judge's Legal Considerations in Handing Down Decision Number 90/Pid.Sus/2023/PN Mks

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's consideration must be addressed carefully, well and carefully. If the judge's considerations are not thorough, good and careful, then the judge's decision originating from the judge's considerations will be annulled by the High Court or Supreme Court. (Arto, 2004)

The judge's arguments in handing down a decision are based on existing evidence, supported by the judge's belief based on conscience and wisdom, to decide a criminal case. In

making a decision, the panel of judges makes an assessment regarding the decision regarding the act, namely whether the defendant actually committed the act accused of him and then regarding the criminal regulations, namely whether the act committed by the defendant is indeed a criminal act, followed by whether the defendant can therefore be sentenced to a crime. (Augistine & Edy Hartanto, 2015)

With the evidentiary process at trial, the judge can make the right decision and conclude whether or not a criminal act has occurred. In this case, the system of evidence adopted in Indonesia is a system of evidence based on negative law (*negatief wettelijk stelsel*) as contained in Article 183 of the Criminal Procedure Code.

The following are the judge's considerations in the trial, namely:

1. Juridical Considerations

Juridical considerations are the judge's considerations which are based on factors revealed at trial and which have been determined by law as matters that must be included in the decision. Juridical considerations include the Public Prosecutor's (JPU) indictment, witness statements, defendant statements and evidence.

2. Non-Judicial Considerations

Non-Judicial Considerations or Sociological Considerations are considerations of judges who use approaches to background, socio-economic conditions and values that exist in society in making a decision. This is in line with what is contained in Law Number 48 of 2009 concerning Judicial Power Article 5 paragraph (1) which explains that " *Judges and Constitutional Justices are obliged to judge, follow and understand the legal values and sense of justice that exist in society* ".

From the explanation of the judge's consideration, it can be interpreted that when deciding a case, a judge must not only consider the legal aspects, but must also consider the sociological aspects.

The following are the judge's legal considerations in handing down decision Number 90/Pid.Sus/2023/PN Mks, as follows :

Considering, that based on the statements of the witnesses, the statements of the Defendant and in connection with the evidence presented at trial, the legal facts were obtained, starting from the witness NT and the witness KYP. Together with the Sub-Directorate team from members of the Narcotics Directorate of the South Sulawesi Regional Police, they received information from a person who did not wish to be identified. Wednesday, September 21 2022 at 16.00 WITA, at the UNM/IKIP Lecturer Housing Block D/1 Kel. Parang Tambung, Tamalate District, Makassar City, there is often distribution of List G drugs without permission by Defendant BN. aka BN bin RN.

That based on this information, an investigation was then carried out on this information by carrying out surveillance/observations to observe the situation and saw several people going in and out of a house at Perum Lecturer UNM/IKIP Blok D/1 Kel. Parang Tambung, Tamalate District, Makassar City and witnesses from other team members then entered the house and met 1 (one) Defendant BN. alias BN bin RN who is sitting on the terrace of the house. Next, witness NT and witness KYP together with the team conducted a search of Defendant BN. alias BN bin RN in the house and found 1 (one) cardboard box containing 8 (eight) white plastic bottles containing white tablets with the Y logo, suspected to be List G drugs, each bottle containing 1,000 (one thousand) white tablets with the logo Y was suspected of being Schedule G drugs in an unused room in the house. Next, Defendant BN was arrested. aka BN bin RN.

That the Defendant BN. alias BN bin RN was interrogated that the Defendant obtained the evidence from EDI on Jalan Dangko Makassar around December 2021, near a gas station on Jalan Dangko Makassar City, before which EDI (DPO) contacted the Defendant by telephone who wanted to entrust the Defendant with the Drug List. G. so I agreed to meet near a gas station on Jalan Dangko Makassar City and then EDI gave the Defendant 1 (one) cardboard box containing 8 (eight) white plastic bottles containing white tablets with the Y

logo containing List G drugs, each of which was Each bottle contains 1,000 (one thousand) white tablets with the Y logo on List G Drugs. After receiving the List G Drugs, the Defendant then took them home;

That EDI entrusted List G drugs to me with the aim of selling them if anyone wanted to buy them, with the selling price of List G drugs that EDI entrusted to the Defendant being IDR 700,000 (seven hundred thousand rupiah) per bottle, which the Defendant planned to sell for IDR 800,000 (eight hundred thousand rupiah) and the Defendant will get a profit of IDR 100,000 (one hundred thousand rupiah) per bottle;

Considering, that after examining the legal facts as described above, connected with the Public Prosecutor's indictment, the Panel of Judges considered in the second indictment of the Public Prosecutor where the Defendant was charged with committing a Criminal Act as regulated and punishable by law in Article 197 of Republic of Indonesia Law No. 36 2009 Concerning health as amended by article 60 number 10 Law Number 11 of 2020 concerning job creation Jo article 106 Paragraph (1) and Paragraph (2) of the Republic of Indonesia Law Paragraph (1) of the Republic of Indonesia Law No.36 of 2009 concerning Health as amended by Article 60 number 4 of Law No. 11 of 2020 concerning Job Creation , the elements of which are as follows ;

Whose Elements

Considering, that what is meant by the element of who is every person as a legal subject of a criminal act who is capable of being responsible for his actions according to the applicable law.

Considering, that the Defendant BN. The alias BN Bin RN is a person who is accused of being the perpetrator of a crime and the Defendant has admitted and confirmed his identity in the Public Prosecutor's indictment and the Defendant is a competent person and is able to take responsibility for his actions, thus the element of who is who has been fulfilled.

Intentional Element producing or distributing pharmaceutical preparations and / or medical devices that do not have distribution permit as intended in article 106 paragraph (1)

Considering, that this element consists of several alternative actions with the understanding that if one of them has been proven then this element has been declared fulfilled.

Considering, that the facts revealed at trial from the statements of witnesses and the confession of the Defendant and connected with mutual evidence are consistent, that on Wednesday 21 September 2022 at 16.00 WITA, witness NT and witness KYP together with a Sub-Directorate team from members of the Narcotics Directorate of the South Sulawesi Regional Police who led by Head of AKP SUARDI, S.SOS, MH received information from a person who did not want to be identified that at Perum Lecturers UNM/IKIP Blok D/1 Kel. Parang Tambung, Tamalate District, Makassar City, there is often distribution of List G drugs without permission by Defendant BN. alias BN bin RN, so based on this information , the Sub-Directorate team from members of the South Sulawesi Regional Police's Narcotics Directorate led by AKP Unit Head SUARDI, S.SOS, MH. carried out an investigation into this information by carrying out surveillance / observations to observe the situation and saw several people going in and out of a house at Perum Lecturer UNM/IKIP Blok D/1 Kel. Parang Tambung, Tamalate District, Makassar City and witnesses from other team members then entered the house and met 1 (one) Defendant BN . alias BN bin RN who is sitting on the terrace of the house. Next, witness NT and witness KYP together with the team conducted a search of Defendant BN. alias BN bin RN in the house and found 1 (one) cardboard box containing 8 (eight) white plastic bottles containing white tablets with the Y logo, suspected to be Schedule G drugs, each bottle containing 1,000 (one thousand) white tablets with the logo Y was

suspected of being Schedule G drugs in an unused room in the house. Next, Defendant BN was arrested. aka BN bin RN;

Considering, that further the Defendant BN. alias BN bin RN obtained list G drugs from EDI on Jalan Dangko Makassar around December 2021 , near a gas station on Jalan Dangko Makassar City, before which EDI (DPO) contacted the Defendant by telephone who wanted to entrust it to the Defendant, so The Defendant agreed to meet near a gas station on Jalan Dangko, Makassar City and then EDI gave the Defendant 1 (one) cardboard box containing 8 (eight) white plastic bottles containing white tablets with the Y logo containing List G drugs in each bottle. containing 1,000 (one thousand) white tablets with the Y logo on List G Drugs. After receiving the List G Drugs, the Defendant then took them home;

Considering, that EDI entrusted the List G drug to the Defendant for the purpose of selling it if anyone wanted to buy it , and the selling price of the List G drug that EDI entrusted to the Defendant was IDR 700,000 (seven hundred thousand rupiah) per bottle, which the Defendant planned to sell for IDR 800,000. ,- (eight hundred thousand rupiah) and the Defendant will get a profit of Rp. 100,000,- (one hundred thousand rupiah) per bottle ;

Considering, that based on the Makassar Branch Police Forensic Laboratory Examination Minutes Lab Number: 3716/NOF/IX/2022 dated 29 September 2022 which was prepared and signed by I NYOMAN SUKENA, SIK as Head of the Makassar Branch Foensic Laboratory basically explains that the evidence is in the form of 1 (one) BNng plastic shaset each containing 25 (twenty five) tablets and 7 (seven) BNng plastic shasets each containing 35 (thirty five) white tablets with the "Y" logo with an average thickness of 0.325 mm and an average diameter of 0.92 mm with a total net weight of 57.0510 grams containing Trihexypenidyl;

Considering, that the Defendant does not have the expertise and authority to procure, store and distribute pharmaceutical preparations in the form of list G hard drugs (pharmaceutical preparations) which do not have a distribution permit from the competent authority as stated in the Health Law.

Considering, that based on the above considerations, the Panel of Judges concluded that the element of intentionally producing or distributing pharmaceutical preparations and / or medical devices that do not have the distribution permit as intended in article 106 paragraph (1) has been fulfilled.

Considering, that based on considerations the Defendant's actions have fulfilled all the elements of the Public Prosecutor's second indictment so that the Panel of Judges concluded that the Defendant had been legally and convincingly proven guilty of committing the crime he was charged with, namely violating article 19 7 in conjunction with article 106 paragraph (1) RI Law No. 36 of 2009 concerning Health .

Considering, that from the facts obtained during the trial in this case, the Panel of Judges did not find anything that could release the Defendant from criminal responsibility, either as a justification or excuse, therefore the Panel of Judges concluded that the actions committed by the Defendant deserved to be sentenced. punishment commensurate with his actions in accordance with a sense of justice.

In the provisions of Article 8 paragraph (2) of the Judicial Power Law, Article 8 paragraph (2) states that "*in considering the severity of the crime, the judge is obliged to show the good and evil characteristics of the defendants .*" This means that, in handing down a decision against a defendant, the judge is obliged to dig up information relating to the defendant's habits or personality to the public to use as a basis for imposing a crime on the defendant.

The main condition for allowing a criminal conviction is the existence of a (human) act that meets the definition of an offense in the law, this is a consequence of the principle of legality. The formulation of this offense is important, meaning that as a principle of certainty, criminal law must be definite in nature, it must be able to know with certainty what is prohibited or what is ordered.

On the other hand, punishment itself is the most complex process in the criminal justice system because it involves many different people and institutions (Maniru & Rochmiatun, 2022)

That in order to impose a crime on a defendant, the judge will first consider things that could aggravate and mitigate the defendant in order to apply a sentence commensurate with his actions. The considerations that aggravate and mitigate the defendant in Decision Number 90/Pid.Sus/2023/PN Mks are:

1. The aggravating circumstance is that the Defendant's actions disturbed the community.
2. Mitigating circumstances are that the Defendant feels guilty and regrets and promises not to repeat his actions again and the Defendant has never been punished.

Regarding the decision made by the panel in this case, the panel of judges handed down a decision against the defendant stating that the defendant was proven guilty of committing a criminal act intentionally distributing pharmaceutical preparations and/or health devices that do not have a distribution permit, therefore sentenced the defendant to imprisonment for 1 (one) year and 10 (ten) months and a fine of Rp. 10,000,000.- (ten million rupiah) subsidiary 2 (two) months in prison. The judge's sentence was lower than the demands of the Public Prosecutor.

The judge's considerations in imposing a criminal sentence on the perpetrator in this case were correctly based on both juridical and non-juridical considerations. The author believes that the judge's imposition of sanctions is based more on the facts of the trial and valid evidence. The sentence imposed in the form of imprisonment for 1 (one) year and 10 (ten) months on the defendant is sufficient to have a deterrent effect on the perpetrator so that he does not repeat his actions again.

So according to the author, the judge's decision handed down to the defendant is sufficient. In his consideration, the judge had taken into account the demands of the Public Prosecutor and the facts revealed in the trial so that the criminal sentence against the defendant was lower than the demands of the Public Prosecutor. This is because the judge also has the freedom and power to impose a sentence on a defendant by considering all aspects including the deterrent effect of punishment on the defendant.

CONCLUSION

The modus operandi used by the defendant who was a distributor of pharmaceutical preparations without a distribution permit in Decision Number 90/Pid.Sus/2023/PN Mks was by buying the drugs from his friend secretly or secretly, then hiding the drugs in his house first and their purpose. to distribute to consumers and obtain profits from selling pharmaceutical preparations without a distribution permit. The judge's considerations in imposing a criminal sentence on the perpetrator in Decision Number 90/Pid.Sus/2023/PN Mks are based on both juridical and non-juridical considerations. Public Prosecutor. The sentence imposed in the form of imprisonment for 1 (one) year and 10 (ten) months on the defendant is sufficient to have a deterrent effect on the perpetrator so that he does not repeat his actions again.

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