

Sanctioning Unpermitted Distribution of Pharmacy Preparations: Juridical Review in Ternate City

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Abstract: *This study conducts a juridical review of sanctions imposed on individuals involved in the unauthorized distribution of pharmacy preparations in Ternate City. It aims to evaluate the legal aspects and efficacy of these sanctions in safeguarding public health. Through an analysis of relevant laws, regulations, and judicial precedents, gaps in the existing regulatory framework are identified and suggestions for improvement are proposed. The study assesses the enforcement practices of law enforcement agencies and considers the adequacy and proportionality of the imposed sanctions. Factors such as the seriousness of the offense, potential harm to public health, and the intent of the offenders are taken into account. Challenges pertaining to enforcement capacity, interagency collaboration, and public awareness are also addressed. Based on the findings, recommendations are made to enhance the enforcement of sanctions. These include strengthening collaboration among agencies, providing specialized training for law enforcement personnel, and conducting public education campaigns. The aim is to improve the efficiency and effectiveness of sanction implementation. This research contributes to the field of pharmaceutical law and public health by providing insights for policymakers, regulatory bodies, and law enforcement authorities. The findings inform the development of effective measures to combat the unpermitted distribution of pharmacy preparations.*

Keywords: *Criminal Sanctions; Pharmaceutical Preparations; Distribution Permit.*

1. Introduction

One of the basic rights inherent in every human being is the right to health. The right to health includes the right to a healthy life and work, the right to health services, and special attention to the health of mothers and children. Soekidjo Notoatmodjo said that a person's health is not only measured from the physical, mental and social aspects, but also measured from his productivity in the sense of having a job or producing economically, such as social service activities for the elderly.¹

According to Law Number 36 of 2009 concerning Health states that Health is a healthy state, both physically, mentally, spiritually and socially which allows everyone to live productively socially and economically.² Health law is currently experiencing rapid development in Indonesia. Knowledge about health needs to be developed to anticipate the many obstacles in this globalization era. This development is inseparable from the development of professional organizations in the field of medical/health law.³ Currently health issues are very crucial with the condition of the Covid-19 pandemic, where everyone is required to carry out their daily activities by implementing health protocols. However, behind these demands, along with the increasingly rapid developments in the health sector,

¹Soekidjo Notoatmodjo, 2003. *Education and Health Behavior*, First Printing, PT Rineka Cipta, Jakarta, p. 3-4

² Article 1 Number 1 Law Number 36 of 2009 concerning Health

³Amri Amir, 1997, *Anthology of Health Law*, Widya Medika, Jakarta, pp . 87

it seems as if supervision and control of pharmaceutical preparations has been neglected. This has occurred with the increasing distribution of pharmaceutical preparations that do not have a distribution permit.

If you look at the definition of pharmaceutical preparations, namely drugs, medicinal ingredients, traditional medicines and cosmetics, it turns out that pharmaceutical preparations are not only limited to drugs but also include cosmetics. It is these cosmetics that are currently being widely discussed among law enforcement, where in recent years, the crime of distributing pharmaceutical preparations that do not have distribution permits has occurred in the community, especially in the city of Ternate.

Based on the initial data obtained, in the City of Ternate between 2018 and early 2021, there have been at least 13 criminal cases of distributing pharmaceutical preparations without a distribution permit that have been handled by law enforcement officials. It is sad that these crimes have increased in 2020 and 2021 when all parties are preoccupied with preventing the co-19 pandemic. Of course, it can be assumed that this happened due to a lack of supervision and weak law enforcement against these crimes. Supervision which is under the authority of the Food and Drug Supervisory Agency (BPOM) and law enforcement by law enforcement officers is not yet optimal so that it seems as if it does not have a deterrent effect on criminal offenders.

This deterrent effect is of course influenced by the severity of the criminal sanction imposed by the judge. Of course, if you look at the initial data as mentioned above, with an increase in cases every year, it raises a question for all of us whether the criminal sanctions applied by law enforcement officials in the legal process carried out by the perpetrators have been maximized, or on the contrary, they have not created a deterrent effect at all.

Based on the things that have been described above, it makes the author interested in conducting a more in-depth study, especially on the juridical aspect regarding the application of criminal witnesses for perpetrators of criminal acts who distribute pharmaceutical preparations that do not have a distribution permit.

2. Method

The research conducted by the author is empirical legal research. Empirical Legal Research is a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical remains and archives⁴. This legal research serves to see the law in a real sense and examine how the law works in society. So that it can be said that legal research is taken from facts that exist in a society, legal entity or government. The empirical legal research approach also seeks to develop rooted knowledge by comparing legal and societal studies.⁵

Types and sources of data used by researchers is Primary Data, namely data obtained or sourced through direct interviews with relevant informants. Secondary data, namely data obtained from books, case documents and writings related to this research.

⁴Mukti Fajar and Yulianto Achmad, *Dualism of Empirical & Normative Legal Research*, Student Library, Yogyakarta. 2010, p.280 _ _

⁵Achmad Ali & Wiwie Heriyani, *Exploring Empirical Studies of Law*, 1st Printing, Jakarta, Kencana Pranada Media Group, 2012, p. 29

In accordance with the problems to be answered and the objectives to be achieved in this study, all legal material collected was analyzed qualitatively, then described to answer the problems in this study.

3. Results and Discussion

3.1 Application of criminal sanctions against perpetrators who distribute pharmaceutical preparations that do not have distribution permits in the City of Ternate

Discussion regarding pharmaceutical preparations, if referring to Law Number 36 of 2009 concerning Health (hereinafter referred to as the Health Law) specifically regarding distribution permits, is clearly regulated in Article 106. Pharmaceutical preparations and medical devices can only be distributed after obtaining a distribution permit. If someone distributes pharmaceutical preparations before having a distribution permit, of course this can already be considered a criminal act. According to Mulyatno, ⁶a criminal act is an act that is prohibited by a legal regulation which prohibits it accompanied by a threat in the form of a certain penalty, for anyone who violates the prohibition. Meanwhile, Simon ⁷formulates *strafbaar feit* (criminal act) is an unlawful act that is punishable by law and contrary to law relating to mistakes by someone who is capable of being held responsible. Thus, a person who distributes pharmaceutical preparations prior to obtaining a distribution permit has committed an act that is prohibited by a rule of law as stipulated in the Health Law. Therefore, anyone who violates a rule of law must be subject to criminal sanctions. Sanctions or punishments are a bad feeling (miserable) that is imposed by a judge with a sentence of a person who has violated the criminal law. ⁸Criminal provisions for distributing pharmaceutical preparations without a distribution permit have also been regulated in Article 197 of the Health Law.

Furthermore, it is also important to understand what is meant by pharmaceutical preparations. Pharmaceutical preparations are drugs, medicinal ingredients, traditional medicines and cosmetics. Drugs are substances or a combination of materials, including biological products used to influence or investigate physiological systems or pathological conditions in the framework of establishing a diagnosis, prevention, cure, recovery, health promotion and contraception, for humans. Traditional medicines are ingredients or ingredients in the form of plant ingredients, animal ingredients, mineral ingredients, galenic preparations, or mixtures of these materials which have been used for generations for treatment, and can be applied according to the norms in force in society.⁹ Cosmetics are materials or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips and external genital organs) or teeth and oral mucous membranes especially for cleaning, perfuming, changing appearance and/or correcting body odor or protecting or keep the body in good condition.¹⁰

Distribution of pharmaceutical preparations is an activity or a series of activities aimed at transferring, distributing drugs, medicinal ingredients, traditional medicines and cosmetics. So that only certain people who have the right to distribute pharmaceutical preparations have the right to distribute pharmaceutical preparations and those who distribute pharmaceutical preparations without

⁶ Moeljatno, Principles of Criminal Law, P T. Rineka Cipta, Jakarta, 2008, p. 59

⁷ Mety Rahmawati, Fundamentals of Deletion, Prosecutor, Abolition of Mitigation and Complaints in the Criminal Code, Trisakti University, Jakarta, 2010, p. 2.

⁸ R. Soesilo, The Criminal Code (KUHP) and its comments, complete article by article, Politeia, Bogor, 1973, p.30

⁹ Article 1 point 4, 8 and 9 of Law Number 36 of 2009 concerning Health

¹⁰ Article 1 point 1 Regulation of the Minister of Health Number 1175/MENKES/PER/VIII/2010 concerning Cosmetic Production Permits

a permit have violated the provisions as stated in Article 197 of the Health Law which constitutes a crime. To be able to distribute pharmaceutical preparations, it is necessary to have a distribution permit issued by the Food and Drug Supervisory Agency (BPOM), because pharmaceutical preparations have an important role in life in order to improve public health. However, if there is an incorrect, inappropriate and rational use of pharmaceutical preparations, it can actually endanger the community. For this reason, the purpose of granting a distribution license is solely to protect the public from the use of pharmaceutical preparations that do not meet the requirements.

However, in recent years, there has been widespread circulation in the community of pharmaceutical preparations that do not have a distribution permit. As is also the case in Ternate City, North Maluku Province. In the period from 2018 to 2021, there are several actors who trade pharmaceutical preparations that do not have distribution permits. These perpetrators have even undergone a legal process starting from the investigation process at the Police and have undergone a trial process to obtain a verdict from the panel of judges in the form of a criminal decision. Factors causing the circulation of pharmaceutical preparations that do not have a distribution permit are due to prices that are much cheaper than pharmaceutical preparations that already have a distribution permit. Then the lack of information about the consequences arising from the use of pharmaceutical preparations that do not have a distribution permit as well as information about criminal sanctions for those who distribute these pharmaceutical preparations without a permit.

Weak oversight from the BPOM is also the cause of the widespread circulation of pharmaceutical preparations that do not have a distribution permit. In addition to oversight, the main cause for perpetrators to distribute pharmaceutical preparations that do not have a distribution permit is due to weak law enforcement where the criminal sanctions imposed on the perpetrators are very light. Very far from the maximum threat as stipulated in Article 167 of the Health Law, where the criminal threat is imprisonment for a maximum of 15 (fifteen) years and a maximum fine of Rp. 1,000,000,000.- (one billion rupiah). But in reality, both the public prosecutor's criminal charges and the court's decision are very far from the maximum criminal threat, as in the description of the data as follows:

1. Application of criminal sanctions in the demands of the Public Prosecutor

The criminal charges of the Public Prosecutor in his charge letter are the conclusion of the examination of the case which is based on the evidentiary process at trial. In compiling a letter of indictment, the public prosecutor will not be separated from what has been previously contained in the indictment which was previously read out by the public prosecutor at the first session prior to the evidentiary agenda. The indictment contains the identity of the defendant, the chronology of events and the articles charged. It is in this part of the indictment that the public prosecutor has concluded based on the results of evidence to what extent the articles charged have been proven according to the public prosecutor.

In determining the severity of the criminal sanction to be prosecuted against a defendant, the public prosecutor certainly has guidelines as stated in the Attorney General's Circular Letter. Based on these guidelines, the public prosecutor in determining the severity of criminal sanctions to be prosecuted against the defendant can consider several factors such as the actions of the defendant, the condition of the defendant, the consequences and other factors related to a sense of justice.

Table. 1 Data on Criminal Prosecutors' Charges¹¹

CASE NUMBER	DEFENDANT NAME	PUBLIC PROSECUTOR'S CLAIMS
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¹¹ North Maluku High Court Case Register Data

		Chapter	Jail & Fines
282/PID.SUS/2018/PN.TTE	Jabal Nur	197	8 months & 5 million
238/PID.SUS/2019/PN.TTE	M. Darwing Nur	197	3 months & 10 million
315/PID.SUS/2019/PN.TTE	Herlina Mochtar	197	4 months
83/PID.SUS/2020/PN.TTE	Henry Kurniawan	197	3 months & 10 million
101/PID.SUS/2020/PN.TTE	Ita Astrid Viana	197	1 month & 1.5 million
186/PID.SUS/2020/PN.TTE	Jauhar Ali	197	6 months & 2 million
196/PID.SUS/2020/PN.TTE	Wati Husmin Hi. Wow	197	4 months & 1.5 million
250/PID.SUS/2020/PN.TTE	Mahani Albar	197	1 year & 10 million
297/PID.SUS/2020/PN.TTE	Jihan Yahya	197	5 months & 1 million
22/PID.SUS/2021/PN.TTE	Jabal Nur	197	8 months & 12 million
68/PID.SUS/2021/PN.TTE	Nurmala Soamole	197	4 months & 1 million
82/PID.SUS/2021/PN.TTE	Ismiati Safitri Siraju	197	6 months
83/PID.SUS/2021/PN.TTE	Ramlia Mochtar	197	5 months & 5 million

Based on research data from 2018 to August 2021, there were 13 criminal cases of distributing pharmaceutical preparations that did not have permits as stipulated in Article 197 of Law Number 36 of 2009 concerning Health, which have been criminally prosecuted by the High Court. North Maluku. In 2018 there was one case with case number 282/Pid.Sus/2018/PN.Tte in which the public prosecutor had been charged with criminal prosecution for 8 months in prison and a fine of Rp. 5,000,000,-. In 2019 there were two cases with case number 238/Pid.Sus/2019/PN.Tte, with criminal charges of 3 months in prison and a fine of Rp. 10,000,000, - and case number 315/Pid.Sus/2019/PN.Tte, with a criminal charge of 4 months in prison and no fine.

In 2020 there were six cases, consisting of case number 83/Pid.Sus/2020/PN.Tte, with a criminal charge of 3 months in prison and a fine of Rp. 10,000,000, -, for case number 101/Pid.Sus/2020/PN.Tte, a criminal charge of 1 month in prison and a fine of Rp. 1,500,000, -, then case number 186/Pid.Sus/2020/PN.Tte, charged with imprisonment for 6 months and a fine of Rp. 2,000,000, -, for case number 196/Pid.Sus/2020/PN.Tte, demanded 4 months in prison and a fine of Rp. 1,500,000, -, then case number 250/Pid.Sus/2020/PN.Tte, criminal charges for 1 year in prison and a fine of Rp. 10,000,000, -, and finally case number 297/Pid.Sus/2020/PN.Tte, charged with imprisonment for 5 months and a fine of Rp. 1,000,000,-

For 2021 until August, there have been 4 cases that have been prosecuted by the public prosecutor, namely case number 22/Pid.Sus/2021/PN.Tte, with a criminal charge of 8 months in prison and a fine of Rp. 12,000,000, - then case number 68/Pid.Sus/2021/PN.Tte, demanded 4 months in prison and a fine of Rp. 1,000,000, - then for case number 82/Pid.Sus/2021/PN.Tte, the public prosecutor demands 6 months in prison and no fines, and finally with case number 83/Pid.Sus/2021/PN.Tte, who are charged with imprisonment for 5 months and a fine of Rp. 5,000,000,-

3.2 Application of criminal sanctions in the Judge's decision

According to Sudikno Mertokusumo, ¹²judges in deciding a case casuistry are always faced with 3 (three) principles, namely the principle of legal certainty, the principle of justice and the principle of expediency. These three principles (the principle of legal certainty, the principle of justice and the principle of expediency) must be implemented in a compromise manner, namely applying all three in a balanced or proportional manner. In addition to these three principles, the judge in deciding a case must also consider various things such as the actions and level of wrongdoing by the defendant, the interests of the victim and his family and also consider the sense of justice in society. Determining the severity of criminal sanctions is indeed the discretion of the judge. However, the discretion of the judge may not override these three principles and the factors that underlie the judge's consideration as the facts revealed from the results of evidence at trial. The most important factor is the impact of the defendant's actions and the effect of the judge's decision on community legal compliance. More details can be observed in the table below:

Table. 2 Judge's decision data¹³

CASE NUMBER	DEFENDANT NAME	JUDGE'S DECISION	
		Chapter	Jail & Fines
282/PID.SUS/2018/PN.TTE	Jabal Nur	197	6 months & 10 million
238/PID.SUS/2019/PN.TTE	M. Darwing Nur	197	2 months & 5 million
315/PID.SUS/2019/PN.TTE	Herlina Mochtar	197	4 months
83/PID.SUS/2020/PN.TTE	Henry Kurniawan	197	8 months
101/PID.SUS/2020/PN.TTE	Ita Astrid Viana	197	20 days & 1 million
186/PID.SUS/2020/PN.TTE	Jauhar Ali	197	3 months 15 days & 1 million
196/PID.SUS/2020/PN.TTE	Wati Husmin Hi. Wow	197	3 months & 1 million
250/PID.SUS/2020/PN.TTE	Mahani Albar	197	7 months & 10 million
297/PID.SUS/2020/PN.TTE	Jihan Yahya	197	5 months & 1 million
22/PID.SUS/2021/PN.TTE	Jabal Nur	197	6 months & 12 million
68/PID.SUS/2021/PN.TTE	Nurmala Soamole	197	2 months & 1 million
82/PID.SUS/2021/PN.TTE	Ismiati Safitri Siraju	197	6 months & 1 million
83/PID.SUS/2021/PN.TTE	Ramlia Mochtar	197	3 months & 1 million

¹² Sudikno Mertokusumo and A. Pitlo, Chapters on Legal Findings, Citra Aditya Bakti, Jakarta, 1993, p.10

¹³ Ternate District Court SIPP

Data obtained from the Ternate District Court case tracking information system in connection with the criminal act of distributing pharmaceutical preparations that do not have a license as stipulated in Article 197 of Law Number 36 of 2009 concerning Health, there were 13 cases that had been decided and sentenced to prison terms within the year 2018 until August 2021. In 2018 there was one case with case number 282/Pid.Sus/2018/PN.Tte where the defendant was sentenced to 6 months imprisonment and a fine of Rp. 10,000,000,-. Furthermore, in 2019 there were two cases with case number 238/Pid.Sus/2019/PN.Tte, with a judge's decision for 2 months in prison and a fine of Rp. 5,000,000, - and case number 315/Pid.Sus/2019/PN.Tte, with a criminal verdict of 4 months in prison and no fines.

In 2020 there were six cases with various prison sentences and fines, consisting of case number 83/Pid.Sus/2020/PN.Tte, with a decision in the form of imprisonment for 8 months and no fine, for case number 101/ Pid.Sus/2020/PN.Tte, the judge imposed a prison sentence of 20 days and a fine of Rp. 1,000,000, -, then case number 186/Pid.Sus/2020/PN.Tte, was sentenced to imprisonment for 3 months 15 days and a fine of Rp. 1,000,000, -, for case number 196/Pid.Sus/2020/PN.Tte, a sentence of 3 months in prison and a fine of Rp. 1,300,000, -, then case number 250/Pid.Sus/2020/PN.Tte, was sentenced to 7 months in prison and a fine of Rp. 10,000,000, -, and the last one in 2020, namely case number 297/Pid.Sus/2020/PN.Tte, with a judge's decision in the form of imprisonment for 5 months and a fine of Rp. 1,000,000,-

Then for the decision data up to August 2021, there are 4 cases in which the defendant has been sentenced to prison terms and fines by the judge, namely case number 22/Pid.Sus/2021/PN.Tte, with a prison sentence of 6 months and a fine of Rp. 12,000,000, - then case number 68/Pid.Sus/2021/PN.Tte, sentenced to 2 months in prison and a fine of Rp. 1,000,000, - then for case number 82/Pid.Sus/2021/PN.Tte, the judge decided a prison sentence of 6 months and a fine of Rp. Rp. 1,000,000, - and finally with case number 83/Pid.Sus/2021/PN.Tte, the verdict is imprisonment for 3 months and a fine of Rp. 1,000,000,-

Based on the data on criminal charges and the judge's decision above, confirmation was then made on the public prosecutor and the judge regarding the imposition of criminal sanctions which were classified as very light and quite far from the maximum penalty. Maksin Umalekhoa ¹⁴said that every criminal charge filed by the public prosecutor in the crime of distributing pharmaceutical preparations without a distribution permit complies with the provisions stipulated in the health law and the determination of criminal sanctions has referred to the Attorney's internal guidelines. Of course, before reading out the criminal charges at trial, a plan of prosecution (rentut) must first be submitted to the leadership for approval. Which means that when there has been an agreement to rent, the criminal charge is in accordance with the facts of the defendant's actions and the provisions of the laws and regulations.

Meanwhile, Sugiannur ¹⁵also said that the sentencing decision and the determination of the severity of the sentence imposed on the defendant for the criminal act of distributing pharmaceutical preparations that did not have a distribution permit were based on legal facts revealed in court by considering mitigating and aggravating circumstances for the defendant, and has gone through deliberations of the panel of judges which has been set forth in its legal considerations. Because as stipulated in the health law, which does not have a special minimum standard, it means that what applies is the general minimum standard so that, according to the panel of judges with the general

¹⁴Interview with Maksin Umalekhoa, Public Prosecutor at the North Maluku High Court, Friday 10 September 2021

¹⁵Interview with Sugiannur, Judge at the Ternate District Court, Monday 20 September 2021

minimum standard, the decision that has been passed is correct and does not violate statutory provisions.

Of course, if you hear the explanations put forward by both the public prosecutor and the judge, then you are only considering the juridical aspect by ignoring the philosophical and sociological aspects. Therefore in a judge's decision ideally must fulfill three kinds of elements, namely juridical, philosophical and sociological foundations. The judge uses a comprehensive juridical analysis method to solve the law of the case he is trying. The juridical aspect is of course used as the main and first approach that is in accordance with the provisions of the applicable laws and regulations, then a philosophical approach which basically must be in accordance with a sense of justice and truth, then a sociological approach that is in accordance with the cultural values that live and apply in society.

In considering the severity of a defendant's sentence, it is not enough to consider the individual attitude of the defendant, such as the defendant giving frank or convoluted statements, the defendant showing remorse or not, the defendant's criminal actions being the first time or repeated. The judge must consider the relationship between the defendant's criminal act and the community and the state, its relation to human values, and even the general impact on society both regionally and internationally.

The low number of criminal charges by public prosecutors and judges' decisions against defendants for the criminal act of distributing pharmaceutical preparations that do not have a distribution permit, shows the low awareness of public prosecutors and judges about the impact of pharmaceutical preparations that do not have distribution permits which are very dangerous to public health. This could happen because both the public prosecutor and the judges who decided on the case thought that what the defendants had done was only limited to obtaining material benefits without regard to the impact that would be caused on people who use pharmaceutical preparations that do not have a distribution permit. Whereas pharmaceutical preparations circulating in the community must be safe, efficacious/beneficial, of good quality and affordable. Therefore, pharmaceutical preparations that are distributed must meet the specified standards and or requirements.

The awareness of public prosecutors and judges that the effects of using pharmaceutical preparations that do not have a distribution permit are very dangerous to public health is very low, so that the criminal sentences imposed on perpetrators/defendants are light. The judge should have thought that his decision would have a deterrent effect on the perpetrators of the crime of distributing pharmaceutical preparations that do not have a distribution permit. Decisions that do not provide a deterrent effect have contributed to inducing society to continue committing criminal acts. In principle, the task of the judge is to make decisions that have legal consequences for other parties. However, the judge cannot refuse to make a decision if the case has already been initiated or examined.¹⁶ For this reason, judge consistency is needed, because without consistency in deciding criminal cases it will form a bad precedent so that the judge's decision has no effect on society.

3.3 The Criminal Sanction In The Judge's Decision Does Not Have A Deterrent Effect On Perpetrators Who Distribute Pharmaceutical Preparations That Do Not Have A Distribution Permit

Based on what has been described in the previous discussion, both the criminal charge from the public prosecutor and the judge's decision are not much different from the aspect of criminal imposition in the form of imprisonment or fines against perpetrators/defendants who distribute pharmaceutical preparations that do not have a distribution permit. This is an irony, because the

¹⁶ Sudarto, *Criminal Law and Community Development Studies on Criminal Law Renewal*, Sinar Baru, Bandung, 1986, p. 84.

sentencing decision handed down by the judge should be able to have an impact on both the defendant and the general public. The judge's decision should be able to educate the public if they want to commit a similar crime, so the public feels afraid not only of the criminal threat as stipulated in Article 197 of the Health Law but also by looking at the application of the criminal imposed by the judge in his decision.

However, this was not the case, the public then considered that the judge's decision handed down to the perpetrators/defendants who distributed pharmaceutical preparations that did not have a distribution permit was very light and there were even some of the defendants when they finished undergoing trial a few days later they were acquitted and finished serving their criminal sentences. This is certainly a bad precedent in law enforcement. Generating a stigma in the community that law enforcement officials in enforcing the law against perpetrators/defendants who distribute pharmaceutical preparations that do not have a distribution permit are not serious so that people then think that it is easy to carry out acts of distributing pharmaceutical preparations even though they do not have a distribution permit, the important thing is to get benefits which is quite large, whereas if caught and in trouble with the law, the possibility of only being sentenced to a few months in prison and a fine that is not that large, so that when the sentence has been completed can be repeated again.

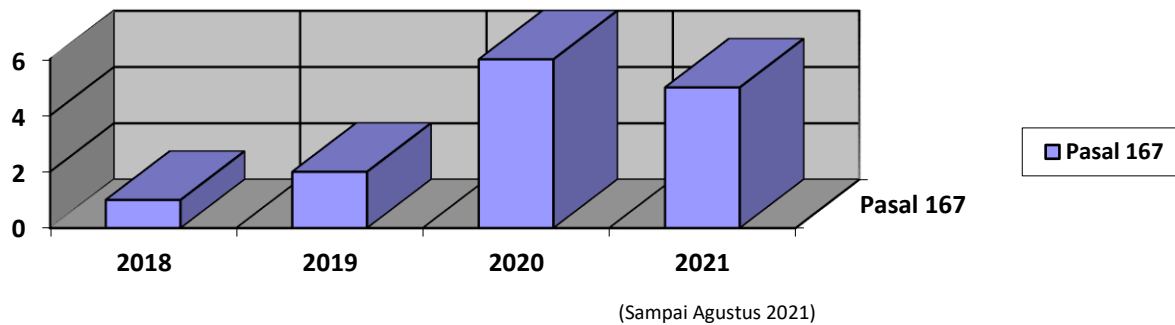
It can be said like that because based on the facts that have occurred, the number of criminal cases of distributing pharmaceutical preparations that do not have a distribution permit is increasing every year. In addition, there were also perpetrators who had previously been sentenced for criminal acts of distributing pharmaceutical preparations that did not have a distribution permit, then several years later after completing their sentence, these perpetrators returned to distributing pharmaceutical preparations that did not have a distribution permit. This is an indicator that criminal sanctions imposed by judges in their decisions cannot provide a deterrent effect on perpetrators who distribute pharmaceutical preparations that do not have distribution permits, as shown in the data below.

3.4 The crime of distributing pharmaceutical preparations that do not have a distribution permit continues to increase

Based on the research data previously described, where the crime of distributing pharmaceutical preparations that do not have a distribution permit has continued to increase from 2018 to August 2021. In 2018 there was 1 criminal case, then in 2019 it increased to 2 cases, then in 2020 increased with a fairly high number of cases of 6 cases and finally in August 2021 it was recorded that 5 cases consisting of 4 cases had been decided and had permanent legal force and 1 case was still in the trial process at the Ternate District Court. The graph of the increase in criminal cases for distributing pharmaceutical preparations that do not have a distribution permit can be described as follows:

G rafik.1 Infographic of increase in cases from 2018-August 2021¹⁷

¹⁷ Ternate District Court SIPP



Looking at the graph of the increase in the number of criminal acts of distributing pharmaceutical preparations that do not have a distribution permit, it continues to increase every year, of course this is not in line with the theory of punishment, especially the contemporary theory, namely the theory of education. Where if it refers to educational theory which basically states that crime aims to educate the public about which acts are good and which are bad. According to this theory, a criminal must be punished accordingly for his actions to teach others not to do the same thing.¹⁸

The crime of distributing pharmaceutical preparations that do not have a distribution permit continues to increase every year, indicating that a criminal sentence given by a judge cannot teach other people not to commit the same act. The community considers that with the low criminal sanction imposed by the judge, the community does not need to be afraid of the criminal conspiracy that will be committed, because some of the defendants who have been sentenced by the judge only serve prison sentences of only a few months and the amount of fines is very light. This condition then does not provide good education to the public that the crime of distributing pharmaceutical preparations that do not have a distribution permit is a bad act.

3.5 Perpetrators who have been sentenced to repeat the crime

Society generally calls a recedivist convict a person who has committed a crime and then repeats the crime again. Where they are people who have committed a crime and have been sentenced to criminal sanctions by a judge who has the authority to try and decide on the case. In imposing criminal offenses against defendants who commit criminal acts for the first time with recedivists who repeat criminal acts, this is very different because this has indeed been regulated in the provisions of the laws and regulations governing criminal imposition for recedivists. The sentence given by the judge to the defendant who has the status of a recedivis is 1/3 (one third) heavier than the sentence given to the defendant who has committed a crime for the first time.

In the crime of distributing pharmaceutical preparations that did not have a distribution permit that occurred in the City of Ternate, the perpetrator who was convicted in 2018 with case number 282/Pid.Sus/2018/PN.Tte , was sentenced to 6 months in prison and a fine of Rp. 10,000,000, - then repeated the same crime again, violating Article 167 of the Health Law in 2021 with case number 22/Pid.Sus/2021/PN.Tte , sentenced to 6 months in prison and a fine of Rp. 12,000,000,

¹⁸ Eddy OS Hiariej, Principles of Criminal Law, Revised Edition, Cahaya Atma Pustaka, Yogyakarta, 2016, p.43

- but the judge in the decision did not consider these things aggravating for the perpetrators. The judge also did not apply the provisions of the article on repetition of criminal acts or recidivism to perpetrators, which should have been criminal sanctions against perpetrators plus one-third of the maximum penalty.

Table.3 . Data on repetition of criminal acts distribute pharmaceutical preparations that do not have a distribution permit¹⁹

CASE NUMBER	DEFENDANT NAME	JUDGE'S DECISION	
		Chapter	Jail & Fines
282/PID.SUS/2018/PN.TTE	Jabal Nur	197	6 months & 10 million
22/PID.SUS/2021/PN.TTE	Jabal Nur	197	6 months & 12 million

The non-applicability of recedivis provisions for perpetrators/defendants who have committed repeated criminal acts is of course a judge's mistake in their decision. Moreover, in the decision for case number 282/Pid.Sus/2018/PN.Tte, one of the judges who examined and tried and decided on the case again became the judge who made the decision in case number 22/Pid.Sus/2021/PN.Tte. The judge should have known that the defendant had committed the crime twice for the same crime. The judge should consider in his decision to increase the sentence for the defendant with an additional one-third of the maximum sentence.

The judge's decision certainly does not provide education and has a deterrent effect on the community. The community then thinks that even though they commit criminal acts repeatedly, the criminal sanctions that will be given by the judge will remain light and there is absolutely no burden. This is certainly contrary to the theory of punishment, especially contemporary theories, namely the theory of the deterrent effect and the theory of rehabilitation.

Referring to the theory of the deterrent effect which states that one of the goals of crime is to have a *deterrence effect* or deterrent effect so that criminals do not repeat their actions. The purpose of punishment as a *deterrence effect* is essentially the same as the relative theory related to special prevention.²⁰Of course the judge's decision in the crime of distributing pharmaceutical preparations that do not have a distribution permit is contrary to the purpose of punishment as a *deterrence effect* because the perpetrators are still repeating crimes that have previously been committed.

Likewise when referring to the theory of rehabilitation which states that criminals must be corrected in a better direction, so that when they return to society they can be accepted by their community and will no longer repeat their evil deeds.²¹Of course, this theory is not also applied by judges, because the judge's decision is very low, both imprisonment and fines, of course, cannot improve the perpetrators of the crime of distributing pharmaceutical preparations that do not have a distribution permit, because when they have finished serving their criminal terms, the perpetrators then return to repeat their criminal acts. . This means that this theory is not also applied by judges as a basis for consideration in imposing criminal decisions on perpetrators/defendants of criminal acts of distributing pharmaceutical preparations that do not have distribution permits.

¹⁹ Ternate District Court SIPP

²⁰ Ibid., p.42

²¹ Ibid., p. 43

One of the efforts to prevent and control crime is to use criminal law, namely with sanctions in the form of punishment. The purpose of criminal law is to frighten people so they don't commit crimes, either to frighten the crowd or to frighten certain people who have committed crimes before, so that in the future they will not commit crimes again. Another goal is to educate or improve people who like to commit crimes so that they become better people and benefit society.

The purpose of imposing a sentence on the perpetrators of a crime is not solely intended to remedy the situation, but also to educate the accused not to repeat his actions, as well as to prevent the public from committing similar acts.

4. Conclusion

The criminal sanctions imposed by public prosecutors in their criminal charges and by judges in their decisions are very low and far from the maximum criminal penalties specified in Article 197 of Law Number 36 of 2009 concerning Health. The public prosecutor and judges are certainly not aware of the impact that the imposition of very light criminal sanctions will pose a threat to public health. This is because pharmaceutical preparations circulating in the community must be safe, efficacious/beneficial, of good quality and affordable. Therefore, pharmaceutical preparations that are distributed must meet the specified standards and or requirements. However, if the enforcement of this crime is not a serious concern for law enforcement officials, in the end it will be the community that will suffer the consequences. The criminal sanction in the judge's decision, which is very light, certainly cannot provide a deterrent effect on perpetrators who distribute pharmaceutical preparations that do not have a distribution permit. Even perpetrators who have previously been sentenced to criminal punishment through a judge's decision, when they have finished serving their sentence, they repeat the same crime that was committed before. The sad thing is that the perpetrator was again tried and sentenced to the same sentence as the previous sentence, and there was absolutely no criminal charge as a repeat offender.

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