Law Enforcement On Illegal Distribution Of Drug Solvents Without Medical Prescription: A Case Study Of Decision No. 302/Pid.Sus/2023/Pn Cjr Under Law No. 17 Of 2023

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Abstract

This study examines law enforcement mechanisms against the illegal distribution of drug solvents without medical prescription under Law No. 17 of 2023 concerning Health, analyzing the legal framework, enforcement challenges, and policy implications through Decision No. 302/Pid.Sus/2023/PN Cjr. The proliferation of illegal drug sales without medical prescription remains a persistent challenge in Indonesia, driven by factors including public demand for convenient access, cost considerations, and systemic weaknesses in pharmaceutical oversight, creating a critical gap between regulatory provisions and effective law enforcement implementation. Employing a normative legal research approach, this study analyzes positive law provisions, particularly Law No. 17 of 2023 concerning Health and relevant criminal law provisions, to evaluate the legal basis and enforcement mechanisms against unauthorized pharmaceutical distribution. Article 435 of Law No. 17 of 2023 provides a robust legal foundation for prosecuting both individual perpetrators and corporate entities involved in producing or distributing drug solvents without compliance with regulatory requirements. This study finds that Decision No. 302/Pid.Sus/2023/PN Cjr demonstrates the application of the ne bis in idem principle, ensuring defendants are not tried twice for the same criminal act. However, the case reveals significant structural weaknesses in the pharmaceutical regulatory and supervisory systems that continue to undermine effective enforcement. While law enforcement efforts against unauthorized drug distribution have commenced, current mechanisms remain insufficient without comprehensive systemic reform. The judiciary has correctly applied fundamental criminal law principles, yet enforcement

success depends on strengthening digital oversight systems, harmonizing cross-sector regulations, and enhancing law enforcement capacity and digital forensics capabilities. This study contributes to legal scholarship by demonstrating the need for an integrated approach combining criminal prosecution, regulatory reform, and institutional capacity building, recommending that policymakers and law enforcement agencies prioritize modernizing pharmaceutical surveillance through digital systems, harmonizing regulations across relevant agencies, and developing specialized law enforcement units equipped with advanced forensic capabilities to effectively combat pharmaceutical crimes.

I. Introduction

Health is a fundamental human right guaranteed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, as well as the right to obtain health services. To realize this constitutional mandate, the state bears the obligation to provide comprehensive health protection to all Indonesian citizens through the implementation of effective and efficient health programs (Berlian, 2025). One critical pillar of this health system is the rigorous regulation and supervision of drug distribution, particularly prescription drugs that require medical authorization. Prescription drugs constitute a category of pharmaceuticals accessible solely through doctor's prescription due to their potentially dangerous side effects when used without proper medical supervision. The unauthorized use of prescription drugs poses severe public health risks, ranging from antibiotic resistance and pharmaceutical poisoning to mortality (Pratama, 2020). However, despite regulatory frameworks, the illegal distribution of prescription drugs without medical prescription remains endemic in Indonesia. According to data from the Food and Drug Supervisory Agency (BPOM), 2,847 cases of illegal drug trafficking were documented throughout 2022, with 35% involving the sale of hard drugs without medical prescription. This phenomenon extends beyond traditional pharmaceutical outlets to online platforms, retail stores, and informal street vendors operating without regulatory oversight or awareness of associated health risks. The United Nations Office on Drugs and Crime (UNODC) similarly reports that the illicit pharmaceutical trade constitutes a significant public health threat globally, with Indonesia emerging as a substantial market within this illicit network (UNODC, 2023).

The proliferation of illegal drug distribution is driven by multifaceted factors, including consumer demand for convenient access, cost differentials compared to physician consultations, and systemic supervisory deficiencies (Ahmad, 2023). Public consumption patterns frequently reflect personal experience or informal recommendations rather than evidence-based medical guidance, exacerbated by unverified and potentially misleading health information disseminated via digital platforms. The public health ramifications of unregulated hard drug consumption warrant considerable concern. The World Health Organization (WHO) emphasizes that irrational antibiotic use has precipitated alarming antibiotic resistance rates that undermine infectious disease treatment efficacy (Sinaga, 2021). Indonesia's antibiotic resistance levels—43% for Escherichia coli and 28% for Staphylococcus aureus—substantially exceed WHO standards of 5%, representing a critical epidemiological threat. Beyond antibiotic resistance, unsupervised hard drug consumption generates severe adverse consequences including organ dysfunction, immunological compromise, and fatal outcomes from overdose or drug interactions. The National Patient Safety Commission documented a 15% increase in adverse drug reaction cases in 2023 relative to 2022, with 60% attributable to medication use lacking proper medical supervision, underscoring the urgency for enhanced pharmaceutical circulation controls (National Patient Safety Commission, 2023).

In response to these public health exigencies, intensified law enforcement in the health sector represents a critical policy imperative. Effective law enforcement functions dually as both a repressive mechanism to prosecute violators and a preventive instrument to deter subsequent violations. Historically, weak enforcement capacity has facilitated the proliferation of unauthorized prescription drug sales, undermining public health protection objectives. Prior to recent legislative reform, the Indonesian legal framework governing drugs and medical devices was primarily codified in Law Number 36 of 2009 concerning Health. However, evolving complexities in pharmaceutical markets, regulatory challenges, and enforcement gaps necessitated comprehensive legislative revision (Nurrohmah & Hufron, 2023). The enactment of Law Number 17 of 2023 concerning Health on July 18, 2023, superseding its 2009 predecessor, represents a substantive advancement in pharmaceutical regulation and enforcement capacity. This legislation establishes heightened criminal sanctions for unauthorized hard drug distribution, imposing maximum imprisonment of 5 years and/or maximum fines of IDR 5,000,000,000 (five billion rupiah), and fortifies the institutional authority of the Food and Drug Supervisory Agency (BPOM) and Civil Servant Investigators (PPNS) in

pharmaceutical supervision and violation investigation (Rusmini, 2017; ASSYIVA & Triana, 2023).

Despite the legislative enhancements embodied in Law No. 17 of 2023, significant research gaps persist regarding the practical implementation of these criminal provisions within Indonesian judicial contexts and the efficacy of law enforcement mechanisms in combating unauthorized pharmaceutical distribution. Limited scholarly attention has addressed how Indonesian courts interpret and apply the new statutory framework, the consistency of sentencing practices, or the coordination mechanisms between investigative agencies and judicial institutions. Furthermore, empirical analysis of emerging criminal methodologies and organized distribution networks remains underdeveloped in Indonesian legal literature. Decision Number 302/Pid.Sus/2023/PN Cjr, adjudicated by the Cianjur District Court, provides an invaluable jurisprudential case study for examining these implementation dynamics. This case involved prosecution of unauthorized Tramadol distribution—a controlled opioid analgesic—and illustrates the evolving criminal sophistication, inter-agency coordination requirements, and judicial application of Law No. 17 of 2023's substantive and procedural provisions.

Research Purpose and Significance: This study systematically examines law enforcement mechanisms against illegal hard drug distribution under Law No. 17 of 2023, utilizing Decision Number 302/Pid.Sus/2023/PN Cjr as an analytical framework to evaluate statutory implementation efficacy, identify institutional coordination dynamics, assess sentencing proportionality, and delineate implications for comprehensive pharmaceutical regulatory reform. By bridging the identified research gap, this analysis contributes empirical jurisprudential evidence to ongoing academic discourse regarding health law enforcement effectiveness in Indonesia and generates policy-relevant recommendations for strengthening pharmaceutical governance structures and inter-agency coordination frameworks essential for protecting public health.

2. Research Method

This study employs a mixed normative legal research methodology combining doctrinal legal analysis with instrumental case study analysis to examine law enforcement mechanisms against unauthorized hard drug distribution under Law Number 17 of 2023 concerning Health. The primary methodological framework is normative legal research, which systematically analyzes applicable positive law

provisions, statutory mandates, and constitutional protections to elucidate the legal foundation and substantive requirements governing pharmaceutical regulation and criminal enforcement. This approach involves comprehensive examination of Law Number 17 of 2023 concerning Health, relevant criminal law provisions under the Criminal Code (Kitab Undang-Undang Hukum Pidana), and ancillary regulations governing drug supervision and distribution standards.

Complementing this doctrinal analysis, the study incorporates a case approach methodology through detailed examination of Decision Number 302/Pid.Sus/2023/PN Cjr adjudicated by the Cianjur District Court. This instrumental case study analysis serves multiple analytical functions: first, it provides empirical grounding for understanding practical judicial application of statutory provisions; second, it illuminates the concrete evidentiary requirements, procedural mechanisms, and sentencing rationales employed by adjudicating panels; and third, it facilitates identification of institutional coordination dynamics between investigating agencies, forensic laboratories, and judicial institutions. By analyzing this exemplary case, the study determines the efficacy of legal enforcement mechanisms, identifies implementation challenges, and assesses the conformity between statutory objectives and judicial outcomes.

Data collection procedures employed secondary source analysis exclusively, comprising four primary categories: statutory instruments and legislative materials including Law No. 17 of 2023 and subordinate regulations; legal doctrine and academic commentary from peer-reviewed journals and authoritative legal treatises; jurisprudential analysis of reported court decisions and judicial precedent; and technical documentation including forensic laboratory examination reports and investigative findings integrated within the court record. Literature review methodology followed systematic procedures: identification of relevant legal sources through targeted searches of indexed legal databases (HeinOnline, Scopus, Indonesian legal repositories); critical evaluation of source authority, recency, and relevance; and integration of materials within coherent analytical frameworks. Temporal focus prioritized contemporary scholarship (2020–2024) from indexed journals and recent legislative materials to ensure engagement with current academic discourse and regulatory evolution.

Data analysis employed descriptive-analytical methodology operationalized through sequential stages: first, normative analysis identifying statutory provisions, legal

principles, and constitutional mandates applicable to pharmaceutical regulation; second, factual reconstruction synthesizing evidentiary materials, investigative findings, and trial proceedings documented within Decision No. 302/Pid.Sus/2023/PN Cjr; third, normative-factual conformity analysis examining alignment or divergence between statutory requirements and judicially-established facts; fourth, comparative evaluation assessing the correspondence between sentencing outcomes and normative proportionality standards; and fifth, synthesis identifying systemic law enforcement effectiveness, institutional coordination mechanisms, substantive legal gaps, and policy implications. Throughout analysis, particular attention addressed the application of fundamental criminal law principles, including the *ne bis in idem* principle (prohibition on double prosecution), evidentiary adequacy, prosecutorial charging decisions, and sentencing proportionality.

The study's analytical scope encompasses three critical dimensions: substantive law analysis delineating the elements of criminal liability under Article 435 of Law No. 17 of 2023 and their manifestation in Decision No. 302/Pid.Sus/2023/PN Cjr; procedural law analysis examining investigative procedures, forensic examination protocols, and adjudicative processes; and institutional analysis evaluating inter-agency coordination between the National Police Criminal Investigation Agency, BPOM, Civil Servant Investigators, and judicial institutions. Through this multidimensional analytical approach, the study generates comprehensive jurisprudential evidence regarding law enforcement implementation efficacy and provides empirically-grounded policy recommendations for institutional strengthening and pharmaceutical governance reform.

3. Results and Discussion

Criminal Law Regulations on the Sale of Hard Drugs Without a Prescription in Law No. 17 of 2023

Law Number 17 of 2023 concerning Health represents a major shift in the paradigm of health law regulation in Indonesia, especially in terms of the distribution of prescription drugs. This transformation is clearly visible from the conceptual redefinition of drugs in Article 1 number 21, which expands the scope from merely "materials or combinations of materials" to include "biological products used to influence or investigate physiological systems or pathological conditions in order to

determine diagnosis, prevention, healing, recovery, health promotion and contraception." This expansion of the definition reflects the adoption of a holistic approach to public health protection, which is no longer limited to curative aspects alone, but also integrates preventive and promotive dimensions as a whole. This approach marks a shift from reactive health governance to more proactive health risk management, in line with the principles of modern health law (Astuti et al., 2024). Within the framework of Law Number 17 of 2023, prescription drugs are classified as high-risk pharmaceutical preparations whose use requires medical supervision. This is based on Article 138 which establishes three basic principles in pharmaceutical distribution, namely safety, efficacy or benefits, and quality. Article 138 paragraph (2) explicitly requires pharmaceutical preparations to be distributed through facilities that meet standards, which means implementing the principle of a controlled distribution system. This provision ensures that the entire distribution chain is under the supervision of regulatory authorities. On the other hand, Article 138 paragraph (3) emphasizes that supervision of the distribution of pharmaceutical preparations is the responsibility of the Central Government, which implicitly strengthens the role of BPOM as the main regulatory institution in national pharmaceutical governance. This centralized supervision model is a form of systemic protection against potential misuse of pharmaceutical product distribution.

The obligation to use a doctor's prescription to obtain prescription drugs as stated in Article 139 is a reflection of the principle of professional gatekeeping in medical practice. This provision is not merely an administrative procedure, but reflects the theory of medical professional liability theory, which places health workers as legitimate intermediaries and has the competence to control access to high-risk drugs (Ariestiana, 2020). This is important considering the problem of information asymmetry in pharmaceutical consumption, where the general public generally does not have sufficient medical knowledge to assess the appropriateness of using prescription drugs without professional judgment.

In terms of criminal structure, Article 435 of Law No. 17 of 2023 adopts a comprehensive criminalization approach, with five constitutive elements that must be fulfilled cumulatively. First, the element of "every person" reflects the expansion of legal responsibility to include both individuals and corporations, which is relevant considering the involvement of business entities in the pharmaceutical distribution chain. Second, the element of "producing or distributing" shows legislative recognition of the integrated character of the pharmaceutical supply chain, and the

use of an alternative structure ("or") allows for the ensnarement of perpetrators who are only involved in one stage. Third, the object of the crime in the form of "pharmaceutical preparations and/or medical devices" covers a broad scope of products, while fourth, the element "which does not meet the standards and/or requirements for safety, efficacy/benefit, and quality" is a marker of the unlawful nature of the act. Fifth, the element of intent (mens rea) is indeed not formulated explicitly, but can be constructed through systematic interpretation of norms, indicating the application of the doctrine of implied intent, which is commonly used in specialist crimes such as pharmaceutical violations. In the context of selling prescription drugs without a prescription, the perpetrator's awareness of violating regulations can generally be proven through the pattern of actions and conditions that accompany it.

The criminal sanctions in Article 435, which are a maximum imprisonment of five years and/or a maximum fine of Rp5,000,000,000.00, indicate the application of a graduated sanctions model, which is in line with the principle of proportionality in the theory of criminal justice. The amount of this criminal threat reflects consideration of the level of social danger, the economic benefits obtained by the perpetrator, and the deterrent impact on the wider community. The use of an alternative-cumulative structure ("and/or") gives judges the flexibility to adjust the type and severity of sanctions to the concrete conditions of the case, including considering aggravating and mitigating factors. This approach is in accordance with recent developments in restorative justice and therapeutic jurisprudence. Institutional innovation in this Law is also reflected in the existence of Civil Servant Investigators (PPNS) for Health as regulated in Article 445, which indicates a specialist law enforcement model. This approach is based on the recognition that handling violations of the law in the pharmaceutical sector requires technical expertise that is not always possessed by general law enforcement officers. The investigative authority granted to PPNS, from receiving reports to confiscating evidence, supports the integration of technical-regulatory expertise with the criminal justice process. However, the author observes the potential for overlapping jurisdiction between PPNS Health and conventional law enforcement officers (National Police and Prosecutor's Office), which can hinder the effectiveness of prosecution if not regulated through a clear coordination mechanism and standardized procedural protocols.

The prominent implementation challenge in this context is the issue of concursus (concurrent criminal acts), where one act can fulfill elements in several criminal

provisions at once, such as Article 433 (forgery), Article 434 (unlicensed distribution), Article 435 (distribution without meeting standards), and Article 436 (misleading advertising). In this condition, the author emphasizes the importance of constructing a careful and comprehensive indictment in order to be able to represent the entire criminal behavior of the perpetrator without violating the principle of ne bis in idem. Handling such cases requires high expertise from law enforcement officers in criminal law theory and a deep understanding of the pharmaceutical regulatory framework (Dorn & South, 1990).

Finally, the synchronization between Law No. 17 of 2023 with a broader criminal law framework, such as the Criminal Code or other special laws, is crucial to ensure legal certainty and consistency in enforcement. The author notes that the absence of explicit transitional provisions and unclear relationships with previous pharmaceutical regulations can create legal uncertainty that has the potential to hinder effective implementation. Therefore, harmonization of regulations and the preparation of standardized prosecution guidelines are urgent needs to ensure that the criminal provisions in Law No. 17 of 2023 can be optimally enforced in order to prevent and prosecute pharmaceutical crimes comprehensively.

Law Number 17 of 2023 concerning Health constitutes a substantive paradigmatic transformation in Indonesian pharmaceutical regulation, particularly regarding prescription drug distribution and enforcement mechanisms. This evolutionary shift is manifested through comprehensive redefinition of pharmaceutical concepts articulated in Article 1 number 21, which substantially expands the definitional scope from reductionist "materials or combinations of materials" to encompass "biological products utilized to influence or investigate physiological systems or pathological conditions for diagnosis, prevention, healing, recovery, health promotion, and contraception purposes." (Angarola & Beach, 1996) This definitional expansion reflects adoption of a holistic public health protection paradigm transcending purely curative dimensions to integrate preventive and promotive health governance modalities consonant with contemporary health law principles (Astuti et al., 2024). Such reconceptualization represents a fundamental transition from reactive health governance frameworks toward proactive health risk management strategies, demonstrating the legislature's recognition of evolving epidemiological and public health challenges.

Within Law Number 17 of 2023's regulatory architecture, prescription drugs are

categorized as high-risk pharmaceutical preparations necessitating supervised medical administration. This classification foundation derives from Article 138, which establishes three fundamental distribution principles: safety, efficacy/benefit, and quality. Article 138 paragraph (2) mandates pharmaceutical distribution exclusively through regulatory-compliant facilities, operationalizing a controlled distribution system ensuring comprehensive supervisory coverage throughout the distribution chain. Complementarily, Article 138 paragraph (3) designates Central Government as the primary supervisory authority, effectively reinforcing the Food and Drug Supervisory Agency's (BPOM) institutional preeminence in national pharmaceutical governance. This centralized supervisory model instantiates a systemic safeguard mechanism against potential pharmaceutical distribution misuse and unauthorized circulation of unverified pharmaceutical products.

The prescription requirement articulated in Article 139 reflects application of professional gatekeeping principles within medical practice, transcending mere administrative procedure to embody medical professional liability theory positioning health workers as legitimate intermediaries possessing requisite competence for controlling high-risk drug access (Ariestiana, 2020). This regulatory architecture addresses fundamental information asymmetries characterizing pharmaceutical consumption, wherein the general public typically lacks sufficient medical knowledge to assess independently the appropriateness of prescription drug utilization without professional judgment. The prescription requirement thus functions as a critical epistemic barrier protecting public health by ensuring that pharmaceutical access decisions incorporate professional medical evaluation and individualized clinical assessment.

Regarding criminal structure, Article 435 of Law No. 17 of 2023 establishes a comprehensive criminalization framework encompassing five cumulatively required constitutive elements. First, the "every person" element expands legal responsibility to encompass both individual perpetrators and corporate entities, reflecting recognition of business entities' participation throughout pharmaceutical distribution networks. Second, the "producing or distributing" formulation demonstrates legislative acknowledgment of the pharmaceutical supply chain's integrated character, with the alternative structure ("or") enabling prosecution of perpetrators engaged at singular supply chain stages. Third, the crime's object "pharmaceutical preparations and/or medical devices" encompasses extensive product categories within expanded definitional parameters. Fourth, the "does not meet the standards

and/or requirements for safety, efficacy/benefit, and quality" element constitutes the marker of unlawful conduct, establishing objective criteria for determining criminal liability. (Gostin, 1998) Fifth, while explicit mens rea (criminal intent) formulation is absent, criminal intent can be reconstructed through systematic norm interpretation, reflecting application of the implied intent doctrine customary in specialized pharmaceutical violation prosecutions. In unauthorized prescription drug sales contexts, perpetrators' awareness of regulatory violations is typically demonstrable through conduct patterns and accompanying circumstances, such as concealment practices, organized distribution networks, profit extraction, and deliberate circumvention of authorized channels.

The criminal sanctions prescribed in Article 435 maximum imprisonment of five years and/or maximum fines of Rp5,000,000,000 (five billion rupiah) reflect application of graduated sanctions models aligned with criminal justice proportionality principles. These sanction levels contemplate social danger magnitude, perpetrator economic benefits derived from violations, and deterrent impacts on broader community conduct. The alternative-cumulative structure ("and/or") affords judicial discretion enabling sanction type and severity calibration to concrete case circumstances, incorporating aggravating and mitigating factor assessment. This approach aligns with contemporary restorative justice and therapeutic jurisprudence developments, facilitating individualized justice outcomes responsive to specific offense and offender characteristics.

Institutional innovation within Law No. 17 of 2023 is substantially manifested through establishment of specialized Civil Servant Investigators (PPNS) for Health, as articulated in Article 445. This specialist law enforcement model reflects recognition that pharmaceutical sector violation prosecution demands technical expertise frequently absent among general law enforcement personnel. PPNS authority—extending from complaint receipt through evidence confiscation integrates technical-regulatory expertise with criminal justice procedures, theoretically optimizing enforcement effectiveness. However, potential jurisdictional overlaps between PPNS Health and conventional enforcement agencies (National Police, Prosecutor's Office) create implementation challenges. Without explicit coordination mechanisms and standardized procedural protocols, such overlapping authority risks prosecutorial inefficiency, duplicative investigations, and inconsistent enforcement outcomes. Therefore, development of comprehensive inter-agency coordination frameworks defining investigative authority demarcation, information-

sharing protocols, and unified prosecution strategies is essential for institutional effectiveness.

A prominent implementation complexity emerges from concursus doctrine (concurrent criminal acts), wherein single perpetrator conduct simultaneously satisfies elements within multiple criminal provisions such as Article 433 (forgery), Article 434 (unlicensed distribution), Article 435 (distribution without meeting standards), and Article 436 (misleading advertising). Concursus scenarios require meticulous indictment construction comprehensively representing the perpetrator's entire criminal conduct while scrupulously observing the *ne bis in idem* principle (prohibition on double prosecution for identical acts). Effective concursus management demands elevated legal expertise in criminal law theory and sophisticated comprehension of pharmaceutical regulatory frameworks. Prosecutorial training programs and prosecution guideline development addressing concursus scenarios are therefore critical institutional requirements for ensuring consistent, legally-sound prosecution outcomes.

Additionally, synchronization between Law No. 17 of 2023 and broader criminal law instruments—particularly the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) and other sectoral regulatory frameworks—is essential for ensuring legal certainty and enforcement consistency. The absence of explicit transitional provisions addressing the legislative succession from Law No. 36 of 2009 and unclear definitional relationships between Law No. 17 of 2023 and antecedent pharmaceutical regulations generate legal ambiguities potentially impeding implementation efficacy. For example, undefined relationships between Article 435 violations and broader criminal code provisions regarding fraud, corruption, or organized crime can create prosecutorial uncertainty regarding appropriate charging decisions and applicable legal theories.

Furthermore, regulatory harmonization necessitates alignment between Law No. 17 of 2023's pharmaceutical standards and implementation mechanisms established through subordinate regulations issued by BPOM, the Ministry of Health, and other relevant agencies. (Lipman, 2013) Inconsistencies or gaps within subordinate regulation particularly regarding pharmaceutical standards definitions, distribution channel specifications, and quality assessment protocols can undermine substantive law enforcement by creating technical implementation obstacles. Therefore, urgent requirements include: (Gardner, 1989) (1) systematic harmonization of Law No. 17 of

2023 with the Criminal Code and sector-specific legislation; (2) development of comprehensive transitional provisions explicitly addressing regulatory succession and interpretation frameworks for borderline cases; (3) establishment of standardized prosecution guidelines addressing concurrent crime scenarios, charging decision criteria, and sentencing considerations; (4) creation of inter-agency coordination protocols explicitly delineating investigative authority, information-sharing obligations, and prosecution responsibility; and (5) development of subordinate regulations clarifying pharmaceutical standards, quality assessment procedures, and authorized distribution channels. Such comprehensive legal and institutional reforms are urgently necessitated to optimize the criminal provisions of Law No. 17 of 2023, thereby enabling effective pharmaceutical crime prevention, comprehensive prosecution of violators, and enhanced public health protection across Indonesian jurisdictions.

Critical Analysis of the Sale of Hard Drugs Without a Doctor's Prescription: A Study of Decision No. 302/Pid.Sus/2024/PN Cjr in the Perspective of Contemporary Health Law

The distribution of prescription drugs without a doctor's prescription is one of the serious problems in the drug monitoring system in Indonesia. Decision No. 302/Pid.Sus/2024/PN Cjr which tried the illegal Tramadol sales case is not only a legal matter, but also reflects the complexity of the regulation and supervision of drug distribution. This case, involving the defendant Muthillah bin Azhari M. Yusuf, shows the weakness of the system in monitoring the distribution of prescription drugs and tests the extent to which criminal law, especially Law No. 17 of 2023 concerning Health, can provide adequate protection. Although the defendant was sentenced to criminal penalties, the root of the problem such as weak supervision and disparities in access to health services have not been fully addressed. Without a comprehensive approach, law enforcement efforts risk only being a temporary solution. Article 435 of Law No. 17 of 2023 states that anyone who produces or distributes drugs that do not meet safety and quality standards can be punished with up to 12 years in prison or a maximum fine of IDR 5 billion. However, this regulation still requires a clearer explanation of what is meant by "does not meet standards." This provision is still too general and depends on expert opinion, so it can lead to different interpretations. In addition, the absence of minimum sanction provisions means that court decisions can vary greatly even though the cases are similar.

Another problem that arises is the inconsistency of the regulations between the Health Law and sectoral regulations such as PP No. 51 of 2009 and BPOM Regulation No. 28 of 2018. The difference in the definition of hard drugs between these regulations creates confusion in legal practice. This condition can be exploited by irresponsible parties. Therefore, a comprehensive legal overhaul is needed so that the existing regulations are more harmonious and do not overlap.

The defendant's method of selling Tramadol through the COD payment system and online communication shows that pharmaceutical crimes are now utilizing technology. Unfortunately, the existing regulations are not sufficient to regulate the sale of drugs digitally. The Health Law does not explicitly regulate the trade in drugs via online platforms, even though this practice is increasingly widespread. This shows the need for more specific regulations regarding drug distribution in the digital era and strengthening digital forensic capabilities by law enforcement officers.

In this case, the judge sentenced the defendant to 1 year and 6 months in prison and a fine of IDR 1 billion. This decision did take into account the defendant's cooperative attitude, but the sentence still felt light when compared to the potential dangers of Tramadol abuse. The absence of additional sanctions such as a ban on running a similar business is also an important note, because it could open up opportunities for recidivism. In the context of community protection, sanctions should better reflect long-term prevention efforts.

Tramadol is a painkiller that works on the central nervous system. Its effects can cause dependence if misused. Unfortunately, Tramadol's legal status in Indonesia is still classified as Certain Drugs (OOT) and does not include psychotropics, although many countries have included Tramadol in the category of substances that are more tightly controlled. As a result, supervision of this drug is still weak and prone to misuse. In addition, the distribution of illegal Tramadol creates a burden on the health system. The costs of handling overdoses and rehabilitation are the responsibility of the state. However, this has not been considered in imposing sanctions. Ideally, an analysis of the economic impact on public health is also used as a basis for determining punishment to better reflect the losses caused.

This case does show good cooperation between the police, BPOM, and the health department. However, the main perpetrator who supplied the drugs (with the initials

Ampon) has not been caught, indicating that law enforcement is still reactive. What is needed is a proactive approach that targets the distribution network and flow of funds for pharmaceutical crime perpetrators. Digital forensic capabilities are also still limited so that important information from confiscated communication devices is not utilized optimally.

To prevent similar cases, Indonesia needs to build a more modern pharmaceutical monitoring system. Technologies such as blockchain and digital tracking for each batch of drugs can increase transparency in drug distribution. Countries such as Turkey and Brazil have succeeded in suppressing the circulation of illegal drugs using this system. The Health Law also needs to regulate sanctions based on the level of risk and the amount of drugs distributed. Currently, the threat of punishment is too broad and can confuse judges in determining the verdict. There needs to be a clear category of sanctions so that the application of punishment is fairer and more consistent. Technology can also be utilized in monitoring online drug sales. Artificial intelligence (AI) and machine learning can be used to detect suspicious patterns in online transactions. With a technology-based early warning system, violations can be prevented early on.

This case provides important lessons for the development of pharmaceutical crime theory, especially in developing countries. Technology-based crimes that collide with conventional legal frameworks create new challenges. Situational prevention theory that focuses on reducing opportunities for crime can be an alternative approach. From a policy perspective, this case shows that weak pharmaceutical governance is not only a technical problem, but also related to governance. There needs to be a paradigm shift from compliance-based regulation to risk-based regulation that is more adaptive to the challenges of the times.

So according to the author, Decision No. 302 / Pid.Sus / 2024 / PN Cjr is indeed an important initial step in prosecuting perpetrators of pharmaceutical crimes. However, without comprehensive reform of the supervision and law enforcement system, the circulation of illegal drugs will continue to be a threat. Integrated steps are needed that include legal harmonization, strengthening technology, sanction reform, increasing institutional capacity, and integrating prevention policies so that this problem can be resolved sustainably and have a real impact on public health.

Decision No. 302/Pid.Sus/2023/PN Cjr represents a jurisprudentially significant initial

step toward systematic pharmaceutical crime prosecution and represents commendable law enforcement coordination. However, this case simultaneously illuminates fundamental systemic deficiencies that isolated criminal prosecution cannot remediate: regulatory fragmentation, definitional ambiguity, technological regulatory lag, investigative capacity constraints, and sentencing architecture insufficiently reflecting pharmaceutical crime's public health impact.

Sustainable pharmaceutical crime suppression and protection of public health requires fundamental reconceptualization of Indonesian pharmaceutical governance—transitioning from reactive criminal prosecution toward proactive risk-based regulation, from compliance-centered frameworks toward harm-reduction-focused prevention, and from fragmented institutional authority toward integrated inter-agency coordination. Such comprehensive reform mandates coordinated legislative action, institutional capacity development, technological infrastructure investment, and paradigmatic reconceptualization of pharmaceutical regulatory governance. Without such comprehensive intervention, isolated prosecutorial successes risk perpetuating surface-level enforcement while fundamental systemic vulnerabilities enabling unauthorized pharmaceutical distribution persist.

This analysis underscores that effective pharmaceutical crime prevention and public health protection constitute governance challenges transcending criminal law doctrine, demanding integrated intervention across regulatory, institutional, technological, and policy dimensions. Indonesian policymakers, law enforcement agencies, regulatory authorities, and judicial institutions must collectively embrace comprehensive reform imperatives articulated through this analysis to advance pharmaceutical governance effectiveness and ultimately realize the constitutional mandate of health protection for all Indonesian citizens.

4. Conclusion

The conclusion of this study are US follows:

Based on comprehensive examination of criminal law regulations articulated within Law Number 17 of 2023 concerning Health, this study concludes that unauthorized prescription drug distribution has been subjected to substantive legislative regulation comprehensively emphasizing pharmaceutical safety standards, quality requirements, and compliance with legitimate distribution mechanisms. The criminal

provisions stipulated in Article 435, encompassing cumulative elements of perpetrator identification, production/distribution conduct, pharmaceutical preparation/medical device classification, safety/efficacy/quality deficiency standards, and implied criminal intent, provide robust legal foundation for prosecuting both individual and corporate perpetrators engaged in unauthorized prescription drug production or distribution. The statutory framework establishes sufficiently comprehensive scope and sanction severity to address serious pharmaceutical crimes, reflecting legislative recognition of public health dimensions inherent in unauthorized drug circulation. However, despite this legislative comprehensiveness, critical deficiencies substantially constrain enforcement efficacy and legal certainty. The ambiguous statutory language regarding "does not meet standards and/or requirements for safety, efficacy/benefit, and quality" necessitates substantial interpretive construction dependent upon forensic expert opinion, prosecutorial discretion, and judicial interpretation—generating divergent outcomes in factually comparable cases. Furthermore, regulatory fragmentation persists between Law No. 17 of 2023 and subordinate instruments—particularly Government Regulation No. 51 of 2009, BPOM Regulation No. 28 of 2018, and the Criminal Code—creating definitional inconsistencies and interpretive ambiguities that enable regulatory evasion. This analysis therefore concludes that while Article 435's legal foundation proves substantively adequate, comprehensive regulatory harmonization remains an urgent necessity. Explicit definitional alignment among principal legislation and subordinate regulatory instruments, clarification of hierarchical interpretive relationships, and development of unified pharmaceutical classification systems aligned with international standards (UNODC, WHO) represent essential prerequisites for ensuring consistent legal application, preventing overlap or double interpretation, and ultimately strengthening pharmaceutical law enforcement effectiveness. Additionally, the active institutional participation of Civil Servant Investigators (PPNS) Health, combined with coordinated engagement of National Police and BPOM, demonstrates commendable inter-agency collaboration. However, careful prosecution processes must consistently apply the *ne bis in idem* principle and general criminal law principles to ensure that law enforcement functions not merely as repressive mechanism but also as preventive instrument capable of deterring future violations and protecting public health through comprehensively addressing unauthorized pharmaceutical circulation.

Decision No. 302/Pid.Sus/2023/PN Cjr reflects that law enforcement against the circulation of prescription drugs without medical authorization in Indonesia has been initiated, yet simultaneously illuminates profound structural weaknesses persisting within pharmaceutical regulation and supervision systems. This case underscores the

necessity for comprehensive reform transcending isolated criminal prosecution, requiring simultaneous intervention across multiple governance dimensions: strengthening digital supervision systems and establishing explicit regulatory frameworks for online pharmaceutical transactions; harmonizing cross-sectoral regulations eliminating definitional inconsistencies and interpretive ambiguities; increasing law enforcement and digital forensic capacity enabling network-level analysis and sophisticated electronic evidence examination; and paradigmatically reconceptualizing pharmaceutical governance from reactive prosecution toward proactive risk-based prevention approaches. The defendant's sophisticated utilization of digital communication technology, organized distribution networks, and cash-on-delivery mechanisms demonstrates that contemporary pharmaceutical crime exploits digital marketplaces inadequately addressed by existing legal frameworks. Furthermore, the unapprehended principal supplier and underdeveloped digital forensic capacity reveal investigative limitations constraining comprehensive network dismantling and supply source elimination. The long-term effectiveness of eradicating unauthorized pharmaceutical circulation depends fundamentally upon integrated approaches combining legal harmonization, technological infrastructure investment, institutional capacity enhancement, and prevention-based public health policies. Implementation of blockchain-based pharmaceutical supply chain tracking, artificial intelligence-enabled transaction anomaly detection, specialized pharmaceutical crime investigative units, comprehensive sentencing frameworks incorporating public health impact assessment, and inter-agency coordination protocols establishing unified investigative authority represent essential components of such comprehensive reform. Without such multidimensional intervention addressing systemic vulnerabilities, isolated prosecutorial successes risk perpetuating surface-level enforcement while fundamental enabling conditions facilitating unauthorized drug circulation persist, thereby undermining the constitutional mandate of comprehensive health protection for all Indonesian citizens.

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