

# The Protection of Consumers Owing to The Distribution of Hard Drugs (List G) In Relation to The Law of The Republic of Indonesia Number 36 Of 2009 Concerning Health in The District of Bandung.

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**Received:** 20 January 2023

**Accepted:** 15 April 2023

**Citation:** Prayuti Y, Faddil DW M, Nugraha GW, Reychan M, Pamungkas D (2023) The Protection of Consumers Owing to The Distribution of Hard Drugs (List G) In Relation to The Law of The Republic of Indonesia Number 36 Of 2009 Concerning Health in The District of Bandung. *History of Medicine* 9(1): 1395–1406. <https://doi.org/10.17720/2409-5834.v9.1.2023.165>

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## Abstract

Health is a Human Right, and one of the elements of welfare that must be realised in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. The health Law, which regulates law enforcement against the distribution of List G drugs, is regulated in Chapter XX from Article 190 to Article 201 (12 articles). However, the criminal sanction, namely the illegal distribution of List G drugs, only touches the production stage and the circulation stage, without touching the active buyers or those who own, store and control or use them, as explained in Article 196 and Article 197. This study aims to examine law enforcement against the circulation and abuse of hard drugs (List G) in the Bandung Regency Region as well as constraints and efforts in its implementation. This research was conducted using descriptive analysis method, namely providing the data studied about the state of the object under study. Based on the results of the research, it can be concluded that the distribution and or misuse of Hard Drugs (List G) in the Bandung Regency area without permission and carried out consciously is an act that is included in a criminal offence so that it needs to be criminally accounted for as well, as regulated in Article 196 and Article 197, The obstacles are: Rules that are less strict in providing sanctions against drug users, Lack of public understanding of illegal drugs and The number of unscrupulous doctors who easily provide prescriptions without the correct qualifications.

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## Keywords

Protection, List G Drugs, Society.

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The idea of the rule of law has long been developed by philosophers from Ancient Greece. Plato, early on in "the Republic" argued that it is possible to realise the ideal

state to achieve goodness, which is based on goodness. For this reason, power must be held by a person who knows the good, namely a philosopher (the philosopher king). But in his books "the Statesmen" and "the Law", Plato states that what can be realised is a form of the second best that places the rule of law.<sup>2</sup>

A government that is able to prevent the decline of one's power is a government by law. In line with Plato, the purpose of the State according to Aristotle is to achieve the best life possible, which can be achieved by the rule of law. Law is a form of collective wisdom of citizens, so the role of citizens is required in its formation.<sup>3</sup>

As a state concept, the rule of law is not something new in the discussion of how the State is run and managed. The idea of the rule of law that has been developed by experts both by Plato, Aristotle, John Locke, Montesquieu and others, is still vague and submerged for a very long time, then reappears more explicitly in the 19th century, namely with the emergence of the concept of rechtsstaat. The notion of rechtsstaats is basically based on the Continental European legal system.<sup>4</sup>

The basic conditions of rechtsstaat proposed by Burkens, in his writing on the Idea of the State of Law in the Indonesian State System are as follows:<sup>5</sup>

1. The principle of legality, every act of government must be based on the basis of legislation (wetterlike-grondslag). On this basis, formal laws and the Constitution itself are the foundation of governmental action. In this regard, lawmakers are an important part of the rule of law.
2. The division of powers, this requirement implies that state power should not rest in one hand.
3. Basic rights (grondrechten), basic rights are the target of legal protection for the people and also limit the formation of laws.
4. Judicial oversight provides the people with a channel through free courts to test the legitimacy of government actions (rechtmatigeidstoetsing).

Indonesia, as a country born in the 20th century, adopted the concept of rule of law in accordance with the principles of constitutionalism. This can be seen from the agreement (consensus) of the Indonesian people since the 1945 Constitution as the Indonesian state constitution was established. This agreement, in its development, transformed into a common ideal commonly referred to as the philosophy of state or staatsidee (state ideals) which functions as a filosofische grondslag and common platforms or kalimatun sawa among fellow citizens in the context of state life.<sup>6</sup>

POLRI (Indonesian National Police) is a government institution that has the main task of enforcing the law, maintaining KAMTIBMAS (Security and Public Order) and providing protection, protection and services to the community. In carrying out this main task, the Police institution requires police functions that have their respective work areas that are interrelated and integrated. One of the police functions is Satnarkoba (Drug Investigation Unit) is an element of the main task implementer under the Chief of Police. Satnarkoba is tasked with organising / fostering the function of investigating and investigating drug crimes, as well as coordinating in the context of guidance, prevention, rehabilitation of victims and drug abuse.<sup>7</sup>

Based on the results of research conducted by the author at the Bandung Police Narcotics Unit, the author found that the amount of abuse and distribution of Schedule G drugs in the Bandung Police jurisdiction is very concerning, where the number of perpetrators, victims and the amount of Schedule G drugs circulating and successfully revealed in large quantities each year, the following data that the author obtained, are as follows:

### **Recapitulation of Cases of Distribution of G-List Hard Drugs (Limited Hard Drugs) in the Bandung Police Jurisdiction**

<sup>2</sup> Jimly Asshiddiqie, HTN dan Pilar-Pilar Demokrasi, Konstitusi Press, Jakarta, 2006, hlm. 147.

<sup>3</sup> Ibid.

<sup>4</sup> Padmo Wahjono, Pembangunan Hukum di Indonesia, Ind-Hill Co, Jakarta, 1989, hlm. 30

<sup>5</sup> Ibid, hlm. 38

<sup>6</sup> Jimly Asshiddiqie, Konstitusi dan Konstitusionalisme Indonesia, Sinar Grafika, Jakarta, 2010, hlm.22.

<sup>7</sup> <https://www.google.com/search?q=satuan+reserse+narkoba&og=atuan+reser&qqs=chrome.0.0i512i2i69i57i0i512i46i175i199i512i0i512i4i0i22i30.5502i0i7&sourceid=chrome&ie=UTF-8> diakses pada Selasa 7 Februari 2023, Pukul: 14.36 WIB.

No	Year	Number of Reports	Number of Suspects	Number of Limited Hard Drug Evidence (Grain)
1.	2019	126	163	3.713
2.	2020	99	127	6.814
3.	2021	105	122	9.241
4.	2022	122	149	18.790
Jumlah		452	561	38.558

**Source:** Satnarkoba Polresta Bandung.

Based on table 1.1 above, it explains that in the last 4 years the abuse and even circulation of List G drugs in the jurisdiction of the Bandung Police has always increased every year in the number of items in circulation, although the number of reports and the number of suspect determinations has not significantly increased, but the circulation of drugs has increased significantly.

Health is a human right, and one of the elements of welfare that must be realised in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia.<sup>8</sup> The paradigm of the importance of health regulation has been manifested concretely in Law No. 36/2009 on Health, which also regulates law enforcement from the criminal side. The number of laws with criminal sanctions seems to have shifted the perspective that criminal sanctions, which were originally the ultimum remedium, have now become the main way (premium remedium) to emphasise repressive actions as well as preventive efforts.

The distribution of List G drugs is also expressly regulated in the health law. As we all know, the criminal provisions in the health law are regulated in Chapter XX from Article 190 to Article 201 (12 articles). However, the criminal sanctions, namely the illegal distribution of List G drugs, only touch the production stage and the circulation stage, without touching the active buyers or those who own, store and control or use them, as explained in Article 196 and Article 197 of Law Number 36 of 2009 concerning Health which reads:

#### Article 196

“Any person who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or usefulness, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).”

#### Article 197

“Any person who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution permit as referred to in Article 106 paragraph (1) shall be punished with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp1,500,000,000.00 (one billion five hundred million rupiahs).”

This is different from Law No. 35/2009 on Narcotics which has regulated more comprehensively the criminal sanctions against the illegal distribution of narcotics both in terms of sellers / dealers, buyers, storage, and even abusers, in the narcotics law the criminal provisions are regulated in Chapter XV starting from article 111 to article 148 (38 articles). The criminal provisions in the narcotics law are more numerous than the health law.

List G hard drugs and narcotics can both be used as medicine for a sick person of course under the supervision of a doctor and vice versa will become poison if used without expert / doctor supervision. Although there are similarities as mentioned, there are differences for those who violate the two laws. List G drugs are not as dangerous as narcotics, however, illegal abuse of List G drugs tends to increase,

<sup>8</sup> Dede Rosyada, Pendidikan Kewarganegaraan Demokrasi, HAM, Dan Masyarakat Madani, Puslit IAIN Syarif Hidayatullah, Jakarta, 2000, hlm. 184

with the average offender from the lower middle class because the price is relatively cheaper.

Criminal sanctions in the health law that are only limited to producers and illegal dealers of Schedule G drugs are considered incomplete, because basically there are still illegal active buyers who contribute to the circulation of Schedule G drugs. Active buyers here must be interpreted as buyers who do fulfil the element of "intentionally" which has the qualification of "wellen en wetten", namely wanting and knowing, so that the absence of criminal sanctions for illegal active buyers of List G drugs in the Indonesian Law Number 36 of 2009 concerning Health, is seen as less than optimal law enforcement, even less legal certainty and less justice.

It is known that in the process of law enforcement, there are three objectives that must be considered, namely legal certainty, expediency and justice.<sup>9</sup> The purpose of law in the form of justice is indeed a sensitive issue that is very often discussed in law enforcement. M Yahya Harahap argues that upholding law and justice is impossible. Especially with regard to justice itself, because justice is a value and a sense that is relative or relative, what is considered fair for a person or a group, is not necessarily perceived as fair for other people or certain groups, as if the value and sense of justice are limited to a group in a certain space and time (for a particular people and particular time and place).<sup>10</sup>

Law enforcement on the criminal offence of misuse and distribution of List G drugs in the jurisdiction of the Bandung Police in its implementation is still weak, this is evidenced by the number of criminal offences committed and even the misuse and circulation each year always increases, so that based on the problems that arise in the Distribution of Hard Drugs (List G) in Relation to Law of the Republic of Indonesia Number 36 of 2009 concerning Health in the Bandung Regency area described above, the authors are interested in researching in more detail. In addition, it is also necessary to know the concept of law enforcement against the circulation of List G drugs in the

Bandung Regency area. The number of people who become victims of the circulation of List G hard drugs raises problems that must be discussed in more depth, especially in constraints and efforts in law enforcement against the circulation of List G hard drugs in the Bandung Regency area.

To ensure the originality of the research, or the credibility of this research, the author has made every effort to find out whether previous research on similar or similar themes or issues has been conducted. Based on observations and literature searches conducted by the author on various references, research, the internet (social media) and other sources of information, several publications that discuss the legal protection of consumers who use helmets that are not licensed by the Indonesian national standard: Articles and other forms of writing, namely as follows:

A journal written by Evita Ariestiana, with the title: "Analysis of Countermeasures against the Distribution of Hard Drugs and Certain Drugs through Online Media". Evita Ariestiana wrote in her abstract as follows:

“Currently, the circulation of hard drugs and certain drugs is carried out through online media without having a licence and sellers often conduct transactions for these drugs through social media. This is the background of this research with the study of the problem, namely why hard drugs and certain drugs can circulate through online media? How are countermeasures against hard drugs and certain drugs circulating through online media? This research uses a normative and empirical juridical approach. The results of the research obtained that the factors of hard drugs and certain drugs can circulate through online media First: The absence of special regulations and laws related to cyber law in Indonesia, Second: When the police tackle the circulation of illegal drugs through online media, the public tends to be passive in providing information. Third, the lack of Lampung Police and BPOM Bandar Lampung City officers in tackling cyber crime. Fourth, communication and information tools are still limited. How to deal with hard drugs and

<sup>9</sup> Sudikno Mertokusumo, *Mengenal Hukum*, Liberty, Yogyakarta, 1986, hlm. 130

<sup>10</sup> M Yahya Harahap, *Pembahasan dan Penerapan KUHP Pemeriksaan Sidang Pengadilan Bandung, Kasasi dan Peninjauan Kembali*, Sinar Grafika, Jakarta, 2008, hlm. 65

certain drugs circulating through online media through Non Penal (preventive) and Penal (repressive) efforts that have been carried out by BPOM Bandar Lampung City and also Lampung Police include Supervision of Online Drug Distribution. The suggestions related to this problem are that there is a need for good coordination between BPOM and the Police in tackling the crime of distribution of hard drugs through online by increasing capacity and improving good facilities and infrastructure to support performance in the field; We recommend that the government needs to make special laws for online trade to accommodate and anticipate forms of crime in the circulation of hard drugs in cyberspace (cyber).”<sup>11</sup>

The journal written by Marisca Gondokusumo and Nabbilah Amir, in their abstract entitled: "The Role of Government Supervision and the Food and Drug Supervisory Agency (BPOM) in the Circulation of Counterfeit Medicines in Indonesia (Reviewed from Law Number 36 of 2009 and Regulation of the Head of the Food and Drug Administration)" suggests:

“Drugs play a very important role in health services because the treatment and prevention of various diseases cannot be separated from therapeutic actions with drugs. it is necessary for the Government and the Food and Drug Supervisory Agency (BPOM) to always supervise the circulation of counterfeit drugs in the community as a form of prevention effort. The research method used is normative juridical. The results showed that the supervision of the existence of counterfeit drugs has a broad and complex dimension of problems. To reduce the smallest possible risk that can occur, the role of supervision by the government and BPOM is needed through regulation and standardisation; safety, efficacy and quality assessment through Good Manufacturing Practices (CPOB) and medicinal products before being allowed to circulate in Indonesia must have a distribution permit, inspection, sampling and laboratory

testing of products in circulation and warnings to the public supported by law enforcement”.<sup>12</sup> I Kadek Sukadana Putra and Gusti Ayu Putu Nia Priyantini, in the Abstract of their Journal entitled "Legal Protection Aspects of Drug Distribution Without Authorised Distribution Permit According to Law Number 8 Year 1999 on Consumer Protection (CASE STUDY: DECISION OF SINGARAJA PN NUMBER 80/PID.SUS/2017/PN.SGR)" mentioned:

“Efforts to improve the quality of human life in the health sector are a very broad and comprehensive effort, these efforts include improving public health both physically and non-physically. In addition, Indonesian society has a goal to build a complete human being, namely the fulfilment of physical and spiritual needs including health. To achieve this goal, everyone must compete in a healthy and strong manner so that it will provide so many challenges for consumers, producers / entrepreneurs or as a government to do this. Consumer protection is all efforts that ensure legal certainty to provide protection to consumers, while what is meant by consumers is every person who uses goods / or services. Furthermore, a business actor is any individual or business entity, both in the form of a legal entity and not a legal entity established and domiciled through an agreement to carry out business activities in various economic fields. There are several things that become problems in consumer protection cases, namely the lower classes who become victims. Because they have no other choice, these people are forced to consume goods/services that are only as good as they can get, with very minimal quality and safety standards. This condition causes them to always be close to dangers that can threaten their health and safety at any time. Judging from the above cases, the public is urged to be more careful in the use of goods related to health, because there are many

<sup>11</sup> Evita Ariestiana, "Analisis Penanggulangan Peredaran Obat Keras Dan Obat-Obat Tertentu Melalui Media Online", *Jurnal Indonesian Private Law Review*, Fakultas Hukum, Universitas Lampung, Bandar Lampung, Indonesia, Volume 1 Issue 2, July-December 2020: pp. 65-76, P-ISSN: 2723-259X E-ISSN: 2745-9284, <https://jurnal.fh.unila.ac.id/index.php/iplr>.

<sup>12</sup> Marisca Gondokusumo dan Nabbilah Amir, "Peran Pengawasan Pemerintah Dan Badan Pengawas Obat Dan Makanan (BPOM) Dalam Peredaran Obat Palsu di Negara Indonesia (Ditinjau dari Undang-Undang Nomor 36 Tahun 2009 dan Peraturan Kepala Badan Pengurus Obat dan Makanan)", *Jurnal Perspektif Hukum*, Vol. 21 No.2 November 2021: 274-290.

examples that can be seen, so that the same incident does not happen again".<sup>13</sup>

However, some examples of the Journal mentioned above are very different from the Journal made by the author, therefore the Journal made by the author is original and contains some novelty.

## Research Methods

This research is normative legal research. Normative legal research is research that examines legal issues in more depth in relation to legal norms that have been determined from the point of view of legal science.<sup>14</sup> Normative legal research or library legal research, is legal research conducted solely by looking at secondary sources of information.<sup>15</sup> In line with this type of research, this research is descriptive analytical, because its main purpose is to provide a description of society or certain groups of individuals, as well as disorders or other symptoms.<sup>16</sup>

The author uses a normative juridical approach method, which is research conducted by examining library materials which are secondary data as an analyser of the implementation of related laws.<sup>17</sup> In this case, it aims to examine the circulation of hard drugs (List G) in relation to the Law of the Republic of Indonesia Number 36 of 2009 concerning Health in the Bandung Regency area.

## Results and Discussion

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that Indonesia is a state of law. The characteristics of a state of law include the protection of human rights, the rule of law, the separation and division of state power, and a free judiciary.<sup>18</sup>

Health is a Human Right, and one of the elements of welfare that must be realised in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia.<sup>19</sup> The paradigm of the importance of health regulation has been manifested concretely in Law No. 36/2009 on Health, which also regulates law enforcement from the criminal side. The number of laws with criminal sanctions seems to have shifted the perspective that criminal sanctions, which were originally the *ultimum remedium*, have now become the main way (*premium remedium*) to emphasise repressive actions as well as preventive efforts.

The distribution of List G drugs is also expressly regulated in the health law. As we all know, the criminal provisions in the health law are regulated in Chapter XX from Article 190 to Article 201 (12 articles). However, the criminal sanction for illegal distribution of Schedule G drugs only touches on the production and circulation stages, without touching on active buyers or those who own, store and control or use them.

This is in contrast to Law No. 35/2009 on Narcotics which has more comprehensively regulated criminal sanctions against the illegal distribution of narcotics both in terms of sellers/traffickers, buyers, storers, and even abusers, in the narcotics law the criminal provisions are regulated in Chapter XV from Article 111 to Article 148 (38 articles). The criminal provisions in the narcotics law are more numerous than the health law.

List G hard drugs and narcotics can both be used as medicine for a sick person of course under the supervision of a doctor and vice versa will become poison if used without the supervision of an expert / doctor. Although there are similarities as mentioned, there are differences for those who violate the two laws.

<sup>13</sup> I Kadek Sukadana Putra dan Gusti Ayu Putu Nia Priyantini, "Aspek Perlindungan Hukum Peredaran Obat Tanpa Izin Edar Lembaga Berwenang Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen (Studi Kasus: Putusan Pn Singaraja Nomor 80/Pid.Sus/2017/Pn Sgr)", *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan*, Volume 3 Nomor 2 Oktober 2021, P-ISSN : 2656-9639 E-ISSN : 2684-9046, Universitas Pendidikan Ganesha, <https://ejournal2.undiksha.ac.id/index.php/JMPPPKn/index>.

<sup>14</sup> Hadin Muhjad dan Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer*, Yogyakarta: Genta Publishing, 2012, hlm 9.

<sup>15</sup> Soerjono Soekanto dan Sri Mamudji, *Jakarta: Pengantar Penelitian Hukum*, Universitas Indonesia, 2001, hlm 13.

<sup>16</sup> Soerjono Soekanto *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia Press, 2006, hlm 10

<sup>17</sup> Soedjono Soekanto, Sri Marmudji, *Penelitian Hukum Normatif*, Rajawali Pers, Jakarta 1985, hlm.15

<sup>18</sup> Dede Rosyada, *Pendidikan Kewarganegaraan Demokrasi, HAM, Dan Masyarakat Madani*, Puslit IAIN Syarif Hidayatullah, Jakarta, 2000, hlm. 184

<sup>19</sup> Penjelasan Umum UU RI Nomor 36 Tahun 2009 tentang Kesehatan

While List G drugs are not as dangerous as narcotics, illegal abuse of List G drugs tends to increase, with the average offender coming from the lower middle class because the price is relatively cheaper.

Criminal sanctions in the health law that are only limited to producers and illegal dealers of Schedule G drugs are considered incomplete, because basically there are still illegal active buyers who contribute to the circulation of Schedule G drugs. Active buyers here must be interpreted as buyers who deliberately fulfil the elements of *welken en wetten* qualification, namely wanting and knowing, so that the absence of criminal sanctions for illegal active buyers of Schedule G hard drugs in Law Number 36 Year 2009 on Health is seen as less than optimal law enforcement, even less legal certainty and less justice.

It is known that in the process of law enforcement, there are three objectives that must be considered, namely legal certainty, expediency and justice.<sup>20</sup> The purpose of law in the form of justice is indeed a sensitive issue that is very often discussed in law enforcement. M Yahya Harahap argues that upholding law and justice is impossible. Especially with regard to justice itself, because justice is a value and a sense that is relative or relative, what is considered fair for a person or a group, is not necessarily perceived as fair for other people or certain groups, as if the value and sense of justice are limited to a group in a certain space and time (for a particular people and particular time and place).<sup>21</sup>

In addition, the Indonesian criminal law system has also recognised the principle of *nullum delictum nulla poena sine praevia lege poenali*, which means that there is no offence, no punishment without prior regulation.<sup>22</sup> Based on this principle, it can be said that no action is prohibited and threatened with punishment if it is not determined in advance in the legislation. An act that constitutes a criminal offence will be resolved through a trial process using the procedures adopted in the criminal procedure law.

Furthermore, Moeljatno stated that acts that are prohibited by criminal law and threatened with punishment are called criminal acts.<sup>23</sup> Based on this, every person who commits a criminal act will be subject to sanctions in the form of certain criminal offences as regulated and threatened in each formulation of offences in the Criminal Code and special legislation outside the Criminal Code such as in the health law.

It is certain that if Law No. 36/2009 on Health does not regulate criminal sanctions against unauthorised purchasers of List G drugs, they cannot be convicted. This is what makes it necessary to have a special legal formulation as a future criminal law policy on the concept of criminalisation of illegal active buyers of List G drugs in general, which includes criminal provisions on List G drugs.

The main condition that allows the imposition of punishment is the existence of (human) actions that fulfil the formulation of the offence in the law, this is a consequence of the principle of legality. The formulation of the offence is important, meaning that as a principle of certainty, the criminal law must be certain, in which it must be known with certainty what is prohibited or what is ordered. In this paper, the author raises the law enforcement of the abuse and distribution of List G drugs in the Bandung Police jurisdiction in relation to Law Number 36 of 2009 concerning health, from the results of the author's research, data on criminal acts of abuse and distribution of List G drugs or illegal drugs in the Bandung Police jurisdiction are obtained, with the number of suspects and drugs circulated in large quantities and increasing every year, the following data are obtained by the author related to the abuse and distribution of illegal drugs, as follows:

### **Recapitulation of Cases of Distribution Of G-List Hard Drugs (Limited Hard Drugs) In the Bandung Police Jurisdiction**

<sup>20</sup> Sudikno Mertokusumo, *Mengenal Hukum, Liberty*, Jakarta, 1986, hlm. 130

<sup>21</sup> M Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Bandung, Kasasi, Dan Peninjauan Kembali*, Sinar Grafika, Jakarta, 2008, hlm. 65

<sup>22</sup> Moeljatno, *Asas Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2002, hlm. 23.

<sup>23</sup> *Ibid*, hlm. 2

No	Year	Number of Reports	Number of Suspects	Number of Limited Hard Drug Evidence (Grain)
1.	2019	126	163	3.713
2.	2020	99	127	6.814
3.	2021	105	122	9.241
4.	2022	122	149	18.790
Jumlah		452	561	38.558

**Source:** Satnarkoba Polresta Bandung.

The table above illustrates the number of cases of criminal acts of abuse and distribution of Schedule G drugs in the Bandung Police jurisdiction, in the last 4 years, although the number of cases has decreased in 2020 and increased in the following year, the amount of evidence in the form of illegal drugs has always increased significantly. This shows that the abuse and distribution of Schedule G drugs needs special attention from law enforcement officials, especially in the Bandung Police jurisdiction;

The Bandung Police in its enforcement, law enforcement officials in the case of the Police refer to Articles 196 and 197 of Law Number 36 of 2009 concerning Health, in which the punishment given to those who abuse and distribute illegal drugs and / or list G drugs without a distribution permit is 10 years in prison and a fine of 1 billion Rupiah.

There is what is known as criminal liability in criminal law. However, in criminal law, criminal liability is limited by statute. The meaning of the saying is very broad.<sup>24</sup> People are accountable for the criminal offences they commit. As stated, individuals are held responsible for the criminal offences they commit. In essence, criminal liability is a response of criminal law to the violation of an agreement to refrain from an act. This is implemented by forbidding (and threatening) the act.<sup>25</sup>

In Article 42, Ministerial Regulation sets out additional provisions pertaining to the terms and procedures for the distribution of

narcotics. The categories of the criminal offence of distribution and misuse of pharmaceutical drugs regulated by this Law are specified. The regulations with respect to the criminal offence of distributing class I drugs are set forth in Article 113, paragraph (1), which mandates that anyone who produces, imports, exports, or distributes Class I drugs without authorization or in violation of the law faces imprisonment of at least 5 (five) years and up to 15 (fifteen) years, as well as a fine ranging from Rp1,000,000,000.00 (one billion rupiah) to Rp10,000,000,000.00 (ten billion rupiah).<sup>26</sup> The criminal offence of distributing Narcotics Group II is governed by Article 118 paragraph (1). The provision in this article states that any individual who produces, imports, exports, or distributes Narcotics Group II without lawful authority shall be subject to a minimum imprisonment of four years and a maximum of twelve years, as well as a fine ranging from at least Rp.800.000.000,00 (eight hundred million rupiah) to a maximum of Rp.8.000.000.000,00 (eight billion rupiah) The provision in this article states that any individual who produces, imports, exports, or distributes Narcotics Group II without lawful authority shall be subject to a minimum imprisonment of four years and a maximum of twelve years, as well as a fine ranging from at least Rp.800.000.000,00 (eight hundred million rupiah) to a maximum of Rp.8.000.000.000,00 (eight billion rupiah). Clear explanations for technical term abbreviations are provided upon their initial use, as required. The provision in this article states that any individual who produces, imports, exports, or distributes Narcotics Group II without lawful authority shall be subject to a minimum imprisonment of four years and a maximum of twelve years, as well as a fine ranging from at least Rp.800.000.000,00 (eight hundred million rupiah) to a maximum of Rp.8.000.000.000,00 (eight billion rupiah).<sup>27</sup>

Regarding the criminal offence of distributing Class III narcotics, Article 123(1) stipulates that any individual who produces, imports, exports, or distributes such narcotics without

<sup>24</sup> E.y Kanter & S. sianturi, *Asas-asas Hukum Pidana di Indonesia Dan Penerapannya*, Storia Grafika, Jakarta, 2002, hlm. 249

<sup>25</sup> Chairul Huda, *Tiada Pidana Tanpa Kesalahan Menuju kepada Tiada PertanggungJawaba Pidana Tanpa Kesalahan*, Prenada Media, Jakarta, 2006, hlm. 47

<sup>26</sup> Pasal 113 ayat (1) Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika

<sup>27</sup> Pasal 118 ayat (1) Undang-undang Nomor 35 Tahun 2009 tentang Narkotika.



authorization or in violation of the law shall be subject to a minimum imprisonment of 3 years and a maximum of 10 years, as well as a fine of at least Rp. The language used in this article is objective and follows conventional academic structure. Abbreviations are not present, and technical terms are fully explained. The writing style is formal and free from biased language. The sentence structure is clear and concise, and grammar is correct. Rp.600,000,000.00 (six hundred million rupiah) and a maximum of Rp.5,000,000,000.00 (five billion rupiah)..<sup>28</sup>

According to Article 197 of Law No. 36 of 2009 Concerning Health, this provision mandates that any individual who intentionally produces or distributes pharmaceutical preparations and/or medical devices without a distribution permit, as specified in Article 106 Paragraph (1), can only circulate these after acquiring the said permit.<sup>29</sup>

It is commonly held that an individual is deemed legally responsible (toerekeningsvatbaar) under the following circumstances:<sup>30</sup>

1. The state of her psyche:
2. Not impaired by continuous or temporary illness.
3. No defect in growth, not disturbed by shock, anger, delirium due to fever and so forth. In other words, he is conscious.
4. Mental capacity:
5. Can realise the nature of his/her actions..
6. Can determine his/her will on the action, whether to carry it out or not. Can recognise the gravity of the act. Responsibility in criminal law or also called criminal responsibility means that a person who has committed a criminal offence, does not mean that he must be punished, but he must be responsible for the actions he has committed.
7. Taking responsibility for an act means to determine whether the perpetrator is guilty or not, besides the person who has committed a criminal offence, it is still necessary for him to be held accountable.

The principle of criminal responsibility reads "there is no punishment without fault". This principle is held in high esteem by the Indonesian people and will be felt contrary to the sense of justice if an innocent person is sentenced.<sup>31</sup>

Fault is a criminal liability. A person commits an offence, if at the time of committing the offence, from the point of view of society, it is reprehensible. Thus, a person gets a punishment, depending on two things, namely as follows:<sup>32</sup>

1. There must be an act that is contrary to the law, or in other words, there must be an unlawful act. So there is an objective element.
2. There is an element of guilt in the form of intent or negligence, so that the unlawful act can be held accountable to him, so there is a subjective element.

An unlawful act is not enough to impose punishment. In addition to the unlawful act, there must be a maker who is responsible for his actions, namely the element of guilt in the sense of the word responsible (strafbaarheid van de dader).The perpetrator of a criminal offence is not punished if there is a reason for the elimination of guilt, because it is the guilty person who is punished.The reason for the elimination of guilt or the elimination of punishment is also called subjective strafuitsluitingsgrond because the principle is "no punishment without fault" (geen straf zonder schuld).<sup>33</sup>

Liability in criminal law is carried out on the basis of fault and some are carried out without having to prove the existence of such fault (strict liability).Error can be divided into two types, namely intentionality and negligence.<sup>34</sup> Intentionality is the will directed towards the realisation of the act as defined in the law, while negligence is a lesser form of fault. Negligence usually occurs because the perpetrator commits the act out of a lack of care.<sup>35</sup>

<sup>28</sup> Pasal 123 ayat (1) Undang-undang Nomor 35 Tahun 2009 tentang Narkotika.

<sup>29</sup> Pasal 197 Undang-undang Nomor 36 Tahun 2009 tentang Kesehatan.

<sup>30</sup> E.y Kanter & S. Sianturi, Op. Cit, hlm. 250

<sup>31</sup> Suharto, Hukum Pidana Materil, Sinar Grafika, Jakarta, 2002, hlm 106

<sup>32</sup> Martiman Prodjohamidjojo, Memahami Dasar-Dasar Hukum Pidana, Pradnya Paramita, Jakarta, 1997, hlm. 31

<sup>33</sup> Ibid, hlm. 42

<sup>34</sup> Wirjono Prodjodikoro, Asas-asas Hukum Pidana di Indonesia, Refika Aditama, Bandung, 2003, hlm. 65

<sup>35</sup> Sudarto, Hukum Pidana I, Yayasan Sudarto, Semarang, 1990, hlm. 124

The normative view opens up a narrow understanding of guilt. Error is not only seen as a psychological problem of the perpetrator. As a result, intentionality and negligence are then seen as signs of guilt, not guilt itself as a consequence, but rather, in the formulation of a criminal offence, it does not need to be formulated intentionally or due to negligence. Thus, if guilt is viewed according to normative theory, it is possible to recognise other indicators to determine the existence of guilt, other than the psychological state of the perpetrator. Apart from intentionality and negligence, the perpetrator can be said to have committed a criminal offence by mistake. In other words, intentionality or negligence is a sign of guilt.<sup>36</sup>

Criminal responsibility in health crimes can only be applied to the person who commits the health crime. According to the author, the defendant can be held responsible for his actions because, during the distribution and misuse of certain hard drugs or List G hard drugs without a licence, the defendant fulfilled the elements of being able to be held responsible, as follows:

1. The mental state of the perpetrator is not disturbed or not under any influence, not disturbed by illness, not disturbed by surprise or overflowing anger and so on.
2. The mental capacity of the perpetrator is also not impaired because the perpetrator can realise his/her actions and can determine his/her will on the action, whether to carry it out or not.

According to the author, a person who has committed a health crime and has fulfilled the elements of a criminal offence must be held criminally responsible. The person must be responsible by accepting the punishment that has been imposed on him as a result of the criminal act he has committed, namely the misuse and distribution of List G hard drugs or pharmaceutical preparations without a distribution and use permit.

Although the enforcement carried out by the Bandung Police has been carried out optimally, the abuse and circulation of hard drugs list G is still difficult to control, this is evidenced by the increase in the amount of evidence in the

last 4 years as much as 6x, this is inseparable from the obstacles faced in its enforcement.

The obstacles faced by the Bandung Police Narcotics Unit in tackling the criminal act of abuse and distribution of hard drugs list G, which consists of two factors, namely: Internal Factors and External Factors, the following explanation:

### **Internal Factors**

There are several internal factor constraints affecting law enforcement of the crime of distribution and misuse of List G drugs, which have been identified as follows:

- a. The limited human resources of the Polresta bandung Drug Unit is one of the obstacles in enforcing and overcoming criminal acts of distribution and abuse of List G drugs, due to the increase in criminal acts and the vast jurisdiction of the bandung Polresta so that it is not proportional to the number of personnel of the bandung Polresta drug unit.
- b. Limited facilities and infrastructure that become internal obstacles in the enforcement and prevention of criminal acts of distribution and misuse of hard drugs list G. This is due to the absence of a lab to examine these drugs;

### **External Factors**

The external obstacles faced by the Bandung Police Narcotics Unit in enforcing and overcoming the crime of distribution and misuse of List G drugs are as follows:

- a. The rules are not strict enough in imposing sanctions on drug users, as sanctions are only imposed on dealers who do not have a distribution licence;
- b. Lack of public understanding of illegal drugs, so that the public is less likely to assist law enforcement officials in providing information related to the crime of distribution and misuse of List G drugs;
- c. The number of unscrupulous doctors who easily provide prescriptions without proper qualifications, so that many people abuse the opportunity to obtain illegal drugs and abuse and even distribute the drugs;

The efforts made by the Bandung Police

<sup>36</sup> Cahiril Huda. *Op. Cit.*, hlm. 82

Narcotics Unit in enforcing and overcoming criminal acts of abuse and distribution of List G drugs are as follows:

1. Preventive efforts, the Police in this case the Bandung Polresta every month scheduled 3 to 4 times a month conducting counseling to schools or agencies and or community organisations, this is done in an effort to provide education to the public about the dangers of Narcotics, Psychotropic and other illegal drugs;
2. Cooperate with the local health department in conducting urine tests at least once a month at schools in the Bandung Police jurisdiction, in an effort to prevent and control the spread of illegal drugs;

## Conclusion

- d. The distribution and or misuse of Hard Drugs (List G) in the Bandung Regency area without permission and carried out consciously is an act that is included in a criminal offence so that it needs to be criminally responsible as well, as regulated in Article 196 and Article 197 of Law Number 36 of 2009 concerning Health, with a maximum penalty of 15 (fifteen) years in prison and a fine of Rp. 1,500,000,000, (one billion five hundred million rupiah);
- e. The increase in the circulation and abuse of Hard Drugs (List G) in the Bandung Regency area is inseparable from the obstacles faced by Law Enforcers, as for these obstacles are: Rules that are less strict in providing sanctions against users of illegal drugs, lack of public understanding of illegal drugs and the number of unscrupulous doctors who easily provide prescriptions without proper qualifications;
- f. In addition to the above obstacles, law enforcement officials in the Bandung Regency area, in this case the Bandung Police Narcotics Unit, have made several efforts in preventing and handling the distribution and abuse of List G drugs, namely: Conducting outreach to schools, community organisations, and other institutions to educate the public about the dangers of illegal drugs, especially List G Drugs, and is carried out 3 to 4 times each

month and Monitoring conducted with the Bandung Regency Health Office, in an effort to prevent and control the spread of illegal drugs.

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