

## **Criminal Law Study On the Criminalization of Law Enforcement to Active Buyers of Illegal Drug Types of Tramadol in Republic of Indonesia Law Number 36 Of 2009 Concerning Health**

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**ABSTRACT :** *Criminal Law Study on the Criminalization of active buyers of Tramadol-Type Illegal Drugs in the Republic of Indonesia Law Number 36 of 2009 Concerning Health, namely that even though an act has no rules in the law it does not mean eliminating the crime which in this case is called rechte delicten as well as criminal law which is the object of study regarding violations and crimes, thus the buyer is active even though it is not regulated in law but the buyer is active as a crime that is against the law because of the criminalization of active buyers of tramadol-type hard drugs that are seen from a victimizing perspective, in this case it is the community and pays attention to the public / the sub-social element where Tramadol-type hard drugs cause harm to society even if it's very small because even though it's not regulated in law, the law actually becomes onrecht (against the law).*

**KEYWORDS:** criminal, health, public health, tramadol type

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### **INTRODUCTION**

Criminal acts in the health sector are regulated in the Republic of Indonesia Law Number 36 of 2009 concerning Health (hereinafter abbreviated as the Health Law). In the general explanation of the law, it is explained that in the Preamble to the 1945 Constitution of the Republic of Indonesia, the ideals of the Indonesian people are listed which are also the national goals of the Indonesian people. Health is a state of health, spiritual and social that enables everyone to live a socially and economically productive life. As regulated in Article 1 number 1 of Law Number 36 of 2009 concerning Health.

Today a growing crime in society is the misuse of dangerous drugs such as Tramadol, the term

Tramadol is no longer a foreign term for the general public. Tramadol is a centrally acting analgesic that has moderate affinity for weak receptors. Tramadol is widely used as a mild to moderate pain reliever. That the law cannot be separated from social phenomena in society and currently there is abuse of Tramadol type drugs. The abuse of Tramadol that occurs a lot in society is a social problem and is something that is against the law/contrary to the law when it is used illegally.

Regulations regarding Tramadol can be found in the Regulation of the Drug and Food Control Agency (BPOM) Number 10 of 2019 concerning Guidelines for the Management of Certain Drugs that are Frequently Abused and which are included in the criteria for Certain Drugs according to this regulation include: Tramadol, Trihexyphenidyl, Chlorpromazine, Amitriptyline, Haloperidol and Dextromethorphan. These drugs are not included in the Narcotics or Psychotropic class, but both work on the central nervous system where abuse can lead to dependence and changes in mental activity and behavior.

Whereas based on the Decree of the Minister of Health No. 2396/A/SK/VI/83 concerning Special Marks for List G Strong Drugs What is meant by hard drugs are drugs that can only be purchased at a pharmacy with a doctor's prescription. The special mark on the packaging and label is the letter K in a red circle with a black border. The drug Tramadol itself is one of the hard drugs that is often sold freely by the public. Tramadol is included in the drug list G (dangerous drugs) or restricted drugs that must be purchased with a doctor's prescription. This drug is actually a drug that is used to relieve pain or pain after undergoing surgery.

Whereas in the Journal of Indonesian Legislation it is said that the use of tramadol must be on the advice and prescription of a doctor. Tramadol is often misused because it can cause a feeling of calm, hallucinations and floating. If taken long term, tramadol can be addictive just like narcotics and can cause side effects if you don't consume it, such as: diarrhea, depression, headaches, tremors and hallucinations. Whereas in that article there is an element of "pharmaceutical preparations", where based on article 1 number 2 of the Government Regulation of the Republic of Indonesia Number 51 of 2009 concerning Pharmaceutical Work, what is meant by pharmaceutical preparations are drugs, medicinal ingredients, traditional medicines and cosmetics.

Medicines are all single substances or mixtures used by all beings internally and externally to prevent, relieve and cure disease. According to Article 1 paragraph (8) of Law Number 36 of 2009 concerning Health states, that: "Drugs are substances or combinations of materials, including biological products used to influence or investigate physiology or pathological conditions in the framework of establishing a diagnosis, prevention, cure, recovery, and can be applied in accordance with the norms prevailing in society.

However, the criminal sanction is that illegal distribution of Tramadol "G" list hard drugs only

affects the producers and distributors, without touching the active buyers or those who own, store and control or use them. This is different from Law no. 35 of 2009 concerning Narcotics which has regulated more comprehensively regarding criminal sanctions against the illegal distribution of narcotics both from the seller/distributor side, the buyer, the keeper, even the abuser, in the narcotics law the criminal provisions are regulated in Chapter XV from article 111 to article 148 (38 articles). There are more criminal provisions in the narcotics law than in the health law.

Hard drugs on the "G" list of the type Tramadol as well as narcotics can both be used as medicine for someone who is sick, of course, under the supervision of a doctor and vice versa, it will become poison if used without the supervision of an expert/doctor. Even though there are similarities as mentioned, there are differences for those who violate the two laws.

Even though the hard drug on the "G" list of the Tramadol type is not as dangerous as narcotics, the use of this type of drug must be based on a prescription as stipulated in Article 196 and Article 197. considered to be relatively inexpensive. It is known that there were 21 (twenty one) cases of abuse of tramadol type drugs that entered the Serang District Attorney in 2019, 2020 there were 43 (forty three) cases and in 2021 there were 47 (forty seven) cases .

Tramadol-type hard drug abusers have criminal sanctions in the health law which are only limited to illegal producers and distributors of these hard drugs as stated in articles 196 and 197 of law number 36 of 2009 concerning Health, that this article should also prohibit active illegal buyers. which also influenced the circulation of the hard drug listed "G" type Tramadol.

The function of criminal law as a preventive function is that prevention becomes the main thing in the case of abuse of Tramadol-type hard drugs, besides that criminal law also functions in terms of tackling crime, especially related to the crime of abuse of Tramadol-type hard drugs. The active buyer here must be interpreted as a buyer who fulfills the element "intentionally" which has the qualifications "wellen en wetten" namely wanting and knowing, so that criminal sanctions are not regulated for active illegal buyers of hard drugs listed "G" type Tramadol in RI Law No. 36 of 2009 concerning Health, is seen as law enforcement that is not optimal, even less legal certainty and less fair.

Whereas in the law enforcement process, there are three objectives that must be considered, namely legal certainty, benefit and justice. The purpose of law in the form of justice is a sensitive issue that is very often discussed in law enforcement. Apart from that, the Indonesian criminal law system is also well known regarding the principle of *nullum delictum nulla poena sine praevia lege poenali*, which means no offense, no crime without prior regulations. Based on this principle, it can be said that there is no action that is prohibited and punishable by crime if it is not determined in advance in laws and regulations.

According to M.v.T in his book Smidt. L as quoted by Moeljatno, said that Crime is rechtsdelicten, namely actions which, although not specified in the Law as criminal acts, have been perceived as onrecht, as actions that are contrary to the legal system. Violations on the other hand are wetsdelicten, namely actions whose unlawful nature can only be known after there is a wets that determines this. An act that constitutes a criminal act will be resolved through a trial process using the procedures adopted in the criminal procedural law. Moeljatno further stated that an act which is prohibited by criminal law and is punishable by crime is called a criminal act.

This is what makes it necessary to have a special legal formulation as a political criminal law in the future concerning the concept of criminalization of active illegal buyers of "G" list of hard drugs in general, which includes criminal provisions regarding Tramadol type "G" list of hard drugs. Criminalization here should not be interpreted narrowly, but must be understood in a normative sense that criminalization is the process of determining a person's actions as criminal acts. This process ends with the formation of a law in which the act is threatened with sanctions in the form of a crime.

Criminal law as a benchmark means for solving problems is expected to be able to provide the right solution, criminal law can be defined as a rule of law, which binds to an act that fulfills certain conditions a consequence in the form of a crime. Whereas in the study of criminal law against active buyers of illegal drugs of the tramadol type, even though an act is not regulated in the law, it does not mean that the crime is eliminated, which in this case is called rechtdelicten, as revealed by Zainal Abidin Farid.

## **METHOD**

The type of research used is normative legal research or doctrinal research, namely legal research conducted by examining legal materials, whether in the form of doctrines or legal principles in the science of law. Meanwhile, the approach used in this study is the statutory approach, the case approach, and the conceptual approach. The types and sources of legal materials used in this normative legal research consist of Primary Legal Materials, Secondary Legal Materials, and Tertierm Legal Materials, (Ibrahim, 2018).

Legal material analysis techniques are carried out by interpreting, evaluating, and assessing all legal materials, which are then identified to determine patterns or themes in these legal materials in accordance with the focus of the problems specified in this research, (Mamudji, 2021).

## **FINDINGS AND DISCUSSION**

Criminal Law Study on the Criminalization of active buyers of Tramadol Illegal Drugs in the Republic of Indonesia Law Number 36 of 2009 concerning Health The Criminal Law Study

purports that criminal law is a public law which in its function is to prevent and deal with crime in order to protect the public interest (society). Criminalization is the process of determining a person's actions as criminal acts. This process ends with the formation of a law in which the act is threatened with sanctions in the form of a crime.

This is understandable because there is no official regulation regarding illegal active buyers of Tramadol type "G" List Hard Drugs. Taking into account the provisions of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation, as well as other related laws and regulations, it is time for an active illegal buyer of Tramadol type "G" List Hard Drugs to be made a special offense within the scope of the health law.

Enforcement of Criminal Law against Buyers, Storers, Owners and/or users of Tramadol Type Illegal Drugs related to RI Law Number 36 of 2009 Concerning Health.

Law enforcement against the distribution of Tramadol-type "G" List Drugs must be carried out in a comprehensive manner starting from upstream to downstream in a legal system theory as stated by Lawrence M. Friedmen who divides the legal system into three parts, namely: legal substance, structure law (legal structure), and legal culture (legal culture).

That with the existence of this law enforcement, which includes all legal provisions that contain criminal threats and actions which, according to a formulation of the law, have been declared as criminal acts that can be punished and subjectively fulfill the requirements to be punished for these actions so that they can be held criminally responsible.

## CONCLUSION

Criminal Law Study on the Criminalization of active buyers of Tramadol-Type Illegal Drugs in the Republic of Indonesia Law Number 36 of 2009 Concerning Health, namely that even though an act has no rules in the law it does not mean eliminating the crime which in this case is called *rechtdelicten* as well as criminal law which is the object of study regarding violations and crimes, thus the buyer is active even though it is not regulated in law but the buyer is active as a crime that is against the law because of the criminalization of active buyers of tramadol-type hard drugs that are seen from a victimizing perspective, in this case it is the community and pays attention to the public / the sub-social element where Tramadol-type hard drugs cause harm to society even if it's very small because even though it's not regulated in law, the law actually becomes *onrecht* (against the law).

Enforcement of Criminal Law against Buyers, Storers, Owners and/or users of Tramadol Type Illegal Drugs related to RI Law Number 36 of 2009 concerning Health, namely law enforcement is important because prevention is the main factor so that Tramadol does not develop, which has the same dangers as narcotics then the function of criminal law in enforcing criminal law becomes

important in terms of crime prevention against Buyers, Storers, Owners and/or users of Tramadol Type Illegal Drugs

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