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### CRIMINAL RESPONSIBILITY TO THE PRODUCERS OF ILLEGAL PCC (PARACETAMOL, CAFEIN, AND CARISOPRODOL)

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#### **ABSTRACT**

**Background:** PCC pills are drugs that have harmful effects on the body, one of its ingredients, carisoprodol is a drug that has been withdrawn from circulation since 2013. In certain cases, PCC pills can cause the body to spasm, go berserk, and act like zombies. From the cases that occur, there arises a problem related to the production of PCC drugs as a crime and its responsibility.

**Objectives:** The purpose of this study is to analyse and describe the actions that produce PCC drugs as a criminal offense and describe how the criminal liability of companies or perpetrators producing PCC.

**Methods:** The method used in this study was normative qualitative, using three approaches, namely the statutory approach and the conceptual approach.

**Results:** The results of the study revealed that one of its ingredients, carisoprodol, if it was synthesized by the body will turn into meprobamate. Meprobamate which belongs to group 4 psychotropic has the effect of dependence on its users, people who produce without permission or misuse, it can be subject to criminal sanctions. Article 60 of Law No. 5 of 1997 regulates the existence of criminal liability against perpetrators who produce psychotropic substances outside of class 1 violating the rules of pharmacopoeia standards and without permission. Criminal liability includes a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Liability for corporate offenses that violate may be fined, and those involved in them may be subject to imprisonment.

**Conclusion:** Law No. 5 of 1997 concerning Psychotropics, all forms of abuse of Psychotropics can be subject to criminal conduct in accordance with applicable law.

## INTRODUCTION

Health efforts are performed by the Government, regional governments, and the community where resources in the health sector according to Article 1 number 2 of Law no. 36 of 2009 is "all forms of funds, personnel, medical supplies, pharmaceutical preparations and medical devices as well as health service facilities and technology that are utilized to carry out health efforts carried out by the Government, regional governments, and / or the community." In this case, resources in the health sector are supported by pharmaceutical preparations according to Article 1 number 4 of Law no. 36 of 2009, "Pharmaceutical preparations are drugs, medicinal ingredients, traditional medicines, and cosmetics." Article 196 of Law No. 36 of 2009, which determines every person who intentionally produces or circulates pharmaceutical preparations and / or medical devices that do not meet the standards or requirements of safety, efficacy or usefulness, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be liable with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah) (Isriawaty, 2015).

Many pharmaceutical preparations circulating that contain substances that are very harmful to health. Among the drugs that circulate freely nowadays and cause casualties for their use, such as the circulation of paracetamol, caffeine, and carisoprodol (PCC) has horrified the city of Kendari, known perpetrators who produced 16 people. Children who take the drug experience the effects of seizures, rampage, to act like zombies. In the case of PCC pills in the city of Semarang, and Solo, Central Java, the director of supervision and drugs of BPOM said that PCC pills are illegal drugs. On the official website of BPOM, it is said that PCC pills are illegal products because of the consequences of the pills for their users and one of the PCC contents is a drug that has been withdrawn by the BPOM. What exactly is the content of the PCC drug and what are the dangers if paracetamol is taken together with caffeine and carisoprodol. PCC is a drug that consists of three components, namely paracetamol, caffeine, and carisoprodol, each of which has a different effect (Larasati, 2018).

The effects of PCC pills are psychoactive, so PCC pills can be categorized as Psychotropic according to the RI law number 5 of 1997 concerning psychotropic article 1 number (1) which reads "psychotropic substances or substances, both natural and synthetic not narcotics, which psychoactive efficacy through selective influence on the central nervous system that causes typical changes in mental activity and behaviour." Health Act Article 102 argued, "The use of pharmaceutical preparations in the form of narcotics and psychotropic drugs can only be conducted based on a doctor's or dentist's prescription and is prohibited from being abused." The provisions of article 103 "everyone who produces, stores, distributes and uses narcotics and psychotropic substances must meet certain standards and requirements." In this case, what is

meant by the health law is the narcotics, psychotropic and other supporting laws (Elfian, 2018).

These pills are illegal drugs in the case of PCC pills, because they contain carisoprodol. Carisoprodol is a drug ingredient registered in Indonesia, but in 2009 BPOM (the Food and Drug Supervisory Agency) withdrew the drug because the drug content was abused. Paracetamol and caffeine, are ingredients that can be found everyday but because paracetamol, caffeine, used together with carisoprodol results in illegal PCC pills. The perpetrators have produced pills in the case of PCC pills that are included in the list of hard and dangerous drugs. The contents of the pill, carisoprodol, have been withdrawn from circulation. Republic of Indonesia Law number 5 of 1997 concerning psychotropic Article 5 stated expressly that "Psychotropic drugs can only be produced by drug manufacturers that already have licenses in accordance with the provisions of the applicable laws and regulations." The perpetrators of criminal offenses can be subject to criminal offenses according to the sound of article 60 of law number 5 of 1997 (Mutho, 2018).

## LITERATURE REVIEW

### PCC Qualifications in Laws and Regulations

PCC is an abbreviation of paracetamol, caffeine, carisoprodol which is a pill content of PCC itself. PCC pill is a drug that is prohibited by BPOM to be produced and circulated because of the effects caused by the drug. However, it should be remembered that Law No. 5 of 1997 is inseparable from State Gazette No. 3671, where there is a classification of psychotropic substances. From groups 1 to 4. In 2017, the Minister of Health made a regulation namely Regulation of the Minister of Health No. 3 of 2017 concerning changes in the classification of psychotropic substances which added several other ingredients that entered the psychotropic group. This psychotropic classification is classified based on the level of dependency (Blomqvist *et al.*, 2020).

Group 1, psychotropic substances which cause a very strong degree of dependence, can only be used for scientific purposes and include prohibited goods. Group 2, psychotropic substances which cause a strong degree of dependence, and can be used for the benefit of health services and science. Group 3, psychotropic drugs which cause moderate levels of dependence and widely used for the benefit of health services and science. Group 4, psychotropic which causes a mild level of dependence and very widely used for the benefit of health services and / or science (article 4 number (1) of Law No. 5 of 1997) (Adam, 2012; Blomqvist *et al.*, 2020).

Referring to State Gazette No. 3671, states clearly psychotropic in each group. There are 26 psychotropics in group 1, there are 14 psychotropics in group 2, there are 9 psychotropics in group 3, and there are 60 types of psychotropic substances in group 4. In group 4 number 41, clearly states that there is a type of psychotropic with the usual name "meprobamat". As explained above, carisoprodol is a meprobamate-derived drug and when carisoprodol is synthesized by the body, carisoprodol changes into meprobamat. meprobamate is a carbamate, playing the active metabolite of carisoprodol. This causes

carisoprodol can be classified as group 4 psychotropic drugs with mild addictive levels (Oesterhus *et al.*, 2017).

## **METHODS**

This study was a legal research using a statutory approach, a conceptual approach. The legislation approach was an approach using legislation and regulation (Marzuki, 2011). Normative legal study was a scientific research procedure to find truth based on normative law, built on the basis of scientific discipline and the workings of normative legal science, namely the science of law whose object is the law itself (Ibrahim, 2005). The legal materials used in this study were primary legal materials and secondary legal materials. Primary Legal Material was legal material that was binding in the form of laws and regulations and other regulations related to the discussion. Sources of collected legal materials were analysed descriptively.

## **RESULTS AND DISCUSSION**

### **Crimes Regarding PCC Drug Production**

#### **Producing PCC as a Criminal Act**

The element or element of a criminal offense is the cause and effect (action), the matter or circumstances that accompany the act, the additional conditions which incriminate the criminal, the element of objective lawlessness, and unsuspecting the subjective law. The objective element of unlawful means that the element of unlawful originates from outside of the perpetrator of the crime, while the subjective element is contrary to the objective element where the element of unlawfulness comes from within the perpetrator of the crime (Anjari, 2017).

There is a term known as *Actus non facit reum, nisi mens sit rea*, which means "no criminal without error" in criminal law and distinguished by the differentiation of *actus reus* and *mens rea*. This is a well-known principle which is the beginning of the division between criminal acts and criminal liability. In Indonesia, what separates *actus reus* and *mens rea* is Moeljatno, Roeslan Saleh, and A.Z Abidin. Then A.Z Abidin made a formula namely  $A + B = C$ , this is a formula taken from the terms *Actus Reus* and *Mens Rea*. The purpose of this formulation is:  $A = Actus Reus$  (*delictum*), namely a criminal act as a condition for objective punishment;  $B = Mens Rea$  is criminal liability as one of the subjective penal conditions. After that:  $A + B = C$ . *lege* and *nulla poena sine lege* are more suitable for written criminal law and for special criminal law such as narcotics and psychotropic criminal law this principle is only to make legal certainty to its citizens (Abidin, 1987).

#### **The act of producing PCC as a criminal offense**

Article 60 number (1) letter a of Law No. 5 of 1997 concerning psychotropic stated that anyone who produces psychotropic substances other than those stipulated in the provisions of article 5; sentenced to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). The perpetrators of the production of PCC pills have violated the provisions of that matter, in article 5 "psychotropic drugs can only be

produced by drug manufacturers that have been licensed in accordance with the provisions of the applicable laws and regulations." Because of that, the perpetrators can be said to have committed a crime because it violated the provisions of Law No. 5 of 1997 Article 60. It is due to in the PCC pill case, it is known that carisoprodol is synthesized by the body into meprobamate which is a Group 4 psychotropic and the perpetrator cannot imposed criminal by the provisions of the Criminal Code and the Health Act (Purwoleksono, 2019).

### **Criminal Liability of Perpetrators Producing PCC Pills**

#### **Elements of Criminal Liability**

There are 2 important elements if a person can be convicted. Two important things are as follows: committing a crime that is prohibited or required by law and has the ability to be responsible. This ability to be responsible will be used as a reason for forgiveness if the person commits a crime. In criminal law, there are 3 reasons why a person commits a crime cannot be convicted. These are justifications, excuse for forgiveness, and the reason for the eradication of prosecution (Roni, 2012).

The reasons for forgiveness in the Penal Code are regulated in articles 44, 48, 49 paragraph (2), 51 paragraph (2) such as, among others: unable to take responsibility, forced power, forced defence that goes beyond the limits, and actions taken to obey illegal orders. As an example to analogize the reasons for forgiveness are as follows: when someone who has a mental disorder schizophrenia (an acute mental disorder experienced by someone thus person cannot distinguish between reality and one's own mind, symptoms include hallucinations, delusions, chaotic speech) burn someone else's yard, then the owner of the plot sues the person with the mental disorder but there is a reason for forgiveness hence the element of wrongdoing is abolished, therefore person cannot be held liable for criminal liability. Thus, it can be concluded that the criminal liability of a person who is proven to have committed a criminal offense can be nullified by law if there is a reason for forgiveness (Wiratraman, 2019). The elements of liability above are elements with cumulative conditions, what is meant by cumulative conditions is absolute conditions. That is, if the elements above are not fulfilled just one then the person is said to not be held liable for criminal liability (Rangkuti, 2018).

#### **Accountability of actors producing PCC**

The offender has produced the pill in the case of PCC pill production. Some do it as a corporation and there are those who do it in individuals who jointly produce PCC pills which of course this act is regulated in KUHP articles 55, 56, but to bridge the articles in Law No. 5 of 1997 with the KUHP there is article 103 of the Criminal Code (Larasati, 2018).

#### **Corporate liability that produces PCC**

In corporate criminal liability in special crimes such as Narcotics and Psychotropic only regulates how responsibility is in certain acts. In the psychotropic law Act No. 5 of 1997, Article 60 regulating production, it is stated that those who produce psychotropic substances other than those stipulated in

article 5 or produce or distribute psychotropic drugs in the form of drugs that do not meet the standards and requirements in Article 7 or produce or distribute psychotropic drugs in the form of drugs that are not registered with the department responsible for health as referred to in article 9 paragraph (1) shall be sentenced to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah) (Priyatno, 2003; Georgi *et al.*, 2020).

According to Article 60 to produce psychotropic substances, it is necessary to remember Article 5 which stated that "psychotropic substances can only be produced by drug manufacturers that have obtained licenses in accordance with the provisions of the applicable laws and regulations." Hence, it is clear that article 60 also concerns corporations. Back to the case of the production of PCC pills, if indeed a corporation produces PCC pills without permission, or the corporation has been proven to conduct activities to produce psychotropic substances which in fact do not exist in the standard books and / or pharmacopoeic requirements in accordance with article 7 of Law No. 5 of 1997 concerning psychotropic substances, the corporation may be subject to a criminal offense in article 60. As stipulated in article 60, the elements in article 60 have been fulfilled at points of article 60, these points are alternative conditions and not cumulative, so the corporation that meets one of the elements in the 3rd point of article 60 can be convicted. Indeed a corporation does not have a visible body, but a crime that can be committed by a corporation is a criminal fine. Therefore, corporate criminal liability is fined (Paramita, 2001; Lackey, 2020).

### **Individual Criminal Liability of PCC Pill Production Actors**

Article 60 may be imposed on individuals producing PCC pills, individuals referred to herein are persons who jointly produce, process, produce results, and package PCC pills. Basically no one can perform production activities as a single human or alone, there is a need for help from others. When examining further about the assistance of others, assistance that can be given by others includes material assistance and assistance in services. Both assistance is regulated in the Criminal Code. Hence, article 60 which does not regulate the inclusion needs to be linked to the Criminal Code, where the Criminal Code regulates the inclusion. Article 60 of the Psychotropic Law of participating actors and assistants producing criminal acts of PCC pill production can be held accountable (Priyatno, 2003).

### **CONCLUSION**

The act of producing PCC pills can be subject to article 60 of Law No. 5 of 1997. Article 60 of Law No. 5 of 1997 regulates criminal acts of psychotropic production outside of group 1 which are circulated without permission and produces psychotropic substances that do not fulfil pharmacopoeic standards. Thus, the perpetrators of PCC pill production, including psychotropic group 4, can be said to have committed a crime. Those who produce PCC pills can be held liable for criminal liability. Criminal liability includes a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 200,000,000.00

(two hundred million rupiah). Liability for corporate offenses that violate may be fined, and those involved in them may be subject to imprisonment.

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