

# Liability Analysis Of Criminal Acts In Deliberately Distributing Jamu Key Wasiat That Does Not Have A Distribution Permit

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## Abstract

The case of Syarifudin Bin Romli, who committed the crime of knowingly disseminating the key to a medicinal herb without the proper distribution permit, was decided by the Tanjungkarang District Court in Decision Number 673/Pid.Sus/2022/PN.Tjk. In light of Decision Number 673/Pid.Sus/2022/PN.Tjk, the question arises as to what motivates the offender to knowingly distribute crucial herbs that are part of a bequest without the proper distribution authorization. Furthermore, in light of Decision Number 673/Pid.Sus/2022/PN.Tjk, what legal ramifications would befall those who wilfully disseminated testamentary key herbs without the proper distribution authorization? A combination of secondary and primary data, as well as a normative juridical approach, constitute the study methodology. In addition, analysis of qualitative juridical data was performed. particularly through providing detailed, organised explanations or descriptions of phrases as the final data set. According to the study's findings, criminals perpetrate their acts by intentionally distributing herbs without a distribution permit, which violates Decision Number 673/Pid.Sus/2022/PN.Tjk. The factors contributing to this criminal behaviour include social values expressed through personality traits, such as negligence, the desire to avoid predetermined obligations, the difficulty of obtaining the necessary permits, a lack of education about the rules and regulations, and ineffective law enforcement. Based on Decision Number 673/Pid.Sus/2022/PN, those who knowingly distribute testamentary key herbs without a distribution permit are also held responsible for their illegal crimes.

**Keywords:** Accountability; Criminal act; distribute; Herbal Key Wills; Without Distribution Permit.

## 1. Introduction

Everyone who needs medicines, food supplements, vitamins, cosmetics and even processed foods, bottled drinking water, definitely wants these commodities to be in a safe condition, efficacious with guaranteed quality. So that the purpose of consuming it is achieved and no adverse side effects arise (Neeliah et al., 2009; Wiryani et al., 2017).

Criminal activity in the food and medical industries endangers the general population. So that criminal acts related to drugs and food are problems that must be taken seriously, even though sometimes there are obstacles that cause law enforcement to be ineffective and inadequate when compared to the risks posed (Aminu & Gwarzo, 2017; Chernysheva, 2020; Moseschus, 2005).

The types of violations that are often encountered include the circulation of counterfeit drugs (not fulfilling pharmacopoeial requirements), hard drugs that do not have legal authority, traditional medicines containing medicinal chemicals (BKO), cosmetics containing hazardous/prohibited

ingredients such as currants (Hg). and cosmetics that are distributed without a distribution permit (Cakrawibawa & Roisah, 2019; Suhartini et al., 2019; Wiryani et al., 2017).

In principle, the purpose of making medicines and their functions is to cure all kinds of complaints of diseases in humans or animals. This follows the definition given in the Decree No.125/Kab/B.VII/1971, dated June 9, 1971, of the Republic of Indonesia's Minister of Health, which pertains to drugs. Medications can be defined as substances that help with diagnosis, prevention, reduction, elimination, cure, or health issues in humans or animals, as well as physical and spiritual abnormalities, and even for cosmetic purposes (Handayani et al., 2019; Pranata & Rudy, 2019).

Pharmaceutical industry entrepreneurs, when viewed in the context of a business perspective that is more oriented towards economic goals, are seen as only pursuing material gain rather than prioritizing the original purpose of making medicines and their functions for the benefit of humanity (Munthe, 2021).

The indifference of business actors to the harm caused to society is not only limited to the production process which does not meet the registration requirements for finished drugs and pharmacopoeial requirements, but more than that also to the distribution system which often does not go through official (legal) channels, of course. this is evidenced by the widespread circulation of drugs that are not officially registered at the Ministry of Health of the Republic of Indonesia (Spink & Moyer, 2011; Wiryani et al., 2017).

The emergence of pharmaceutical industry products in the form of chemical drugs that endanger the health and lives of consumers, in the view of law as an act that is prohibited as regulated in the applicable laws and regulations, both in the provisions of Act Number 36 of 2009 concerning Health and in those contained in the provisions of Act Number 8 of 1999 concerning Consumer Protection (Pranata & Rudy, 2019).

In this law, the clauses of the articles contain provisions governing the application of criminal sanctions to business actors who are proven to have committed criminal offenses in the procurement, storage, sale of dangerous drugs without a permit and drugs without a distribution permit whose manufacturing process does not meet drug registration standards. so and pharmacopoeial terms (Amrullah & Rugebregt, 2017; Wiryani et al., 2017).

Arrangements for criminal sanctions are strictly regulated in provision 197 of Act Number 36 of 2009 concerning Health. Other provisions are contained in the regulations that regulate and protect the rights of the public as consumers against losses that may arise as a result of the use of medicinal products which are regulated in the provisions of Article 4 of Act Number 8 of 1999 concerning Consumer Protection (Amrullah & Rugebregt, 2017).

The criminal act of intentionally distributing unlicensed herbal medicine, committed by Syarifudin Bin Romli, commenced on Tuesday, January 25, 2022. Witnessed by Dwi Handoko, David Firnando M, and Ihwanul Qosim, members of the Lampung Police Narcotics Opsnal Team observed the defendant's Facebook account advertising a bottle of herbal medicine on the Marketplace platform. Subsequently, the team contacted the defendant via telephone to purchase the packaged herbal medicine. The defendant was instructed to come to his residence located at Dusun 1 Rt 08 Rw 03 Jati Mulyo Village, Jati Agung District, South Lampung Regency, at approximately 20:00. Upon arrival, the Lampung Police Narcotics Operations Team was present. At the residence of the accused, there were 100 crates of herbal medication, each containing 12 bottles, resulting in a total of 1200 bottles. The Lampung Police Narcotics Operations Team seized herbal medicine packaged under the brand name Kunci Wasiat, which lacked a distribution permit. During interrogation, the defendant revealed that he obtained the herbal medicine from a witness named Teguh Ristiawan Bin Sauji, who resides in Way Kanan (Mahfud et al., 2021; Nanang Pangestu & Hanim, 2021).

In Decision Number 673/Pid.Sus/2022/PN.Tjk, the Tanjungkarang District Court's panel of judges found Defendant Syarifudin Bin Romli (mentioned above) legally and convincingly guilty of distributing pharmaceutical preparations without a distribution permit, as stated in the single indictment. The defendant was sentenced to one month and fifteen days in prison and fined Rp. 5,000,000.00 (five million rupiah), with the possibility of a one-month prison sentence substituted for nonpayment of the fine (Wachyono, 2020; Wiryani et al., 2017).

Based on the description in the background, the problems posed in this study are:

- 1) In accordance with Decision Number 673/Pid.Sus/2022/PN.Tjk, what circumstances led to the commission of a criminal crime by the intentional distribution of testamentary key herbs without a distribution permit?
- 2) In light of Decision Number 673/Pid.Sus/2022/PN.Tjk, what legal ramifications might befall those who, on purpose, distribute testamentary key herbs without the proper distribution permits?

## 2. Research Method

The classified data series are subsequently subjected to qualitative juridical analysis, wherein the data is comprehensively interpreted based on the facts gathered in the field. The analysis involves organising and describing the data in the form of individual sentences. Moreover, the analytical results are viewed as deductive conclusions that provide solutions to problems based on study findings (Ayres et al., 2003; Kuckartz, 2019b, 2019a).

## 3. Discussion

1. **Considerations Influencing Criminals to Engage in the Illegal Distribution of Herbs Decision Number 673/Pid.Sus/2022/PN.Tjk-Related Keys to Wills Without a Distribution Permit**

Distributing a herbal product without the required permit is a criminal offense in the pharmaceutical industry. This act can be committed by an individual, a group, or a legally recognized entity that operates without the necessary authorization from a government agency, in violation of relevant regulations. Such actions pose a threat to public safety and are considered illegal. Criminal punishments for anyone who due of his mistake violates the restriction might be liable to physical punishment or fines. The deliberate distribution of testamentary key herbs without a distribution permission is a criminal offence that is influenced by various conditions. The following research presents the factors that contribute to the crime of intentionally distributing testamentary important herbs without a distribution permit.

According to the interview with Dwi Handoko, an Assistant Investigator for the Lampung Regional Police, he identified negligence as a critical personality element contributing to the intentional distribution of wills and essential herbs without a distribution authorization. Negligence in this context refers to the deliberate act of selling bottled 'jamu' on the Marketplace through a Facebook account. Subsequently, a search was conducted at the defendant's residence, resulting in the seizure of 100 boxes of herbal medicine. Each box contained 12 bottles, totaling 1200 bottles, which were intended for sale. These bottles were confiscated due to the absence of a distribution permit for the herbal medicine brand, Kunci Wasiat.

According to Kandra Buana, the Public Prosecutor at the Lampung High Court, the reasons behind the intentional circulation of key herbs without a distribution permit can be attributed to cultural factors prevalent in society. One such factor is the perpetrator's desire to evade established obligations.

One reason for the criminal act of intentionally distributing testamentary key herbs without a distribution permit is to evade the obligations set by the Ministry of Trade. Pharmaceutical distributors and producers are required to possess legitimate permissions in order to engage in the manufacturing and commerce of pharmaceutical supplies and medications.

Socialization is a form/container for transmitting a goal to be reached and is a type of understanding for the community. In this instance, the distribution of drugs to the community is aimed at enhancing public awareness and knowledge of the field of pharmacy. The residents of Lampung lack awareness and education regarding the legislation on the distribution of pharmaceuticals or plants without proper permits. From a regulatory standpoint, there are criminal prohibitions related to the distribution of drugs/herbs. Prior notification of this information should be provided by the Regional Government and local law enforcement authorities for the welfare of the residents of Lampung.

Through this process of socialisation, the residents of Lampung have become more cautious in the dissemination of drugs/herbs, as the regulations governing the distribution of drugs/herbs impose strict requirements and violations of these requirements might result in punitive measures. The inhabitants of Lampung suffer financial losses due to their insufficient comprehension of the legislation regarding the distribution of drugs and herbal products. The Regional Government and law enforcement officers are responsible for the legal dissemination of drug/herb distribution.

According to the Tanjungkarang District Court Judge, Hendro Wicaksono, one of the factors contributing to the deliberate distribution of testamentary herbs without a distribution authorization can be attributed to structural issues.

a. Inadequate enforcement of laws.

Inadequate law enforcement is a contributing cause to the criminal crime of intentionally distributing prohibited herbs without a distribution permission. Inadequate monitoring and law enforcement create the perception of leniency and fail to discourage drug/herbal drug trafficking. This is because there are few instances where illegal offences of intentionally distributing testamentary key herbs without a distribution permit are resolved.

b. Obtaining authorization is challenging.

The intricate and time-consuming licencing process is believed to be a major factor to the deliberate dissemination of herbal will keys without a distribution permit, which is considered a criminal crime. Challenges in acquiring permits for the manufacturing and dissemination of pharmaceutical and therapeutic items. The degree of complexity involved in acquiring this permission directly influences the extent to which therapeutic herbs can be distributed in the field. JE Sahetapy proposes the sobural approach as an alternative explanation for the reasons of crime. This method, represented by the acronym sobural, encompasses social ideals, cultural components, and structural issues that are universally present in all societies. Cultural characteristics and structural issues mutually impact one another within society. Thus, these two parts are responsive to the changes occurring in the society in question. Consequently, these two parts are susceptible to external influences, including science, technology, and other factors. The two aspects mutually impact the social ideals inherent in society. Therefore, social values will change in response to the progress of cultural elements and structural factors within the relevant society.

The causative factors of the crime, which involve the deliberate circulation of herbal medicine without a distribution permit, can be analysed based on the JE Sahetapy Theory mentioned above. These factors include the negligence of the perpetrators who intentionally sell medicine/herbal products under a false brand on Facebook Marketplace. Law enforcement was able to identify the defendant's actions and subsequently found evidence at their residence, consisting of 100 boxes of herbal medicine. Each box contained 12 bottles, resulting in a total of 1200 bottles ready for sale.

Moreover, the causes contributing to the crime of purposefully distributing prohibited herbs without a proper permit can be attributed to the insufficient dissemination of information regarding legislation, which reflects cultural elements prevalent in society. Lack of socialisation will adversely affect the limited extent of public knowledge. The public's awareness regarding the unlawful crime of deliberately distributing unpermitted key herbs will rise if the government refrains from disseminating information about them to the public. However, the criminals aim to evade

preset responsibilities, which are also sociological concerns, including the duty to organise licencing and compensation in drug/herb distribution activities.

Moreover, due to inadequate law enforcement measures and the challenges associated with acquiring permits. The factor contributing to weak law enforcement is the inefficiency of the Police, Attorney, and Judiciary institutions in effectively enforcing laws against drug/herb traffickers who have violated mining restrictions, which is a result of underlying structural issues. The effectiveness of law enforcement is contingent upon the norms, laws, and regulations governing the distribution and control of the drug/herb. Due to inadequate law enforcement, this will serve as a deterrence in the future. The limited number of verdicts rendered will influence the public's reluctance to engage in comparable criminal activities. In addition, the degree of complexity involved in obtaining a legal permission,

From the given description, it may be inferred that the reasons leading to the perpetrator's commission of a criminal crime involve intentionally distributing important herbs without the necessary distribution permission, as stated in Decision Number 673/Pid.Sus/2022/PN.Tjk. The perpetrator seeks to evade specified obligations by incorporating social values in the form of personality elements, such as neglect. Additionally, the difficulty in acquiring permissions, the lack of socialisation regarding laws and regulations, and inadequate law enforcement contribute to this behaviour. The primary factor linked to the intentional distribution of testamentary key herbs without a distribution permission is the personality trait of carelessness. Therefore, the factors that drive the offender to intentionally distribute the herbal key without a distribution permit, as examined in this study, align with JE Sahetapy's theory. According to Sahetapy, another approach to understanding the causes of crime is the sobural approach, which stands for social values, cultural aspects, and structural factors. These elements are present in every society.

**2. The Accountability of Criminal Offenders Deliberately Circulating Inheritance Key Herbal Medicines That Do Not Have a Distribution Permit Based on Decision Number 673/Pid.Sus/2022/PN.Tjk**

According to the interview with Dwi Handoko, the Lampung Regional Police Investigator, intentionally distributing key herbs without a distribution permit is a criminal act that must be held accountable. This act is considered disgraceful to society and the person responsible for it should be held accountable. In other words, the individual's conscience should guide their judgement and decision-making when it comes to committing criminal acts, taking into consideration the permanent legal consequences.

In terms of the culpability of an individual who commits a crime, particularly the offence of intentionally distributing a prohibited herb without a distribution permit, the Criminal Code generally addresses this matter in a negative manner, specifically through provisions concerning the exemption from punishment. Exemption from punishment refers to the act of not imposing a sentence or granting immunity to the one who has committed the offence. To determine the

occurrence of a crime, a thorough and systematic investigation is conducted to gather evidence. 1  
 This process relies on an adequate amount of first evidence that can instill confidence. 2  
 During the investigation phase of the case, the individuals responsible for the criminal act 3  
 deliberately disseminated the herbal remedy without a valid distribution permission. If there are 4  
 credible reports, complaints, or indications of individuals intentionally distributing a herbal key to 5  
 a will without the proper distribution permit, the Police Investigator will take appropriate measures 6  
 to uncover the criminal act. This includes identifying and apprehending the person responsible for 7  
 distributing the herbal key testament without authorization. The police promptly initiated an inquiry 8  
 upon receiving a report regarding the intentional distribution of a herbal remedy without a proper 9  
 distribution permit. If the data from the report confirms the occurrence of the crime, the police will 10  
 proceed with the investigation. The follow-up process entails soliciting information regarding the 11  
 suspect's identity, as well as data and documents, and thereafter conducting additional 12  
 investigations into the modus operandi employed by the culprit. Upon the presentation of 13  
 compelling evidence and credible witnesses, the defendant was apprehended and thereafter held 14  
 in custody. 15

Furthermore, at the investigative level, Dwi Handoko stated that the duties and powers of Police 17  
 Investigators are as follows: 18

1. Make Minutes of Examination (BAP) regarding the results of the investigation. 19
2. The investigator is obligated to promptly submit the case file to the Public Prosecutor upon 20  
 completion of the inquiry, as stated in Article 8 of Act Number 8 of 1981 regulating the Criminal 21  
 Procedure Code. There are two steps to submitting the case file, and they are namely: 22
  - a. Investigators only submit case files. 23
  - b. At the conclusion of the inquiry, the investigator will turn over the case's suspect and any 24  
 relevant evidence to the public prosecutor. 25

According to an interview with Kandra Buana, the Public Prosecutor at the Lampung High Court, 27  
 it was found that those who intentionally distribute key herbs without a distribution permit, as 28  
 stated in Decision Number 673/Pid.Sus/2022/PN.Tjk, are responsible for their criminal actions. 29  
 This act is considered unlawful, prohibited by law, and not justified in the eyes of society. 30  
 Circulating the key to the testamentary herbal medication without a distribution permit is a criminal 31  
 offence punished under Article 197 of Act Number 36 of 2009 concerning Health. 32

The Public Prosecutor requests that the Panel of Judges at the Tanjungkarang District Court, 33  
 after examining and trying the case, officially and convincingly declare the defendant Syarifudin 34  
 bin Romli guilty of intentionally producing or distributing pharmaceutical preparations and/or 35  
 medical devices without a distribution permit, as stated and punishable under Article 197 of Act 36  
 Number 36 of 2009 concerning Health. The Prosecutor proposes a prison sentence of 2 months 37  
 for the defendant, which will be reduced if the defendant remains in temporary detention, along 38  
 with a fine of IDR 5,000,000. Additionally, the Prosecutor recommends that the defendant be held 39  
 in custody and charged a court fee of Rp. 2,000. 40

According to an interview with Hendro Wicaksono, a Tanjungkarang District Court Judge, it is stated that individuals who intentionally distribute herbal products without a distribution permit and make false claims about their effectiveness should face more severe punishment if they have also committed other illegal acts. Although the act satisfies the legal definition of a wrongdoing and is not justified, it does not yet meet the criteria for imposing a punishment. In order to impose criminal punishment, it is necessary to establish that the individual who did the conduct bears responsibility or is culpable.

Hendro Wicaksono, serving as a Judge at the Tanjungkarang District Court, emphasised that due to the Defendant's conduct being legally and persuasively demonstrated, it is imperative to declare the Defendant guilty and impose a punishment that aligns with the severity of the offence. Upon considering the Public Prosecutor's demands, the panel of judges issued Decision Number 673/Pid.Sus/2022/PN.Tjk, taking into account Article 197 of Act Number 36 of 2009 regarding Health, Act Number 8 of 1981 regarding Criminal Procedure Law, and other relevant laws. The main content of the decision is as follows:

- a. In the second alternative charges brought up by the public prosecutor, the defendant Syarifudin bin Romli is found guilty beyond a reasonable doubt of distributing medicinal preparations without the proper distribution permits.
- b. Sentenced the defendant to imprisonment for 1 (one) month and 15 (fifteen) days and a fine of Rp. 5,000,000.00 (five million rupiahs) provided that if the fine is not paid it is replaced with imprisonment for one month .
- c. Find out how much of the defendant's sentence can be reduced by the time he or she has spent in custody.
- d. Ordered the Defendant to remain in detention.
- e. Determine the evidence in the form of: 1 (one) unit of Infinix brand blue android mobile phone, 100 boxes of herbal drink with the brand lock will each containing 12 (twelve boxes) of herbal drink with a total of 1200 (one thousand two) hundred) bottles (returned to the Public Prosecutor to be used in a case on behalf of Teguh Ristiawan bin Sauji)
- f. Ordered the Defendant to pay court fees in the amount of Rp. 2,000.00 (two thousand rupiahs).

WJP Pompe in Wirjono Projodikoro argued that a person's criminal responsibility is related to mistakes. There are 2 (two) types of errors in criminal law, namely:

1. Intentional (dolus/opzet)

In the theory of intentionality (opzet), namely wanting and knowing (willens en wetpens), the actions committed consist of 2 (two) theories, namely:

- a. The theory of will (wilstheorie) is the will to realize the elements of a crime in the law.
- b. Theory of knowledge or imagining (voorstellings theory), the actor is able to imagine the consequences of his actions.

Most crimes have an element of intent or opzet. This intention has 3 (three) types, namely:

- a. Deliberation to achieve something intended purpose/goal/dolus directus.



- b. Deliberation which does not contain a goal but is accompanied by the conviction that a consequence will definitely occur (deliberateness with certainty). 1  
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- c. Deliberation is like the sub above, but accompanied by awareness that there is only possibility (not certainty, that something will happen as a result (intentionalism with possibility/dolus eventualis). 3  
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2. Inadvertence (omission/culpa) 6

Lack of caution/negligence/culpa is a mistake in general, in science it has a technical meaning, namely a type of mistake by the perpetrator of a crime that is not as serious as intentional, namely lack of caution, resulting in an unintentional occurrence. 7  
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The individuals who knowingly disseminate the herbal key testament without a distribution permit, as stipulated in Decision Number 673/Pid.Sus/2022/PN.Tjk by Syarifudin Bin Romli, are accountable for their unlawful conduct. This is consistent with the notion put forth by WJP Pompe in Wirjono Projodikoro, which posits that an individual's culpability for a criminal act is linked to their misconduct. In the field of criminal law, mistakes can be classified into two distinct categories: purposeful, also known as dolus or opzet, and inadvertence, generally referred to as carelessness or culpa. 11  
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The responsibility for purposefully distributing herbal medications without the required distribution permit, as outlined in Decision Number 673/Pid.Sus/2022/PN.Tjk, lies with the manufacturer, who may experience feelings of guilt. There exists a psychological link between the creator and the action, regardless of whether it was deliberate or unintentional, and there is no valid reason to exempt the creator from being held accountable for the offence. Errors might be seen as a stigmatising element that, essentially, does not discourage illegal behaviour. Moreover, the essay explores how the lack of measures to discourage unlawful behaviour is tackled in the development of legal frameworks. This encompasses both intentional actions and negligence that lead to illegal conduct, as well as the ability to be held responsible for such actions. 18  
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The individuals who deliberately distribute the herbal key testament without a distribution permit, as specified in Decision Number 673/Pid.Sus/2022/PN.Tjk, have been lawfully established and convicted. Their activities blatantly contravene and infringe upon the existing legal provisions, so constituting an offence (strafbaarfeit). An offence, also referred to as a criminal act, pertains to conduct that contravenes the law and is liable to be penalised. It is perpetrated by those who possess the capacity to be held responsible for their conduct. This implies a psychological connection between the perpetrator and the action, particularly about a deliberate error committed by the perpetrator. This error entails the intentional dissemination of a natural remedy to the populace without the requisite authority. 27  
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From the provided description, it can be inferred that the individuals responsible for the offence deliberately distributed herbal items without the required distribution permission, as specified in Decision Number 673/Pid.Sus/2022/PN.Tjk. The Defendant, Syarifudin Bin Romli, has been irrefutably and conclusively established as culpable for this offence in accordance with the law. Consequently, the Defendant has received a sentence of one month and fifteen days of 36  
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incarceration, in addition to a fine of Rp. 5,000,000.00. Failure to pay the fine will result in an extra one-month incarceration. This is consistent with WJP Pompe's concept of error, which includes both deliberate and inadvertent errors.

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