

## ABSTRAK

### ANALISIS DASAR PERTIMBANGAN HAKIM DALAM PENJATUHAN TINDAK PIDANA PEREDARAN OBAT TRADISIONAL DAN KOSMETIK TANPA IZIN (Studi Putusan 814/Pid.Sus/2024/PN.Tjk)

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Peredaran obat tradisional dan kosmetik tanpa izin edar merupakan permasalahan hukum di bidang kesehatan yang semakin meningkat seiring tingginya kebutuhan masyarakat terhadap produk kesehatan dan kecantikan. Produk tanpa izin edar tidak melalui proses pengawasan dan pengujian oleh Badan Pengawas Obat dan Makanan (BPOM), sehingga berpotensi membahayakan kesehatan konsumen dan melanggar ketentuan hukum yang berlaku. Kondisi ini menuntut peran hakim dalam menjatuhkan putusan yang tidak hanya memenuhi aspek kepastian hukum, tetapi juga mencerminkan perlindungan konsumen dan tujuan pemidanaan. Berdasarkan hal tersebut, permasalahan dalam penelitian ini adalah Bagaimanakah pertimbangan hukum hakim dalam menjatuhkan Putusan Nomor 814/Pid.Sus/2024/PN.Tjk dan Apakah pidana yang dijatuhkan oleh hakim telah sesuai dengan tujuan pemidanaan.

Penelitian ini menggunakan pendekatan yuridis normatif dan yuridis empiris. Data primer diperoleh dari salinan resmi Putusan Nomor 814/Pid.Sus/2024/PN.Tjk serta wawancara dengan Hakim Pengadilan Negeri Tanjungkarang, Jaksa Penuntut Umum Kejaksaan Negeri Tanjungkarang, dan Dosen Bagian Hukum Pidana Fakultas Hukum Universitas Lampung. Data sekunder diperoleh dari peraturan perundang-undangan, buku literatur hukum, jurnal ilmiah, dan dokumen resmi yang relevan. Pendekatan penelitian meliputi pendekatan perundang-undangan (*statute approach*), pendekatan kasus (*case approach*), dan pendekatan konseptual (*conceptual approach*). Analisis data dilakukan secara kualitatif dengan mengkaji fakta hukum, pertimbangan hakim, serta kesesuaiannya dengan ketentuan hukum dan tujuan pemidanaan.

Hasil penelitian menunjukkan bahwa Pertimbangan hukum hakim dalam Putusan Nomor 814/Pid.Sus/2024/PN.Tjk didasarkan pada pembuktian unsur tindak pidana secara sah dan meyakinkan, dengan mengacu pada Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan, Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, serta peraturan BPOM. Hakim mempertimbangkan alat bukti berupa keterangan saksi, surat, dan pengakuan terdakwa, serta menilai adanya unsur kesalahan (*Mens rea*) dalam perbuatan terdakwa. Pidana yang dijatuhkan oleh hakim dinilai telah mencerminkan

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tujuan pemidanaan, khususnya pencegahan dan perlindungan masyarakat, meskipun masih lebih menitikberatkan pada terpenuhinya unsur formil tindak pidana dibandingkan akibat konkret yang ditimbulkan.

Saran penelitian ini adalah aparat penegak hukum diharapkan meningkatkan konsistensi dan ketegasan penegakan hukum terhadap peredaran obat tradisional dan kosmetik tanpa izin, pemerintah dan BPOM perlu memperkuat pengawasan serta edukasi kepada masyarakat dan pelaku usaha, pelaku usaha wajib mematuhi ketentuan perizinan dan standar keamanan produk, serta masyarakat diharapkan lebih cermat dalam memilih produk dan aktif melaporkan peredaran produk ilegal.

**Kata Kunci:** Pertimbangan Hakim, Obat Tradisional & Kosmetik, Tanpa Izin

## **ABSTRACT**

### **ANALYSIS OF THE BASIS FOR JUDGES' CONSIDERATIONS IN IMPOSING CRIMINAL SANCTIONS FOR THE DISTRIBUTION OF TRADITIONAL MEDICINES AND COSMETICS WITHOUT A LICENSE (A Study of Decision No. 814/Pid.Sus/2024/PN.Tjk)**

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*The distribution of traditional medicines and cosmetics without marketing authorization constitutes an increasingly prevalent legal issue in the field of public health, in line with the growing demand for health and beauty products. Products distributed without marketing authorization do not undergo supervision and testing by the National Agency of Drug and Food Control (BPOM), thereby posing potential risks to consumer health and violating applicable legal provisions. This condition requires the role of judges in delivering decisions that not only ensure legal certainty but also reflect consumer protection and the objectives of criminal punishment. Based on this background, the research problems formulated in this study are How are the judge's legal considerations applied in rendering Decision Number 814/Pid.Sus/2024/PN.Tjk and Whether the criminal sanctions imposed by the judge are in accordance with the objectives of punishment*

*This research employs normative juridical and empirical juridical approaches. Primary data were obtained from the official copy of Decision Number 814/Pid.Sus/2024/PN.Tjk and interviews with a Judge of the Tanjungkarang District Court, a Public Prosecutor of the Tanjungkarang District Attorney's Office, and Lecturer of the Criminal Law Department, Faculty of Law, University of Lampung in Bandar Lampung. Secondary data were collected from statutory regulations, legal literature, scientific Journals, and relevant official documents. The research approaches include the statutory approach, case approach, and conceptual approach. Data were analyzed qualitatively by examining legal facts judicial considerations, and their conformity with applicable laws and the objectives of punishment*

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*The results of the study indicate that The judge's legal considerations in Decision Number 814/Pid.Sus/2024/PN.Tjk were based on lawful and convincing proof of the elements of the criminal offense, referring to Law Number 36 of 2009 on Health, Law Number 17 of 2023 on Health, and BPOM regulations. The judge considered evidence in the form of witness testimonies, documents, and the defendant's confession, as well as the existence of fault (Mens rea) in the defendant's actions. The criminal sanction imposed by the judge is considered to reflect the objectives of punishment, particularly prevention and protection of the public, although it still places greater emphasis on the fulfillment of formal elements of the offense rather than on the concrete consequences arising therefrom.*

*The study recommends that law enforcement officials enhance consistency and firmness in enforcing the law against the distribution of unlicensed traditional medicines and cosmetics; that the government and BPOM strengthen supervision and education for the public and business actors; that business actors comply with licensing requirements and product safety standards; and that the public be more vigilant in selecting products and actively report the circulation of illegal products.*

**Keywords:** *Judicial Considerations, Traditional Medicines & Cosmetics, Without License.*