

Criminal Liability Against  
Business Actors Who Sell  
Imported Food Products  
Without Circulation License  
Through Online Store (Study of  
Decision No.  
613/Pid.Sus/2019/Pn.Pdg)

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# Criminal Liability Against Business Actors Who Sell Imported Food Products Without Circulation License Through Online Store (Study of Decision No. 613/Pid.Sus/2019/Pn.Pdg)

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## ABSTRACT

In this modern era, technological developments are increasingly advanced and growing rapidly, because of these technological advances, it supports transactions through online shops, causing some business actors who sell goods and services both domestically and abroad who do not have a license. certain of the goods it sells. And these goods have been circulated and traded freely, so that business actors can sell goods with high competitiveness both domestically and abroad. Even the existence of free trade can have a negative impact on those who have bought it. Therefore, there must be the application of criminal liability to business actors who have committed criminal acts by selling products in the form of goods or services that violate an applicable provision. Based on the results of the analytical research in Decision No. 613/Pid.Sus/2019/Pn.Pdg, the perpetrator can be imposed with criminal sanctions because he has fulfilled one of the elements, namely the ability to be responsible for all his actions. In criminal liability which is one of the other requirements is the element of ability to be responsible for a criminal act. So every criminal act in the Criminal Code can generally be described into two types, namely subjective and objective elements. Based on the judge's consideration in Decision No. 613/Pid.Sus/2019/Pn.Pdg, the defendant should be sentenced to a fine because the defendant's actions clearly harm the state in terms of non-tax state income or abbreviated.

**Keywords:** Criminal liability, Business actors, Distribution license

## 1. INTRODUCTION

In this modern era, technological developments are increasingly advanced and growing rapidly, because of these technological advances, it supports transactions through online shops, causing some business actors who sell goods and services both domestically and abroad who do not have a license. certain of the goods it sells. And these goods have been circulated and traded freely, so that business actors can sell goods with high competitiveness both domestically and abroad. Even the existence of free trade can have a negative impact on those who have bought it. Therefore, there must be the application of criminal liability to business actors who have committed criminal acts by selling products in the form of goods or services that violate an applicable provision. The definition of a crime comes from a term known in the Dutch criminal law book, namely *StafbaarFeit* which consists of 3 (three) words, namely *staff* which is defined as criminal and legal, *Baar* is defined as can or may, and *feit* which is defined as an act, events, violations, and actions. In the Criminal Code there is no explanation

regarding the *staff* *feit* itself, usually a crime is equated with an offense, which comes from the Latin word *delictum*. *Stafbaarfeit* or sometimes called a *delict* which is translated into Indonesian.[1] According to Bambang Poernama, which is in line with the opinion of J.E Jonkers in Bambang Poernama's book, which has provided a definition of *strafbaarfeit* into two meanings, as stated by Bambang Poernomo, namely:

- a. The definition of *strafbaarfeit* is a *feit* incident that can be criminalized by law.
- b. Understanding in a broad sense *strafbaarfeit* is a behavior that is contrary to the law, and relates to what an act is done intentionally or *alpha* by someone who can be accounted for.[2]

Criminal acts are also contained in positive Indonesian criminal law which is in the Criminal Code and the Law outside the Criminal Code which is usually called a special crime. The enforcement of this particular crime is regulated in Article 63 and Article 103 of the Criminal Code. The rules regarding special crimes outside the Criminal Code are contained in Article 103 of the Criminal

Code which contains several provisions from Chapter I to Chapter VIII. In this book, there are also rules regarding acts which other statutory provisions may be punishable by, unless the law provides otherwise. In Book I of the Criminal Code, it applies to criminal acts outside the Criminal Code except for regulations outside the Criminal Code which are called special criminal law (*lex specialis*) which means that <sup>25</sup> contains legal rules that deviate from the general rules of criminal law, both in material criminal law and formal criminal law, criminal law outside the Criminal Code can be classified as special criminal law or general criminal law as it will be developed and increasingly widespread, because almost all fields of law always contain criminal provisions. There is also the purpose of a special crime, namely to fill in deficiencies or legal vacancies for which there is no regulation in the Criminal Code. The relationship between these general and special regulations must be included in a legal harmonization process, namely as an effort or process to realize, harmony, conformity, harmony, compatibility, and balance between legal norms contained in legislation as a legal system in one to the unit of the national legal framework. In this case, the business actor sells food products without a certain license which can be called a distribution permit which is a certification from the Food and Drug Supervisory Agency or abbreviated as BPOM, to produce products by large-scale domestic industries, househ<sup>8</sup>lds, or industries that produce a product. food must be certified by BPOM. This distribution permit will be issued by BPOM RI, especially for every business that produces food products with milk-based ingredients, uses certain food additives (such as preservatives, flavor enhancers, dyes, etc.), or carries claims such as the function of food as complementary food to <sup>2</sup>reast milk (MPASI), food for the elderly, and so on.<sup>[3]</sup>Food is also the most important basic human need and is also a part of the human rights of every Indonesian people. So food must always be available in sufficient, safe, quality, nutritious, <sup>22</sup> varied manner at affordable prices in order to attract people's purchasing power, and not conflict with religion, belief, and culture in the community, to achieve all of this there must be an implementation of a system. food in order to convey all forms of protection for those who produce and consume the food.<sup>[4]</sup> There is a goal of establishing the Agency for Drug and Food Control or BPOM abbreviation, which has the same goals as the European Medicines Agency (EMA), and the Food and Drug Administration (FDA) with the main objective of supervising the entire circulation of drugs and food throughout the region. Indonesia. The purpose of implementing supervision on drugs and food is to ensure that all products are safe for consumption, and meet all quality and nutritional criteria so as not to harm the consumer who buys them. So that there is a certain license in a product, both foreign and domestic, which referred to as a distribution permit. So when buying medicinal and food products, it is better to check first whether the product has been registered with BPOM or not. If it is registered and has a distribution permit, the product means it is safe and suitable for consumption.<sup>[5]</sup>

So that a product must have a certain license, otherwise it will have a negative impact on consumers, in addition to harming consumers, it can also harm the state in terms of tax revenue. BPOM also said that there was a financial loss to the state that could reach Rp 5.5 billion in 2013 which must be borne due to the circulation of products sold by business actors who do not yet have a license.<sup>[6]</sup>Therefore, if a fine is imposed for business actors who do not have a license, it will increase foreign exchange earnings for the state. Fines are also contained in Article 10 of the Criminal Code, which can be interpreted as an obligation to pay an amount of money, which has been determined in the judge's decision and charged to the convict for the violation or crime he has committed.<sup>[7]</sup> As a form of principal crime, fines for almost all overtredingen violations or violations are intended as an act that violates something and is related to the law or is often referred to as an offense. Unlawful acts, overtrending is regulated in book III of the Criminal Code, and some crimes are regulated in book II of the Criminal Code. An example of the case contained in Decision Number 613/Pid.Sus/2019/PN.Pdg has sentenced Herwin Budi Manrucci as the defendant in charge or manager of Toko Asun who obtained food products without distribution permits through online stores such as Shopee and Tokopedia by ordering them online. on line. In addition, he also received food products from a salesperson whose identity the defendant did not know because he did not have an invoice, the defendant bought it from the salesperson because the price was cheaper than an online store and the defendant had been selling food products for about 3 (three) years without the distribution permit. economy of approximately Rp. 6,000,000.00. The defendant was also searched by a team from the Center for Drug and Food Control in Padang because he had permission from the authorities and then the defendant and the evidence were taken to the Center for Drug and Food Control in Padang. So that the defendant's actions were sentenced to criminal penalties as regulated and threatened with crime in Article 142 Jo Article 91 paragraph (1) of Law No.18 of 2012 concerning Food. The Panel of Judges stated that the defendant Herwin Budi Manrucci had been legally and convincingly proven to have committed a criminal act by a food business actor who deliberately did not have a distribution permit for imported processed food to be <sup>3</sup>aded in retail packaging and traded food goods that did not include information and/or instructions for use.goods in the Indonesian language then impose a sentence on the defendant with a prison term of 7 (seven) months. Every product that does not have a distribution permit must be considered because it is an effort to protect the public or protect consumers. As in this case, the defendant does not have a distribution permit for a food product that he sells online. Therefore, the defendant in this case is subject to imprisonment without being fined by the judge. Because the defendant's actions are clearly detrimental to the state as a result of the products being circulated without such a permit. The state is disadvantaged because it can increase state revenue in the form of Non-Tax State Revenue (PNPB), so business

actors are required to pay PNPB based on Article 1 of Law No. 9 of 2018 concerning Non-Tax State Revenue. Therefore I am interested in lifting with the title "CRIMINAL LIABILITY AGAINST BUSINESSES WHO SELL IMPORTED FOOD PRODUCTS WITHOUT CIRCULATION LICENSE THROUGH ONLINE STORE (EXAMPLE OF DECISION STUDY NO. 613/PID.SUS/2019/PN.PDG)".

## 2. METHOD

The research used in this method is normative with. The approach used refers to the case approach and the legal approach. Literature study data collection techniques. The types of data sources obtained by the author through primary legal materials include related laws and regulations, secondary materials in the form of books, journals, and the internet as well as tertiary supporting materials in the form of legal dictionaries.

## 3. DISCUSSION

In Indonesia, state revenues are basically divided into 2 (two), namely state revenue in the form of taxes and non-tax revenues. Based on Law no. 28 of 2007 concerning General Provisions and Tax Procedures (KUP).[8] Tax is a contribution that must be given to the state and must be paid by an individual or entity, and can be coercive under the law, in the absence of a direct or indirect reward to be used as state needs for the welfare of the people. Payment of taxes is also a form of obligation that plays an important role for the state, and taxpayers are also applied directly in the implementation of tax obligations for state financing and national development.

According to the regulations of the Taxation Law, paying taxes is not only a form of obligation, but it is also the right of every citizen to pay taxes participate and contribute in the form of participation in the form of state financing and national development. Therefore, it can be explained that tax is a contribution that must be made by taxpayers.[9] Article 1 number 2 of the KUP Law explains that taxpayers include individuals or entities, which include taxpayers and tax cutters, and tax collectors, who have tax rights and obligations according to the rules contained in tax laws and regulations.[10] As Indonesian citizens, we are obliged to pay for this rule, which is also contained in Article 23 A of the 1945 Constitution, because taxes are a very important source of state revenue for the administration of government and the implementation of national development. So that the government places tax obligations as a form of state obligation which is a means of state financing and national development to achieve state goals.

There is also a tax on food and beverages called a consumption tax, the tax is part of the VAT, which can be levied on any value added of goods or services from producers to consumers. The legal basis for this tax is

contained in Permenkeu No. 141/PMK.03/2015 Article 1 paragraph 6 letter J. According to this regulation it can be said that catering and catering services will be subject to PPH 23. In Article 1 PMK No. 18/PMK.010/2015 there is an understanding of catering and catering services which are food and beverage providers equipped with equipment and supplies in serving food. Sales tax is a tax contained in the sale of goods, especially food and beverage products. Tax classification is divided into three, namely:

- a. Taxes on consumption are divided into (two) types, namely general and specific.
- b. General taxes are divided into 2, namely value added tax and sales tax and taxes on general goods and services.
- c. Specific taxes consist of excise duty, import duties and taxes on goods and services which are generally specific in nature. Examples of this tax group are excise taxes on cigarettes, cigars, sliced tobacco and other processed products.
- d. Classification of taxes on consumption, the tax rate includes food in restaurants such as VAT (Value Added Tax) which is usually charged at 10% of the price of the food. Service providers for catering and catering services are not subject to value added tax, because the type of business will be subject to consumption tax which can be in the form of PPH as regulated in Article 23 with an amount of 2%. Meanwhile, those who do not have a NPWP can be charged a 4% tariff.

There are also tax rules for business actors who want to sell goods through online stores. One of the taxes imposed on business actors is the Marketplace Tax, this tax is a VAT collection policy in e-commerce transactions or called online buying and selling transactions. The legal basis for the tax is regulated in Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trading Through Electronic Systems. Every business actor, including traders who trade through the electronic system or PSE for short, must meet the general requirements in accordance with the laws and regulations. In these requirements there are business licenses, technical permits, TDP, NPWP, code of business conduct business behavior code of practices, standardization of goods and/or services products and other matters in accordance with the provisions of laws and regulations. In Article 17 paragraph (1) PP 80/2019 also discusses that domestic and foreign PPMSE are prohibited from accepting domestic and foreign traders who do not meet the requirements stipulated in the regulations in Indonesia. Circulation of processed food online must have a distribution permit and meet good production methods in accordance with the provisions of Article 16 Regulation of the Food and Drug Supervisory Agency Number 8 of 2020 concerning Control of Drugs and Food Circulated Online or Online. In this Agency Regulation, that is meant by online distribution of drugs and food is any activity or series of activities related to the distribution and/or delivery of drugs, traditional medicines, health supplements, cosmetics, and processed food using electronic transaction media in the context of trading.



Article 17 states that business actors can distribute processed food online. Business actors who distribute processed food online as referred to in paragraph 1 are obliged to guarantee the safety and quality of processed food. Business actors in conducting online distribution of Processed Food can go through:

- a. Own electronic system.
- b. Electronic system provided by PSE.

In the provisions of paragraph 2, business actors and PSE as referred to in paragraph 1 must ensure that the electronic system used complies with the following provisions:

- a. Include information regarding the name and address of the business actor selling processed food.
- b. Include complete information and/or information included on processed food labels in accordance with the provisions of the legislation.[11]

Meanwhile, Non-Tax State Revenue<sup>5</sup> or abbreviated (PNBP) is a form of levy that must be paid by individuals or entities to obtain direct or indirect purposes for services and utilization of resources and rights obtained by the state. Based on the laws and regulations, the central government's revenue outside of taxation is grants which are managed in a form of revenue and expenditure budget mechanism

state (APBN). Non-Tax State Revenue is regulated in a special<sup>30</sup> law outside the Criminal Code, namely the Law of the Republic of Indonesia Number 9 of 2018 concerning Non-Tax State Revenue. In Article 1 paragraph 4, what is meant by the obligation to pay is an individual or entity from within the<sup>2</sup> country or abroad who has the obligation to pay PNBP in accordance with the provisions of the legislation. In the enactment of this special law, of course, it cannot be separated from the general provisions contained in the Criminal Code in accordance with the principle of *lex specialis derogat lex generalis*. In the case of taxation, one of them is about distribution permits. Distribution permit is a license granted for various kinds of medicines and foods circulating in Indonesia. These permits must be owned by producers or importers of medicines and food. Without this permit, drugs and food are illegal to be circulated, so if you want to distribute medicinal and food products, you must first obtain approval from the results of the assessment of the safety, quality, and nutritional criteria of a processed food in circulation in Indonesia. Obtaining a distribution permit is carried out by first registering a processed food product with the Food and Drug Monitoring Agency (BPOM). Distribution permits are divided into 4 types of labels, namely: SP, MD, ML, and PIRT. The following is a brief description of the three types of permissions.

1. SP Labels

This label is usually called the Extension Certificate which is a label given by the Health Office to small-scale entrepreneurs or commonly referred to as Small and Medium Enterprises (UKM).

2. MD is a license for large and local industries

These labels are usually local and are large-scale industries that manufacture their own products. For example, delicious noodle products from PT. Prakarsa Alam Segar must already have an MD code. The MD code for a product also varies depending on the location of the place of production.

3. ML (Outer Food) is a license for large importing industries. This label is usually intended when food and beverage products are imported into Indonesia. For example, Milo products, either directly imported or repackaged in Indonesia.[12]
4. PIRT (Home Industry Production) is different from MD and ML issued from BPOM for large food industries, PIRT which stands for Household Industry Food, is a letter issued by the Health Office in the local district to the small-scale food industry and medium-sized enterprises (SMEs) or home-based. PIRT registration must include laboratory test results that the food product is safe for consumption.[13]

Based on the four types of labels above, in Decision No. 613/Pid.Sus/2019/PN.Pdg that the products sold by business actors are imported products, business actors should already have an ML (external food) label if food and beverage products are imported into Indonesia. Because there are already rules regarding the label of processed food in Perka Badan Pom No. 31 of 2018. It is stated that every person or business actor who imports processed food to be traded<sup>7</sup> retail packaging must include a label when entering the territory of the Unitary State of the Republic of Indonesia (NKRI) and Article 5<sup>9</sup> states that the label in question contains at least the product name, a list of materials used, net weight, name and address of the party producing or importing, halal for those required, date and production code, expiry date, distribution permit number, origin of certain food ingredients and Article 7 reads the label referred to in Article 5 paragraph 1 must be written and printed. Goods that have been circulated contained in the Decision No. 613/Pid.Sus/2019/PN.Pdg are also goods imported from abroad that are based on the facts revealed in court. Proven green tea mix cha tramue brand, skim milk flour, bhongninggou zi (goji berry), 3 in 1 Ipoh white coffee King, old town white coffee, big hacks, small hacks, cheong kimchuanbelacan, boxton fruit special grade, Nestle Milo 3 in 1, Nestle Nespray, Pork Leg with Mushrooms in the form of packaged food in plastic which was sold at the shop owned by the defendant, namely the Asun store located on Jalan Tanah Kongsu No. 26 RT. 002 RW. 004 Kampung Pondok Padang Barat are goods originating from abroad or imported goods which can be seen from the packaging which does not include information and/or instructions for the use of goods in Indonesian. This will get PNBP with the conditions issued<sup>4</sup> by BPOM will produce PNBP for Indonesia. Based on the Government Regulation of the Republic of Indonesia Number 32 of 2017 concerning Types and Tariffs of Types<sup>32</sup> Non-Tax State Revenues Applicable to the Food and Drug Supervisory Agency<sup>4</sup> in Article 1 point (1) it states that there are several types of Non-Tax State Revenues

(PNBP) that apply to the Supervisory Agency. Drugs and Food includes receipts from:

- a. Registration, Registration, Notification and Evaluation Services.
- b. Inspection Services for Imported Product Production Facilities.
- c. Certification services, and testing services.

Should be paid by business actors in Decision No. 613/Pid.Sus/2019/PN.Pdg if registering a license to obtain a distribution permit from BPOM. However, in this case, the business actor does not have a distribution permit for the product he sells, so he does not pay PNBP. There are also rules regarding the prohibition for business actors to sell a food product without a distribution permit in Article 142 Jo. Article 91 paragraph 2 of Law No. 18 of 2012 concerning Food, namely: "Food business actors who intentionally do not have a distribution permit for any processed food made domestically or imported for trading in retail packaging as referred to in Article 91 paragraph (1) shall be punished with imprisonment for a maximum of 2 (two) years or a fine a maximum of IDR 4,000,000,000.00 (four billion rupiah)."

Based on Law no. 18 of 2012 concerning Food where Article 91 states that in terms of controlling the safety, quality and nutrition of any processed food made domestically or imported for trading in retail packaging, food business actors are required to have a distribution permit, because what is shown in court is the decision is a food product that does not have a distribution permit, then the food product is not allowed to be circulated in Indonesia because it violates provisions as regulated in Law no. 18 of 2012 concerning Food. Based on Law No. 18 of 2012 concerning Food, business actors who do not have a distribution permit for imported or domestic food products can be subject to imprisonment or fines. 613/Pid.Sus/2019/PN.Pdg states that food business actors who intentionally do not have a distribution permit for imported processed food to be traded in retail packaging and trade food goods that do not include information and/or instructions for the use of goods in Indonesian sentenced to imprisonment for 7 (seven) months.

But in Decision No. 613/Pid.Sus/2019/PN.Pdg should be based on the consideration of the judge, the defendant should be sentenced to a fine because the defendant's actions can harm the state in terms of state income in the form of taxes so that if a fine is imposed, it can increase the country's foreign exchange, therefore there is criminal responsibility for the perpetrator effort. The distribution permit is also a regulation that must be considered by business actors if they want to sell foreign or domestically made food products online because it can lead to a criminal act.

There are several views of experts' opinions regarding the definition of a criminal act. According to Chairul Huda, criminal acts can be related to the principle of legality, while the maker can be punished on the basis of error, meaning that a person will have criminal liability if he has committed an act that is wrong and contrary to the law. In essence, criminal liability is a form of mechanism made to

react to violations caused by the existence of a certain agreed-upon act. In a criminal act, if a person commits an act that is contrary to the law or all the rules regulated in the law, criminal responsibility for all his actions is required.[14]

The element of error is an element that plays an important role or can be said to be the main element in criminal liability. In the sense of a criminal act, it does not include criminal liability, because a criminal act only refers to a person's actions that are against the law or prohibited by law, regarding whether someone who commits a crime is then sentenced to depend on whether someone commits a crime there is an element of error or not. Criminal liability itself is also a form of determining whether a suspect or defendant can be held accountable for a crime that has occurred. In this case, criminal liability is a form that determines whether a person is released or convicted. This ability can notify the guilt of the perpetrator of a criminal act in the form of intentional or negligence, meaning that the action is reprehensible, the accused is aware of the action taken.[15]

In addition to criminal liability, there is also responsibility for a product called product liability which is the legal responsibility of the person or legal entity that produces the product (producer, manufacture) or the person or legal entity that sells or distributes the product.[16] In product liability, consumers claiming compensation are only required to show that the product is defective when delivered by the manufacturer and has caused harm to the consumer. In general, product defects experienced by consumers are the responsibility of business actors which lies in product defects caused by other people or other products. In this case, (product liability) recognizes an absolute responsibility called (strict liability).[17]

Product liability or product liability aims to protect consumers, eliminating the consumer's obligation to prove the producer's fault, and conversely the producer is obliged to prove that he did not make a mistake, a logical consequence of the legal construction, that the producer must prove that he is not guilty is that the producer is deemed to have made a mistake. immediately after the consumer suffers a loss due to using the product. The legal development of product liability is marked in its development by the recognition of the imposition of responsibility on the producer based on the existence of a contract, giving rise to a very limited scope, which only arises between one party who has executed a contract between the victim and the producer of defective or damaged goods that. Therefore, other parties who are also victims of the defective or unsafe product are not protected. In this case, the consumer will experience a loss for the defective goods, but the UUPK itself has used the principle of semi strict liability.[18] As the rules are contained in Article 19 UUPK. Business actors must be responsible for providing compensation for consumer damage or loss. Whereas in Article 28 of the UUPK there is evidence of whether or not an element of error has become a burden for business actors. In this case the responsibilities of business actors according to Article 27 of the UUPK, can be given a limitation of responsibilities

so that business actors can be released either partially or wholly from all responsibilities losses suffered by consumers if the goods are not circulated, causing defects in the future, and caused by the negligence of the consumers themselves.

In the application of civil sanctions, it is still a requirement to obtain compensation in the case of product liability, only proving the element of error is not the burden of the consumer anymore, but is the burden of the producer to prove that he is innocent (thick proof). This can be stipulated in Article 28 of the UUPK, which contains that: "Proof of whether or not there is an element of error in the claim for compensation as referred to in Article 19, Article 22, and Article 23 is the burden and responsibility of the business actor" In addition to civil sanctions in the UUPK there are also criminal sanctions, namely as stipulated in Article 62 paragraph 1 and paragraph 2 of the UUPK, then producers who violate the provisions above are sentenced to a maximum imprisonment of 5 years or 2 years or a maximum fine of Rp 2,000,000,000, - ( 2 billion rupiah) or Rp. 500,000,000, - (five hundred million rupiah). Depends on which article is violated. The sanctions are also contained in Decision No. 613/Pid.Sus/2019/Pn.Pdg which was used to be imposed on the defendant at the consideration of the panel of judges in the second indictment. In the cumulative indictment of business actors, namely violating Article 62 paragraph (1) in conjunction with Article 8 paragraph (1) Letter J of Law No. 8 of 1999 concerning Consumer Protection. So that the defendant Herwin Budi Manruci has been legally proven on two elements, namely:

1. Business actors.
2. It is prohibited to produce or trade goods that do not include information and/or instructions for the use of goods in the Indonesian language.

As well as convincing him to commit a crime, because he is not responsible for his actions, because the defendant deliberately does not have a distribution permit imported processed food for trading in retail packaging and trade in food goods that do not include information and/or instructions for the use of goods in the Indonesian language. With lightening things, namely

1. The defendant has never been convicted.
2. Be polite in court.
3. Regret the action and will not do it again, and

The aggravating thing is that the defendant harmed consumers in terms of both halalness and hygiene. Therefore, the defendant was sentenced to imprisonment for 7 (seven) months. In criminal liability, the burden of responsibility can be given to the perpetrators of binding criminal offenses on the basis of imposing criminal sanctions. A person is said to have criminal liability if there is something or an act committed by him that violates the law, but a person can lose his responsible nature if an element is found in him that can cause the loss of a person's ability to be responsible. The basis of criminal liability itself is an error contained in the soul of a person who is associated with the mistake and is

associated with behavior that can be punished on the basis of the mentality of the perpetrator who can be reproached because of his behavior. For the existence of an error to the perpetrator, it must be achieved and determined in advance several things concerning the perpetrator, namely: [19] The ability to be responsible, the relationship, the psychology between the perpetrator and the consequences, including behavior that is not contrary to the law in everyday life, *dolus* and *culpa*, mistakes are subjective element of a crime. This is a consequence of his opinion that connects or unites *strafbaarfeit* with errors.

#### 4. CONCLUSION

Circulation permit has been stipulated in Article 17 in conjunction with Article 91 paragraph (1) of Law no. 18 of 2012 concerning Food, and Law no. 8 of 1999 concerning Consumer Protection and these rules are used in Decision No. 613/Pid.Sus/2019/Pn.Pdg which is considered a sanction to be imposed on the defendant as well. In Decision No. 613/Pid.Sus/2019/Pn.Pdg the perpetrator can be subject to criminal sanctions because he has fulfilled one of the elements, namely the ability to be responsible for all his actions. And the perpetrator can be said to have committed a criminal act, if the act has been proven to be a criminal act as regulated in the applicable criminal laws regulations as well as in the Criminal Code. Therefore, if a person has been proven to have committed a criminal act, he cannot always be sentenced to a criminal sentence. This is because in criminal liability, it is not only seen from the actions, but also from the element of guilt. So every criminal act in the Criminal Code can generally be described with elements.

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