



Application of Elements of Participation in Crime of Trafficking in Goods That are Not in Accordance with Indonesian National Standards

Iyah Faniyah ¹, Anggara Wijaya Herman ^{1*}, Bisma Putra Pratama ¹

¹ Program Magister Ilmu Hukum, Universitas Ekasakti, Padang, Sumatera Barat, Indonesia

*Corresponding author's email: anggarawh86@gmail.com

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Abstract: The application of the element of participation by the Directorate of Special Criminal Investigation of the West Sumatra Regional Police against the crime of trafficking in goods that are not in accordance with the Indonesian National Standard (SNI) is to position the qualification as the perpetrator who ordered the act (*doen pleger*), because the will of the main perpetrator is realized through the actions of other parties under his control. On the other hand, distribution managers, marketing agents, or retailers can be classified as participating in the conduct (*medepleger*) if they are proven to have knowledge of the non-conformity of goods with applicable standards, but continue with sales activities. Any perpetrator involved in the chain of circulation of goods can be held criminally liable as long as it can be proven that they have knowledge or at least strong suspicion about the non-conformity of the goods with applicable standards. The obstacles encountered by the Directorate of Special Criminal Investigation of the West Sumatra Regional Police in the application of the element of participation to the crime of trafficking in goods that are not in accordance with Indonesian national standards are the most prominent legal obstacles in the investigation of this case are in the aspect of proving the element of guilt and the involvement of the perpetrators which are doctrinally the core of participation. The regulatory structure regarding the crime of trafficking in goods that does not meet standards is still scattered and fragmentative, causing difficulties for investigators in identifying which norms are relevant to ensnare the perpetrators of participation. Non-legal aspects, limited human resource (HR) capacity of investigators are crucial factors that affect the effectiveness of the implementation of inclusion elements, especially in cases involving the distribution of goods digitally. It is related to the low level of legal awareness among business actors and the public, especially in the trade sector of daily necessities.

Keywords: Application of Elements; Inclusion; Criminal Acts; Indonesian National Standards

Introduction

One form of economic offense that is of concern in law enforcement practices is the crime of trafficking in goods that do not meet standards, where the perpetrator trades goods without meeting the quality, safety, or label requirements as stipulated in laws and regulations. This criminal act not only disrupts a healthy business climate, but also has the potential to cause material losses, safety threats, and legal uncertainty for consumers.¹ The crime of trafficking in non-standard goods is often committed jointly by more than one person, or at least involves several parties who play a role in the distribution and marketing chain of goods.²

This form of participation includes co-actors (*medepleger*), helpers (*medeplichtige*), organizers (*uitlokker*), and those who order to do (*doenpleger*). The application of the element of participation in

¹ Harsanto, *Economic Law and Economic Crime*, Sinar Grafika, Jakarta, 2019, p. 44.

² Sariyanti, Application of Product Standards in the Perspective of Economic Criminal Law, *Journal of Law and Regulation*, Vol. 6, No. 1, 2020, p. 52.

criminal acts is very crucial in complex cases, including in the realm of illegal trade, where the main actors often work through intermediaries, distributors, and even companies that are used as a tool to distribute goods that do not meet legal standards.³ For example, a distributor may only carry out logistics activities, without having sufficient information about the legality of the goods being distributed. On the other hand, there are also intellectual actors who do not directly sell, but instead become the main initiators and controllers of the crime.⁴

This condition requires a deeper understanding of the concept of inclusion in criminal law, both in terms of doctrine and in terms of its application by law enforcement officials, including investigators, public prosecutors, and judges. Without clarity and precision in determining who can be held criminally liable in a construction of inclusion, the judicial process will not only lose its effectiveness, but also substantive justice which is the main goal of criminal law.⁵ This is where the question arises about how to apply inclusion in the corporate context: whether responsibility is imposed only on legal entities as criminal subjects, or can it be traced and imposed on individuals who act as advocates, helpers, or co-actors.⁶

In economic criminal cases involving consumer goods such as food products, beverages, building materials, and medical devices, non-compliance with standards can have a systemic and latent impact. Therefore, law enforcement officials are required not only to focus on material actors, but also to be able to trace the patterns of participation hidden behind business structures. This is where the role of investigators and prosecutors becomes very important in unraveling legal facts in depth, in order to reveal who is actually involved and criminally responsible.⁷

When the investigation and prosecution process is not carried out thoroughly, then the inclusion aspect becomes merely a complement to the indictment, without really being systematically analyzed to determine the construction of criminal liability in a fair and proportionate manner.⁸ The doctrine of participation requires the existence of a *concurrent intent* and a real contribution to the implementation of criminal acts. In the context of non-compliant trade in goods, the existence of intellectual actors, distribution coordinators, and parties who knew but allowed violations to occur became highly relevant to be legally analyzed as part of inclusion.⁹

When a company violates the provisions of the goods standard, law enforcement officials often only make the operational manager or field staff a suspect, while those who have control over strategic decisions actually escape the legal process. This not only creates inequality in accountability, but also undermines public trust in the integrity of the criminal justice system.¹⁰ This is due to the limited understanding of the authorities on the importance of the element of inclusion in the construction of economic criminal charges. Not infrequently, law enforcers view that as long as there is a return of losses or an apology from the perpetrator, then a criminal settlement is not necessary, even though the criminal elements have been formally met.¹¹

The element of participation must be a sharp instrument to trace the chain of accountability to the strategic level, not just symbolic or repressive to actors in the field.¹² Based on science, the discourse on participation in economic crimes still does not get a portion in academic studies, especially when compared to the discussion of participation in violent crimes or crimes against life. In fact, in global developments, the concept of *liability sharing* is important in dealing with corporate crimes and illegal

³ Achmad Ali, *Revealing Legal Theory and Judicial Theory*, Kencana, Jakarta, 2015, p. 151.

⁴ Ibrahim, *Corporate Criminal Law*, Prenada Media, Jakarta, 2018, p. 107.

⁵ Lestari, "Criminal Liability in Inclusion: A Case Study of Illegal Drug Trafficking", *National Juridical Journal*, Vol. 11, No. 2, 2021, p. 67.

⁶ Surya Putra, *Special Criminal Law: A Study of Economic and Corporate Delik Studies*, Pustaka Siswa, Yogyakarta, 2020, p. 89.

⁷ Rachmad, "The Construction of Participation in Corporate Crime", *Journal of Progressive Legal Science*, Vol. 8, No. 1, 2019, p. 28.

⁸ Gunawan, *The Practice of Economic Criminal Investigation in Indonesia*, Prenadamedia Group, Jakarta, 2017, p. 134.

⁹ Indrawan, *Principles of Inclusion in Indonesian Criminal Law*, Sinar Grafika, Jakarta, 2016, p. 68.

¹⁰ Wahyudi, "Collective Accountability in Economic Crime", *Journal of Law and Economics*, Vol. 7, No. 2, 2019, p. 91.

¹¹ Laksmi, Differences in the Criminal and Civil Realms in Problematic Product Trafficking Cases, *National Law Journal*, Vol. 13, No. 1, 2020, p. 44.

¹² Supriyono, *Indonesian Criminal Law Reform and RKUHP*, Raja Grafindo Persada, Jakarta, 2021, p. 107.

distribution network systems. Indonesia needs the development of a criminal law doctrine that is responsive to these challenges, including through in-depth research like this.¹³

Therefore, a systemic approach is needed to uncover the involvement of all parties in the criminal chain, and this can only be done if the element of inclusion is applied dynamically and progressively.¹⁴

Research Methods

This research is an *analytical descriptive research*, namely research that describes the application of the element of participation in the crime of trafficking in goods that are not in accordance with the Indonesian National Standard (SNI). The approach used is a normative juridical approach supported by an empirical juridical approach. The data used are secondary data as the main data and primary data as supporting data obtained through literature studies/document studies (*library research*) and primary data as supporting data obtained through field research with semi-structured interview techniques.

Results And Discussion

The Application of Elements of Participation by the Directorate of Special Criminal Investigation of the West Sumatra Regional Police against the Crime of Trafficking in Goods That Are Not in Accordance with Indonesian National Standards

Normatively, Article 55 of the Criminal Code emphasizes that those who commit, order to commit, or participate in committing criminal acts, are all in the position of perpetrators and therefore can be held criminally responsible. Meanwhile, Article 56 of the Criminal Code expands the scope of accountability to those who assist in committing crimes, both before and during its implementation. These two provisions are the main pillars of the concept of inclusion in Indonesian criminal law which originated from the Dutch criminal law system, including the classification of direct perpetrators (*pleger*), conveners (*doen pleger*), co-perpetrators (*medepleger*), and auxiliaries (*medeplichtige*).¹⁵

In implementing the element of participation, law enforcement officials, especially investigators from the Directorate of Criminal Investigations, are faced with the strategic task of not only identifying the main perpetrators, but also other parties who play an important role, both actively and passively. This complexity can be seen in the case of Anso Duo, a concrete case in the jurisdiction of the West Sumatra Police related to the distribution of plastic water tanks without the Indonesian National Standard (SNI). The main perpetrator, Mendri Aiskoto, knowingly produced and distributed goods without mandatory certification. However, the results of the investigation show that the activity was not born from one hand; Production managers who oversee the manufacturing process, field supervisors who ensure products leave the factory, distributors who distribute goods to the market, and retailers who market them to consumers all play crucial roles. The complexity of this employment relationship and distribution flow requires investigators to conduct an in-depth reading of the actions, roles, and causal relationships between the perpetrators, so that the element of participation can be applied appropriately. Thus, the Anso Duo case shows that the crime of trafficking goods without standards is systemic and cannot be understood individualistically.

To understand the involvement of actors in the legal context, inclusion theory is an analytical tool that cannot be ignored. This theory develops into several major approaches, namely objective theory (*objectieve leer*), which focuses on a real contribution to the execution of crime; subjective theory (*subjective leer*), which prioritizes the inner will or intention of the perpetrator; and the combined theory (*gemengde leer*), which requires a simultaneous relationship between physical contribution and the intention to cooperate in crime.¹⁶ In the case of Anso Duo, the combined theoretical approach is more relevant because

¹³ Marlina, "The Concept of Inclusion in International Criminal Law and Its Relevance to Indonesia", *Journal of Global Law*, Vol. 5, No. 2, 2021, p. 55.

¹⁴ Nur Aisyah, *Organizational Structure and Corporate Crime*, UII Press, Yogyakarta, 2019, p. 139.

¹⁵ Moeljatno, *Principles of Criminal Law*, Ghalia Indonesia, Jakarta, 2002, p. 127.

¹⁶ Andi Hamzah, *Indonesian Criminal Law*, Sinar Grafika, Jakarta, 2008, pp. 195-197.

the investigator must assess both concrete actions such as involvement in the distribution of goods without SNI labels and the knowledge and intentions of the perpetrators who continued to participate despite knowing of a violation of the law.

The application of inclusion in this context also cannot be separated from the character of the criminal act that is the object, namely a formal criminal act. Based on the theory of formal crime, a crime is considered to be completed solely by committing an act prohibited by law, regardless of whether or not there are concrete consequences that arise. Thus, the focus of proof is not on the occurrence of losses or victims, but on violations of prohibition norms. In the context of trade in goods that do not meet standards, the act of offering, producing, or distributing goods without SNI certification already meets the elements of a criminal act. This provision is affirmed in Article 8 paragraph (1) letter a jo. Article 62 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection, and strengthened by the provisions of Law No. 3 of 2014 concerning Industry and Law No. 7 of 2014 concerning Trade.¹⁷ The nature of this formal delicacy is a strong normative basis for investigators not to wait for the emergence of real losses for consumers, because their own actions have been seen as a form of violation of legal and administrative obligations.

Reflecting on this framework, in this case, parties such as production managers, warehouse staff, and distributors can only be held criminally liable if it can be proven that they know the illegal status of the goods but still actively assist in the implementation of distribution. Knowledge and active involvement are important points because participation theory emphasizes that participation can only be qualified as a criminal act if there is awareness of the unlawful nature of the act. For example, if a distributor has received an official warning from BPOM or the Trade Office that the goods he distributes do not have an SNI label but continue with sales activities, then the element of intentionality as a form of subjective error can be declared fulfilled.¹⁸ In this context, evidence such as warning letters, internal meeting minutes, and conversations via email or text messages that show that the perpetrator knows the information is an important instrument to build a full construction of criminal accountability.

The concept of *functional perpetration* or functional perpetrator becomes relevant in this context, especially when the perpetrator does not commit physical acts directly but has strategic control over the course of the crime. In the doctrine of criminal law, a functional perpetrator is understood as an individual who plays a role in regulating, directing, or controlling the operational structure of criminal acts, even if he is not in the final distribution line. Applying this concept in the case of non-compliant trade in goods allows investigators to direct the focus to those actors who have decisive power, such as operational managers, heads of logistics, or supervisors who authorize the distribution of goods without standard verification. Thus, the application of the theory of inclusion can be expanded proportionately, without eliminating the principle that criminal liability must still take into account individual errors based on intentionality or gross negligence.¹⁹

Obstacles encountered by the Directorate of Special Criminal Investigation of the West Sumatra Regional Police in the application of the element of participation in the crime of trafficking in goods that are not in accordance with Indonesian national standards

In general, the most prominent legal obstacle in the investigation of this case is in the aspect of proving the element of guilt and the involvement of the perpetrators which are doctrinally the core of participation. In the combined theory (*gemengde leer*) that has developed in Indonesian criminal law, participation is not enough only to be proven through outward actions or objective contributions, but also requires ensuring the existence of subjective elements in the form of inner attitudes, intentions, or legal awareness of the parties who are suspected of participating. This obstacle causes the construction

¹⁷ Roeslan Saleh, *Aspects of Criminal Law*, Ghalia Indonesia, Jakarta, 1984, p. 112.

¹⁸ Eddy O.S. Hiariej, *Principles of Criminal Law*, Cahaya Atma Pustaka, Yogyakarta, 2014, p. 249.

¹⁹ Topo Santoso, *Criminology*, Rajawali Press, Jakarta, 2018, p. 172.

of the element of participation cannot be built firmly, thus affecting the legal confidence of investigators in determining the status and role of each party allegedly involved.²⁰

This obstacle is clearly seen in the handling of the "Anso Duo" case handled by the West Sumatra Police. In this case, the main perpetrator who is the owner of the water tank business has been legally and convincingly proven to carry out production activities without SNI certification, but when investigators traced the involvement of other parties in the business structure, many obstacles were found. Production managers, field supervisory staff, as well as some employees involved in the distribution process stated that they were not aware of any violations of standards committed by the company. According to Briptu Faturrahman as an assistant investigator, many parties who are not the main perpetrators avoid responsibility on the grounds that they only work based on instructions without understanding the legality aspects and technical standards of the product.²¹ This phenomenon reinforces the view that corporate crimes are generally carried out through hierarchical structures that allow the main perpetrator to hide an element of intentionality while the other perpetrator as a subordinate simply carries out the order without understanding the legal consequences of the act. Such a condition complicates proving that the parties have the same awareness or will in the criminal act committed.

From a non-legal aspect, the limited capacity of human resources (HR) investigators is a crucial factor that affects the effectiveness of the implementation of the inclusion element, especially in cases involving the distribution of goods digitally. In the development of modern trade, the distribution system of actors often uses multi-tier patterns, online transactions through marketplaces, and dropshipping mechanisms that make it difficult to track the relationship between the main actors and supporting actors. Most auxiliary investigators do not yet have the technical expertise to trace digital transaction patterns, verify electronic distribution flows, or analyze user data from online sales platforms. Briptu Faturrahman emphasized that "investigators often only find physical goods and purchase notes, but do not have the skills or tools to trace transaction data in the marketplace," even though this digital evidence is often the main clue to uncover the involvement of the accompanying party.²² This condition shows that the development of the perpetrator's *modus operandi* is not in line with the institutional capacity of the apparatus, thereby weakening the construction of criminal liability for parties involved indirectly but having a significant contribution.

The next institutional obstacle lies in the lack of optimal information exchange system between authorized agencies in the supervision of circulating goods. Until 2025, the West Sumatra Regional Police Directorate of Criminal Investigations will not have direct digital access to the SNI registration database, BPOM distribution permit list, or the distribution system for licensed goods from the relevant ministries. As a result, verification of the legality status of goods is often carried out manually through letters or informal communication, which slows down the investigation flow and hinders the proof of the involvement of the comorbidities in the distribution structure. Illegal traffickers often take advantage of this time gap to move warehouses, remove evidence, or erase traces of transactions. Thus, barriers at the institutional level have not only an administrative, but also strategic impact, as they directly affect the ability of investigators to connect the points of the participant's role in a crime network simultaneously.

From the perspective of criminal law theory, these obstacles weaken the effective implementation of inclusion theory. Mezger, through his subjective approach, emphasizes that the essence of inclusion is not only in objective contributions, but in the existence of a common will (*gemeinsamer Vorsatz*) or collective intention that links the actions of the perpetrators in a series of crimes.²³ To prove this collective intention, investigators need quick access to digital, administrative, and technical evidence. When such access is hindered, the facts on which the inference of common intentions are based cannot be realized.

²⁰ Andi Hamzah, *Indonesian Criminal Law*, Sinar Grafika, Jakarta, 2008, p. 199.

²¹ Interview with Briptu Ismail Bayu, Investigator at the Directorate of Criminal Investigation of the West Sumatra Police, October 21, 2025.

²² Interview with Briptu Ismail Bayu, Investigator at the West Sumatra Police Directorate of Criminal Investigations, October 21, 2025.

²³ Mezger, *Lehrbuch des Deutschen Strafrechts*, Verlag G. C. Hummel, Berlin, 1931, p. 276.

In the context of criminal liability, the absence of adequate evidence results in investigators not being able to meet the element of guilt which is the main element of criminal imposition. Therefore, strengthening the cross-agency information system is an urgent need so that the process of verifying the status of goods, distribution permits, and the identity of perpetrators can be carried out in an integrated and responsive law enforcement ecosystem.

To overcome all these obstacles, systemic and structured measures are needed to strengthen the application of the element of participation in economic crimes, especially the crime of trafficking in goods that do not meet standards. This strengthening effort must start from the institutional dimension of investigation, especially through increasing the capacity of investigators in digital forensic aspects, supply chain analysis, and an in-depth understanding of product technical standards. Economic criminal law-based training, including the ability to trace transactions through *digital commerce*, mapping distribution flows in online markets, and identifying perpetrators in *multi-layered* networks, needs to be a priority in the police education curriculum. In addition, regulatory reform is needed to clarify the construction of corporate criminal liability, including the mechanism for assigning fault to administrators involved in the production and distribution process of non-standard goods. Institutional strengthening through an integrated information system between law enforcement officials, technical supervisory agencies, standardization agencies, and trade authorities is an absolute necessity to accelerate verification, strengthen evidence, and narrow the space for organized crime perpetrators who take advantage of bureaucratic gaps and inconsistencies between institutions.

Conclusion

The application of the element of participation by the Directorate of Special Criminal Investigation of the West Sumatra Regional Police against the crime of trafficking in goods that are not in accordance with Indonesian national standards is to position the qualification as the perpetrator who ordered the act (*doen pleger*), because the will of the main perpetrator is realized through the actions of other parties under his control. On the other hand, distribution managers, marketing agents, or retailers can be classified as participating in the conduct (*medepleger*) if they are proven to have knowledge of the non-conformity of goods with applicable standards, but continue with sales activities. Any perpetrator involved in the chain of circulation of goods can be held criminally liable as long as it can be proven that they have knowledge or at least strong suspicion about the non-conformity of the goods with applicable standards.

The obstacles encountered by the Directorate of Special Criminal Investigation of the West Sumatra Regional Police in the application of the element of participation to the crime of trafficking in goods that are not in accordance with Indonesian national standards are the most prominent legal obstacles in the investigation of this case are in the aspect of proving the element of guilt and the involvement of the perpetrators which are doctrinally the core of participation. The regulatory structure regarding the crime of trafficking in goods that does not meet standards is still scattered and fragmentative, causing difficulties for investigators in identifying which norms are relevant to ensnare the perpetrators of participation. Non-legal aspects, limited human resource (HR) capacity of investigators are crucial factors that affect the effectiveness of the implementation of inclusion elements, especially in cases involving the distribution of goods digitally. It is related to the low level of legal awareness among business actors and the public, especially in the trade sector of daily necessities.

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