

Problems Of Supervision Of Buying Circulations Medicine

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ABSTRACT

Drugs are pharmaceutical preparations that are much needed during the pandemic, such as today. There are so many pharmaceutical preparations circulating through internet-based media, which are not in accordance with applicable regulations so that they have big potential to cause bad impacts. There are various obstacles faced by the government in carrying out supervision of pharmaceutical preparations through the Food and Drug Supervisory Agency, especially related to online drug buying and selling activities. Some of these obstacles include good access to Indonesia's territory, the low level of public knowledge about drugs, low cross-sectoral supervision, and weak legislation. These weaknesses then become a gap for business actors to conduct online buying and selling transactions without complying with applicable regulations. Thus, further supervision is needed by the Food and Drug Supervisory Agency as a form of responsibility and the realization of legal certainty in order to improve justice and public safety as consumers.

Keywords: Pharmaceutical preparations; Drugs; Online; Supervision.

INTRODUCTION

Indonesia was surprised by the Corona Virus Disease, or hereinafter referred as Covid-19, outbreak in March 2020. At that time, the massive virus spread causing many people exposed to symptoms ranging from mild to severe and many even died.¹ During this Covid-19 pandemic, everyone is required to comply with health protocols in accordance with instructions from the government through the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/382/2020 concerning Protocols for Public Health in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease 2019 (Covid-19). Various activities began to be limited such as schools, offices, and other activities.² Buying and selling transactions for all necessities are also carried out through online medium, including drugs. Medicine is actually a necessity that can be said to be important for a person, especially in treating the disease they are suffering from.³

¹ NikmaFitriasari. (2020). "Pencegahan Primer Membentuk Masyarakat Sehat di Era Covid-19," on *Jurnal Sosial & Budaya Syar-i*. FSH UIN Hidayatullah Jakarta. (2), p. 1154

² Asmuni,. (2020). "Problematika Pembelajaran Daring di Masa Pandemi Covid-19 dan Solusi Pemecahannya," on *Jurnal Paedagogy: Jurnal Penelitian dan Pengembangan Pendidikan*.7(4): 2722-4627, p. 282

³ M. Alfin *et.al.* (2020). "Sistem Layanan Pengaduan masyarakat pada Balai Besar POM Kota Pontianak Berbasis Mobile," on *Jurnal Sistem dan Teknologi Informasi*. Volume 8(1), p. 98

Based on Presidential Regulation Number 80 of 2017 Concerning the Food and Drug Supervisory Agency or hereinafter referred as BPOM, this agency carries out supervision of drugs and food circulating in the community in accordance with statutory regulations in efforts to ensure health, safety, and welfare of the society. In accordance with Article 1 Paragraph (8) of Law Number 36 of 2009 Concerning Health *uncto* Article 1 Paragraph (2) of Regulation of BPOM Concerning Control of Drugs and Foods that Circulated Online, boldly states that drugs are materials or guidelines, including biological products used to influence physiological systems or pathological conditions in the body order to determine diagnosis, prevention, cure, recovery, health improvement and contraception for humans. The definition of a drug is very clear through the law, but not all people understand about the indications, contraindications, and rules of the drug usage. Moreover, nowadays it is easier for people to get the type of medicine they want through online medium.

Currently, drug buying and selling transactions are carried out online through electronic commercial or hereinafter referred as e-commerce. This kind of transaction is directly carried out online between buyers and business actors without having to face each other yet still communicating through electronic messages.⁴ So far, social networking has greatly influenced individual behavior patterns, where online transactions are considered to be beneficial for business actors and consumers. Online transaction provides various conveniences by making consumers easier to find the references of the product they looking for within the capability of providing easy payment procedures.⁵ In addition, it is also supported by consumptive behavior, growing a new lifestyle of online transactions, which was originally purposed to meet the needs of life.⁶

This online-based-sale makes drugs become widely circulated, including drugs that do not have any distribution permits since they utilize the transportation routes, both land, sea, and open air, thus making it a gateway for free entry and exit of medicines. Circulation and abuse of drugs increasingly widespread since it reaches its various circles. Abuse of drugs, especially when the drugs consumed without correct instruction and competent diagnosis, certainly brought such significant matter to the society regarding to its cause, harmful effects to the body.⁷ Advertisement, by this case, exactly become a supportive forum in promoting drugs, which is too excessive and potentially building a gap for business actors to attract public interest as consumers to buy the products.⁸ However, it is unfortunate that there is a lack of a strong legal protection in supervision, including in terms of advertising which has not been fully regulated in the legislation.⁹

The diversity of drugs that sold online regards to the confusion of society to distinguish between drugs that are allowed to be distributed and which are not.¹⁰ Likewise with traditional medicine which is believed by some people is safer than pharmaceutical medication.¹¹ Some

⁴ Leli dan Martha. (2018). "*Perlindungan Hukum Terhadap Konsumen Atas Penjualan Obat-obatan Illegal Secara Online*," on *Jurnal Niagawan*. 7(3), p. 167

⁵ Nita Ariyulinda. (2018). "*Urgensi Pembentukan Regulasi Penjualan Obat Melalui Media Online*," on *Jurnal Legilasi Indonesia*. 15(1), p. 38

⁶ Susiana Simamora, (2020). "*Pengaruh Keragaman Produk, Kualitas, dan Kepuasan Konsumen Terhadap Keputusan Pembelian Pada Shopee Online*," on *Jurnal Kohesi*. 4(3), p. 111

⁷ Evita Arierstiana, (2020). "*Analisis Penanggulangan Peredaran Obat Keras dan Obat-Obat Tertentu Melalui Media Online*," on *Jurnal Fakultas Hukum Universitas Bandar Lampung*. 1(2), p. 66

⁸ Indra Maulana. (2020). "*Peranan Daya Tarik Konten, Kemudahan penggunaan Dan Kualitas Interaksi Layanan Dalam Meningkatkan pembelian Daring di E-Commerce Blibli.com Di Purwakarta*," on *Jurnal Ekonomi dan Bisnis*, 7(1), p. 79

⁹ Andy Lenyet. *al.* (2014). "*Kebijakan Pengawasan Iklan pangan Olahan di Indonesia*," on *Jurnal Kefarmasian Indonesia*. 4(1), p. 15

¹⁰ Reza dan Dede, (2021). "*Edukasi Kepada Siswa/I SMK Di Wilayah Bekasi Dalam menyingkapi Informasi Dan Perbedaan Obat Online*," dalam *Jurnal Mitra Masyarakat*. 2(1), p. 50

¹¹ Selma Siahaan, *et. al.*, "*Pengetahuan, Sikap, dan Prilaku Masyarakat dalam Memilih Obat yang Aman di tiga Provinsi di Indonesia*," on *Jurnal Kefarmasian Indonesia*. Volume 7, Number 2 Agustus 2017, p. 142

people in Indonesia believes that traditional medicine can treat various diseases. This matter could be true, but on the other hand, if it does not have a distribution permit and consumed within the inappropriate regulations, it can be toxic and harmful to the body.¹²The community as consumers should take early protection against drugs so as to avoid various losses that can be fatal to their health.¹³

Online Drug Trafficking Case:¹⁴

Refers to the news from Kompas.com that published on June 16th 2020, the Banjar West Java Police Narcotics Investigation Unit managed to confiscate around 237.618 pills of various types of drugs without distribution permits. At a press conference, the Chief of Banjar Police, AKBP Melda Yani, stated that the suspect was transacting through an online account. There are two suspects with the initials MR (21 years old) from Brebes and I from East Jakarta. MR was arrested at his rented house in Mekarsari, Banjar District on Saturday 9th May 2020. MR suspected of selling pharmaceutical preparations in the form of Hexymer. The officers managed to secure approximately 220 Hexymer pills at MR's residence, where MR admitted to buying the drug through the online account of suspect I which was sent via an expedition delivery service.

Head of the AKP Drug Unit Use Supian managed to track down I's whereabouts through the expedition interrogation in Rawamangun and Pisangan, East Jakarta. The joint team used the undercover buy method to the online account. On Thursday 11th June 2020 at 15.30 West Indonesian Time, suspect I was arrested when he came to the expedition office in Pisangan to send goods. The results taken from the search of the suspect's residence and body found 247.618 pills of various types. The suspect was then taken to Banjar Resort Police Headquarter for further investigation. Based on MR's confession, he admitted that he was selling the drug to a friend, but it turned out that the suspect's friend was addicted and wanted to buy the drug. The proceeds from the sale of the drug without a distribution permit, MR earned IDR 900.000 up to IDR 1.000.000 per month. MR sells three Hexymer for IDR 10.000. The money from the sale is used to meet their daily needs. Currently, the suspect is ensnared in Article 196, Article 197, and Article 198 of Law Number 36 Year 2009 Concerning Health *juncto* Article 62 of Law Number 5 of 1997 Concerning Psychotropics.

Based on the case above, we can figure out that the evolution of internet-based information technology and all of its benefits on the other hand brought its own negative impacts since it is easier for dealers to carry out their actions that can endanger the safety of the current generation.¹⁵ Various changes in social life as a result of the development of internet-based technology so that it is very necessary to make adjustments and most importantly there must be a policy in dealing with online drugs without distribution permits that can harm the society.¹⁶ For this reason, to addressing this problem, this study will discuss the obstacles in the circulation of online drugs circulating online in the community and the supervision and efforts made to buying and selling drugs online.

¹² Mauliza dan Mukhlis. (2019). "Pelaksanaan Penyidikan Tindak Pidana Peredaran Obat Tradisional Yang Mengandung Bahan Kimia (Suatu Penelitian di Balai Besar Pengawas Obat dan Makanan Banda Aceh)," on Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana Fakultas Hukum Universitas Syiah Kuala. 3(1), p. 169

¹³ Danang Sunyoto. (2016). "Aspek Hukum Dalam Bisnis." 1st Edition. Yogyakarta: Nuha Medik, p. 140

¹⁴ Candra Nugraha, Terungkap Kasus Peredaran Obat Tanpa Izin yang Dijual Online accessed from <https://regional.kompas.com/read/2020/06/16/13054111/terungkap-kasus-peredaran-obat-tanpa-izin-yang-dijual-online?page=all> on 10th August 2021, at 21.37 WIB

¹⁵ Maskun. (2014). "Kejahatan Siber Cyber Crime Suatu Pengantar." 1st Edition. Jakarta: Kencana, p. 47

¹⁶ Didik dan Elisatri. (2009). "Cyber Law Aspek Hukum Teknologi Informasi." 2nd Edition. Bandung: PT. Refika Aditama, p. 17

METHOD

Within this study, the author uses normative juridical method. Normative research actually discusses the doctrines or principles in the science of law which refers to the applicable positive law.¹⁷ The object of research using the legislation in force in the State of Indonesia, namely: Health Law; Consumer Protection Law; Electronic Transaction Information Law; and other laws and memorandums that are related to the issues to be discussed. Other supporting materials that can be used as comparisons for solutions to this are using various scientific journals and books including several websites that are closely related to the problems to be discussed.

Several theories and opinions of experts that serve as benchmarks in this study on the constraints and supervision of online drug sales through online medium in terms of legal aspects, include:

a. Legal Liability Theory¹⁸

According to Ridwan Halim, legal responsibility is a liability in carrying out activities that do not conflict with the rules that have been set. Likewise, according to Purbacaraka, that in implementing rights and obligations there must be a principle of a sense of responsibility, including the exercise of power.

b. Theory of Justice¹⁹

The essence of justice is an assessment of an action or treatment that is studied and based on legal provisions or rules. According to Aristotle, justice is divided into several form, namely:

a) distributive justice, where each party gets the right according to its proportion. The relationship between the state and society, the state is obliged to provide what are the rights of its citizens such as protection, facilities, a sense of security and comfort as well as in other forms; and

b) commutative justice, where everyone is treated fairly, not only getting what they are entitled to but must accept consequences in the form of sanctions if proven guilty.

c). Legal Certainty Theory²⁰

According to Gustav, legal certainty is a statutory rule that is made with certainty because it has clear and logical rules so that it does not cause doubt and does not conflict with norms or rules in society. Meanwhile, according to Jan Michael Otto, he detailed that legal certainty includes clear legal rules which are released and recognized by the State where government agencies comply with the law, as well as citizens adapt to these rules.²¹

¹⁷ Zainuddin Ali. (2018). "*Metode Penelitian Hukum*." 10th Edition. Jakarta: Sinar Grafika, p. 24

¹⁸ Kumpulan Pengertian, Pengertian Tanggung Jawab Hukum Menurut Para Ahli accessed from [Pengertian Tanggung Jawab Hukum Menurut Para Ahli ~ Kumpulan Pengertian on 11th August, at 20.28 WIB](#)

¹⁹ Kompas.com, Teori Keadilan Menurut Aristoteles dan Contohnya, accessed from <https://www.kompas.com/skola/read/2021/06/02/125545769/teori-keadilan-menurut-aristoteles-dan-contohnya?page=all> on 11th August 2021, at 20.40 WIB

²⁰ Kejaksaan Tinggi Bone, Analisa Konsep Keadilan, Kepastian, dan Kemanfaatan Dalam Penegakan Hukum tindak Pidana-Pertambangan accessed from <https://www.kejari-bone.go.id/artikel/detail/1/analisa-konsep-keadilan-kepastian-dan-kemanfaatan-dalam-penegakan-hukum-tindak-pidana-pertambangan.html> on 11th August, at 20.46 WIB

²¹ I Dewa Gede Atmadja dan I Nyoman Putu Budiarta. (2018). "*Teori-Teori Hukum*." 1st Edition. Malang: Setara Press, p. 206

DISCUSSION

1. Issues Arises Within the Distribution of Online Drugs in Society

The population of people escalated from time to time in all regions in Indonesia. Based on data obtained at the end of March 2021, Indonesia is on the 15th position among countries in the Asian region, and it is estimated that 76.8% of the population of 276.3 million people currently use internet-based media.²² Some people are greatly helped by this condition because it can save time and transactions that are carried out easily only by using the internet. Most of these people, fulfill their needs through the internet, including buying drugs. Medicine is indeed something that can treat illness and is even now a necessity during the Covid-19 pandemic.

This condition creates competitiveness among business actors to be able to carry out large sales in various ways. Sometimes the business actor no longer obeys the rules of the applicable regulations since their purpose is only to seek profit without paying attention to the rules and safety of the people who will consume the drug itself. The growth of new accounts has not been able to keep up with the surveillance activities that have been carried out by the government in controlling online drug dealers. Various efforts have been made by the government to maintain the safety of consumers, but there are still many drugs circulating in the market through online media. This condition is caused by several factors, namely:

a. Minimum Awareness of Society Related to Drugs

Most of the society prefer to self-medicate rather than having to go to health services because it is considered more economical and time-saving. Since people know that the world of the internet, most of them keep struggling to figure out the cause of their illness through Google and buy drugs through online shops or market places that sell various types of drugs according to their needs. Another reason of why they prefer to buy the drugs online is because the prices offered at online stores are way cheaper than in pharmacies or other offline drug stores. Everyone is competing to be able to have drugs to heal themselves or even protect themselves from this dangerous virus without knowing the effects of these drugs in the future. Various promotions and offers from sellers are sometimes too excessive and some are even misleading so that people are influenced to buy them. Online media offers various types of drugs that are needed by the community without even using a prescription from a doctor, without complying with and understanding the Regulation of the Minister of Health Number 919/MENKES/PER/X/1993 Concerning the Criteria for Drugs that Can be Dispensed Without a Prescription.²³

However, unfortunately, based on the safety side, people who consume drugs that they bought online only get least possible information. Most of the people are not aware of the contraindications of the dangers of these drugs. In Article 7 paragraph (1) of the Regulation of the BPOM Number 8 of 2020 Concerning Control of Drugs and Foods Circulated Online, it is stated that drugs that may be sold through online media are drugs that are included in the criteria for over-the-counter drugs, limited over-the-counter drugs and hard drugs but must comply with the provisions of the legislation. Actually, the classification of drugs has been regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 949/Menkes/Per/VI//2000 Concerning Registration of Finished Drugs.

²² Viva Budy Kusnandar, Penetrasi Internet Indonesia Urutan ke-15 di Asia pada 2021 accessed from <https://databoks.kata-data.co.id/datapublish/2021/07/12/penetrasi-internet-indonesia-urutan-ke-15-di-asia-pada-2021> on 10th August 2021 at 08.55 WIB

²³ Yugi Setyarko. (2016). "Analisis Persepsi Harga, Promosi, Kualitas Layanan, dan Kemudahan Penggunaan Terhadap Keputusasan Pembelian Produk Secara Online". On *Jurnal Ekonomika dan Manajemen*. 5(2), p. 135

Most of people in Indonesia do not want to deal with law enforcement officers, so they rarely report drug distribution problems online. This situation is caused because they prefer to not to deal with the authorities at all and are afraid of prolonging the problem in the future. They will only report if there is a big loss that befell them. As long as people think that what they get is not detrimental to themselves, they will not report it to law enforcement, when in fact they are aware that this can harm themselves at any time. This is where the government's responsibility through BPOM is really needed in providing early socialization to the community from an early age.

b. The Weaknesses of Several Rules in Indonesia

The biggest challenge of tracing buying and selling transactions online is the very fast account growth due to the weak law governing the formation of accounts in online drug buying and selling transactions. Business actors always create an account in running their business. Article 1457 of the Criminal Code describes a reciprocal relationship between buying and selling by looking at each other's obligations.²⁴ There are so many weaknesses in this online buying and selling transaction, there are no clear rules in regulating buying and selling transactions, according to Article 1330 of the Criminal Code, where one of the requirements is that the sale and purchase agreement of both parties must be old enough, but in fact online transactions can be done by anyone. without knowing the age limit.

There is no face-to-face communication between buyer and seller within e-commerce. Transactions from online buying and selling actually regulated in Article 47 of Government Regulation number 82 of 2012 Concerning Electronic System and Transaction Operators. In Indonesia, there are no restrictions and regulations governing business actors and underage buyers online, so buying and selling can be done by all levels of society without any age limit. At this time buying and selling transactions are dominated by young people because of the urge to meet various needs. Article 8 paragraph (3) of the Consumer Protection Law explains that business actors are prohibited from distributing pharmaceutical preparations without clear information.

Likewise with the Circular Letter of the Minister of Health HK.02.01/MENKES/303/2020 Concerning the Implementation of Health Services through the Use of Technology and Communication in the Context of Preventing the Spread of Covid-19, there is a weakness in legal certainty through regulations in the use of internet-based media, both verbal and visual. In addition, Human Resources and Pharmaceutical Engineering Personnel must have competence in remote pharmaceutical services.²⁵

c. The Incongruity of Sanctions Applied by the Legislation

As an example, Decision Number 308/Pid.Sus/2020/PN BGL: The Bengkulu District Court decided that the defendant Hasan Basri Hamdani Als Dani and was proven legally and convincingly guilty of committing a criminal act by deliberately producing or distributing pharmaceutical preparations that did not meet the standards, requirements and quality efficacy of drugs as which are regulated and subject to criminal penalties in accordance with Article 196 *juncto* Article 98 Paragraphs (2) and (3) of the Health Law. The evidence in the form of 8.900 Samcodin items was sentenced to the defendant with imprisonment for eight months in prison and a fine of IDR 200.000.000 subsidiary two months in prison reduced while the defendant is in detention.

²⁴ Isnaeni. (2016). *"Perjanjian Jual Beli"* 1st Edition. Bandung: PT Refika Aditama, p. 28

²⁵ Syahdan Nurdin dan Cindratri, *Layanan Telefarmasi Menjawab Tantangan Revolusi Industri 4.0* accessed from https://id.berita.yahoo.com/layanan-telefarmasi-menjawab-tantangan-revolusi-101203029.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAE_oXqcykxq59_bfOP1gRTQ-e91uwD5Wh-H8uJ8kY2z2Jm92wgQJ6grUbtUIV5Rb8vsc85MYZaUIBFefmyKZ-wWPbHCzHyHp2bFdHwBzwSZEkwIauIHsjm4u-mOoR7UcfjoOSRiJQWDKrVUv8V_jVfVxbEWGJssIZYqBNKa_B6ufon 2nd September 2021, at 17.52 WIB

The thing that makes the policy of a professional judge in deciding the waiver is the future of the defendant in the sense that the defendant is the breadwinner of the family, cooperative attitude during the trial, the age of the defendant and the defendant admits and regrets and admits his actions which may be able to lighten his sentence. There are so many decisions from the courts that do not reflect the enforcement of justice so that they do not cause a deterrent effect because the human condition is not based on the applicable law so as to make the decision lighter. Based on Article 196 of the Health Law, it is explained that anyone who intentionally produces pharmaceutical preparations that are not in accordance with Article 98 will be subject to a maximum imprisonment of ten years and a maximum fine of IDR 1.000.000.000.

Likewise, the risks of online drug distribution have attracted the attention of various parties, while drug dealers do not think about the quality, efficacy and safety of the drug when consumed by others. There are many considerations that make law enforcers give sanctions to drug dealers online. Most of the sanctions carried out are only in the form of verbal warnings and account closures. If the account is closed, they can create a new account with different identity and electronic email. Sanctions imposed for violations are not in accordance with the provisions in the applicable law, sometimes only a few are given sanctions for actions committed by online drug dealers considering the various balances.

d. Weak Supervision from the Government Through Cross-Sectoral

The government through BPOM, Ministry of Communication and Informatics, and several related parties are still unable to verify the account data used by drug dealers. This condition was caused by the cooperation between Ministry of Communication and Informatics, Indonesian E-Commerce Association or hereinafter called as IdeA, and BPOM that are still lacking because the limited number of officers so they cannot keep up with the coverage in various remote areas. Some activities are still carried out manually so they cannot keep pace with the growth of various accounts of drug dealers. Cooperation with Asparindo is only an agreement without a strong legal basis. Likewise, the letter of cooperation between BPOM, IdeA, Ministry of Communication and Informatics, Customs, and Asparindo has no binding power in terms of prosecution and sanctions. The cooperation letter or agreement letter should be further improved in the form of legislation so that it has legal certainty and better binding power

2. Supervision and Endeavors for Online Drug Distribution

The government through BPOM is responsible for controlling the circulation of drugs online by issuing Regulation of the BPOM Number 8 of 2020 Concerning Control of Drugs and Foods Circulated Online. Unfortunately, there are many issues that become obstacles for the government through BPOM. Therefore, online drug control needs to be improved. The supervision carried out by the government through BPOM actually includes:

a. Smart Education for Society as Potential Consumer

It is very important to increase the knowledge and awareness of society regarding to the purchase of drugs through online medium. Raising society's awareness can be done through various medium, apart from print media, it can also be done through social mediasuch as YouTube, Podcast, Instagram and so on.²⁶ Ways that need to be taken in educating the public include:

²⁶Selma Siahaanet.al., "Pengetahuan, Sikap, dan.....Op.Cit, p. 142

- 1) Conducting socialization to increase insight and understanding of the benefits and functions of drugs as well as the correct indications for their use through social media. If the green zone area can be implemented face-to-face²⁷;
- 2) Giving an understanding of the negative impact of drugs if they are consumed not in accordance with the rules of use;
- 3) Provide various descriptions of drugs that are worth buying or consuming considering that currently it is very vulnerable to spread drugs online and sometimes drugs now do not have distribution permits; and
- 4) Explain clearly the effects that arise when drugs are misused in purchasing and using them.

b. Approach to Business Actors Towards Online Drug Buying and Selling

Policies and regulations should be strict about every type of drugs that can be traded online. Based on Article 7 Paragraph (1) of BPOM Regulation Number 8 of 2020, it is stated that online drug distribution can only be carried out for drugs that are included in the category of over-the-counter drugs, limited over-the-counter drugs and hard drugs. The hard drugs referred to are contained in Paragraph (2) are the classification of over-the-counter drugs, limited over-the-counter drugs, and hard drugs as referred to in Paragraph (1) is in accordance with the provisions of the legislation. Business actors must pay attention to the conditions and types of drugs to be traded in accordance with Article 106 Paragraph (1) of the Health Law *juncto* Article 3 of BPOM Regulation Number 8 of 2020 that states that: “*pharmaceutical preparations and medical devices can only be circulated after obtaining a distribution permit*,”. Similar regulation applies to various pharmaceutical industries and Pharmaceutical Large Companies, or hereinafter referred as PBF, in accordance with Article 4 Paragraph (1) stating that the Pharmaceutical Industry, Pharmaceutical Wholesalers, Branch Pharmacy Wholesalers, and Pharmacies can carry out drug distribution in accordance with the provisions of the legislation. Business actors shall have the authority to promote and provide drugs to consumers as stated in Article 98 Paragraph (2) of the Health Law with the aim of not endangering the safety of the society in accordance with Article 104 Paragraph (1) of this law. Business actors must have expertise and competence as well as authority in carrying out pharmaceutical practices in accordance with Article 108 Paragraph (1) of the law mentioned. In addition, business actors are required to comply with the rules set forth in Article 7 of the Consumer Protection Law, including Chapter IV, especially Article 8 Paragraph (3) of the Consumer Protection Law which contains prohibitions on what not to do for consumers.

c. Supervision Through Cross-Sectoral Cooperation

According to State Administrative Law, the meaning of supervision is a process that finds out the differences or similarities in the activities carried out so that they are in accordance with the desired.²⁸ Supervision of drugs is very important so that the society as potential consumers get protection for competent information on drugs in circulation.²⁹ Protection for consumers must be carried out from upstream to downstream as a whole starting from supervision before being circulated (pre-market) and monitoring during drug circulation (post-market).³⁰ The government is responsible for the regulation and supervision of pharmaceutical preparations in accordance with Article 98 Paragraph (3) with Law Number 36 of 2009 Concerning

²⁷ Wahyu *et al.*. (2017). “*Tinjauan Kriminologiterhadap Tindakpidana Penipuan Jual Beli Online*,” on Jurnal. 13(1), p. 44

²⁸ Sudjana. (2018). “*Tanggung Jawab Pemerintah dan Obat Murah*.” 1st Edition. Bandung: C.V. Keni Media. 2018), p. 256

²⁹ *Ibid*

³⁰ Shesha Annisa Desrina. (2020). “*Hubungan Kewenangan Pusat dan Daerah Dalam Pengawasan Obat di Apotek*”. On University of Bengkulu Law Journal. 5(1), p. 14

Health: Provisions regarding the procurement, storage, management, promotion, distribution of pharmaceutical preparations and medical devices must meet the quality standards of pharmaceutical services stipulated by law. The government's obligations are also stated in Paragraph (4) of mentioned law where the government is obliged to foster, regulate, control, and supervise the procurement, storage, promotion and procurement of drugs in accordance with the legislation.³¹

Several supervisory policies that the government can provide through BPOM include several aspects, including:

- a) Strengthening the cooperation between BPOM and Ministry of Communication and Informatics, Customs and Excise, IdEA, and Asperindo. Based on the Memorandum of Understanding between BPOM and Ministry of Communication and Informatics of the Republic of Indonesia Number: HK.08.23.11.15.6689 Number:34/KOMINFO/DJAI/HK.03.02/11/2015 concerning Cooperation in Supervision of Publication, Promotion, and Advertising of Drugs and Food on Internet Medium. There are so many accounts online that sell drugs that do not comply with the provisions, at the end of June 2019, 4.063 accounts were found that would be recommended by BPOM to be taken down by Ministry of Communication and Informatics of the Republic of Indonesia and as many as 69% of these accounts could not be processed anymore.³² In 2019, BPOM also collaborated with IdEA along with Marketplace CEOs in an effort to become an extension of BPOM in supervising the circulation of drugs and food online so that people can get good and safe information and products.³³ The delivery service, on this case Asperindo, is strengthened and there should be a law that regulates it to have a legal protection in the technical implementation. BPOM and Asperindo have agreed to cooperate in signing a cooperation agreement on coordination and exchange of information in order to effectively supervise the delivery of drugs and food.³⁴ The benefit of being able to select the type of delivery, especially in drug preparations. Online drug delivery is in accordance with Article 9 Paragraph (2) of BPOM Regulation Number 8 of 2020 where drug delivery as referred to in Paragraph (1) to patients can be carried out independently by pharmacies or in collaboration with third parties in the form of legal entities. Likewise for the delivery of drugs described in Article (1), delivery of drugs that are circulated online can be carried out directly to patients or sent to patients in accordance with the provisions of the legislation. This search must be improved by collaborating with various related parties, especially Kominfo and Asperindo in monitoring to prevent irregularities committed by business actors in selling medicinal products to the public. The signing of Memorandum of Understanding Number HK.08.1.23.12.16.4356 concerning Supervision of Prohibited Goods, Supervised, and/or Regulated Trading Procedures at the Places of Entry and Exit as well as Supervision of Goods Circulating in the Market by Reri Indriani as Main Secretary of the BPOM and Director General of Customs, namely Heru Prambudi. The agreement

³¹ *Ibid*

³² Rifaldi Putra Irianto BPOM jaring 4.063 Situs Penjualan Obat Tidak Sesuai Ketentuan accessed from <https://mediaindonesia.com/humaniora/266200/bpom-jaring-4063-situs-penjualan-obat-tidak-sesuai-ketentuan> on 10th August 2021, at 10.20 WIB

³³ Badan POM, Rangkup IdEA dan CEO Marketplace, Badan POM Perkuat Pengawasan Penjualan dan Iklan Obat dan Makanan Melalui Daring accessed from <https://www.pom.go.id/new/view/more/berita/16439/Rangkul-idEA-dan-CEO-Marketplace--Badan-POM-Perkuat-Pengawasan-Penjualan-dan-Iklan-Obat-dan-Makanan-melalui-Daring.html> on 25th August 2021 at 18.26 WIB

³⁴ Detiknews, BPOM dan Asperindo Teken Nota Kerjasama Pengawasan Pengiriman Obat dan Makanan accessed from <https://news.detik.com/berita/d-3240326/bpom-dan-asperindo-teken-nota-kerja-sama-pengawasan-pengiriman-obat-dan-makanan> on 11th August 2021, at 19.01 WIB

includes coordination of implementation, follow-up to the drafting of legislation, improvement of Educational Information Communication (KIE), improvement of competence of officers as well as exchange of data and information related to the import, expenditure and distribution of drugs and food.³⁵ Delivery regulations according to Article 9 Paragraph (4) BPOM Regulation Number 8 of 2020. The delivery as referred in Paragraph (2), is accompanied by a shipping document that at least includes information in the form of the identity of the pharmacy, pharmacy officer and recipient of the goods accompanied by proof of signature. Bear in mind into the condition of vast territory spread throughout Indonesia, stricter supervision would exactly needed, it could be done by adding skilled and competent workers in their fields supported by adequate facilities and infrastructure. This condition is to be able to balance and anticipate the circulation of drugs without permission which is carried out online by business actors. There is an increase from a memorandum of cooperation between cross-sectors into legislation in providing legal certainty for institutions that can carry out their duties and functions with certainty.

b) Enhancing further surveillance through cyber patrols

During the pandemic nowadays, there are many drugs that are believed by the public to be able to cure Covid-19 circulating both from within the country and from abroad. For this reason, the government and related agencies are looking for keywords to record accounts that sell drugs online. In addition, to supervise these facilities regarding the types of drugs being traded. Some accounts have been taken down and some will be searched by cyber patrols so that action can be taken if they are proven to have taken actions that are not in accordance with applicable rules. Investigations and prosecutions are usually carried out based on various cases that harm the community and threaten the safety of the community:

1) Investigation

In article 43 of Law number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, where Investigation is a series of activities in an effort to be able to find a condition of an act suspected of violating the law. Efforts in investigative action are to collect evidence that makes a person's actions lead to criminal acts. These investigations usually start from reports from the public about cases experienced or from several accounts that trade drugs that should not be circulated. Usually it starts by looking for keywords from the account that sells the drug and searching to find a bright spot for the drug's circulation.

2) Prosecution

If there is evidence that the drug being circulated does not meet the stipulated rules, action will be taken against the business actor immediately. The action is carried out on the marketplace where the seller's account is a pharmacy which sells medicines online without a doctor's prescription or does not comply with the provisions where the storage and distribution is not in accordance with applicable regulations, where the evidence is in the form of medicinal products and supporting evidence of electronic transactions. Commonly, this action is a collaboration between BPOM and law enforcement officials.

d. Strict Sanctions for Unlicensed Online Drug Dealers

³⁵ BPOM, Komitmen BPOM dan DJBC Untuk Pengawasan Bersama Obat & Makanan, accessed from <https://www.pom.go.id/new/view/berita/13103/Komitmen-BPOM-dan-DJBC-untuk-Pengawasan-Bersama-Obat--Makanan-Import.html>, on 25th August 2021, at 16.00 WIB

According to SoerjonoSoekanto, law enforcement is influenced by the law itself, law enforcement parties, law enforcement facilities, society and culture that exist in everyday life.³⁶ Everyone has the same position under the law without any exception (equality before the law).³⁷ A criminal act is an act that is prohibited by the laws in force in Indonesia and is accompanied by criminal sanctions for those who violate it. Some sanctions must be enforced in accordance with the Health Law, the Consumer Protection Law, and the Narcotics and Psychotropics Law. Sanctions given on the basis of the dealer's actions in the form of distributing drugs are not in accordance with online provisions that can harm the user. Article 2 of the Criminal Code reads: "*The criminal provisions in the legislation with Indonesia are applied to everyone who commits a criminal act in Indonesia,*".

In addition to administrative sanctions, if a business actor is proven to provide and/or distribute dangerous illegal drugs and does not have a distribution permit which is processed in court, the following criminal provisions will be imposed:

- a) Article 196 *juncto* Article 98 Paragraph (2) and Paragraph (3) of Law Number 36 of 2014 Concerning Health;
- b) Article 197 *juncto* Article 106 Paragraph (1) of Law Number 36 of 2014 Concerning Health;
- c) Article 198 Law Number 36 of 2014 Concerning Health;
- d) Article 62 Paragraph (1) *juncto* Article 8 Paragraph (1a) of Law Number 8 of 1999 Concerning Consumer Protection;
- e) Article 45A of Law Number 11 of 2008 Concerning Electronic, Information, and Transaction Law; and/or
- f) Likewise, the Narcotics and Psychotropic Law will be subject to very heavy criminal sanctions.

CONCLUSION

The development of internet medium has spread in almost all corners of Indonesia. Various obstacles faced by the government through BPOM in monitoring the circulation of drugs online considering the vast territory of Indonesia that has good access to transportation, weak knowledge from the public, weaknesses of some regulations so they cannot provide legal certainty, and sanctions on business actors who are still light havenot done justice. This is a gap for business actors to develop their business online without thinking about the safety of the community as consumers, as well as the number of officers from BPOM and across sectors that are not yet comparable to the population in Indonesia. In such conditions, it is very necessary for the government to take responsibility through the extension of the BPOM to oversee various obstacles related to the online distribution of drugs.

The government through BPOM is responsible for monitoring the circulation of drugs online, including prevention of various possibilities that online drug circulation will occur, starting from increasing supervision in various aspects to narrowing the scope of distribution of drugs that do not have distribution permits in accordance with the law by educating the public, increasing the number of BPOM human resources equipped with adequate facilities and infrastructure, as well as increasing the cross-sectoral cooperation memorandum to the

³⁶ SoerjonoSoekanto. (2019). "*Faktor-Faktor yang Mempengaruhi Penegakan Hukum.*" 16th Edition. Depok: PT. Rajagrafindo Perkasa, p. 8

³⁷ Priska *et.al.*. (2021). "*Penegakan Hukum Terhadap Pelaku Penyalahgunaan Ganja Sebagai Pengobatan,*" on Jurnal De Legalata Jurnal Ilmu Hukum, 6(2), p. 2

level of legislation to provide legal certainty for online drug control implementers. BPOM and law enforcement officers take action against business actors if they are proven to have violated the rules set by the government. Sanctions are given in accordance with applicable laws with efforts to provide a deterrent effect and minimize criminalization in society. All of this is done to ensure justice, security and public safety.

RECOMMENDATION

Society:

- a. To be more careful, wise in conducting drug transactions and not easily tempted by promotions or advertisements and the prices offered; and
- b. Collaborating with BPOM, if there are drugs sold that are not in accordance with the provisions, they can report them to the authorities or BPOM.

Business Actors:

- a. Participate in assisting the government's task in complying with the rules regarding drug distribution through online media so that it is in accordance with applicable laws so as not to endanger the safety of consumers;
- b. Do not over-promote or share negative content that can provide misguided knowledge to the public and comply with applicable regulations.

Government through BPOM:

- a. To never get bored to educate the public about drugs and approach business actors either online or in person;
- b. Strengthen cross-sectoral cooperation by involving various institutions including Ministry of Communication and Informatics, Customs and Excise, Asperindo, and IdEA to oversee the circulation of drugs and improve the distribution system of goods circulation as well as block accounts and take action against business actors proven to sell drugs that do not have distribution permits with the aim of preventing crime and public safety;
- c. Completing infrastructure and adding human resources who are experts in their fields in supervising the circulation of buying and selling drugs online;
- d. Accelerate the process of passing a more comprehensive drug distribution law as a strong legal umbrella for drug distribution, especially online;
- e. Sanctions for policy violations must be given strictly in accordance with the law to provide a deterrent effect for all persons involved in online drug trafficking that can endanger the safety of the public as consumers.

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