

Criminal Action Responsibility Against Drug Counterfeiters According Indonesian Criminal Code And Law Number 36 Of 2009 Concerning Health

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Abstract: In the world of Health in Indonesia, there is a fact that the economic level of most Indonesian people is at the lower level or much poor. On the other side, they need medicine to treat disease but on the other hand, the price of the medicine is beyond their ability to buy. In view of experimental proof uncovered different sources, the most generally flowed counterfeit medications are : pain relievers and anti-toxins. These medications are flowing locally without government consent and research facility test. It can't be determined what content is contained in the phony or unlawful medications . The issue is the means by which to direct the wrongdoing of medication forging as indicated by regulation number 36 of 2009 concerning Wellbeing and concurring Indonesian Crook Code. The exploration technique is juridical experimental and engaging insightful. The aftereffect of this examination is that the guideline with respect to the crook demonstration of medication falsifying in Indonesia is managed in a few legal arrangements , in particular Indonesian Crook Code, regulation number 36 of 2009 concerning Wellbeing and Regulation number 8 of 1999 concerning Shopper Security.

Keywords: Fake Drugs, Criminal Action, Criminal Liability

1. Introduction

Drugs are articles or substances that can be utilized to treat illness, alleviate symp-toms, or change compound cycles in the body. Medication is a substance, or a mix of materials expected to be utilized in laying out a determination, forestall ing, diminishing, wiping out, restoring illness or side effects of sickness, substantial and otherworldly wounds or problems in people or creatures and to enhance or embellish the body or portions of the human body including customary medication.

In the Declaration of the Clergyman of Soundness of the Republic of Indonesia No. 193/Kab/B.VII/71, it is expressed that a medication is a substance or a mix of mama terials planned to be utilized in laying out a finding, forestalling, lessening, elim-inating, restoring sickness or side effects of disease, injury, or illness. physical and profound anomalies in people or creatures and to enhance or decorate the body or portions of the human body.

According to Batubara drugs are chemical substances that can affect biological tissues. [1] In WHO (World Health Organization), a drug is defined as a substance that can affect physical or psychological activity. Meanwhile, according to the National Drug Policy (KONAS), drugs are arrangements used to impact or examine physiological frameworks or

neurotic circumstances with regards to laying out conclusion, avoidance, recuperating, recuperation from torment, symptoms of illness, and/or disease, to improve health and contraception. In a general sense, a drug is a substance which through its chemical effects brings about a change in biological function. [2]

According to Katzung, each drug has its own special properties to work properly. The physical properties of the drug can be in the form of a solid at room temperature or in the form of a gas but can differ in handling related to the pH of the body compartment and the degree of ionization of the drug. The molecular size of the drug which varies from very large (BM 59,050) to very small (BM 7) can affect the diffusion process of the drug in body compartments. The shape of a molecule must also be such that it can bind to its receptor. Each drug interacts with receptors based on strength or chemical bonds. In addition, rational drug design means being able to estimate the exact molecular structure based on the type of biological receptor. Based on the law, drugs can be classified into:[3]

1) OTC drug

OTC drugs are drugs that can be used without a doctor's prescription (called OTC drugs = Over the Counter). This is a sign of the "safest" drug. Meds that can be purchased uninhibitedly in drug stores, even in slows down, without a doc-peak's solution, are set apart with a green circle with a dark boundary. This medication is utilized to treat gentle side effects of the infection. Such as vitamins or multivitamins. Restricted over-the-counter drugs (previously called Rundown W) are medications which in specific amounts can in any case be bought at drug stores, without a doc-pinnacle's remedy, utilizing a blue circle set apart with a dark line. For instance, against headache drugs (Antimo), hostile to influenza (Noza).

2) Hard drugs

Hard drugs (formerly called List G drugs = Gevaarlijk = dangerous) are strong drugs which must be obtained with a doctor's prescription, wearing a red circle marked with a black border with the letter K in it. Drugs included in this group are antibiotics (tetracyclines, penicillins, etc.), as well as drugs containing hormones (diabetes drugs, tranquilizers, and others). These drugs are potent and if used carelessly can be dangerous and even poison the body, aggravate disease or cause death.

3) Psicotropika and Narkotika

These drugs are the same as drugs (narcotics and dangerous drugs) that can cause addiction (addict) with all the consequences that we already know. Therefore, this class of drugs from manufacture to use is strictly monitored by the government and may only be handed over by pharmacies on a doctor's prescription. Every month pharmacies are required to report their purchase and use to the government.

Psychotropics are substances/drugs that can diminish mind action or invigorate the focal sensory system. Cause conduct issues joined by hallucinations (envisioning), deceptions, disabled thinking, state of mind swings and can cause de-dubiousness, and stimulatingly affect clients. Examples: Ecstasy, Shabu-shabu

Realizing the ideals of the country through national development, one of which is a priority scale, namely the creation of public awareness in maintaining the health of the community and its family. Family health is important, because the family is the smallest community in the life of the nation and state, therefore the importance of public health is related

to the nation's community as well as being the backbone of the success of successful development in order to achieve a just, prosperous and prosperous legal society.

Clarification of Article 1 of Regulation Number 36 of 2009 concerning Wellbeing states: Wellbeing is a sound state, both genuinely, intellectually, profoundly and socially that permits everybody to live socially and financially useful. Since ancient times, naturally everyone who is sick will try to find a cure, as well as a way to treat it. The use of drugs aims to obtain healing from the disease suffered. In the utilization of medications should be as per the arrangements, since, supposing that off-base, the utilization of medications can cause things that are not attractive. One of the violations in Wellbeing regulation that frequently happens as of now is a wrongdoing in the drug area

On the other side, over-the-counter medicines can be purchased without a prescription at pharmacies and drug stores. Usually these drugs can encourage self-medication or disease treatment without a doctor's examination and without a doctor's analysis. It is this free sale of drugs which later becomes one of the factors for the existence of parties that produce and distribute drugs or pharmaceutical preparations that do not meet standards or are even counterfeit. The problem of pharmaceutical preparations that do not meet standards is a problem that requires intensive handling from many parties because this does not only concern the problem of controlling pharmaceutical preparations, but also the problem of crime, which in this case requires the intervention of the police and full support from the community.

These days, the flow of fake medications is overflowing in different nations, including Indonesia. The outcomes of the flow of these medications are stress ing, to be specific the aftereffect of the utilization of fake medications that can compromise general wellbeing. Then again, medications which are the necessities of the communi-ty, as a matter of fact have not been completely open to individuals who need them, consider-ing that the costs are once in a while not reasonable by the local area.

Counterfeiting of medicinal needs for humans and their distribution has become a serious problem in various countries, including Indonesia and other developing countries, so that it has become the attention of Indonesia as a nation, the attention of the international community and international members, especially the United Nations.[4]

From the data accumulated by different gatherings and in view of complete empirical proof from different sources, the most widely recognized flow of fake medications include: sorts of erectile brokenness medications, pain relievers and anti-microbials. The medications are coursing locally without government consent and la-boratory tests. It can't be found out what content is contained in fake or unlawful medications.

The guideline of the wrongdoing of medication falsifying by creating and conveying drugs that don't satisfy the guidelines is contained in Article 196 of Regulation Number 36 of 2009 concerning Wellbeing which peruses: 'Each individual who deliberately supportive of duces or disseminates drug arrangements or potentially clinical gadgets that don't fulfill the guidelines. as well as the prerequisites for security and quality as re-ferred to in Article 98 passage (2) and section (3) will be rebuffed with im-prisonment for a limit of 10 (a decade) and a fine of a limit of Rp. 1,000,000,000.00 (one billion rupiah).

In the mean time, in the Indonesian Crook Code (KUUHP) drug duplicating is directed, among others, in view of Article 386 and Article 204 of the Criminal Code Pharmacy is a calling that is connected with the craftsmanship and study of giving regular source materials and manufactured materials reasonable for commitment and use in the treatment and counteraction of an illness.[5]

The proclamation of Regulation Number 23 of 1992 concerning Wellbeing which was subsequently repudiated and supplanted by Regulation Number 36 of 2009 concerning

Wellbeing, sociologically and juridical emphasized the state's commitment to realizing representative health that can be enjoyed by the people of Indonesia.

2. Hypotesis Development

- 1) How is the regulation of the crime of drug conterfeiting according to law number36 of 2009 concerning Health ?
- 2) How is the implementation of criminal liability against drug counterfeiters according to the Number 36 of 2009 concerning Health related to the Criminal Code?

3. Methode Research

The research is juridical normative and empirical, namely an approach method to the object of research that emphasizes law as a norm and emphasizes the implementation of law in society

4. Discussion

4.1 In Crriminal Liability Against Drug Counterfeiting in Indonesia.

In criminal regulation, an individual who carries out a wrongdoing must be rebuffed if the perpe-trator can represent the activities he has carried out. The issue of criminal risk is firmly connected with responsibility, since a responsibility that states not is being indicted without culpability or "geen straf zonder schuld. The wrongdoing of forging drugs has been controlled in a few regulations and guidelines in Indo-nesia, in particular in the Indonesian Crook Code (KUUHP), Regulation Number Long term 2009 concerning Wellbeing and Regulation Number Long term 1999 concerning Buyer Assurance.

There is a difference regarding criminal liability regulated in these three laws, which in the subject of criminal acts that will be subject to criminal liability. In the Criminal Code, the subject of criminal acts will be subject to accountability in the form of a person or person (subject of criminal law), while in Law Number 36 of 2009 concerning Health and Law Number 8 of 1999 concerning Consumer Protection, the subject of criminal acts consists of Natuurlijke person, namely individuals or individuals, and Rechtspersoon, namely legal entities or corporations.

Regulation Number 36 of 2009 concerning Wellbeing, it contains legitimate guidelines pointed toward expanding the wellbeing status of all individuals from the local area which are done in light of non oppressive, participatory, and economical standards with regards to the development of Indonesian HR, as well as expanding re-silience and seriousness. country for public development. The subject of a crook act is an individual or distinct (individual) is an individual whose single demonstration has satisfied the detailing of a medication duplicating wrongdoing, which is known as a solitary entertainer dader.

Meanwhile, in the Indonesian Criminal Code (KUUHP) drug counterfeiting is regulated, among others, based on Article 386 and Article 204 of the Criminal Code Article 386 Indonesian Criminal Code stated:

- A. Any individual who sells, offers or conveys food, drink or medication which he knows to be falsified, and disguises it, will be rebuffed by a greatest im-prisonment of four

years.

- B. Food, drink or medication fixings are falsified in the event that their worth or valuable ness is decreased on the grounds that they have been blended in with something different.

Article 204 of the Criminal Code (KUUHP)

1. Any individual who sells, offers, conveys or disseminates products, which are known to imperil the life or strength of individuals, despite the fact that the risky nature is noti-fied, is undermined with a greatest detainment of fifteen years.
2. In the event that the demonstration brings about the passing of a person, the blameworthy individual will be sen-tenced to life detainment or detainment for a specific time of 20 years.

Regulation Number 36 of 2009 contains legitimate guidelines pointed toward expanding the wellbeing status of all individuals from the local area which are done in light of non-unfair, participatory, and reasonable standards with regards to the development of Indonesian HR, as well as expanding strength and seriousness. country for public turn of events

Game plans for the wrongdoing of medication falsifying contained in Regulation Number 36 of 2009 concerning Wellbeing are as per the following

- 1) Wrongdoing of forging drugs by creating and circulating medications that don't conform to tranquilize norms. [6] Though in regards to the guideline of the wrongdoing of medication falsifying by produc-ing and dispersing drugs that don't agree with drug principles, it is contained in Article 196 of Law Number 36 of 2009 concerning Health, which reads: "Anyone who deliberately produces or distributes pharmaceutical preparations and/or medical devices who does not meet the standards and/or requirements for safety, efficacy or benefits, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be subject to imprisonment for a maximum of 10 (ten) years and a fine of a maximum of Rp. 1,000,000,000 .00 (one billion rupiah)" a Each person; Here it means that as the subject of a crime, namely any person or individual who can be responsible and legally competent in accordance with statutory regulations.
- 2) Deliberately; Here it means that the actions committed by a person were carried out intentionally and with full awareness that the actions committed were against the law.
- 3) Delivering or appropriating drug arrangements as well as clinical gadgets; Here creating or dispersing drug arrangements as well as clinical de-indecencies can be made sense of that the demonstration of creating is a demonstration which is a cycle for delivering results, while the word distributing means an act of carrying something by moving from one hand to another or from one place to another. another place. And the object in producing or distributing in relation to the criminal act of drug counterfeiting is pharmaceutical preparations in the form of drugs
- 4) Which doesn't fulfill the guidelines and additionally necessities for security, adequacy or advantages, and quality as alluded to in Article 98 section (2) and passage (3).

Here is what makes the demonstration of delivering or conveying drug arrangements an unlawful demonstration on the grounds that the drug arrangements don't fulfill the guidelines as well as prerequisites for security, adequacy or advantages, and quali-ty as alluded to in Article 98 section (2) "Any person who does not have expertise and authority are prohibited from

procuring, storing, processing, promoting, and distributing drugs and substances with medicinal properties.” and paragraph (3) "Provisions regarding procurement, storage, processing, promotion, distribution of pharmaceutical preparations and medical devices must comply with quality standards for pharmaceutical services stipulated by Government Regulations". [7]

From the regulation on drug counterfeiting in Article 196, it can be seen that a person is prohibited from producing or distributing pharmaceutical preparations in the form of drugs that do not meet standards. The standard used is the Indonesian Pharmacopoeia, which is a drug standard book issued by an official government agency that issues medicinal ingredients, the chemicals in drugs with their properties, medicinal properties, and dosages that are used. And other standard books, what is meant by other standard books in this provision is that if they are not in the Indonesian pharmacopoeia, they can use the US pharmacopoeia, British pharmacopoeia, and international pharmacopoeia.[8]

Drug Counterfeiting Crime Producing and distributing drugs that do not have a distribution permit. Referring to the definition of counterfeit drugs according to the Regulation of the Minister of Health Number 1010/Menkes/Per/XI/2008 concerning Drug Registration, Counterfeit drugs are "Drugs that are produced by unauthorized parties based on applicable laws and regulations or production of drugs with markings that imitate the identity of drugs others who already have distribution permits.[9]

To shield general society from the dispersion of medications that don't meet the necessities, security, quality and advantages are evaluated through the medication registration instrument to get a circulation grant. A dissemination permit is a type of endorsement for drug enlistment to be conveyed inside the area of Indonesia. Drugs that have a dissemination license should meet the accompanying measures:

- 1) Convincing viability and sufficient security demonstrated through creature tests and clinical preliminaries;
- 2) Quality that meets the prerequisites as surveyed from the creation interaction as per Great Medication Assembling Practices (GMP),
- 3) The checking contains total and objective data that can ensure the appropriate, normal and safe utilization of medications;
- 4) As per the requirements of society.

That drugs that are produced or distributed that do not have a distribution permit or imitate drugs that already have a distribution permit are counterfeit drugs and regarding the regulation contained in Article 197 of Law Number 36 of 2009 Concerning Health, which reads: "Anyone who deliberately produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution permit as referred to in Article 106 paragraph (1) shall be subject to imprisonment for a maximum of 15 (fifteen) years and a fine of a maximum of Rp. 1,500,000. 000.00 (one billion five hundred million rupiah)".

Drug Counterfeiting Crime Producing Drugs Without Expertise and Authority. Drug production requires certain expertise in the pharmaceutical field because it is related to the composition of the drugs and certain dosages needed to cure the disease. For this reason, not just anyone is allowed to manufacture drugs. Even for people who already have expertise in the pharmaceutical field, they are not allowed to produce drugs immediately, they need authority given by the government, which are called health workers. A wellbeing specialist is any individual who is committed to the wellbeing area and has information or potentially abilities through training in the wellbeing area which for particular kinds expects power to complete wellbeing endeavors.

Article 198 of Law Number 36 of 2009 Concerning Health regulates the prohibition to

practice pharmacy in this case is producing drugs, because without expertise there will be errors in drug production that produce counterfeit drugs, and expertise without authority will misuse expertise for profit. herself.

To practice pharmacy as referred to in Article 108 Paragraph (1) of Law Number 36 of 2009 concerning Health. Drug practice which incorporates the production including quality control of drug arrangements, security, acquirement, stockpiling and distribution of medications, administration of physician endorsed drugs, drug data administrations as well as medication advancement of restorative fixings and customary prescriptions should be completed by wellbeing laborers who have the aptitude and authority as per the arrangements regulation.[10]

That Article 198 of Law Number 36 of 2009 Concerning Health relating to the crime of drug counterfeiting regulates the prohibition of anyone who does not have the expertise and authority to practice pharmacy, in this case the manufacture and distribution of drugs in accordance with the provisions of laws and regulations, because without having the expertise and authority, errors can occur in the manufacture or distribution of drugs that can be categorized as counterfeit drugs.

5. Conclusion

Whereas arrangements regarding the criminal act of drug counterfeiting in Indonesia are regulated in several provisions of laws and regulations, namely

- a. Indonesian Criminal Code,
- b. Law Number 8 of 1999 regarding Consumer Protection
- c. Law number 36 of 2009 concerning Health

There needs to be an increase in public awareness of the dangers of counterfeit drugs through increased awareness of drugs.

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