

Responsibility Against the Criminal Acts of Medicine Corruption

Juniaty Caroline Simajuntak¹, Megawati Barthos²
{juniatycs@gmail.com}

Universitas Borobudur, Jakarta, Indonesia¹²

Abstract. Today, the circulation of counterfeit drugs continues to occur as if it is difficult to stop. As a result of the circulation and use of counterfeit drugs, it will automatically threaten public health. On the other hand, medicines which are the needs of the community, in fact have not been able to be fully affordable by the people who need them considering the price is sometimes not affordable by the community. The problem is, how is the application of accountability to perpetrators of drug counterfeiting crimes? The development of counterfeit drug cases in Indonesia from year to year in terms of the quantity of their distribution is suspected to show an increase. Responding to various public complaints related to the circulation of counterfeit drugs, especially in the Special Capital Region of Jakarta and its surroundings, various legal actions as a form of accountability for perpetrators of drug counterfeiting crimes have been carried out by the ranks of the National Police on a regular basis. The purpose is intended to uncover cases of drug manufacture and distribution of counterfeit drugs which can be categorized as violating "Anyone who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not meet standards and/or requirements for safety, efficacy or benefit, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of Rp. 1,000,000,000.00 (one billion rupiah), as well as violating Article 196 of Law Number 36 of 2009 concerning Health."

Keywords: Drug Counterfeiting Crime Actors

1 Introduction

Today, the circulation of counterfeit drugs continues to occur in various countries, and it is hard to stop, including in Indonesia. The consequences of the circulation of these drugs, which are worrying, are the consequences of the consumption of counterfeit drugs that can threaten public health. On the other hand, original medicines are a community need. Fulfilling the need for drugs for humans as well as counterfeiting and circulating counterfeit drugs are significant problems in many countries, including Indonesia and other developing countries, so Indonesia as a nation has become a concern, the attention of Members of international organizations, including the United Nations, as well as the international society at large (UN). [1]

Meanwhile, based on empirical evidence revealed from various sources, the most widely circulating counterfeit drugs include; Types of drugs erectile dysfunction drugs, pain relievers, and antibiotics. These drugs are circulating in the community without government permission

and laboratory tests. It cannot be ascertained what content is contained in counterfeit or illegal drugs.

Regarding counterfeiting and the circulation of counterfeit drugs, the government through its law enforcement agencies is responsible for taking legal action and legal action against parties as perpetrators of counterfeiting and circulating counterfeit drugs. Legal actions and efforts by law enforcers are under the orders of the laws that have regulated them because the actions committed by drug counterfeiters are categorized as a criminal act that deserves legal sanctions. In its position as a criminal act, the regulation of drug counterfeiting, producing, and distributing drugs that do not comply with drug standards is contrary to the provisions of Article 196 of Law Number 36 of 2009 Concerning Health, as well as Articles 386 and 204 of the Criminal Code.

The problem, namely; How is the application of accountability to perpetrators of drug counterfeiting crimes? The methodology of the problem-solving approach is carried out by normative and empirical legal research methods that are then analyzed descriptively.

2 Discussion

Any suspicion of a criminal act, in the context of providing legal protection to the larger community, law enforcers are obliged to take legal actions and remedies against anyone suspected of being a criminal. For every criminal act without exception by the principle of legality and the principle of equality before the law, the obligation for legal action is carried out based on the main tasks and functions of the institutions involved in the criminal justice system that consists of the process of investigation, prosecution and criminal justice and the execution of perpetrators of criminal acts if they go through the process. was proven guilty.

Regarding this paper, there is a criminal act of drug counterfeiting if it is strongly suspected;

The first infringes on Article 196 of Law Number 36 of 2009 concerning Health, while the second does so in violation of Articles 386 and 204 of the Criminal Code. The provisions of Article 196 of Law Number 36 of 2009 concerning Health states that; "Any person who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or benefit, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be subject to a maximum penalty of ten (ten) years in prison and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." [2]

While the provisions in the Criminal Code related to drug counterfeiting, among others, are regulated under Article 386 of the Criminal Code and Article 204 of the Criminal Code.

Article 386 of the Criminal Code states;

- a. Any person who sells, offers or delivers goods of food, drink, or medicine which he knows that it is counterfeit, and conceals, shall be punished by a maximum imprisonment of four years.
- b. The food, drink, or medicine is counterfeited if its value or usefulness is reduced because it has been mixed with something else.[3]

Article 204 of the Criminal Code states;

- a. Anyone who sells, provides, delivers, or distributes goods that are known to jeopardize people's lives or health, even if the danger is not disclosed, faces a maximum sentence of fifteen years in jail.
- b. If a human being is killed as a result of the conduct, the guilty person faces life in prison or a maximum sentence of twenty years in jail. [3]

Responding to various public complaints related to the rampant counterfeiting and circulation of counterfeit drugs in Indonesia, especially in the Special Capital Region of Jakarta and its surroundings, various actions and legal efforts have been taken by the Indonesian National Police and the Food and Drug Supervisory Agency (BPOM).

Periodically, the Metro Jaya Regional Police and the Food and Drug Supervisory Agency (BPOM) often reveal cases of manufacturing counterfeit drugs and herbs in the jurisdiction of the Polda Metro Jaya. Furthermore, in the legal action operation, the Ditreskrimsus Polda Metro Jaya, together with the Food and Drug Supervisory Agency (BPOM), succeeded in securing the perpetrators, and then after legal action or investigation was carried out to fulfill the elements, both subjective elements and objective elements related to the provisions of Article 196 of the Law. -Law Number 36 of 2009 concerning Health and provisions in the Criminal Code related to drug counterfeiting are regulated, among others, based on Article 386 of the Criminal Code and Article 204 of the Criminal Code.

After meeting the elements related to the fulfillment of evidence as regulated in the provisions of Article 184 of the Criminal Procedure Code, then the criminal responsibility for drug counterfeiters is followed up with legal remedies through a judicial trial, in this case, the authority is carried out by the Public Prosecutor to be processed at a court trial.

Based on the results of the disclosure of cases in the examination of drug counterfeiters in a joint operation of elements of the Metro Jaya Police with the Food and Drug Supervisory Agency (BPOM), a perpetrator who is known to have managed a factory, which employs 15 employees, succeeded in producing illegal drugs and herbs with an income of IDR 3 billion per month. The types of drugs that are most counterfeited include erectile dysfunction drugs, pain relievers, and antibiotics. These drugs are circulating in the community without government permission and laboratory tests. It cannot be ascertained what content is contained in counterfeit or illegal drugs.

The success of uncovering the perpetrators of producing and selling counterfeit drugs shows a commitment to quality law enforcement. However, this still requires a comprehensive support capacity. This means that improving the quality of law enforcement includes Quality of work/management procedures, quality of facilities/infrastructure, quality of legislation (legal substance), and marketability of environmental circumstances for broad reforms, including the legal culture of the community, are all examples of institutional quality (legal structure).

Law enforcers are role models in society, who have certain abilities based on their profession. Law enforcers must be able to introduce legal norms or rules and provide good examples. Law enforcers have certain abilities in carrying out their roles, namely in terms of law enforcement related to law enforcement in the criminal justice system, whose role is regulated by the Criminal Procedure Code. In particular, the law enforcement institutions of the National Police and the Civil Servant Investigator (PPNS) BPOM, to overcome and take legal action against those who are responsible for the crimes criminal acts of counterfeiting and trafficking of counterfeit drugs, in addition to the Criminal Procedure Code, the legal basis for their roles and functions is governed by the State Police Law Number 2 of 2002. The Indonesian National Police serves a variety of functions in addition to law enforcement carries out the functions of security, order, protection, and protection of the community.

Countermeasures and legal actions against perpetrators of counterfeiting and circulation of counterfeit drugs are a series of activities carried out by Polri investigators and BPOM Civil Servant Investigators (PPNS) as law enforcers, who carry out their duties based on legal orders that have legal legitimacy. In the context of these legal events, related to legal action to countermeasures, Polri investigators and BPOM Civil Servant Investigators (PPNS), especially in the jurisdiction of Poldametro Jaya, can fully understand the operational definition of

counterfeiting and circulation of counterfeit drugs and their elements as intended in the Act. Law Number 36 of 2009 concerning Health is associated with the Criminal Code.

Law enforcement is carried out by law enforcers and aims to achieve order and legal protection for the community. In terms of law enforcement as part of the realization of legal ideals, the good and bad of the law are always associated with the behavior patterns of law enforcement. For clarity, an example will be presented which is taken from an element of law enforcement circles, namely the police who are considered law by the wider community (in addition to other elements, such as judges, prosecutors, and so on). As law enforcers, in the context of overcoming and taking legal action against perpetrators of a crime, actions against perpetrators of criminal acts can only be carried out by parties who have legitimate legal authority regulated by law.[4]

The National Police Institution, as regulated in Law Number 2 of 2002 concerning the State Police and the Criminal Procedure Code, in one of its duties and functions has legitimate authority as an investigator, in carrying out the investigation process against perpetrators suspected of committing a criminal act. Predictably conceptually, in carrying out a process of legal action against the perpetrators of the crime of counterfeiting and circulating counterfeit drugs, at the stage of investigating the perpetrators of the crime, they should not violate human rights. Therefore, investigators are obliged to comply with applicable legal provisions, especially the Criminal Procedure Code.

Legal action was taken by investigators against perpetrators of counterfeiting and circulation of counterfeit drugs, namely in the form of the authority to carry out legal investigations, and investigations in the form of arrests, detentions, searches, confiscations, as well as examinations as well as making an examination report (BAP). This is a series of law enforcement actions against perpetrators of criminal acts, which are carried out without violating the applicable legal provisions.

Police institutions in carrying out law enforcement functions by the doctrine of public order (public order), as well as to maintain public order (public order), following the authority ordered by Law Number 2 of 2002 concerning the State Police, upholding the rule of law, as well as providing protection and services in an infinite society. This role and authority are carried out according to the will of the principle of equality before the law. It means that the National Police investigators in facing the task of the state do not want the possibility of overlapping responsibilities and duplication of effort as happened before the reform era. Therefore, the National Police can be held accountable for the behavior of law enforcement, which is independent, and free to make policies and discretion even though this has dramatic consequences for the community. [5]

In carrying out the functions of investigation and investigation, the constitution grants the National Police special rights or privileges to: summon, examine, arrest, detain suspects, as well as search and confiscate goods deemed to be related to a criminal act of any kind, including the perpetrator of a crime. This action becomes the authority of the perpetrators of the crime of counterfeiting and circulating counterfeit drugs.

On the other hand, the efforts of Arrests and detentions by investigators are a series of control crimes committed against criminals that are legitimized by law, which according to the Criminal Procedure Code is mentioned in the investigation or investigation stage. Objectively, the police investigators in carrying out law enforcement actions originate from the ideals of a state of law that upholds the rule of law (the law is supreme). This means that as law enforcers, the police investigators are ordered by law and not by the people (government of law and not of men).[6]

The concept of implementing law enforcement by Polri Investigators and BPOM Civil Servant Investigators (PPNS), against perpetrators of criminal acts of counterfeiting and circulation of counterfeit drugs, is based on upholding the rule of law. In dealing with criminal acts against the perpetrators of the crime of counterfeiting and circulating counterfeit drugs, no one is above the law, and the law must be applied to anyone based on the principle of treatment and in an honest manner. The Criminal Procedure Code authorizes Polri investigators to carry out arrests and detentions, searches, and confiscations which are implicit to complete evidence.

The regulation of the crime of counterfeiting and the circulation of counterfeit drugs, among others, is regulated by Law Number 36 of 2009 concerning Health and the Criminal Code. The regulation of the crime of counterfeiting drugs by producing and distributing drugs is regulated under Law Number 36 of 2009 concerning Health, in Article 196, Article 386 Criminal responsibility linked to the conviction of the perpetrator of a criminal conduct is meant to assess if a person can be held accountable for his or her actions be held accountable for a crime that occurred. The ability to be responsible is inherent in the perpetrator or the subject of a crime.

4 Conclusion

According to the Criminal Code, the perpetrators who can be accounted for in the crime of drug counterfeiting are individuals or individuals. The subject of the criminal act of a person or individual (person) is a person whose single act has fulfilled the formulation of the criminal act of drug counterfeiting, which is called the sole maker (dader). In accordance with Health Law No. 36 of 2009 and the Criminal Code, the conceptual framework of criminal responsibility for counterfeiters and the circulation of counterfeit drugs, this law is a material legal basis for legal action to be carried out by Polri investigators and Civil Servant Investigators. (PPNS) BPOM against the perpetrators of counterfeiters and the circulation of counterfeit drugs.

References

- [1] Aditomo Makruf, *Obat dan Pemanfaatannya*, Pamarator Press, Jakarta, 2012
- [2] Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan, Pasal 196, Penjelasan.
- [3] Criminal Code Law
- [4] Aswanto Iriawan, *Sistem Peradilan Pidana di Indonesia*, Intermasa, Jakarta, 2014
- [5] Rudy Heryawan *Asas-asas Hukum Acara Pidana di Indonesia*, Jakarta: Pamarator Press, 2017
- [6] Andi Hamzah, *Sistem Peradilan Pidana*, Gramedia, Jakarta, 2014