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Consumer Protection on Illegal Drugs Cases in Indonesia

Chatrin Intan Sari*

Universitas Negeri Semarang, Indonesia

ABSTRACT: The purpose of this study is to know how the legal protection for consumers on the circulation of illegal drugs and how the accountability of business actors on the circulation of illegal drugs. By using normative juridical research method is concluded: 1. Legal protection to consumers on the circulation of illegal drugs conducted by the government through the Agency of Drugs and Food (BPOM). With this BPOM shows the attention that the government has run its supervision. In addition, the protection of consumer law arising from the existence of rights and obligations set forth in Article 4 letters a and c, article 7 letters a and d, article 8 paragraph 1 letter a, d and e of Law Number 8 Year 1999 concerning Consumer Protection. The fulfillment of consumer rights over security, the right to be heard, the correct, clear and honest information regulated in the UUPK is still not fulfilled. Article 98 paragraph 2, Article 106 paragraph 1 and 2 of Law Number 36 Year 2009 on Health. 2. The business actor is responsible as the manufacturer of the goods because the importer of the goods is not an agent or official importer. The business actor who is an individual shall be liable for the losses incurred even if only as an importer not as a producer of the goods. Related to the violation of Article 8 paragraph 1 letter a, d and e then based on Article 62 paragraph 1 Laws that sanctions may be subject to imprisonment a maximum of five years or a maximum fine of Rp. 2,000,000,000 (two billion rupiah). It is thus a legal basis which can be worn by consumers as a form of accountability, addressed to businessmen illegal drugs is a criminal sanction sebagaimana governed by article 62 paragraph 1 of BFL.

KEYWORDS: Consumer Protection, Illegal Drug, Legal Protection

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

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I. INTRODUCTION

Lately the public is often surprised by the news in various mass media that many products, especially drugs that are often consumed daily are illegal drugs that can endanger health, such as the existence of drugs that have been expired re-sold and containing harmful chemicals. This proves that the safety of medicines in Indonesia is still far from safe. Rampant circulation of illegal drugs in Indonesia proves that the weakness of Indonesia's defense from various things that endanger the community. Thousands of illegal drugs every year are still found circulating in various parts of Indonesia one of them in the city of Manado. When conducting operations conducted by the Center for Food and Drugs Control (BBPOM) since the end of 2014 until mid-2015 in Manado managed to find various kinds of drugs illegalsebanyak 11,342 pieces with an estimated economic value of Rp. 5.25 million. After further examination found the dangerous content of paracetamol drugs, piroxicam, phenylbutasone, etc. used for the drug pegallinu which can cause kidney and stomach disorders. As for dexamethasone for allergies itching can cause risk in the kidney and facial cleansing.¹

¹ Herdian Herdian, "Ribuan Kosmetik dan Obat Ilegal Beredar di Manado", *KABAR24* <<https://kabar24.bisnis.com/read/20141111/78/272099/ribuan-kosmetik-dan-obat-ilegal-beredar-di-manado>>, 2014. See also Riviera Jesica Manurung, Nuswantoro Dwiwarno, and Joko Setiyono. "Peran Ncb-interpol

Circulation of drugs that do not meet the current requirements of increasingly worrying drug products that exist in the Indonesian market today many of which come from imported products that are not in the correct legal procedures. From the results of surveys with population and sampling BPOM found that 50 percent of illegal drugs circulating in the Indonesian market come from China and India and the most common types of illegal drugs that are circulating drugs, penurunkolestrol and slimming drugs.² The public should be aware that products with permission from the Health Service means products that meet the safety and benefit standards of the product. Conversely, products that do not have a license of course have not passed the inspection stage. Products that do not have these permits may contain non-standard substances if consumed can cause harm to consumers.

Basically, the circulation of illegal drugs is indeed often happening every year. But only recently did the public know. The availability of information about illegal drugs due to lack of information and the lack of referrals about illegal drug trafficking has led consumers to fall into it, Indonesia has become the largest market for illegal drug products, most of which come from outside products. Hence the task

Indonesia dalam Rangka Pemberantasan Peredaran Obat Dan Kosmetik Ilegal Dalam Operasi Pangea." *Diponegoro Law Journal* 5, No. 3 (2016): 1-14; Fatma Riska Fitrianiingsih Dai, Ramdhan Kasim, and Nurmin K. Martam. "Perlindungan Hukum Bagi Konsumen Terhadap Peredaran Kosmetik Ilegal." *SemanTECH (Seminar Nasional Teknologi, Sains dan Humaniora)* 1, No. 1 (2019); Kadek Agus Adi Mego, I. Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti. "Tinjauan Yuridis terhadap Selebgram yang Melakukan Endorse/Promosi Barang Ilegal pada Produk Obat Kosmetik." *Jurnal Konstruksi Hukum* 2, No. 2 (2021): 271-276.

² Bella Jufita Putri, "50 Persen Obat Palsu Berasal dari Tiongkok dan India", *LIPUTAN6* <<https://m.liputan6.com/health/read/2439491/50-persen-obat-palsu-berasal-dari-tiongkok-dan-india>>, 2016.

of Indonesian business actors should fill the domestic market by not only thinking about quantity but also prioritize the quality of a product. Therefore, to guarantee a consumer protection arrangement, the state pours consumer protection into a legal product. By mutual agreement between the President of the Republic of Indonesia and the People's Legislative Assembly of the Republic of Indonesia, Law No. 8/1999 on Consumer Protection (UUPK) is enacted, the Act shall come into force after one year as of April 20, 2000. With the UUPK of guaranteed protection of consumer rights in Indonesia is expected to be met well. In the explanation of UUPK not only aims to protect the rights of consumers but also to create a healthy business climate and encourage business actors to produce products of quality goods or services.³

Related to that health is also a right for every human being. Therefore, supervision in every activity related to the world of health is important for the government to promote the welfare of the community. The sale of illegal drugs has also violated the provisions set forth in health legislation, as they are not listed in the BPOM registration register. Described in the Health Act that, pharmaceutical preparations and medical devices can only be circulated after obtaining marketing authorization.⁴ This means illegal drugs because

³ Leli Juwanti, "Perlindungan Hukum Terhadap Konsumen Atas Penjualan Obat-Obatan Ilegal Secara Online." *Niagawan* 7, No. 3 (2018): 163-170; Wira C. Pelealu, "Perlindungan Hukum Terhadap Konsumen Atas Peredaran Obat-Obatan Ilegal Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen." *Lex Et Societatis* 4, No. 7 (2016); Cut Mayang Widya Nuryaasiinta, "How Far is Consumer Protection in the Health Care Sector?." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 6, No.1 (2020): 47-72.

⁴ Article 106 paragraph 1 of Law Number 36 Year 2009 on Health. Concerning to the roles of BPOM, *please also read and see* Tresya Tresya. "Peran BPOM dalam Melakukan Pengawasan terhadap Pangan Tanpa Izin Edar." *Wajah Hukum* 2,

they do not have a marketing authorization and are not in accordance with the laws and regulations.

II. METHODS

The research method used in this paper is normative legal research. Normative legal research is literary legal research. Normative legal research is a document study, which uses secondary data sources in the form of legislation, government regulations, legal theories, articles, and opinions from scholars prominent law.

III. LEGAL PROTECTION FOR CONSUMERS ON ILLICIT DISTRIBUTION OF ILLEGAL DRUGS

Consumer protection laws are established for the benefit of consumers in this case the physical and social economic of consumers. In the case of the physical consumer is related to the security and safety of the body and or their soul in the use of consumer goods or services. While in terms of social economy every consumer can obtain optimal results with the use of their economic resources in the use of goods or services their living needs. The balance of consumer protection with producers can be achieved by enhancing consumer protection, because as in the current free market era, producer positions have been stronger than consumers.

No. 2 (2018): 173-177; Atin Carolina Parei, and Fitika Andraini. "Fungsi dan peran BPOM dalam perlindungan konsumen terhadap makanan yang mengandung bahan berbahaya di Kota Semarang." *Jurnal Ilmiah Dinamika Hukum* 19, No. 2 (2018): 1-9; Ni Kadek Ayu Padmi Ari Sudewi, I. Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti. "Perlindungan Hukum Badan Pengawas Obat Dan Makanan (BPOM) Terhadap Peredaran Produk Jamu Yang Mengandung Bahan Kimia Obat Berbahaya." *Jurnal Analogi Hukum* 2, No. 2 (2020): 246-251.

Part of consumer protection efforts in Indonesia is based on a number of principles that have been believed to provide direction in their implementation at the practical level. Consumer protection basically is organized as a joint effort based on five relevant principles in national development:

- a) The principle of benefit, in carrying out consumer protection should provide the greatest benefit to the interests of consumers and entrepreneurs as a whole
- b) The principle of justice, providing an opportunity for consumers and business actors to obtain their rights and perform their obligations fairly.
- c) The principle of balance, providing a balance between the interests of consumers, business actors, and governments in the material and spiritual sense.
- d) The principle of consumer safety and security, to provide security and safety to consumers in the use, use and use of goods and / or services consumed or used.
- e) The principle of legal certainty, both business and consumer actors obey the law and obtain justice in the provision of consumer protection as well as the state guarantee legal certainty.

Given this principle, the authors argue that consumer protection law can have a really strong footing base in the hope that consumers and business actors can obtain their rights and perform their obligations in a balanced way. In that case, of course, the consumer must get correct and responsible information about the consumer product that is informative information about all the necessities of life needed.

Form of legal protection through a regulation. In this case the government made Law No. 8 of 1999 on Consumer Protection in

order to protect trade activities between producers and consumers. Implementation of the BFL is made to protect the rights of consumers not harmed or to protect the consumer from fraudulent acts businesses. In addition, UUPK is also a manufacturer's guarantee if the manufacturer violates the prevailing provisions, then the consumer is entitled to seek compensation.

In the case of circulation illegal drugs UUPK provide protection to consumers by providing arrangements regarding the prohibition to business actors that will provide harm to consumers. That business actor has violated some provisions of the article in UUPK, namely:

- a) The business actor has violated the consumer's right to the convenience, security, safety in consuming the goods, right to the right, clear and honest information about the condition of the goods. Related to the breach, the business actor is clearly aware that the drugs sold belonging to drugs containing hazardous substances such as borax, karisoprodol and active substances Drug Chemicals (BKO) that can endanger the health and even the safety of consumers and comfort in taking drugs. Furthermore, business actors also do not provide the correct information, clear and honest about the content of these drugs.
- b) A business actor violates its obligation to have good faith in conducting its business activities and does not guarantee the quality of traded goods under the provisions of the applicable quality standard of goods.¹¹ In this case the business actor has violated his obligation to have good faith in running his business. Because it is clear that the business actor already knows the content of harmful ingredients and BKO active substances contained in drugs and traditional medicine. Even has sold products that do not have distribution authorization from BPOM

so that the product does not meet the quality standards that have been set in Indonesia.

- c) Business actors have committed prohibited conduct to trade products that are not in accordance with the required standards and statutory provisions, otherwise they are not in accordance with the conditions and efficacy, otherwise it is not in accordance with the quality of the composition and processing process as stated in the label. Perpetrators businesses have sold and distributed traditional medicines and medicines that do not meet the standards of good drug preparation and standards for the manufacture of good traditional medicine and the applicable laws and regulations in the absence of marketing authorization from BPOM. In addition, business actors already know that these drugs contain chemicals and other hazardous substances which are not in accordance with the conditions and efficacy stated in the product label.⁵ Therefore, the drugs traded are incompatible with the quality and composition contained in the description of the goods.

In this case the law has not run smoothly because there are still many illegal drug products in Indonesia that can be sold free when they use dangerous materials such as borax to make drugs. In addition, manufactured goods can also be forged easily and are very harmful to consumers. As a result, not only in terms of material loss but can be life-threatening if consumed.

⁵ Siti Muslimah, "Label halal pada produk pangan kemasan dalam perspektif perlindungan konsumen muslim." *Yustisia Jurnal Hukum* 1, No. 2 (2012); Slamet Mujiono, "Perlindungan Konsumen: Regulasi Bisnis." *EBI (Jurnal Ekonomi dan Bisnis Islam)* 1, No. 1 (2016); Aulia Rahman Hakim, "Perlindungan konsumen terhadap peredaran produk makanan dan minuman tanpa label." *Yustitiabelen* 6, No. 2 (2020): 98-110.

From the above explanation on the rights and obligations of consumers and business actors listed in Article 4 to Article 7 aims to enable businesses and consumers to know what their rights and obligations are. If the business actor violates its obligations, the consumer may demand the responsibility of the business actor by suing the business actor as regulated in article 45 UUPK, namely:

- 1) Any disadvantaged consumer may sue a business actor through an agency in charge of resolving a dispute between a consumer and a business actor or through a court in a public court.
- 2) Consumer dispute resolution can be reached through court or out of court based on the voluntary choice of the parties to the dispute.
- 3) The settlement of disputes outside the court as referred to in paragraph (2) shall not eliminate the criminal liability as stipulated in law.
- 4) Where a consumer dispute resolution effort has been chosen out of court, a court action can only be taken if the attempt is declared unsuccessful by either party or by the parties to the dispute.

Consumers and business actors may choose whether they will resolve their dispute through courts in accordance with applicable general court provisions or will resolve their disputes outside the courts held to reach agreement on the form of indemnity or on certain actions to ensure that no harm will be made by consumers through consumer dispute resolution bodies.

The other regulation that regulates related illegal drug circulation namely Law Number 36 of 2009 about Health. This law regulates the prohibition of pharmaceutical practice in this case the production of illegal drugs, because without expertise there will be mistakes in producing drugs that produce counterfeit drugs, and unauthorized expertise will be misuse of expertise for its own benefit.

In this case the business actor has violated several provisions of the article in the Health Act, namely:

- a) Business actors violate prohibited conduct by storing, promoting and distributing drugs with no expertise and authority in the provision of pharmaceuticals under the provisions of article 98 paragraph 2 of the Health Act.⁶ In this case the business actor is very clear already know that in the trade they do not have the expertise of a pharmacist and the authority to have a drug distribution license, and are prohibited from storing, promoting, and distributing the drugs they are trading. Thus, the business actor has committed prohibited conduct by storing, promoting, and distributing traditional drugs and drugs with no expertise and authority in the provision of pharmacies.
- b) Business actors violate pharmaceutical preparations which may only be circulated after obtaining marketing authorization, as well as in the case of pharmaceutical preparation information that must meet the objectivity and completeness requirements and are not misleading in accordance with article 106 paragraphs 1 and 2 of the Health Act.¹⁴ In this case business actor is very clear to know that drug traded product does not have distribution license. In addition, business actors do not provide consumers with clear information about traditional medicines and drugs that are traded through the objectivity and completeness of the packaging but

⁶ Andin Rusmini, "Tindak Pidana Pengedaran Dan Penyalahgunaan Obat Farmasi Tanpa Izin Edar Menurut Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan." *Al-Adl: Jurnal Hukum* 8, No. 3 (2017); A. S. Suharto, "Penindakan Peredaran Gelap Obat Daftar G Perspektif Undang-Undang Kesehatan Kaitannya Dengan Undang-Undang Narkotika." *Jurnal Hukum Media Justitia Nusantara* 11, No. 1 (2021): 207-231.

provide misleading information from advertisements that are posted with an uncertain word of promise.

IV. RESPONSIBILITY OF BUSINESS ACTOR FOR ILLEGAL DRUGS DISTRIBUTION

Based on Article 19 paragraph 1 UUPK that the business actor is responsible to provide compensation for damage, pollution, and or loss of consumers due to consume goods and or services produced or traded. The elements contained in article 19 paragraph 1 UUPK, namely:

- 1) Business actor: According to Article 1 paragraph 3 UUPK that the business actor is an individual and / or business entity either legal entity or non-legal entity.
- 2) Responsible to provide compensation: responsible means an act to bear all the risks of the consequences caused by deeds. Responsibility is given in the form of compensation that is replacing something with something else, whose value is estimated as big as the loss.
- 3) For the damage, pollution, or loss of the consumer: concerning the consequences to be accounted for by the business actor, namely a state of loss suffered by consumers related to the consumer's health after consuming the illegal drugs.
- 4) Consequences of consuming goods or services produced or traded: this is the cause of damage, pollution and loss of consumers for consuming illegal drugs produced by business actors.

From the 4 (four) elements above it is clear that the consumer is entitled to receive compensation incurred by the business actor even though drugs entering Indonesian territory illegally and no

representative office can be sued by consumers. Consumers who suffer losses from consuming the drug can still sue business actors who trade the drugs to the concerned. Consumer suits that suffered losses due to consume drug products and illegal traditional drugs without distribution permit is an act against the law committed by business actors as arranged in UUPK. Hoping that with the existence of UUPK as a legal umbrella against the criminal act of circulation of these illegal drugs the business actors no longer repeat their actions.

In relation to the violation of Article 8 paragraph 1 letter a, d, and e, the legal basis that can be used by consumers as a form of liability to the perpetrators of illegal drugs business is a criminal sanction as regulated in Article 62 paragraph 1 UUPK may be subject to criminal imprisonment of five years or a maximum fine of Rp. 2,000,000,000 (two billion rupiah).

In addition to the principal criminal sanctions that may be granted, there are additional sanctions against the violations as provided for in article 63 of UUPK, in the form of:

- a) Deprivation of certain goods
- b) Announcement of the judge's decision
- c) Payment of compensation
- d) Orders of termination of certain activities that cause consumer loss
- e) Obligation of withdrawal from circulation
- f) Revocation of business license.

This additional criminal only adds to the principal penalty imposed. Thus, it can not stand alone except in certain cases, in the appropriation of certain additional criminal goods is facultative, meaning that it can be imposed but not necessarily.

To the loss suffered by the consumer, the business actor is responsible to provide compensation as provided for in article 19 paragraph 1 UUPK. Furthermore, in paragraph 2 it is explained that the compensation provided by the business actor may be a refund or replacement of goods and /or services of a similar or equivalent value, or health care and /or compensation in accordance with applicable laws and regulations. Subject to article 4 letter h that consumers who suffer losses must fight for their rights to get compensation, compensation and /or reimbursement if the goods and / or services received are not in accordance with the agreement or not as it should be.

According to Article 19 paragraph 3 UUPK that the compensation shall be done no later than 7 (seven) days after the date of the transaction. If a business actor who refuses and / or does not respond and / or does not compensate the claim, the consumer may file the lawsuit through the consumer dispute resolution body or submit to the judiciary in the place of the consumer's position.

In addition to criminal and civil liability that must be carried out by business actors there are several channels of consumer dispute resolution that can be done by way of consumer dispute resolution outside court and consumer dispute resolution through general court.

1. Dispute resolution outside the court

- a) The settlement of disputes peacefully by the parties to the dispute Resolution of consumer disputes as referred to in Article 43 Paragraph (2) UUPK, does not rule out the peaceful settlement by the parties to the dispute, that is the business actors and consumers without going through court or consumer dispute settlement body, and to the extent not

inconsistent with consumer protection legislation. Even in the elucidation of the article it is argued that at every stage it is endeavored to use the settlement of peace by both parties to the dispute.

- b) Elucidation of Article 45 Paragraph (2) of the UUPK can be seen that the UUPK requires that a peaceful settlement be a legal effort that must first be endeavored by the parties to the dispute before the parties elect to settle their dispute through BPSK or the judiciary when they do not agree to make peace.

2. *Settlement of disputes through the Consumer Dispute Settlement Board / BPSK*

- a) Consumer Dispute Settlement Agency (BPSK), for consumer out of court dispute resolution. With the BPSK then the settlement of consumer disputes can be done quickly, easily, cheap. Because the law determines within a period of 21 working days, BPSK must give its verdict. Easy because the administrative procedures and decision-making process is very simple. Cheap lies in the cost of affordable cases.
- b) Any consumer who feels aggrieved by a business actor may complain his or her problem to BPSK, either directly, represented by his / her proxy or by his / her heirs.
- c) Complaint submitted by its attorney or his / her heirs may only be performed if the consumer is sick, dead, elderly, immature or a foreign national. The complaint can be submitted orally or written to the BPSK secretariat in the city / district where the consumer's domicile or in the nearest town / county with the consumer's domicile. BPSK is not only in charge of resolving consumer disputes outside the court but also conducting activities in the form of consultation, supervision on inclusion

of clauses standard, and as a place of complaint from consumer about existence of violation done by business actor.

- d) Consumer dispute resolution in BPSK is conducted solely to reach agreement on the form and amount of compensation and / or of certain actions to guarantee no recurrence of losses suffered by consumers. The size of the material losses experienced by consumers is based on the impact of the use of goods / services to consumers. The form of guarantee in question is in the form of a written statement explaining that there will be no repetition of actions that have harmed the consumer.

3. *Consumer Dispute Settlement through General Court (Litigation)*

- a) Any disadvantaged consumer may sue business actors through an agency tasked with resolving segketa between consumers and business actors or through different courts within the general court. Subject to section 48 of the UUPK, dispute resolution of consumers through courts refers to the applicable general judicial provisions.
- b) Thus, the dispute settlement process through a public court, conducted as well as a normal dispute lawsuit, by filing a lawsuit for compensation either based on an offense, a breach of promise / default or negligence of business actor / producer causing injury, death or loss to the consumer. This civil suit is filed through a state court in a place of consumer standing. With the enactment of UUPK, the consumer who will file a lawsuit to the business actor does not file a lawsuit through a district court in the place of business actor who becomes the defendant, as regulated in Article 118 HIR, but submitted to the district court in the place of the consumer as the plaintiff.

V. CONCLUSION

Legal protection of consumers over the circulation of illegal drugs made by the government through the Agency of Drugs and Food (BPOM). With this BPOM shows the attention that the government has run its supervision. In addition, the protection of consumer law arising from the existence of rights and obligations set forth in Article 4 letters a and c, article 7 letters a and d, article 8 paragraph 1 letter a, d and e of Law Number 8 Year 1999 concerning Consumer Protection. The fulfillment of consumer rights over security, the right to be heard, the correct, clear and honest information regulated in the UUPK is still not fulfilled. Article 98 paragraph 2, Article 106 paragraph 1 and 2 of Law Number 36 Year 2009 on Health. The business actor is responsible as the manufacturer of the goods because the importer of the goods is not an official agent or importer. The business actor who is an individual shall be liable for the losses incurred even if only as an importer not as a producer of the goods. Related to the violation of Article 8 paragraph 1 letter a, d and e then based on Article 62 paragraph 1 Laws that sanctions may be subject to imprisonment a maximum of five years or a maximum fine of Rp. 2,000,000,000 (two billion rupiah). It is thus a legal basis which can be worn by consumers as a form of accountability, addressed to businessmen illegal drugs is a criminal sanction sebagaimana governed by article 62 paragraph 1 of BFL.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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