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Criminal Liability of Illegal Drug Traffickers in Makassar City

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ABSTRACT

Criminal liability for criminal offenses in cases of illegal drug trafficking may be levied against individuals and/or legal entities. Criminal sanctions against is may include imprisonment and penalties. While criminal sanctions are legal entities in the form of administrative sanctions such as the revocation of business license that sealing a pharmacy is proven to commit a crime in case of illegal drugs. This research is a qualitative research that aims to be applied and utilized. Primary data in this research can be done through field research by interviewing related officials and this research is supported by normative research. Primary data and secondary data obtained and analyzed descriptively qualitative. Efforts taken to prevent the occurrence of illegal drug criminal acts is to make effective cooperation between related institutions, in this case BPOM and POLRI. And not to mention the existence of illegal drug circulation.

Keywords: criminal liability, circulation, illegal drugs

INTRODUCTION

Health development is a part of national development aimed at increasing awareness, willingness, and healthy living capability for everyone to realize the highest level of public health¹. According of Republic Indonesia Constitution number 36 at 2009 about Health, that definition of health is: "Healthy, physical, mental, spiritual and social conditions that enable everyone to live socially and economically productive lives".

According to World Health Organization health is not only an absence of disease or weakness but also as a condition of physical, mental, and social welfare. This showed that health is one of the basic human needs that be met. Without human health would not be productive to live economically feasible and doing a great education².

The government is obliged to facilitate and provide the health needs of its citizens such as listed in the 1945 Constitution in article 34, paragraph 3 that the state is responsible for Health and Public services³. One of governmental obligation to public health is to ensure the availability, equity, and affordability of health supplies, especially medicines. In order to guarantee the availability of drugs, the government can conduct specific policies for the procurement and use of drugs and medical materials⁴.

Regulation of the Head National Agency of Drug and Food Number 27 at 2013 about Food and Drug Importation Control in Indonesian Region, explain the meaning of drug at Article 1 paragraph 4:

"Drug is including a biological product, which are materials or alloys used to influence/investigate the pathological physiology of pathology in the determination of diagnosis, preventing, healing, recovery and enhancement of health and contraception for humans"

Currently, there are so many kinds of drugs on the market, ranging from pharmacies, pharmacy installations, drugstores, minimarkets, roadside stalls, to individuals, who in fact have no expertise in the field of pharmacy. The drugs he sold were varied. Ranging

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from drug-free, drug-free is limited, drug pharmacies, prescription drugs, and narcotics. This is causing the circulation of drugs increasingly not well controlled. Whereas Article 98 paragraph (2) of Law number 36 at 2009 about Health that:

“People who do not have the expertise and authority are prohibited from purchasing, storing, processing, promoting, and distributing medicines and medicinal materials”

Provisions regarding the procurement, storage, processing, sale, distribution of pharmaceutical preparations and medical devices must go through a pharmacy care service quality standards as the rules of government². Lately, one of the most prevalent health crimes is the pharmaceuticals related to illegal drug trafficking. Illegal drug trafficking is a problem that not only happens in Indonesia, but also become a global problem that until now still needs the right way to clear it. The fact, case on 26th February 2016 at Polrestabas (The Capital City Police of Makassar) and BPOM (The National Agency of Drug and Food) Makassar together have succeeded to secure 735 items of Somadriil Compositum, at arrestoperation personnel of Makassar. Where brands such drugs since July 2013 has been revokedlicence of circulationby the Head of The National Agency of Food and Drug, but in reality there are many individually and sold in pharmacies or drug stores in Makassar.

The control of illegal drug trafficking can be finish only by one sector. Given the length of time on this problem occurred with the widest network of traffickers, of course it takes the awareness of multiple sector o striving eradication of illegal drugscirculation, both from the government sector, businessmen,and community. Therefore, this study aims to analyze the background of illegal drug trafficking, criminal liability of illegal drug traffickers, and to know the efforts made by BPOM (The National Agency of Drug and Food) and POLRI (Indonesia National Police) to preventing the illegal drugscirculation.

MATERIALS AND METHOD

Research Sites: Based on the problems that the authors pointed out above, then this research will be conducted at the TheNational Agency of the Food and Drug in Makassar, The Capital Police of Makassar and the prison of Makassar at first class.

TYPES OF RESEARCH

The research used by the type of empirical research with sociological juridical research model. The definition of sociological jurisdiction of a study conducted on the real state of society or community environment with the intent and purpose of finding facts (*fact-finding*), which then led to the identification (*problem-identification*) and eventually lead to the settlement of the problem⁵.

DATA COLLECTION

Data collection method is used interview which is meant to do question and answer directly between researcher and respondent or informant to get information or answer to this research.

DATA ANALYSIS

The data collected both primary and secondary data, then analyzed descriptively qualitative to answer the existing problems.

RESULTS

There are three (3) elements deed by traffickers of illegal drugs, that sell drugs without official permission from Health Department, BPOM, Pharmacy, drugstores without doctor's prescription. Individually, groups, and pharmacy or drugstore that selling drugs have been revoked permission.

Individually or groups that selling drugs without Health Department and BPOM permission called an illegal drug transaction, officially is a pharmacy or drug store. Based on Government Regulation No. 51 at 2009 on Employment Pharmacy on Article 14 said : 1. Each facilities or the distribution of pharmaceutical dosage form of the drug should have a pharmacist as a person in charge (PIC), 2. Pharmacists as responsible as referred to in paragraph (1) may be assisted by chaperones and/or pharmaceutical technical staff, 3. Further provisions on the conduct of Pharmaceutical Works in distribution facilities or distribution of pharmaceutical products referred to in paragraph (1) and (2) is regulated by the Minister.

Pharmacy/the drugstore have selling drug/medicine according to the doctor's prescription. Care service without doctor's prescription governed by Minister of Health at No. 919/Menkes/Per/X/1993 of 1993 about the

drug criteria distribution without doctor's prescription (Permenkes 919/1993). Article 2 of Regulation of the Minister of Health No. 919/Minister of Health/Per/X/1993 1993 describes a drug that can be delivered without doctor's prescription must meet the following criteria: a. Not contraindicated for use in pregnant women, children under the age of 2 years old and the elderly over 65 year olds, b. Treatment with medication by itself is not giving sustainable disease risk, c. Its use does not required by health workforce d. Its use is required for the high prevalence disease. The drug has a ratio of the efficacy and safety that can be responsible by itself.

Based on Article 24 (c) of Government Regulation no. 51 at 2009, that hard drugs not be purchased without a doctor's prescription. It can also be seen in Article 2 at the Minister of Health Decision at 02 396/A/SK/VIII/1986 about Hard Drug ListG: 1. On the drug label and outer packaging should be contained by special sign about hard drugs, 2. provisions means in paragraph (1) is complementary to the necessity to include the phrase "Requires a doctor's prescription" assigned by Minister of Health Decision No. 197/A/SK/77 dated 15th March 1977.

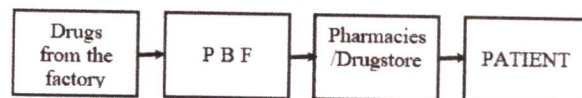
The legal pharmacy stores sometimes found the violation of the drugs circulation rules. Doctor's prescription drugs, which should only be purchased at pharmacies, in fact can be purchased freely in pharmacies and drugstores even without a prescription. Meanwhile, in the packaging of drugs have to noticed with a doctor's prescription. The phenomenon that occurs is often an antibiotic drug, purchased without a doctor's prescription when it is very dangerous if taken without rules, could be bacteria become resistant (strong added) or threaten the kidneys or liver in consuming drugs considered suitable. For example, when toothache directly consuming ponstan and amoxicilin, when fever directly consuming paracetamol and amoxicilin, but in case does not need antibiotics.

Individually, Group, and Pharmacy/ Drug Store selling drugs that have been revoked permits of distribution the third element is a frequently on community, many people of pharmacies that distribute or sell drugs that have been revoked permission and has been withdrawn. The authors give an examples of cases. Where on Thursday, 25th February 2016 located at Korban 40,000 street, Makassar, held raids conducted by Satresnarkoba Polrestabes Makassar (Drug Trafficking Unit of Polretabes), was found *Somadril Compositum*

with 3,000 tablets distributed, 400 tablets in strips and 2600 tablets in plastic sachet packaging.

June 2013, the marketing authorization for the medicinal *Somadril Compositum* not extended or revoked based on the marketing authorization by the Head of The National Agency Drug and Food decision No. HK.04.1.35.06.13.3535 2013 on 27 June 2013 about revoked of drug distribution license containing karisoprodol.

Table 1: Draft of drug circulation procedure



After the regulation published by BPOM RI No. HK.04.1.35.06.13.3535 in 2013, it's agency collecting the data directly on the field (PT Actavis Indonesia) and instruct to stopping *Somadril Compositum* production, the data collection performed by the BPOM aims to see how much *Somadril Compositum* which generally on factory and market circulated in Indonesia.

The accountability of criminal liability of illegal drug traffickers, based on interview with the Chief of Unit III Drug Trafficking Unit of Polrestabes Makassar explained that from the pattern of penal policy formulation in the act No. 36 at 2009 about Health, furthermore it can be said that the formulation of criminal sanctions cumulatively (prison and penalty) is found in Article 190 paragraph (1) and (2), Article 191, Article 193, Article 194, Article 195, Article 196, Article 197, Article 199 paragraph (1), Article 200 and Article 201 paragraph (1). While the single formulation (only fines) are found in Article 198, Article 199 paragraph (2), and Article 201 paragraph (1).

Table 2: Summary of *Somadril Compositum* circulation in 2014-2016 in the ranks of Polrestabes Makassar

No.	Year	Number of Evidence
1.	2014	672 items
2.	2015	10 items
3.	2016	3,735 items

* 2014 to 2015 the number decreased dramatically and then again experienced a very drastic increased at 2016.

BPOM (The National Agency of Drug and Food) try to prevent an illegal drug circulation with efforts: issued a circular to the pharmaceutical service health care service (Drugstore, Clinic, Hospital, and Community Health Center) for ensure procurement is only originated from the officially handed and given to patient according the applicable rules, to instructs the parts of BPOM in Indonesia for controlling the procurement and distribution of drug, sampling intensive to the product of drugs in the Health care service and jointly with association of profession for coaching its members.

Meanwhile the efforts of The unit of Drug Trafficking in Polrestabes Makassar includes the preventive and repressive. Preventive measures that had been run up by Drug Trafficking Unit of Polrestabes , among them: the installation of billboards/banners affixes, legal counseling, and raids. While the repressive efforts that have been done so far to reduce the number of criminal acts of illegal drug dealings *Somadril Compositum* types include: to investigate, arrest, detention, seizure, and destruction of evidence.

DISCUSSION

This study showed that people, especially adolescences, have lack understanding about the dangers of drugs and severity of court rulings that have been given to the perpetrators of *Somadril Compositum* distributor. A light punishment will not provide a deterrent effect for the distributor so that case repetition and abuse will be continue and increase in future. The Eradication of trafficking cases (*Somadril Compositum*) can be effective if the legislation on the punishment for traffickers aggravated.

Understanding of this law can be caused due to the background of community education is still low. While the legal understanding of dealers is only limited that the *Somadril Compositum* is a drug that is forbidden for consumption and distribution.

Limited human resources Satres Drug Polrestabes Makassar became one of the obstacles in tackling the crime of the circulation of *Somadril Compositum*. The increasing number of drug cases every year in the city of Makassar, is not comparable with human resources owned Satres Drug Polrestabes Makassar.

It should be given appreciation of preventive and repressive efforts made by Drug Satres Polrestabes

Makassar. Preventive efforts that have been carried out maximally by the Satres drugs, among them: the installation of billboards/banners affixes, legal counseling, and raids can not be denied While repressive efforts to suppress the number of criminal acts illegal drug circulation type *Somadril Compositum*, such as investigation, investigation , arrest, detention, seizure, and destruction of evidence must be given a thumbs-up.

However, the development of the crime rate of *Somadril Compositum* has increased every year, not in proportion to the number of Personnel Drug Polrestabes Satres personnel in the office and those who are involved in the field in arresting the dealers. Not all officers participated in the arrest, only some officers who participated in the operation and some officers work according to their respective duties at the office⁶⁻⁹.

A light court ruling has been granted to perpetrators of *Somadril Compositum* dealers. a major obstacle A light punishment will not provide a deterrent effect for the dealers so that case repetition and abuse will continue to occur and multiply in the coming year. The eradication of the *Somadril Compositum*'s circulation case can be effective if legislation on penalties for dealers is exacerbated

CONCLUSIONS AND RECOMMENDATIONS

Three (3) elements deed by traffickers of illegal drugs, that sell drugs without official permission from Health Department, BPOM, Pharmacy, drugstores without doctor's prescription. Individually, groups, and pharmacy or drugstore that selling drugs have been revoked permission.

The punishment of criminal illegal drug distributor will be jailed and fined according the Health Constitution of Republic Indonesia with article 196, 197, and 198 No. 36 at 2009. There are several effort made by BPOM and POLRI to prevent the illegal drugcirculation that have been revoked permission and improve cooperation between BPOM and the National Police in to clearly the drug illegal distribution (the drug with revoked permission). The authors suggest that BPOM and POLRI as the agency with adequate authority and regulation, to support the increasing of workload, then required to increase quantity and quality of human resources^{10,11}. The implementation of criminal sanctions should be

really applied based on Health Constitution of Republic Indonesia act no. 36 of 2009, in order to provide a deterrent effect on community.

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