

LEGAL PROTECTION ASPECT OF SELLING DRUG TRANSACTIONS THROUGH ONLINE PHARMACY SERVICE

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Abstrak

This writing aims to find out how the form of legal protection against consumers in the event of default in conducting drug sales transactions through online pharmacy services and to find out the form of liability by the seller or pharmacist when committing negligence to consumers in the transaction. This writing uses the normative legal research method with the data collection method used is the Literature Method; Tracing the research material is done by reading, studying, and quoting legislation, and related literature and then the data obtained are analyzed qualitatively.

The results of this study address that: (1) the form of legal protection for online pharmacy consumers has been specifically regulated in the health law, the law on health workers and generally regulated in the consumer protection law. (2) The legal consequences obtained by the pharmacist or negligent seller is to provide compensation to consumers if proven to have neglected and are responsible for their profession both in civil and administrative terms.

Based on these results, it is recommended: (1) pharmacists or sellers to pay close attention to every doctor's prescription that enters the pharmacy system in order to maintain the safety and security of consumers in consuming drugs. (2) Consumers or the public must be more careful when receiving drugs from pharmacists so that if pharmacists are negligent, drugs can be replaced immediately before consumption.

Keywords: *Legal Protection, Buying and Selling Transactions, Online Pharmacy*

A. INTRODUCTION

The era of globalization is marked by the rapid development of electronic technology and has influenced almost all aspects of life and activities of society, so the sophistication of modern technology makes the opening of an all-transparent global information network that has been marked by the advent of the internet. Internet technology has a huge influence on the world economy. The internet brings the world economy into a new phase which is more popular with the term of digital

economics. Its existence is marked by the increasingly widespread economic activity that utilizes the internet as a medium of communication, collaboration, and cooperation. Trade, for example, increasingly relies on electronic commerce or electronic commerce (e-commerce) as a medium of transaction.¹

Trading via the internet is also developing with virtual business system, such as virtual stores and virtual companies where business people run businesses and trade through internet media and no longer rely on conventional real company bases.²

Trade transactions using e-commerce technology in Indonesia vary greatly from daily needs such as clothing and food to complementary needs. Trade transactions using e-commerce technology at the beginning of its development are very popular among business people engaged in the clothing and food sector, so that drugs that are currently popular are traded using e-commerce technology.³

Positive law in Indonesia which regulates health mostly lists licensed pharmacies and drug stores (TOB) as a container for drug trade.⁴ Perbedaan antara toko obat berizin dan apotek terletak pada izin dan jenis obat yang dijual, The difference between a licensed drugstore and a pharmacy lies in the permit and type of drug being sold, "The drugstore must have a permit and a person in charge but it is sufficient with a pharmacist's assistant and may only sell limited free and free drugs that are already registered at the POM Center. As for the pharmacy, apart from having to have a permit, it must also have a person in charge in the form of experts called a pharmacist, and for pharmacies, in addition to selling free and limited free drugs, is also given the authority to sell hard drugs and psychiatric drugs but must include a doctor's prescription, " as explained by the Head of the Drug Administration And Food of DKI Jakarta, Dewi Prawitasari.⁵

¹ Dr. Abdul Halim Barkatullah, S.Ag., SH., M.Hum, Syahrida, SH., MH., 2010, *Sengketa Transaksi E-Commerce Internasional*, FH Unlam Press, Banjarmasin, hlm.1

² Asril Sitompul, S.H., LL.M., 2001, *Hukum Internet (Pengertian Mengenai Masalah Hukum di Cyberspace)*, PT. Citra Aditya Bakti, Bandung, hlm.xiii

³ S. Rana Tsary, 2018, "Latar Belakang Globalisasi"

(Eprints.ums.ac.id/59551/3/BAB%20I.pd Diakses Pada 18 Agustus 2018 Pukul 12.15)

⁴ Stephen Zeenot, 2013, *Pengelolaan & Penggunaan Obat Wajib Apotek*, D-MEDIKA (Anggota IKAPI), hlm.139

⁵ JULI ETHA RAMAIDA MANALU, 2017, "PERBEDAAN TOKO OBAT DAN APOTEK. INI YANG BISA DIBELI DARI KEDUANYA" (<HTTPS://LIFESTYLE.BISNIS.COM/READ> DIAKSES PADA 17 FEBRUARI 2019 PUKUL 14.42)

Regulations governing pharmacies are covered by the Republic of Indonesia's Minister of Health Regulation No. 9 of 2017 concerning Pharmacy, which regulates all matters regarding pharmacies in the form of pharmacy establishment and licensing requirements, drug procurement, to all arrangements in pharmacies.⁶

In the previous paragraph, when it is related to drug trade transactions that use e-commerce technology widely, a pharmacy is one of the platforms that adopts this system as an alternative to sales to increase profits and make it easier for consumers to get access to medicines both anytime and anywhere, this practice is popularly known as an online pharmacy.⁷

Buying and selling transactions through this online pharmacy service is an attractive alternative and popular among buyers at this time, since it provides several benefits such as the buyers privacy can be maintained, much information about the drugs to be purchased is provided, and purchases that can be done anywhere and anytime.⁸

With the purchase of drugs through online media, people get easy and fast access, especially if certain drugs are deemed useful for themselves. Thus the public is more interested in finding and buying drugs through sites on the internet.

Currently, drugs that are sold through online pharmacies, online drug stores or sites on the internet are in the form of hard drugs, limited free drugs, over-the-counter drugs, narcotics drugs, psychotropic drugs, traditional medicines, herbal medicines, and health supplements. With this condition, people easily get and use hard drugs, narcotics or psychotropic drugs without a doctor's prescription that should be in the purchase of these drugs must use a doctor's prescription. ⁹

The sale of drugs through online media is very free, so these drugs are very vulnerable to misuse by the public, which will unwittingly endanger health and even cause casualties.

Drugs that are sold online are also difficult to monitor, both in terms of promotion and transactions. In addition, product-related information delivered to the

⁶ Peraturan Menteri Kesehatan Republik Indonesia Nomor 9 Tahun 2017 Tentang Apotek

⁷ S. Rana Tsary, *loc.cit.*

⁸ APOPLUS, 2017, "INFORMASI MENGENAI KELEBIHAN DAN KEKURANGAN APOTEK ONLINE", ([HTTP://APOPLUS.ID](http://apoplus.id) DIAKSES PADA 18 FEBRUARI 2019 PUKUL 06:34)

⁹ Pasal 24 huruf c Peraturan Pemerintah Nomor 51 Tahun 2009 tentang Pekerjaan Kefarmasian

public is very minimal, not only that, the address of the seller of medicinal products is also unclear.¹⁰

Indonesia currently does not have regulations relating to drug sales through online media. Every online pharmacy, online drugstore and individual freely sells drugs, both drugs that are categorized as hard drugs, narcotics drugs, and psychotropic drugs through online media without any requirements or restrictions that regulate it.

As it is known that drugs are health products which in their use must follow procedures and requirements.¹¹ In its use, the patients must follow a doctor's prescription and the party that gives the drug must have permission as a pharmacist¹² and drug sales must be licensed in the form of a pharmacy¹³ or a drugstore.¹⁴

Regarding to this sale and purchase transaction in general (*lex generalis*), as regulated in the Civil Code (hereinafter referred to as the Civil Code) Book III Concerning Commitment, especially Chapter I through Chapter V and several related articles as general legal rule, but specifically (*lex specialis*), this electronic sale and purchase transaction is regulated in Act Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as Act Number 11 of 2008 concerning ITE).¹⁵

According to the Civil Code Article 1457 sale and purchase is "an agreement, with which one party binds itself to surrender a material, and the other party to pay the promised price". Then regarding to electronic transaction according to Article 1 paragraph (2) of Law Number 11 Year 2008 on ITE, namely "legal actions carried out using computers, computer networks, and or other electronic media". Based on the above understanding, there are similarities, such as giving rise to legal relations between the parties in the transaction. Law Number 11 Year 2008 of ITE exists because of the Civil Code development and to accommodate the needs of the people

¹⁰ Majalah Farmasetika, Penjualan obat online, Vol 1 No.8 Oktober Tahun 2016.

¹¹ H.A. Syamsuni, 2007, Ilmu Resep, EGC, Jakarta, hlm. 143.

¹² Lihat Pasal 11 Peraturan Menteri Kesehatan No. 9 Tahun 2017 tentang Apotek.

¹³ Lihat Pasal 12 Peraturan Menteri Kesehatan No. 9 Tahun 2017 tentang Apotek.

¹⁴ Lihat Pasal 5 Keputusan Menteri Kesehatan No. 1331 Tahun 2002 Tentang Perubahan atas Peraturan Menteri Kesehatan No. 167 Tahun 1972 Tentang Pedagang Eceran Obat.

¹⁵ Dhea Handariningtyas, 2017, *Transaksi Jual Beli Melalui Media Instagram Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik*, (<http://digilib.unila.ac.id>, diakses pada 28 Agustus 2018 pukul 15:03).

who are now full of technology, because in this sale and purchase transaction that is used is the internet media, so deals or agreements that are created are done via the internet as well¹⁶. This has been confirmed in Article 1 paragraph (17) of Law Number 11 Year 2008 of ITE, namely "electronic contracts are parties agreements made through electronic systems".

Almost the same as buying and selling agreements in general, the sale and purchase agreement through this online pharmacy also starts from the offer and acceptance. Offer is an act of someone having the reason that the act itself is an invitation to enter into a binding agreement¹⁷. Offers on buying and selling transaction through this online pharmacy is done by the seller, in which the seller utilizes advertisements on blog sites and other social media to display drug advertisements along with other prices and benefits shown to prospective buyers, and is followed by acceptance by the buyer parties.

There are several advantages so that buyers and sellers are interested in conducting this electronic transaction. As with lower promotional costs, the product can be seen 24 hours by anyone and at any time, and the seller can manage the business more flexibly and casually, because it can be done even when it's in relaxing situation¹⁸.

Some of the advantages offered above do not deny the risks that arise in this sale and purchase transaction because it is carried out without a meeting between the parties. They base this sale and purchase transaction on mutual trust because, after all, the sale and purchase transaction cannot be separated from the agreement problem¹⁹. Therefore, the sale and purchase agreement that occurs between the parties is also done electronically, and there is no agreement file as in the common sale and purchase transactions. Such conditions certainly can lead to various legal consequences with all the risks, including if a default action arises from one of the parties in the transaction, then how is the responsibility of one party when

¹⁶ Edmon Makarim, *Kompilasi Hukum Telematika*, Raja Grafindo Persada, Jakarta, 2004, hlm. 228.

¹⁷ Mariam Darus Badruzaman, *E-Commerce Tinjauan Dari Hukum Kontrak Indonesia*, (Jakarta: Citra Aditya Bakti), 2001, hlm. 33.

¹⁸ Fathul Husnan dan Java Creativity, *Buku Pintar Bisnis Online*, PT Elex Media Komputindo, Jakarta, 2015, hlm. 4.

¹⁹ Asril Sitompul, *Hukum Internet*, Citra Aditya Bakti, Bandung, 2004, hlm. 55.

performing a default and other problems such as there is no obligation from the seller to confirm to the buyer²⁰.

Based on the above problems, indeed, this is very detrimental to one party and would certainly make it difficult for the injured party to claim all losses arising from the act. However, to prevent some of the problems above, the government also plays a role as a means to solve various social problems that are firm enough to sanction those who abuse these electronic transactions, and this regulation is a form of state responsibility to provide maximum protection for all activities that make use of information and communication technology in the country so that it is well protected from the potential misuse of technology stipulated in the law²¹. Then the problem formulation is; what is the legal protection for consumers in buying and selling drugs through online pharmacy services and what is the form of seller's accountability in buying and selling drugs through online pharmacy services?

B. RESEARCH METHOD

This research uses normative legal research which is legal research conducted by examining library materials or secondary data, in this type of research, law is often conceptualized as what is written in the legislation (law in books) or it is drafted as a rule or norm which is a benchmark for human behavior that is deemed appropriate.²² The data used in this study are secondary data. Secondary data, are data obtained from library research and documentation, which are already available in the form of books or documentation that are usually provided in libraries²³. Furthermore, the technique of collecting data material is by describing (illustrating, depicting, discussing, and elaborating) a legal problem in the form of scientific work²⁴.

The analysis of data material used in this study is qualitative analysis aimed at quality of data and real characteristics that apply in society. Which means that the main concern is to be able to understand the nature of facts or symptoms that actually

²⁰ Setiawan, *Electronic Commerce: Tinjauan Dari Segi Hukum Kontrak*, Rineka Cipta, Jakarta, 2000, hlm. 4.

²¹ Neni Sri Imaniyati, *Hukum Bisnis*, Graha Ilmu, Yogyakarta, 2013, hlm. 255.

²² Selvy, 2009, "Keterbukaan Informasi", Fakultas Hukum Universitas Indonesia, (<http://www.lontar.ui.ac.id> diakses Pada 24 September 2018 pukul 13:09)

²³ Hilman Hadikusuma, *Metode Pembuatan Kertas Kerja Atau Skripsi Ilmu Hukum*, Mandar Maju, Bandung, 2013, hlm. 65

²⁴ *Ibid.* hlm. 75

apply, not only want to apply (positive) explicitly but implicitly, which is popular (sociological). So what is important is not the legal principles in the laws and regulations but the rules of behavior in the reality of society.²⁵

C. DISCUSSION

1. Form of Legal Protection for Consumers If the Seller Takes a Default Action in the Medicine Sale and Purchase through Online Pharmacy Services.

Legal protection is a protection given to legal subjects in accordance with the rule of law, both preventive and repressive, both written and unwritten. In other words, legal protection is defined as a separate picture of the function of law which has the concept of providing a justice, order, certainty, usefulness, and peace for all the interests of the community²⁶. Legal protection is all efforts to protect legal subjects through the applicable laws and regulations and forced implementation with a sanction ²⁷.

Legal protection is by its nature divided into two, first: preventive legal protection, namely legal protection provided by the government with the aim of preventing before the violation. This is contained in the legislation with the intent to prevent a violation and provide guidelines or limitations in carrying out an obligation. In this preventive legal protection, legal subjects are given the opportunity to raise their objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes. Preventive legal protection means a great deal of governmental action based on freedom of action because with preventive legal protection the government is driven to be careful in making decisions based on discretion.

Second repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional punishment provided that a dispute has occurred or a violation has been committed. Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and

²⁵ Hilman Hadikusuma , *ibid*, hlm. 99

²⁶ Wahyu Simon Tampubolon, *Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang-Undang Perlindungan Konsumen*, Jurnal Ilmiah Advokasi, Vol. 04 Nomor 1, Maret 2016, hlm. 53

²⁷ Sri Wahyuni S, *Perlindungan Hukum Internet Service Provider Terhadap Penyalahgunaan Sistem Secure Socket Sheel oleh Pengguna Layanan Jasa Telekomunikasi*, Skripsi, Sarjana Hukum, Fakultas Hukum Universitas Hasanuddin, Makassar, 2016, hlm. 17

Administrative Courts in Indonesia falls into this category of legal protection. The principle of legal protection against government action rests and comes from the concept of the recognition and protection of human rights because according to history from the west, the birth of the human right recognition and protection concept is directed to the limitations and placement of community obligations and government. The second principle that underlies legal protection against governmental acts is the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights takes first place and can be linked to the rule law goal.²⁸

A sale and purchase transaction through e-commerce services are usually vulnerable to a default action that can be carried out by the seller or buyer, the default is a condition that is due to negligence or error, the debtor cannot fulfill the performance as specified in the agreement and not in a forced state²⁹. Juridical problems that usually arise if there is a default action is a form of protection for consumers, because some typical characteristics of e-commerce will put consumers in a weak or even disadvantaged position³⁰. If there is a default dispute that results in losses for consumers such as goods received that do not match those ordered or delays in receipt of goods from the predetermined time period, the dispute resolution must protect the interests of consumers.

The possibility of default that can occur in the sale and purchase of drugs through online pharmacies is the omission of prescription reading by the pharmacist, so that the quality and quantity of the drugs given to the buyer are not in accordance with the prescription, there is a pharmacy negligence in terms of taking drugs, so the drugs received by the buyer does not match what is stated in the prescription, there is a delay in the drug receipt that has been purchased, which results in a shift of risk for

²⁸ Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*. hlm. 30

²⁹ Rizka Ferdiana Sari, 2017, *Delik Wanprestasi Jual Beli Online Perspektif Hukum Pidana Islam*, (<https://www.researchgate.net/publication> Di Akses Pada 25 Februari 2019)

³⁰ Dahlia S.H., M.H., 2009, *perlindungan konsumen terhadap transaksi jual beli melalui media internet (e-commerce)*, (<https://media.neliti.com/media/publications/> di akses pada tanggal 24 februari 2019)

the object of the agreement, for the risk that can occur to the consumer it requires legal clarity that can protect the rights as consumers.³¹

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Specifically, the consumer protection in the event of negligence by the pharmacist is regulated in Article 58 Paragraph (1) of Law Number 36 Year 2009 concerning Health, which regulates the patients or consumers right to obtain compensation, which reads "Everyone has the right to sue compensation for a person, health worker, and / or health provider that causes losses due to errors or negligence in the health services they receive." Regulated also in Article 77 of Law Number 36 Year 2014 Regarding Health Workers which reads" Every Recipient of Health Services harmed due to mistakes or negligence Health Workers can request compensation in accordance with the provisions of the legislation."

In general, consumer protection is regulated in Law Number 8 of 1999 Concerning Consumer Protection (known as UUPK) in the UUPK as an effort to protect consumer rights that have been determined, a Consumer Protection Institute has been formed which functions as a forum for handling cases or matters relating to consumers, there are 3 institutions regulated in the UUPK namely BPKN (National Consumer Protection Agency) regulated in Chapter VIII articles 31 to article 43, LPKSM (Non-Governmental Consumer Protection Institution) in Chapter IX article 44, and BPSK (Consumer Dispute Settlement Agency) in Chapter XI article 49 to article 58, each institution has set its duties and functions aimed at assisting consumers in obtaining their full rights.

³¹ Veris Septiansyah, Sh.,S.I.K.,M.Si.,2018, *Perlindungan Hukum Terhadap Konsumen Dalam Perdagangan Barang Dan Bisnis Investasi Melalui Transaksi Elektronik (E-Commerce)*, (<https://Media.Neliti.Com/Media/Publications> Di Akses Pada 25 Februari 2019)

³² Muhammad wasalam, 2007, hukum dan apotek, (<http://eprints.ums.ac.id/> di akses pada tanggal 25 februari 2019)

Legal protection for consumers arises as a result of a legal relationship between consumers and business actors in which the relationship can cause a dispute³³. In this case if a dispute occurs in the drug sale and purchase through online pharmacy services, the dispute resolution will be further regulated specifically in Article 29 of Law Number 36 Year 2009 concerning Health, which reads "In the case of health personnel suspected for negligence in carrying out their profession, such negligence must be resolved first through mediation."

Furthermore, dispute resolution is generally regulated in Law No. 8/1999 concerning Consumer Protection. Consumer dispute resolution can be reached through the court or outside the court based on the voluntary choice of the disputing parties.

Drug Seller Form and Responsibility in Online Pharmacy Services

Because public awareness towards the development of increasingly varied health services and the relationship between consumers and health service providers that are not only sufficiently regulated in moral norms through a code of ethics or professional ethics and discipline by health service providers, then the need for regulation with the rules begins to be felt. which is more normative forcing as an effort to give consumers the opportunity to defend their rights and get legal protection. Interaction between service providers and health service recipients will occur in a legal relationship, then the legal function in protecting human interests will be oriented towards responsibilities, obligations and risks. However, due to the development of a legal relationship that occurs in the community is influenced by various factors, resulting in an imbalance between responsibilities, obligations and risks. Therefore, based on the free will prevailing principle, it is possible to do conditions to limit, reduce or free certain responsibilities or obligations of one party or to share the appropriate risk burden.

The liability basis for actions taken by pharmacists or sellers are in accordance with the types of violations that have been committed which include ethical violations and accountability, disciplin and legal manner.

D. CONCLUSIONS

³³ Waode Eka Munawarty, *Perlindungan Hukum Bagi Konsumen Pelayanan Kesehatan Tradisional*, Skripsi, Sarjana Hujum, Fakultas Hukum Universitas Hasanuddin, 2013, Hlm. 93

1. An online pharmacy can become a legal entity if it has fulfilled the requirements that have been determined by regulations in Indonesia. Legal protection for consumers if pharmacists make mistakes and negligence in pharmaceutical services, both in the process of compounding drugs and in drug administration so that it can cause harm to consumers has been regulated in Law Number 36 Year 2009 Concerning Health, Law Number 36 Year 2014 Concerning Health Workers and Law Number 8 of 1999 Concerning Consumer Protection, along with efforts to resolve disputes that can be pursued through the court (litigation) and outside the court (non litigation).
2. The form of responsibility that can be carried out by pharmacists in this online pharmacy service is, if there is a malpractice committed by the pharmacist, the pharmacist must be responsible in accordance with the types of violations committed which include violations and ethical accountability, disciplin and legal manner, to be legally accountable both in civil and administrative terms.

Suggestions

For Pharmacists or Sellers:

- a. Pay close attention to every doctor's prescription that enters the pharmacy system in order to maintain the safety and security of consumers in consuming drugs so that the pharmacist can be more careful in carrying out their duties.
- b. A Pharmacist or seller must always actively inform consumers about the dosage, consumption rules of use for each drug that is given so that consumers do not make mistakes when consuming drugs.

For Consumers and or Public:

- a. Consumers or the public must be more careful when receiving drugs from pharmacists so that if there is a possible negligence of the pharmacist, the drug can be replaced immediately before consumption.
- b. Consumers or the public must actively ask about the dosage or rules of use of the drug obtained from the pharmacist so that there is no error when consuming the drug.

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