

Criminal Acts of Gratification Between Doctors and Pharmaceutical Companies

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ABSTRACT

The system of health services and medical services run by the medical profession, deals with medical ethics and the problems that arise in medical ethics. Normative juridical research method, with descriptive analytical specifications. Normative legal research is research that only uses secondary data sources, namely legislation and legal theories. The basic needs of human life are the main thing in the fulfillment of the right to public health. The government's responsibility in fulfilling the right to health is to regulate, foster, and supervise the implementation of health efforts that are equitable and affordable by the community and improve the health status of the community. This need for health is felt by the community, which ultimately makes doctors a much-needed profession. One of the services provided is the provision of health, where patients should receive drugs according to their needs. This is where the crime of gratification occurs. It should be noted that gratification is included in the criminal act of corruption. Efforts to overcome crime in criminal acts of gratification with penal and non-penal efforts. According to criminal policy, penal measures are efforts to eradicate criminal acts of gratification. When the case occurs, legal remedies will be carried out according to the provisions in the law through criminal justice. Meanwhile, efforts to tackle non-permanent crimes are preventive in nature. This prevention is important and considered effective to prevent such cases from happening.

Keywords: Criminal Policy; Gratification; medical service

INTRODUCTION

Health is a natural right that is a necessity for all living things, as well as humans, who need improvement efforts not only in the economic, social but also health fields (Eriksson & Dahlblom, 2020; Opfer & Siegler, 2004; Padikkapparambil et al., 2020). In the Reformation Era and the challenges of globalization, people's demands for the availability of fast, precise, sophisticated, quality and enjoyable health services and affordable costs can really be felt by the community (Kulzhanov et al., 2000; The Lancet Psychiatry, 2017). Advances in science and technology encourage people to pay attention to health status in order to improve their quality of life (Uprety et al., 2016).

The government issued a law that regulates health services for the community which is regulated in Law Number 36 of 2009 concerning Health. This law regulates the duties and responsibilities of the government in regulating, fostering, and supervising the implementation of health efforts that are equitable and affordable by the community and improve the health status of the community. Advances in science and technology encourage people to pay attention to health status in order to improve their quality of life.

The government issued a law that regulates health services for the community which is regulated in Law Number 36 of 2009 concerning Health. This law regulates the duties and responsibilities of the government in regulating, fostering, and supervising the implementation of health efforts that are equitable and affordable by the community as well as improving the health status of the community. medical field. Along with the development of medical science and health service centers and medical service centers, more and more people are associated with medical personnel, facilities and techniques. This is also marked by the improvement of the health care system and medical services both qualitatively and quantitatively.

The system of health services and medical services run by the medical profession, deals with medical ethics and the problems that arise in medical ethics. In this regard, that the Unitary State of the Republic of Indonesia is a state based on law (*rechtsstaat*) and not a state on power (*machtsstaat*), then the legal position must be placed above all else. Every act must comply with the rule of law without exception, including the medical profession. The medical profession is different from the business profession, where the medical profession is a profession accompanied by high morality, where every doctor must be ready at any time to provide assistance to anyone, anytime and anywhere in accordance with professional standards. The medical profession must be carried out in accordance with the medical code of ethics.

Article 53 paragraph (3) of Law Number 36 of 2009 concerning Health, that health services must prioritize the safety of patients' lives over other interests. Regarding the rights and obligations of doctors, Amri Aming said that there are seven (7) rights owned by doctors, one of these rights is the right to work according to standards with professional standards and also the right to remuneration (*honorarium*). In addition to the rights of doctors mentioned by Amri, there are several rights of doctors/dentists as stipulated in Article 50 of the Medical Practice Law, which include the right to obtain legal protection as long as they carry out their duties in accordance with professional standards or operational procedure standards, and the right to provide medical services according to professional standards. and standard operating procedures and the right to receive compensation.

On the other hand, one of the doctor's obligations is the doctor's obligation related to the social function of health care. The doctor's obligations relate to the interests of the community, which include:

1. Every doctor must be careful in distributing medicines that are in short supply.
2. Determination/order of patients to be hospitalized must take into account the number of available beds.
3. Do not write down prescriptions for drugs that are not really needed by the patient,
4. Consider cheap or expensive prescription drugs (*generic/external drugs*).

In carrying out a treatment carried out by a doctor, both parties certainly have rights and obligations. The obligations of doctors as regulated in the Medical Practice Law do not have a significant difference with the obligations of doctors written in the literature.

Public unrest is directed at the medical profession who provides drugs that exceed the quality that should be given to patients or only gives certain drugs directly to patients, so the patient must buy the drug in question at the pharmacy (Feroz et al., 2020; Patalano et al., 2021; Tanniru et al., 2021; Viswanadham, 2022; Wong et al., 2022). Of course, there is an interest behind the doctor's habit, namely getting a commission from a pharmaceutical company. This habit is carried out continuously, and the number of doctors involved in the conspiracy is also increasing, even though the doctor is aware that his actions have violated the positive law and harmed his patients.

This is also related to the gratification of pharmaceutical companies to the medical profession, where the pharmaceutical company in promoting drugs uses collusion in the form of cooperation with doctors by providing commissions or incentives to doctors for every drug prescription writing to patients where this is an agreement made. between pharmaceutical companies and doctors on prescriptions written by doctors. Pharmaceutical companies calculate it as a promotional cost that is included in the cost of production. This results in high production costs and high drug prices. The high price of drugs is entirely the responsibility of the consumer.

The community itself considers gratification a natural thing to be done by state officials and civil society. The condition of society and the environment that is far from anti-corruption actions makes corruption develop as a culture of society. This is what causes corruption as a crime to become a habit in society and develop into community culture.

METHOD

This writing applies a normative juridical research method, with a descriptive analytical specification (Hardin, 2008). Normative legal research is research that only uses secondary data sources, namely legislation and legal theories. The approach used by the author is an analytical approach. The author conducts an inventory of secondary data consisting of primary, secondary and tertiary legal materials that have a correlation with the topic of the problem to be tested.

RESULT AND DISCUSSION

Criminal Policy or Criminal Politics in Gratification in the Medical Field

Prevention and eradication of corruption as a serious crime that threatens the life of the community, nation and state needs to be carried out by the government. These efforts can be carried out by using a crime prevention policy called criminal policy as one of the tasks of the State in order to create public welfare as stated in the Preamble to the 1945 Constitution. Marc Ancel who formulated criminal policy or criminal politics as "the rational organization of the control of crime by society". Starting from the understanding put forward by Marc Ancel, G. Peter Hoefnagels stated that "Criminal policy is the rational organization of the social reaction to crime".

Furthermore, G. Peter Hoefnagels stated that the criminal policy is as follows:

- a. Criminal policy is the science of responses; (Criminal Policy is the science of responses/reactions)
- b. Criminal policy is the science of crime prevention; (Criminal Policy is the science of crime prevention)
- c. Criminal policy is a policy of designing human behavior as crime; (Criminal Policy is a policy that refers to human criminal behavior)
- d. Criminal policy is a rational total of the responses to crime; (Criminal Policy is the most rational responses to crime).

Criminal policy itself can be re-divided into penal virtues (crime prevention efforts using criminal law) and crime prevention policies outside criminal law (non-penal). According to Barda Nawawi Arief, criminal policy (criminal policy) using the means of penal (criminal law) means seeking a crime prevention using criminal law (emphasizing on the repressive nature) which is carried out through the criminal justice system, will come into contact with criminalization steps. Combating crime by using penal efforts (criminal law), is the oldest effort, as old as human civilization itself.

Furthermore, (Darma et al., 2020) stated that efforts to overcome crime or criminal acts with criminal law (penal policy) are essentially part of law enforcement efforts. Therefore, it is often said that legal politics or criminal law policies are part of law enforcement policies. Therefore, the role of the Government to encourage the public to be more empowered in the prevention (prevention and eradication) of corruption is very important. The state has an important role in regulating and enforcing the law in the field of corruption in realizing protection and welfare as well as the rights of all people as citizens. An important instrument that can be used by the state in carrying out its regulatory function, including in the field of preventing corruption, is the law, and this is an application of the legality principle in the concept of a state based on law.

Related to the function of the regulator as mentioned above, if it is associated with the role of criminal policy in the context of crime prevention, the formulation stage is a strategic stage in overcoming criminal acts (Ali & Rais, 2018; Terpstra & Fyfe, 2014; Zaia et al., 2019). This is as stated by Barda Nawawi Arief that the process of legislation/formulation/making of laws and regulations is essentially a law enforcement process "in abstracto". This legislative process or formulation stage is a very strategic initial stage of the "in concreto" law enforcement process. Therefore, errors or weaknesses at the legislative/formulation policy stage are strategic mistakes that can become an obstacle to "in concreto" law enforcement efforts.

The drafting of a law or legislation stage is also part of the effort to enforce a concept that contains the values of justice, certainty and benefit as contained in the concept of the Indonesian rule of law. According to Satjipto Rahardjo, in essence the law contains ideas or concepts that can be classified as abstract, including ideas about justice, certainty and social benefits. the concept which incidentally is the abstract. It should also

be realized that all of this is aimed at improving the quality of law enforcement, especially regarding the prevention of criminal acts or corruption.

As stated above, crime prevention is divided into two parts, namely, penal crime prevention, which means countermeasures carried out after a crime has occurred. In the case of gratification that occurs from a pharmaceutical company to a doctor, the prevention of crime with a penalty is through the criminal justice route. Prevention of crime with this penal aims to eradicate the crime. Where when a case occurs, the handling is through criminal justice. Meanwhile, penal crime prevention is non-penal crime prevention. Combating crimes with non-penal emphasizes more on preventive or preventive measures before the occurrence of criminal acts of gratification between doctors and pharmaceutical companies.

Prevention of Non-Penal Crimes in Gratification

The development of criminal acts, especially corruption, is balanced with efforts to overcome crimes that are repressive or penal and preventive or non-penal. In other words, crime prevention through eradication and prevention. The regulation of criminal acts of corruption as a whole is a step for the government to minimize new cases. Regulations on the development of criminal acts of corruption are in line with existing regulations. Preventive or non-penal efforts aimed at preventing are realized in Law Number 20 of 2001. Gratification is included in the criminal act of corruption.

Gratification is a gift in a broad form which includes the provision of goods, money, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment, and other facilities. The gratuity can be given domestically or abroad, both using electronic means and those not using electronic means. The realization of rules regarding gratification is included in preventive or non-penal crime prevention measures. The arrangement for giving gifts as regulated in Article 12 letter b of Law Number 20 of 2001 states that giving in a broad sense, which includes the provision of money, goods, discounts, commissions, interest-free loans, travel tickets, lodging facilities, tourist trips. , Free treatment and other facilities. Understanding the meaning of gratification is very important, why is that because receiving gifts from outside the habit becomes an act of giving and being given that is against the public interest. as well as the relationship between doctors and pharmaceutical companies, vulnerable to corruption (gratification)

According to criminal policy or criminal politics, crime prevention with non-penal is the most strategic crime prevention policy. Because the prevention is preventive before the occurrence of a crime, including gratuities. In this non-penal means, it is to handle and eliminate the conducive factors that cause crime. These factors include problems or social conditions that either directly or indirectly trigger the occurrence of crime. So when viewed from the point of view of criminal policy at a macro and global level, non-penal efforts occupy a key and strategic position of the overall criminal political effort.

Likewise in the case of gratification carried out by pharmaceutical companies against the medical profession. Non-penal efforts can be in the form of:

1. Supervision

To protect the community, the use of drugs that are in accordance with the standards for the community needs to be monitored. This means that when people seek treatment, a doctor must have competence in both ethical, moral and medico legal skills and abilities, professionalism and patient safety. The drugs given are drugs according to pharmaceutical standards. This means that the drug is given according to the patient's condition and according to government standards that can be reached by the community. This supervision is important to avoid cooperation between pharmaceutical companies that supply drugs with the category of finished drugs (expensive) to doctors.

2. Appeal

In addition to monitoring, it is better for the government to provide advice on the use of drugs to the public. This appeal and counseling is expected to help the community in using drugs according to the body's needs. The importance of this appeal or counseling is to increase public awareness of the law. This appeal or counseling is done by providing information and directions or input to the community.

So that we can do non-penal crime prevention efforts through supervision carried out by the government, local governments, communities, and organizations and can also through appeals or counseling to the public about drugs that are in accordance with community standards and needs, so as to create conditions such as economic conditions, the environment, and community culture that becomes a dynamic in development and not vice versa creates social tensions that eventually trigger deviant actions. In addition, increasing public awareness or participation that security and order are a shared responsibility in reducing drug gratification by pharmaceutical companies to the medical profession.

Another government effort in eradicating corruption is to update the underlying laws and regulations. These efforts are in order to prevent the occurrence of the crime of gratification. Crime prevention basically cannot be separated from a policy, as well as criminal acts of gratification. Efforts to reform the law, especially for criminal acts of gratification, must pay attention to the underlying values and objectives to be achieved. The gratification formulation policy can be implemented properly in the context of reforming criminal law. As the study and exploration of the values contained in society and sourced from Pancasila. One way to realize the purpose of law, namely legal certainty, is to reform criminal law. This legal certainty is a justifiable protection against arbitrary actions, which indicates that someone gets something at a certain time in certain

circumstances. So that people need legal certainty, because with legal certainty the community becomes more orderly, without legal certainty it will cause unrest. Theoretically, legitimate or legal validity provides a condition for a legal rule to be legitimate or valid, so that it can be applied to the community by formulating it in legislation.

CONCLUSION

Health, which is a basic human need, is the main thing in fulfilling the right to public health. The government's responsibility in fulfilling the right to health is to regulate, foster, and supervise the implementation of health efforts that are equitable and affordable by the community and improve the health status of the community. Thus the government is responsible for the health care system and medical services run by the medical profession, dealing with medical ethics and problems that arise in medical ethics. Health services must prioritize the safety of patients' lives over other interests, meaning that patient safety is paramount.

This need for health is felt by the community, which ultimately makes doctors a much-needed profession. One of the services provided is the provision of health, where patients should receive drugs according to their needs. However, in reality, patients often buy drugs at pharmacies with certain brands and have higher costs than drugs that are included in the standard. There is an interest here between doctors and pharmaceutical companies whose drug production must be used and given to the public. The reciprocity is that pharmaceutical companies provide gifts, salaries, etc. to the medical profession. This is where the crime of gratification occurs. It should be noted that gratification is included in the criminal act of corruption.

Efforts to overcome crime in criminal acts of gratification with penal and no-penal efforts. According to criminal policy, penal measures are efforts to eradicate criminal acts of gratification. When the case occurs, legal remedies will be carried out according to the provisions in the law through criminal justice. Meanwhile, efforts to tackle non-permanent crimes are preventive in nature. This prevention is important and considered effective to prevent such cases from happening.

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