

MITIGATION OF BRIBERY OF PHARMACY COMPANIES WITH DOCTORS IN REVIEW OF INDONESIAN ANTI-CORRUPTION LAW

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Abstract

At the end 2015 team Tempo Magazine was successful reveal exists case bribery committed by one company pharmacy that is Interbat against 2,125 doctors (Kompas , 2015). The indicator is the more the height price medicine and services health If We use service doctor (May T, 2017). Bribery the given in form of money and facilities other , Interesting sake Avoid KPK variations bribe No just money, but in form of sponsorship (Prihartini , et.al, 2020). This is also caused interest financial from company pharmaceutical order for the drug to be produced in demand sold on the market . Apart from status doctor Civil Servant , profession There are also doctors with status as doctor private sector is opening place practice independent (Fitri Z, 2018). Laws in circulation only status doctor Only civil servants can be ensnared with the Corruption Law , even though Non- State Servant doctors or doctor private sector can also snared with the Code of Ethics Law profession medicine (Handayani , 2021). This research answers the questions (1) What is the influence of the form of bribery mitigation carried out by pharmaceutical companies with doctors? (2) How effort law in prevention And enforcement practice bribes to doctors by companies pharmacy in anti- corruption law Indonesia ? In research This writer use method research sociolegal with aspect review of the political economy of law that uses approach interdisciplinary , Research results This reveal that there is influence giving something to doctor by the company pharmacy to freedom and independence doctor in write recipe drug to patient as well as form of legal action for the receiving doctor bribe can snared with deed arranged bribes in articles 12B and 12C of the law Corruption (action criminal corruption) and prevention efforts bribe with ISO 37001:2016.

Keywords : *Pharmaceutical Companies, Bribery , Doctors*

I. INTRODUCTION

One common problem in a country is that it is a crime of corruption that has not been solved properly and perfectly (Sriwijayanti, 2022). Bribery has now begun to explore every sector, one of which is in health and medicine mainly. Doctors are one of the most honorable professions because they help people of humanitarian value when done well and properly by a medical code of ethics (Hakim, 2019). The co-operation of a doctor with a pharmaceutical company is illegal, as it costs many a lot of money to fail to function under the rule of law, The proliferation of illegal practices is marked by indicators that increase the cost of medicine and health products and the cost of health care if used by a doctor (May, 2017).

Cooperation involving doctors with pharmaceutical companies was wrapped in a variety of bribes to avoid KPK, not just in money but in the form of goods and services, one of which was sponsorship. The fact remains that in Indonesia, doctors who accept bribes from pharmaceutical companies are not only civil servants but also private or non-civil servants doctors who are bribed (Handayani, 2021). This private doctor is included in one of the private sectors in Indonesia. However, perpetrators of bribery in this sector have not yet been charged under the Corruption Eradication Law because Indonesia itself has not yet categorized bribery in the private sector as a criminal act of corruption, even though there is a problem of corruption in The private sector is not free from the traps of applicable law; this can be seen if bribery that occurs in the private sector is one of the forms of corruption that occurs in the private sector., This is regulated in Article 21 of the UNCAC, which contains about Bribery In Private Sector (Marbun, 2017)

The current rise in bribery cases involves the government and the legislature in the procurement of goods, services, awards, and even bribes. Private sector corruption in Indonesia is very closely linked to extortion and bribery, so the health sector is not immune from this problem, so the role of the state must be to quickly take action that is guided by legal grounds to overcome this private sector corruption. Indonesia itself is one of the countries involved in international agreements; therefore, Indonesia has ratified two important international agreements, including UNCAC (United Nations Convention Against Corruption), which has been ratified by Indonesia in Law No. 5 of 2009 and ratified in Law No. 7 of 2006, and UNTOC (United Nations Transnational Organized Crime), which was ratified by Indonesia in Law No. 5 of 2009. This agreement is of course very important for the stage of preventing and eliminating corruption in the private sector. In accordance with the provisions of the UNCAC agreement, state parties must be willing to eradicate corruption in the private sector. In the UNCAC agreement, Article 12 states that each party state must have the courage to take actions that are guided by the basic principles of applicable law to prevent corruption in the private sector, one of which is providing criminal sanctions against individuals who commit criminal acts of corruption in the private sector (Salam and Prakasa, 2021).

Even so, doctors and state officials can be charged with criminal corruption under chapters 12b and 12c so that the doctor can be prosecuted. Whereas legal actions for private doctors who bribe can be prosecuted under chapters 2 and 3 of s. 11 in 1980 for felony bribery (Adilah and Ningtias, 2021). In this case, efforts to prevent bribery cases involving pharmaceutical companies and doctors can be avoided with some of the measures listed in the anti-bribery system of ISO 37001:2006.

It is important to be able to suppress corruption crimes primarily in the health sector. (Aslam, 2022). Based on the above legal concerns, the authors are interested in analyzing the bribery cases of doctors with pharmaceutical companies relating drugs to patients, aimed at knowing and regulating legal actions, specifically Indonesia's anti-corruption laws, to prevent and tackle the bribery case.

II. PROBLEM FORMULATION

1. How do pharmaceutical companies deal with health mitigation?
2. How are legal efforts to prevent and criminalize the practice of bribing doctors and pharmaceutical companies under Indonesia's anti-corruption laws?

III. RESEARCH METHODS

Research is a series of activities aimed at the development of science and the revealing of truth (Irawan and Prasetyo, 2022). The preferred method for completing this study is a sociolegal study method for analyzing the issue of bribery as a national and international crime. The social approach of law will refer to an aspect of social science with one of the political economy reviews of law to investigate bribery cases related to the current law.

The interdisciplinary approach is the preferred approach in this study; its purpose is to know the legal problems of anticorruption not only with the science of law but also with the various social sciences and to see the laws of developing legal issues at hand (Wiratraman and Putro, 2019)

IV. RESULTS AND DISCUSSIONS

1. What pharmaceutical companies are mitigating bribes against their doctors and their influence

a. understanding doctor and pharmaceutical company

As is well known, a doctor is an expert at treating illnesses and providing treatment to patients by prescribing medicines for patients in order to help cure their health problems (Prasetianto, 2023). In Indonesia alone, the profession of physician is divided into two categories: doctors who are civil servants (civil servants) and non-civil servants (non-civil servants), or who are often referred to as private doctors. It is not uncommon for many civil servants who also work in private hospitals to do so under the condition of outside office hours; it is permissible under the rules of the profession.

Pharmaceutical companies, often referred to as pharmaceutical companies, are among the commercial enterprises that go into the development and also distribute medicine and health tools to both government and private hospitals, and this should be particularly interesting to discuss because medicine is a basic need and is a factor in healing health. In pharmaceutical companies, there is a section that serves as a health-care agent; the intermediary is known as a medical representative (mendrep), whose work offers benefits and promotes the excellence of products owned by the company. Medrep routinely makes calls to a doctor as the user, both face-to-face and indirect (Wulandari and Imron, 2017). The company has two types of domestic capital companies (PMDN) and foreign capital companies (pma), both types of companies have different strategies for marketing their products.

b. Suap dan Korupsi Sektor Privat

Corruption at the moment is a major problem for every country. As for the sort of corruption: financial disadvantages to the state, bribery, embezzlement in office, gratuity, extortion, a clash of interest in procurement, corruption (Pustha and Fauzan, 2021). The crime of corruption is often associated with bribery, as if bribery is a basic form of corruption. Corruption itself is often defined as an unreasonable act that violates moral and legal principles (Sintung, 2015). According to Act No. 11 of 1980, bribery is defined as giving and promising something to someone or an agency in order to seduce or induce the person to do what is directed by the giver of a bribe, which is, of course, contrary to public duties and authority. The rule of law traps only doctors with civil servants' status, penal code 12b and 12c, while private doctors enter into violations of the law of the medical code of ethics, which can be ensnared by chapters 2 and 3 of the 1980 penal code 11, because it is clear that a doctor or medical personnel are prohibited. Affected into things that may go against his professional ethics, it refers to the corruption of the private sector (Mardikasari and Mardijono, 2023)

The 2001 article of medical code of ethics issued a general obligation under article 3 of code stating that doctors who practice their profession for the sake of public health are prohibited from participating in anything that might go against the ethics of the profession. Here are three things contrary to the professional ethics of the doctor:

1. Apply knowledge and skill in medical collectively or individuals in various forms
2. A doctor receives either a reward or a reward other than the services rendered to the patient unless he wishes to
3. Doctors are connected and receive a commission from pharmaceutical or pharmaceutical companies and medical instrument companies that may have the influence of the profession of medicine
4. Participates both directly and indirectly in the process of promoting drugs or other materials for their own or personal benefit.

While regulations governing corruption and the rule against bribery under criminal threats and the code of ethics are already in place, they still have not been able to stamp out or eliminate corruption practices and bribery in the health sector (Mardikasari and Mardijono, 2023). This is possible, and one of the main reasons is that there hasn't been a law on corruption in the private sector of article 21 of UNCAC which has been ratified by Indonesia in act no. 7 of 2006.

Private sector corruption is a criminal act of corruption committed in the private sector with the aim of enriching oneself through unnatural things. UNCAC itself defines corruption as the following acts: 1). Bribery; 2). Bribery in the private sector; 3). Embezzlement of assets in the private sector (embezzlement in the private sector). 4). Embezzlement, 5). Trading in influence, 6). Laundering of proceeds of crime, 7). Misappropriation, 8). perception of wealth; 9). obstruction of the legal process (obstruction of justice); 10). Abuse of authority (abuse of functions); 11). enrichment by illicit means (illicit enrichment) (Suryanto, 2021). As a result of the enormous adverse effects on the state, the UN convention on corruption (UNCAC) suggests that countries more firmly tackle problems in the private sector.

Legal ties with economics are closely interconnected, where legal science requires the aid of economics in learning more about law. An approach using the political economy aspect of law will certainly help to analyze legal matters, especially private-sector bribes. As Posner put it, the concept of this economy will depend more on the value, utility, and efficiency of legal problems, especially in the health sector. The existence of laws in life is basically used as a rule and a sanction that has a purpose to regulate human behavior, which is basically a desire to increase satisfaction. It is part of the economics of laws made and used to promote widespread public interest.

2. **Causal factors and the influence of bribery on doctors services to patients in prescribing medicines.**

The state's opportunity, authority, and means make the background of corruption possible. Derived from the resistance and opportunity theories, bribes result from willpower and opportunity. Where willingness is an internal factor that encourages a person to act on corruption that benefits themselves, the opportunity becomes an external factor involving a weak system of surveillance and justice (Pustha and Fauzan, 2021). The difficulty with the marketing of these drugs has reached the full range of processes, so pharmaceutical companies are suspected of seducing or inciting doctors by giving them attractive promises and thereby prescribing drugs produced by the company. The reward should be packed with gifts, not only money but also gifts of watches, clothes, gold, etc., and services such as delivery to certain places, as well as airline ticket support or gift certificates. As bribes between pharmaceutical companies and doctors developed, a highly anticipated form of bribery with sponsorship from domestically to overseas. This attracted more than a few doctors, who turned their backs on the pharmaceutical company. Even so, many doctors still adhere to the rules by prescribing reasonable medications according to professional ethical rules (Adilah and Ningtiyas, 2021). This is obviously affecting patients, who suffer heavy financial losses from prescriptions given by doctors that are inappropriate. Based on data collected in 2015, the magazine Tempo has found a bribery case involving one of the leading pharmaceutical companies, namely Interbat, based in Sidoarjo, east Java. The company claims to have offered a bribe in the form of cooperation with 2,125 doctors in the past three years and 151 Indonesian hospitals, at the expense of 45% of the drug itself (Fitri, 2018).

The promotion of drugs offered to doctors has, of course, had a major impact on the patient's well-being, as they tend to prescribe medicines made by the cooperative pharmaceutical company, regardless of the needs of the patient (Sumaryono, and Bahfen, 2020).

This has to be the case because the doctors who make a deal with the pharmaceutical industry have been given a target consistent with the agreement at the start of cooperation, which is likely to be higher or more recompense than is likely to be met by the doctor at any given time. Often, in order to meet a doctor's prescribed goals, doctors do not hesitate to add medications that are not really needed. Such actions have led to problems such as feelings of ill health because of the higher cost of medicines, and the medicines that doctors have given patients are inappropriate for health problems, adversely affecting their healing level (Hakim). Bribes to doctors must have had adverse effects on the quality of public health as health services became poor, and this was the crossroads with the mainstream government policy of health. According to health minister no. 64 chapter 3 of 2016 chapter 3 in performing duties, the ministry of health of the republic of Indonesia (RI) performs the function of formulating, enforcing and implementation of policies on public health factors, health services and also agriculture.

3. Legal efforts in prevention and bribery by pharmaceutical companies review Indonesia's anti-corruption laws

1. Criminal liability review of Indonesia's anti-corruption laws

Public ignorance or patients given health care by medical personnel make the ill-advised patient highly reluctant to prosecute or use a legal practice for medical fraud in prescription drugs, which makes the taking of bribes wrapped in a doctor's counter to the pharmaceutical industry a constant repeat. The cooperation between physicians and pharmaceutical companies is not equal to the rule of law in Indonesia, because the nature of cooperation is seeking an enormous amount of profit under any circumstances. As per the above explanation, Indonesia's law on corruption only includes PNS' most eligible physicians and civil servants' who have bribery elements, which will be framed under Sections 12b and 12c of Law Number 20 of 2001 on corruption crimes, with the shortest

prison sentence of four (4) twenty years and most (20) years and pay \$200 a fine, and \$1,000,000,000 at the most. Whereas non-government or private doctors can be framed under Sections 2 and 3 of Act No. 11 In 1980, there was felony bribery for violating the professional ethics of doctors. It is still very often found in public and private hospitals, but it does not involve all doctors; there are many who do well in the profession.

2. Prevention efforts are being made to counter the practice of bribery

Handling bribery cases, especially irregularities in the health sector, experiences various obstacles due to a lack of awareness of the perpetrators of bribery and weak legal regulations in Indonesia (Lukiawan, 2018). Efforts made to prevent and reduce the problem of bribery can be used by the ISO 37001:2016 referred to in the health sector (Susanti, Sarah, and Hilimi, 2018). ISO 37001:2016 is one of the management anti-bribery systems created to help establish, implement, and maintain anti-bribe compliance or discipline. The system has the purpose of preventing, detecting, and handling bribery actions in both the public and private sectors (Puslatbang, 2020)

In the ISO 37001:2016 system, some of the realms are designed to prevent bribery, including observing the regulations of legislation and having the ability to prevent, detect, and tackle (BSN, 2021). It needs better supervision to prevent and detect the act of bribery, as well as awareness of one's self to recognize that an act of bribery is illegal. Government policy on the use of protection against bribery has been carried out in accordance with UNCAC regulations, including in some sectors involving public services, public officials, and the private sector.

4. Solutions provided

After doing this study, the writer advises immediately to issue clear and firm legislation to prevent and handle bribery, especially for non-civil physicians who are unaware of legislation and currently have no firm sanction only on bribery and ethical codes. This is in view of the similarly detrimental actions of civil servants and non-civil servants alike. In addition, the government would also need good supervision for those who would disrupt the freedom and independence of the profession, especially those who influence the service of the patient, as the pharmaceutical company's position is crucial and strategic as a provider of medicine.

V. CONCLUSION

From the research that has been carried out, it can be concluded that giving something to doctors by pharmaceutical companies, whether in the form of money, goods, or sponsorship services that are of a favorable nature, will affect the independence and freedom of professional ethics of doctors in providing health services to the community in the form of prescribing medicines. Doctors are more likely to prescribe medicines made by pharmaceutical companies that have established collaborations, and of course sometimes they do not match the indications of the patient's health problems. This causes losses to the patient, both financially because the price of the medicine becomes more expensive and health losses because they don't get the right medicine. . Collaboration between pharmaceutical companies and doctors is a criminal act of corruption. For doctors with civil servant status, they can be charged under Article 12B of the Corruption Crime Law, while the criminal offense for doctors with non-PNS status or private doctors is under the Medical Code of Ethics (KODEKI) articles . 2 and 3 of Law Number 11 of 1980 concerning criminal acts of bribery and corruption in the private sector (bribery in the private sector). The forms of bribery by pharmaceutical companies towards civil servant doctors and non-civil servant doctors do not have a large difference because the act of bribery will have the same negative impact, namely detrimental

to the state, detrimental to patients, and, of course, contrary to government policies. To prevent and reduce bribery crimes in the health sector, prevention efforts can be carried out using ISO 37001:2016 guidelines, especially in private sector corruption.

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