IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 24, Issue 8, Ser. 1 (August. 2019) 46-55
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

Responsibilities of Pharmaceutical Business Actors against the Circulartion of G-List Medicine in Banda Aceh City

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Abstract: Article 19 paragraph (1) of the Consumer Protection Law states that business actors are responsible for providing compensation for the damage, pollution and / or consumer loss due to the consumption of goods and or services produced or traded. Even though, the government has regulated the circulation of the drug of G list (Gevaarlijk). In fact, the drug was found freely circulating in Banda Aceh City. The free circulation of the drug of G list could potentially harm the society at large. The results of the study indicate that all losses suffered by consumers as a result of the free circulation of hard drugs of G list are the responsibility of business actors both criminal and civil law.Factors that make business actors ignore their responsibility to consumers are: first, the high level of public demand for hard drug of G list at a low price. Second, the low level of knowledge, bargaining power and consumers' finance of their rights both must be received from business actors and the rights that can be requested from business actors if there is a consumer loss. Then Third, pharmaceutical business actors can't be sued for the default, because selling the hard drugs listed G without a doctor's prescription is an act that is contrary to the laws and regulations.

Date of Submission: 19-07-2019 Date of acceptance: 05-08-2019

I. INTRODUCTION

In the National Health System (NHS) (referred to as SKN) it is stated that Health is a healthy condition, both physical, mental, spiritual and social which enables everyone to live socially and economically productive. The Increasing awareness and knowledge of the societies about health now also encourages them to demand health services including increasingly quality and professional medical services. One of the sub-systems in SKN is medicine and medical supplies. In the subsystem, the emphasis is placed on the availability of drugs, equity including affordability and quality assurance of drugs.

National drug policy is a policy document for the implementation of programs in the field of medicine, as a description of the drug and health supplies subsystem in the SKN. All circulated drugs must be guaranteed safety, efficacy and quality in order to truly provide benefits to the health and welfare of the community and not harm the community. Affordability and rational use of drugs are parts and objectives that should be achieved.

If it is associated with consumers, wherever they are, all of them have their social basic rights. These basic rights are the right to get a safe product, the right to get information about the product used, the right to choose the goods clearly and thoroughly and the right to be heard as a consumer. Health is a human right. Everyone has the right to live a decent life, including getting a good health. The advancement of science and technology encourages people to pay attention to the health status in order to improve their quality of life.[1]

In order to improve the quality of life, medicine is an important and irreplaceable component especially in health services, both primary health service and higher health services. Medication is also an important component because it is needed in most health efforts. Because of the high demand for drugs in health services, it causes violations of the pharmaceutical sector often occurs in the community especially the drugs.[2]

According to the WHO report (The World Medicines Situation 2011, http://www.who.int/medicines/areas/policy/world_medicines_situation/en, accessed on September 19, 2018), drug expenditure is the largest part of the health budget. In some developed countries, the expenditure cost of this drug ranges from 10% (ten per cent) to 20% (twenty per cent) of the health budget, such as in Germany

[1] Siti MasithaDewi. (2017). "AnalisisYuridisPerlindunganHukumTerhadapKonsumenPenggunaObatKeras". *JurnalHukumKesehatan*, 1(01) : 17-26

[2]Sunardy. Ivan ZairaniLisi. InsanTajali Nur. (2014). "PerlindunganHukumTerhadapKonsumenAtasPeredaranJenisObat Flu Mengandung Precursor (BahanPembuatPsikotropika) di Kota Samarinda". *JurnalBerajaNiti*, 3(08): 1-16

15% (fifteen per cent) and Japan 19% (nineteen per cent). Whereas in developing countries this cost is even greater between 25% (twenty-five per cent) to 65% (sixty-five per cent). In Indonesia, it is budgeted for 40% (forty per cent) of the health budget for the cost of drug expenditure.

The accuracy of drug use is an important aspect in efforts to achieve the goal of the efforts to improve the quality of human life in the health sector. The accuracy of drug use is characterized by Rational Drug Use (POR) or Rational Use of Medicine (RUM). POR is a campaign spread by WHO throughout the world, including in Indonesia. On its website, WHO explained that the definition of POR is if patients receive treatment according to their clinical needs, in doses that are appropriate to their needs, within the appropriate time period and at affordable cost to themselves and most of people. With 4 (four) keywords, those are appropriate clinical needs, dosage, time and cost, POR is an intervention effort to achieve effective treatment. (The Pursuit of Responsible Use of Medicines. http://www.who.int/medicines/areas/rational_use/en/index.html, accessed on March 15, 2018).

By the issuance of the Regulations on Compulsory Drug of Pharmacies, several drugs are permitted to be given by the Pharmacist at Pharmacy without prescription. However, for hard drugs that are not included in the list of compulsory drug of pharmacies (OWA), the administration must be based on the doctor's prescription request. The phenomenon that currently occurs in the city of Banda Aceh is the existence of deviation in the circulation of hard drugs in the community. Nowadays, there are still many people who do not care about drug trafficking and are potentially disadvantaged from the use of drug because they buy medicine at drug seller that do not have distribution permits to sell certain medicines, especially medicines included in the list of hard drugs. Gevaarlijk (referred to as the hard Drug, G-List).[3] Actually, The circulation of hard drugs in the G-list must be controlled by the government, this supervision is aimed to make the licensing process functions as a preventive measure from the government so that it will not harm consumers.

The free circulation of drugs included in the hard drugs of G list turned out to be in great demand from consumers, this was because the drugs were easily to get and sold freely at any drug store that was available and was generally known by the public. The use of hard Drug of G Listis also due to a myth that develops and is trusted by the community, if not with hard drugs then the disease suffered will not heal. The example of the drugs that has been widely known by the public is antibiotics *Amoxicillin*. The use of Amoxicillin drugs can cause side effects such as nausea and dizziness, even though the drug packaging has been written "On Medical Prescription only", but most of pharmaceutical business actors such as pharmacies and drug stores give the drug directly to consumers without using a prescription.

Inappropriate use of the G-list drug has a high risk for health in accordance with the origin words of Gevaarlijk which means dangerous. As the author found in Radar Cirebon Online Media, the use of hard Drug of G List can provide many side effects that harm consumers, especially if not consumed in accordance with the POR guidelines. Like hard drugs, the list of G types of Tramadol which is usually given to patients is used for pain relief after surgery. The effects of these types of drugs can cause sedative effects and improve mood. However, due to the free circulation of the drug, the drug was even misused by the teenagers to get the effects of motion sickness. (Radar Cirebon, Awas, Konsumsi Obat Ini Bisa Bikin Gila, http://www.radarcirebon.com/awas-konsumsi-obat-ini-bisa-bikin-gila.html, accessed on September 18, 2018).

The author also found a more worrying fact related to the free circulation of the hard drug of G list, in some regions of Indonesia it was found that criminals also consumed hard drugs of the G-list of Thirex type or commonly known as Cow Pill to make emotions overflowing, to increase bravery, confidence and giving effect to hallucinations as supporters when they will commit a criminal act (Tribun News, KonsumsiObatKerasDorongPelajarLakukanTindakKriminal. http://jogja.tribunnews.com/2017/10/02/konsumsi-obat-keras-dorong-pelajar-lakukan-tindak-kriminal, accessed on December 17, 2018).

Because of the risks as described above, the law has therefore provided the limitations on the circulation of hard drugs of G list which can only obtain at certain health facilities, one of them is the Pharmacy and the administration of hard drugs of the G list is only can be done by authorized health personnel namely pharmacists. The pharmacists can only issue hard drugs based on doctor's prescription request.[4]

In practice, many facts of the problem arose from the illegal circulation of G drugs and were resolved through litigation as found in the Directory of Supreme Court Decisions. There were 2 (two) cases related to the circulation of hard drugs in the G list at Banda Aceh District Court with Number. 39/Pid.sus/2018/PN/Bna and Tapak Tuan District Court with Number. 80/Pid.B/2013/PN.Ttn. The court decision on 2 (two) cases above

[3]Yustina Sri Hartini and Sulasmono (2010).*ApotekUlasanBesertaNaskahPeraturanPerundang-UndanganTerkaitApotekTermasukNaskah dan UlasanPermenkestentangApotek Rakyat*. Yogyakarta: UniversitasSanata Dharma. p. 71.

[4]Yustina Sri Hartini. (2009). "RelevansiPeraturanDalamMendukungPraktekProfesiApoteker di Apotek". *JurnalIlmuKefarmasian*. 6(2): 97-106

shows that there are still pharmaceutical business actors who circulate hard drugs of G list that do not have distribution permits.

In 2000, one of the Non-Departmental Government Institutions was established namely The National Agency of Drug and Food Control of Republic of Indonesia (NADFC) or BPOM. BPOM is based in Jakarta, but BPOM has a technical implementation unit in the area called the Center for Drug and Food Control (BBPOM). BPOM was given some authority by the government, those are related to licensing and supervision of drug distribution and supervision of the pharmaceutical industry and drug and food testing. BBPOM as technical executor of BPOM in the region has the duty to implement policies in the field of supervision of therapeutic products, narcotics, psychotropic substances and other addictive substances, traditional medicines, complementary products, food safety and hazardous materials.

The supervision of pharmacies as a service facility for drugs or therapeutic products become one of the tasks of BPOM in accordance with their respective work areas. The role of Civil Servant Investigators (PPNS) at BBPOM is needed in investigations if there is a criminal act of the circulation of hard drug because they master in certain fields including supervision of drugs and food. The existence of BBPOM has a function as one of the operational elements in law enforcement.[5]

In the city of Banda Aceh, it was found that several pharmacies did not implement the Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law), especially related to consumers of hard drugs listed G. In its practice, it was also found that there were pharmacies that did not provide information on the correct use of drugs to consumers. This is contrary to the regulation contained in Article 7 of Law No. 36 of 2009 concerning Health (Health Law) which states that everyone has the right to obtain balanced and responsible information and education about health. Moreover, the drug of G list which is a dangerous drug if consumed irrationally and requires clear information or instructions on the procedures for its use. Generally, The drug store also does not carry out two rules at the same time including the first is the government regulation concerning the prohibition for drug stores to sell or distribute the medicine of G list drugs and the second is the rules contained in the Consumer Protection Law.

Based on the description and court decision above, it is clear that the legal problems arising from the free circulation of hard drugs listed G are the losses suffered by consumers which are the responsibility of the business actor. Therefore, this research is important to do, in order to answer all the problems that arise as a result of the illegal circulation of G list drugs in the city of Banda Aceh as stated in the descriptions above.

In order not to expand the discussion in this paper, the authors limit the problems in this paper with identification as follows:

1. What is the responsibility of the pharmaceutical business actors for consumers' losses as a result of the circulation of hard drugs of G list?
2. What are the factors that make business actors ignore the responsibility to consumers related to the circulation of hard drugs of G list?

II. METHODS

This research is empirical legal research.[6] The data sources used by the author in this study are primary data and secondary data. Primary data is collected through observation and interview methods, while secondary data is obtained from legal materials that consist of primary, secondary and tertiary legal materials.[7]

This study uses a qualitative approach, which is a way of analyzing the results of research that produces analytical descriptive data, that data is stated by respondents in writing or verbally as well as real behavior, which is examined and studied as something intact. The qualitative analysis method is not merely aimed to reveal the truth but also to understand the truth.[8]

[5] IsmiMarya (2014)."PeranPenyidikBalaiBesarPengawasObatdan MakanandalamPenegakanHukumPidanaTerhadapPelakuPenjualObatKerasTanpaKewenangan". *JurnalPoenali*. 2(04) : 1-11

[6] Ronny HanitijoSoemitro."*PenelitianHukumSebagaiGejala Masyarakat, SebagaiInstitusiSosialAtauPerilaku yang Mempola*"on Ronny HanitijoSoemitro (1990).*MetodePenelitian dan Jurimetri*. Jakarta: GhaliaIndonesia, p. 34.

[7] Saifuddin Azwar (2007). *MetodePenelitian.* Yogyakarta: PustakaPelajar, p. 36.

[8] Mukti Fajar and YuliantoAchmad (2017). *DualismePenelitianHukumNormatif dan Empiris*. Yogyakarta: PustakaPelajar, p. 192.

III. RESULT

A. Responsibilities of Pharmaceutical Business Actors Against Consumers as a Result of Circulation of Hard Drugs of G List

The Health legislation basically has prohibited pharmaceutical business actors from circulating G drugs illegally. The government regulation is reinforcing this prohibition stating that anyone who does not have the expertise and authority is prohibited from holding, storing, processing, promoting, and circulating drug and medicinal ingredients of drug. If there are still pharmaceutical business actors who circulate the hard drugs of G list unofficially, thus the consumer losses arising from the circulation activities are entirely the responsibility of the pharmaceutical business actor.

The Health Law also makes consumers have the right from the losses suffered. In the Health Law which states that every person has the right to claim compensation towards a person, health worker, and/or health provider that causes losses due to errors or negligence in the health services he receives. If the word 'Someone' in the article can also be interpreted as a Pharmaceutical Business Actor, then the consumer of hard drugs listed G has the right to receive compensation if they feel disadvantaged.

The regulation of compensation for consumers of health is also in line with the Consumer Protection Act. In the Consumer Protection Law, there is an article concerning the responsibility of business actors in which the principle of responsibility is very important aspect in the field of consumer protection law. In the case of circulation of hard drugs G list, pharmacies and drug stores as pharmaceutical businesses actors are parties who are responsible for fulfilling consumer rights which is a result of the sell and purchase relationship on the hard drug of G list between business actors and consumers,then the legal relationship that occurs between the two is the relationship of civil law that has been regulated in a special chapter in the Consumer Protection Law, regarding the responsibility of business actors as regulated in Chapter VI from Article 19 to Article 28.

Losses suffered by consumers in general can be divided into 2 (two) parts, those are losses that befall to themselves and losses that befall to their assets. While, the loss of assets itself can be experienced in the form of the real losses and the losses of expected profits. Even though, losses can be in the form of losses to a person (physical) or losses that befall on the assets, but if it is associated with compensation by a business actor, then both can be valued with money or assets. Likewise, because the loss of assets can also be in the form of losing the expected profits, thus the definition of loss should be the assets reduction or non-acquired assets of one party caused by an act that violates the law of the other party.[9]

In the Consumer Protection Law related to the responsibility of business actors, the arrangements that are very relevant to the responsibility of business actors to consumers resulting from the illegal circulation of G List drugs are found in the provisions of Article 19 of the Consumer Protection Law, which is stated as follows:

(1) Business actors are responsible for providing compensation for the damage, pollution and/or loss of consumers due to consuming goods and/or services produced or traded;
(2) Compensation as referred to in paragraph (1) may be in the form of refunds or substitutes for goods and / or services of a similar or equivalent value, or health care and/or compensation in accordance with the applicable legal provisions;
(3) Provision of compensation is carried out within a period of seven days after the date of the transaction;
(4) Provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate criminal charges based on further evidence of the element of error;
(5) The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the fault is a consumer mistake.

Based on Article 19 of the Consumer Protection Law above, it is known that business actor's responsibilities are in the form of providing compensation to consumers for damage, pollution and/or loss of consumers due to consuming goods and/or services produced or traded. Giving compensation is intended to restore a condition that has become damaged (unbalanced due to the use of goods or services that do not meet consumer expectations). This right is strongly related to products that have harmed consumers in the form of property losses, as well as the losses related to themselves (illness, disability, and even death).

After paying attention to the contents of Article 19 of the Consumer Protection Law regarding the responsibility of business actors, it is known that there are some weaknesses in the substance of the article that could potentially harm consumers, especially consumer losses caused by the illegal circulation of G list drugs. In regards to The substance of Article 19 paragraph (1) of the Consumer Protection Law mentioned above, the responsibilities of business actors for the circulation of hard drugs of listed G consist of the liability for compensation of damage, pollution and loss of consumers. Therefore, Based on that matter, it means that the responsibility of the business actor includes everything that can bring losses to the consumer.

[9] Ahmadi Miru and SutarmanYudo (2004). *HukumPerlindunganKonsumen*. Jakarta: PT. Raja GrafindoPersada, p. 137.

The substance in Article 19 paragraph (2) of the Consumer Protection Law, explains that the form of compensation for consumers can be in the form of refunds or substitutes for goods and / or services of a similar or equivalent value, or health care and/or compensation in accordance with the applicable legislation. The word "can" in Article 19 paragraph (2) shows that there are still other forms of compensation that can be submitted by consumers to business actors, for example the losses suffered by consumers either temporarily or a lifetime loss caused by consuming hard drugs of G List which can also be requested for compensation to business actors as a form of immaterial loss.

Other forms of compensation that can be submitted by Consumers to Business Actors can also be seen in Article 60 of the Consumer Protection Law which explains that consumers have the right to receive the compensation of a maximum of Rp.200,000,000 (two hundred million rupiah) through the imposition of administrative sanctions imposed by BPSK (Article 52 point m jo. Article 60 paragraph (2) UUPK).

If we look further in Article 19 paragraph (2) of the Consumer Protection Law, it is known that the article also has weaknesses which have the potential to harm consumers, especially if consumers suffer from an illness or feel other effects because of consuming hard drugs of G list that are illegally sold by business actors. Based on the article, consumers only obtain one form of compensation namely the loss of the price of goods, or only health care, even though the consumer has suffered losses not only the loss of the price of goods but also losses arising from health care costs.

As a result of the limitation of compensation from business actors to consumers because of the weaknesses of the substance of the article, therefore, Article 19 paragraph (2) should also determine that the provision of compensation can be in the form of refunds and/or substitutes for goods or services in equal value and goods and/or health care and/or compensation can be given to consumers at the same time. This means, the formula between the word "equivalent value" and "health care" which is mentioned in the article 19 paragraph (2) no longer uses the words "or" but "and/or". Through this change, if the loss causes other diseases to the consumers due to the consumption of drugs sold by business actors so that besides getting compensation for the price of goods in this case the hard drug of G list, the consumers are also entitled to health care as a form of compensation provided by business actors.

In Article 19 paragraph (3) of the Consumer Protection Law, there are also weaknesses that have the potential to harm consumers which is about the period of compensation for only 7 (seven) days after the transaction occurred. If this provision is maintained, consumer who consumes the hard drug of G list on the eighth day after the transaction and then suffers a loss, thus based on Article 19 paragraph (3) the Consumer is not entitled to the compensation from the business actor, even though in fact the consumer has suffered the loss.

Therefore, in order to provide maximum protection through this Consumer Protection Law without ignoring the interests of business actors, article 19 paragraph (3) should stipulates that the grace period for providing compensation to consumers is 7 (seven) days after the loss and not 7 (seven) days after the transaction as formulated in the existing article.

In addition to the responsibility of business actors as stipulated in Article 19 of the Consumer Protection Law, there are also arrangements concerning consumer rights that cannot be ignored by business actors regulated in Article 4 of the Consumer Protection Law. Not only the Consumer Protection Law but also the regulation of the Rights of Consumer of Health can also be found in Article 5 of Aceh Qanun Number 4 of 2010 on Health.

In term of compensation, it has been regulated in more detail as part of consumer rights, as stated in Article 4 in letter (h) of the Consumer Protection Law, which states that "The right to obtain compensation, reimbursement and/or subtitution, if the goods and/or services received is not in accordance with the agreement or not as it should ".

Regarding to the consumer rights that have regulated in the Consumer Protection Law and the Qanun of Aceh, the consumer's right is an obligation for the business actor to implement it. The rights of consumers are only possible to be enforced if the business actor is willing to voluntarily fulfill the demands of consumers towards the fulfillment of their rights that are violated or neglected by the business actor. If the business actor is not willing to implement it voluntarily, while the consumer assumes that the business actor has violated the obligations and prohibitions determined by the Consumer Protection Law and is detrimental to him, then the enforcement of consumer rights can only prosecuted through a dispute resolution process specified in the Consumer Protection Law.

The settlement of the problem of consumer losses resulting from the illegal circulation of G drugs has been regulated in Article 45 of the Consumer Protection Law which states that in the case of consumer dispute resolution it is divided into 2 (two) parts:

1. Settlement of the Disputes of Consumer Outside the Court, consists of:

a. Peaceful Dispute Resolution;

Peaceful dispute resolution is aimed to resolve disputes between parties, with or without power/accompaniment for each party, through peaceful ways. Negotiations in deliberations and/or consensus between the related parties. The settlement of disputes in this way is called "the Settlement in family manner". Many disputes can or cannot be resolved using this method. Through this peaceful dispute resolution, it is actually want to form an easy way of the settlement, inexpensive and (relatively) faster.

b. Settlement through the Consumer Dispute Settlement Agency (BPSK).

The Consumer Protection Law established an institution in consumer protection law that is the Consumer Dispute Settlement Agency. The legal basis for the establishment of BPSK is Article 49 Paragraph 1 of the Consumer Protection Law jo. Article 2 of the Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 stipulates that a Consumer Dispute Settlement Agency must be established in each City or Regency. In the Article 1 point 11 of the Consumer Protection Law mentions that BPSK is the institution that has the duty in handling and resolving disputes between business actors and consumers. These complaints can be submitted orally or in writing to the Secretariat of BPSK in the City / Regency of the consumer's domicile or the nearest city / district to the consumer's domicile. Every consumer who feels aggrieved by a business actor can complain about his problem to BPSK, either directly, represented by his proxy or by his heirs.

The purpose of the establishment of the BPSK institution is to resolve consumer' disputes quickly, inexpensively and easily. Fast because dispute resolution through BPSK must have been decided within a period of 21 working days and it is not possible to conduct an appeal that can prolong the process of case settlement. It's easy because administrative procedures and decision-making processes are very simple and can be carried out by the parties themselves without the need for a legal counsel. Inexpensive because the trial fees charged are very light and affordable for consumers. If the BPSK decision is accepted by both parties, then the decision is final and binding, so it does not need to be submitted to the public court.

Nowadays, in Aceh Province, there are only 4 (four) Districts which have BPSK institutions (List of All Indonesian BPSK, http://siswaspk.kemendag.go.id/daftarbpsk, accessed on December 17, 2018) as follows:

1. BPSK Kab. Aceh Tengah which is located in Disperindagkop, ESDM, Pemkab Aceh Tengah: Jln. Takengon-Isaq, Kp. Kung, Kec. Pegasing, Kab. Aceh Tengah, Telp./Fax: (0643) 21811 / (0643) 21302.
2. BPSK Kab. BenerMeriah which is located in DisperindagPemkab. BenerMeriah: KomplekPerkantoranPemda, Jalan SeruleKayu, Kab. BenerMeriah, Telp: (0643) 7426041 / (0643) 442604.
3. BPSK Kab. Aceh Utara which is located in Jln. Tgk. ChikDitiro No. 1, Lhokseumawe 24351, Telp: (0645) 42305, Fax: (0645) 43048.
4. BPSK Kota Lhokseumawe which is located in DisperindagPemkotLhokseumawe: Jln. H. Meunasah, Uteunkot No. 1B, Kota Lhokseumawe 24351, Telp: (0645) 45888.

Based on the Presidential Decree, the cost in implementing the duties of BPSK is charged to the State Budget (APBN) and Regional Budget (APBD). In order to make it easier for consumers to reach BPSK, then in the presidential decree, there are no restrictions on jurisdiction of BPSK, so that consumers can complain about the problem to any BPSK they want. In regards to consumer disputes related to the circulation of hard drugs of G list that is occurred in Banda Aceh, thus it can be submitted and resolved at 4 (four) BPSK institutions that have been formed in Aceh Province including BPSK of Central Aceh, BPSK of North Aceh Regency, BPSK of BenerMeriah Regency and BPSK of Lhokseumawe City.

Regarding the problems raised in this study which is about the responsibility of pharmaceutical businesses for the circulation of hard drugs G list, BPSK has the authority to resolve disputes between business actors and consumers. If consumers make complaints to BPSK, Then BPSK will settle the disputes in accordance with the recommendations of BBPOM and the sanction that will be given to business actors is in the form of fines or the demands for compensation to consumers.

2. Settlement of Consumer Disputes through Litigation at General Judicial Institutions.

The authority of the General Courts to adjudicate the disputes of consumer is confirmed and mentioned in the Consumer Protection Law which is contained in Article 23 said that "Business actors who reject and or do not respond and or do not fulfill compensation for consumer claims as referred to in Article 19 paragraph (1) , paragraph (2), paragraph (3) and paragraph (4), can be sued through the Consumer Dispute Settlement Agency or submitted to the Judiciary at the place of residence of consumers (domicile) " Based on that article, the General Court has the competence to resolve the disputes between Consumers and Pharmaceutical Business actors especially related to compensation to consumers which is caused by the illegal circulation of G list drugs.

In the case of circulation of hard drugs of G list, it is found that the relationship between the pharmaceutical business actors and the consumer does not have a contractual relationship. Therefore, the type of claim that can be submitted by consumers to the Court is a lawsuit concerning Unlawful Actions. The regulation

of Unlawful Actions in the Civil Code is regulated in Article 1365 of the Civil Code which states that "Any act that violates the law, which brings the loss to another person, requires the person who caused an error that arise the loss, compensating for the loss". Then based on Article 1365 of the Civil Code, the consumer who is harmed by the Business Actor as a result of consuming the G list drug can submit a lawsuit of Unlawful Actions to the District Court with the aim of obtaining compensation from the Business Actor because of the loss suffered from consuming G list hard drugs.

When a consumer submits a Lawsuit of unlawful actions to the Business Actor, thus the obligation to prove it is on the Consumer as the Plaintiff. Consequently, if the consumer fails to prove the existence of an element of unlawful actions carried out by the business actor, then the compensation claim demanded by the Consumer as the Plaintiff is not granted by the Panel of Judges. The advantage for consumers who submit a claim for compensation claim through a lawsuit of unlawful actions to the District Court is that consumers can submit several claims as follows:

1. Consumers can demand immaterial compensation;
2. Consumers can demand forced money (dwangsom); and
3. Consumers can demand confiscation (ConservatoirBeslaag).

In regards to the 3 (three) types of consumer claims above, it cannot be decided by BPSK as the authorized body to resolve consumer disputes, because this is the authority of the General Court. The hard drug consumer G list will be in a weak position and will not be benefited if they choose to fight for their rights to claim compensation maximally to business actors through BPSK. Therefore, the resolution of the problems arising from the legal relationship can be settled through the General Court in this case is the authority of the District Court in the place where the domicile of consumer is located.

In general, the dispute resolution process through litigation in the Court is less favor and becomes rare by consumers, because of several things, those are:

1. Settlement of disputes through litigation is generally slow so it seems a waste of time. The inspection process is very formal (formalistic) and technical (technically). The formal and technical characteristic of the judicial institution often cause in protracted dispute resolution so that it requires a long period of time. Especially in business disputes, a fast and low costs as well as informal procedure is required.
2. The parties consider that costs of the case are very expensive, especially related to the duration of dispute resolution. The longer the settlement of a case finished, the greater the cost will be paid. The People who is litigating in court must mobilize all resources, time and mind (litigation paralyze people).
3. Courts are often considered to be less responsive (unresponsive) in resolving cases. This is because the court is considered less responsive to defend and protect the interests and needs of the parties who are litigants and the society considers the court often does unfair.
4. The court decisions often cannot resolve the problem and satisfy the parties. That is because in a decision there are parties who feel win and lose (win-lose), in which the feeling of winning and losing will not give peace to one party, but will create a revenge, hostility and hatred. In addition, there are court decisions that are confusing and do not provide legal certainty (uncertainty) and are difficult to predict (unpredictable).
5. The ability of judges who are generalists, Judges are considered to have only very limited knowledge, only knowledge in their field of law and in general, so it is impossible to be able to resolve the disputes or cases that contain the complexity of problems in various fields.

B. Factors That Make Business actor Ignore their Responsibilities for ConsumersRelated to the Circulation of Hard Drugs of G list

Based on the juridical analysis that hasconducted the writer, if it was reviewed further related to the regulationsthat are contained in the Civil Code concerning the terms of validity of the agreement in Article 1320 of the Civil Code which explain that the agreement can be valid and binding on the parties when the agreement has met the conditions that are specified in Article 1320 of the Civil Code, those are:

1. Agreement;
2. Competent in term of making an engagement;
3. A certain thing; and
4. A cause or causa that is halal.

The four points mentioned above are clearly stated in article 1320 of the Civil Code (KUHPerdata), as the conditions (a) and (b) concerning the subject (including agreement and capacity of the party making the agreement), while the requirements (c) and (d) concerning the object (requirements related the object of the agreement, includes a lawful cause). There is a defect of intention (erroneous, coercive, fraud) or incapable of making an agreement, when the terms of subjects was not fulfilled, thus the agreement can be cancelled. However, when the terms of the object are not fulfilled, the agreement is null and void.

Based on the explanation stated above, according to the author, the agreement between business actors and consumers in transactions of the hard drug of G list is not an agreement that fulfils the legal requirements of the agreement so that the Business Actor cannot be considered as the one who committed the Default, Because Business Actors and Consumers have already known that hard drugs of G list are not the goods that could be trade freely. The government has regulated the conditions for the sale of hard drugs of the G list, both in the part of business actors and consumers. Therefore, the legal actions of sale and purchase the hard drugs of G list by the Business Actors and Consumers is not an agreement that can be hold accountable, because Business Actors and Consumers know that these legal actions include as the legal actions that is lawful by the positive law in Indonesia.

In the circulation of the hard drug of G list, most of business actors ignore consumer rights which include as the obligations of businesses actors, starting from not providing information on the use of hard drugs of G list, not guaranteeing the quality of drugs, until violating the government's regulations related to the permission in circulating of G list drugs.

Based on an interview with one of the owners of a pharmacy in Banda Aceh, Mr.NZ explained that his pharmacy was still selling hard drugs list G. He said that at his pharmacy the sale of hard drugs G list was only given, if the consumer attached a doctor's prescription. If there is no doctor's prescription, the purchase of a hard drug G list cannot be served. Even so, he admitted that he occasionally still sold G-listed hard drugs without a doctor's prescription request. However, the sale is only giving to people who are already known to him or workers at the Pharmacy because they often buy certain drugs including G-listed drugs. The consumers are often buying drugs to be consume regularly to cure certain disease.

The result of interview with one of the Drug Store owners in Banda Aceh, Mr.EY, he said that he knew that the activity of circulating the drug of G list by his drug store was illegal and threatened with criminal sanctions. Illegal circulation of G-list drug can also cause civil sanctions if there are consumers who are harmed due to the circulation. At the beginning of the process of the drug store permit, he has heard the explaination regarding the restrictions on what types of drugs may or may not circulated by the Drug Store in the Banda Aceh City Health Office.

Even so, he admitted that he continued to sell hard drugs of the G list in his shop because of the high public demand for the drug. He got hard medicine from Freelance Sales from the City of Medan. They travelled throughout the Province of Aceh to distribute various types of medicines including hard drugs G list which is a compulsory drug of pharmacy.

Mr. EY also explained that many people complained to him that the price of hard drugs listed in the Pharmacy was so expensive. People also have difficulty to get a doctor's prescription every time they would like buy hard drugs. Because a doctor's prescription can only be obtaining by visiting the doctor directly who prescribed the drug while on treatment. Even though they need these drugs regularly to be consume, of course, through multiple drug purchases. However, the prescription that is given by a doctor is limited to only getting 1 (one) prescription of copy for the next purchase.

Mr. EY also explained that so far he had provided information on drug use to consumers. However, information on the use of these drugs given without an analysis of the need to treat the diseases suffered by consumers. As describe by doctors when prescribing medication, Even though in practice, until now, he admitted that there were no people who complained about the drugs that had been sell by the drug store. Mr. EY also argued that those responsibilities for the circulation of hard drugs G list are not included only Pharmacies and Drug Stores but also Drug Distributors. The government should apply more strict and strong rules for Drug Distributors, because Drug Distributors are the responsible parties and are the origin of all drugs circulating in the field. The government should claim drug distributors to be able to account for all drugs circulating in the field according to their designation as stipulated in the Law.

If the distribution of drugs by the Drug Distributor is in accordance with the designation, of course, the Drug Store can no longer sell the hard drug of G list because they no longer have the goods. Then the most effective supervision to carry out by the government is on the origin of the distribution channel of the Drug Distributor. If the Drug Distributor has carried out all the rules made by the Government, accompanied by direct supervision of BBPOM and the Health department, then it is expected that the circulation of hard drugs in the G list can be properly recorded to minimize the circulation of illegal drugs G list in the community. Then, the protection of consumer hard drugs of G list could be achieved through regulation and supervision by the Government.

Based on the description above, it can conclude that the factors that make the Business Actor ignore the responsibility to the Consumer are as follows:

1. Medicine is an important need for the community and is urgent. Due to the high demand, it is prone to deviations of drug trafficking, especially hard drugs G list. For example, people who do not buy hard drugs of G list in a legal place but prefer to buy G-listed hard drugs without using a prescription to get a far cheaper price.

2. The position of drug consumers, in general, is still weak in the fields of economy, education and bargaining power. That makes consumers potentially become victims of the circulation of drugs of G list. Society as consumers, do not understand that the use of hard drugs of G list is irrational and without guidance on the proper use of harm both health and financial.
3. The actions carried out by Pharmaceutical Business Actors who circulate illegal drugs on the G list illegally are not included as the agreement that has met the legal requirements of the agreement, so that Pharmaceutical Businesses actors cannot be considered Default. Therefore, the legal action of sale and purchase on the hard drugs of G list conducted by the Business Actors and Consumers is not an agreement that can be claimed for its responsibility by the law.

IV. CONCLUSION

Pharmacists who circulate the G list drug illegally and harm consumers, their responsibilities must be claimed for both criminal and civil for doing unlawful action. The responsibility of Pharmaceutical Business Actors can be requested through 2 (two) ways including Non-Litigation through Peaceful Dispute Resolution and Dispute Settlement through BPSK, and Litigation through public justice institutions.

So far there has been a conviction verdict for businesses that circulate illegal G list drugs in the city of Banda Aceh, but there are still many pharmaceutical business actors in Banda Aceh who ignore the responsibility to consumers because of 3 (three) factors. First, the high level of public demand for hard drugs with G list at low prices while the purchase of these drugs by prescription can only be obtained at a relative more expensive price. Second, the low knowledge, bargaining power and financial consumer of their rights both the rights that must be received from business actors and the rights that can be requested from business actors in the case of a consumer loss. Then third, pharmaceutical business actors is unable to be sued for defaulting therefore that the sale and purchase of hard drugs without the prescription of doctors is an act that is contrary to the legislation.

REFERENCES

Books:

[1]. Achmad Ali. (2012). *MenguakTeoriHukum (Legal Theory) dan TeoriPeradilan (Judicialprudence) TermasukInterpretasiUndang-Undang (Legisprudence).* Jakarta: Kencana.
[2]. Ahmadi Miru and SutarmanYudo (2004). *HukumPerlindunganKonsumen*. Jakarta: Raja GrafindoPersada.
[3]. Az Nasution (1995). *Konsumen dan Hukum: TinjauanSosialEkonomi dan Hukum pada PerlindunganKonsumen*. Jakarta: PustakaSinarHarapan.
[4]. Mukti Fajar&YuliantoAchmad (2017). *DualismePenelitianHukumNormatif dan Empiris*Cetakan IV. Yogyakarta: PustakaPelajar.
[5]. PurwantoHardjosaputra (2008). *Daftar Obat Indonesia*Edisi I. Jakarta: MuliaPurna Jaya Terbit.
[6]. Ronny HanitijoSoemitro (1990). *MetodePenelitianHukum dan Jurimetri.* Jakarta: Ghalia Indonesia.
[7]. Saifuddin Azwar (2007).*MetodePenelitian*. Yogyakarta: PustakaPelajar.
[8]. Sartono (1993). *Apa yang Sebaiknya Anda KetahuiTentangObat-ObatBebas dan BebasTerbatas.* Jakarta: GramediaPustaka Utama.
[9]. Shidarta (2006). *HukumPerlindunganKonsumen Indonesia*. Jakarta: PT Grasindo.
[10]. Siahaan (2005). *HukumKonsumen, Perlindungankonsumen dan TanggungJawabProduk*. Jakarta: Panta Rei.
[11]. Yustina Sri Hartini&Sulasmono (2010). *ApotekUlasanBesertaNaskahPeraturanPerundang-UndanganTerkaitApotekTermasukNaskah dan UlasanPermenkestentangApotek Rakyat*. Yogyakarta: UniversitasSanata Dharma.

Journal Articles:

[1]. Andi Suriangka. PerlindunganKonsumenTerhadapPenyaluranObatKeras Daftar G Oleh Badan Pom di Makassar, *JurnalIlmuHukum*, 4(2), 24-36. doi: https://doi.org/10.24252/jurisprudentie.v4i2.4044
[2]. AnggiRestiasari, R. Ismadi S. Bekti, Ahmad Gozali, KepastianHukumApotek Rakyat Dan PekerjaanKefarmasian.*JurnalHukumKesehatan*, 3(1), 1-13. doi: https://doi.org/10.24167/shk.v3i1.693
[3]. LeliJuwanti& Marta Tilov. PerlindunganHukumTerhadapKonsumenAtasPenjualanObat-ObatanIlegalSecara Online.*JurnalUnimed*, 7(3), 105-112. doi: https://doi.org/10.24114/niaga.v7i3.11606
[4]. Yustina Sri Hartini, *RelevansiPeraturanDalamMendukungPraktekProfesiApoteker Di Apotek, Pharmaceutical Sciences and Research (PSR),* 6(2), 97-106. doi: http://dx.doi.org/10.7454/psr.v6i2.3439

Legislation:
[1]. Keputusan Menteri KesehatanNomor. 347 Tahun 1990 tentangObatWajibApotik.
[2]. Keputusan PresidenNomor. 166 Tahun 2000 dan Keputusan PresidenNomor 103 Tahun 2001 tentangKedudukan, Tugas, Fungsi, Kewenangan, SusunanOrganisasi, Dan Tata Kerja Lembaga Pemerintah Non Departemen.
[3]. Keputusan PresidenNomor 90 Tahun 2001 tentangPembentukan Badan PenyelesaianSengketaKonsumen Pada Pemerintah Kota Medan, Kota Palembang, Kota Jakarta Pusat, Kota Jakarta Barat, Kota Bandung, Kota Semarang, Kota Yogyakarta, Kota Surabaya, Kota Malang, dan Kota Makassar.
[4]. PeraturanPresidenRepublik Indonesia Nomor. 72 Tahun 2012 tentangSistemKesehatan Nasional.
[5]. PeraturanPemerintahNomor. 72 Tahun 1998 tentangPengamanan dan PenggunaanSediaanFarmasi dan AlatKesehatan.
[6]. Qanun Aceh Nomor 4 Tahun 2010 tentangKesehatan.
[7]. Undang-UndangRepublik Indonesia Nomor. 36 Tahun 2009 tentangKesehatan.
[8]. Undang-UndangRepublik Indonesia Nomor. 8 Tahun 1999 tentangPerlindunganKonsumen.

World Wide Web:
[1]. Radar Cirebon. (2016).Awas, *KonsumsiObatIniBisaBikin Gila*. Available online from: http://www.radarcirebon.com/awas-konsumsi-obat-ini-bisa-bikin-gila.html. [Accessed September 18, 2018].
[2]. Daftar BPSK, *SistemPengawasanPerlindunganKonsumen pada DirektoratJenderalPerlindunganKonsumen dan TertibNiaga pada Kementerian Perdagangan*. Available online from: http://siswaspk.kemendag.go.id/daftarbpsk. [Accessed December 17, 2018].
[3]. Tribun News, (2017),*KonsumsiObatKerasDorongPelajarLakukanTindakKriminal*. Available online from: http://jogja.tribunnews.com/2017/10/02/konsumsi-obat-keras-dorong-pelajar-lakukan-tindak-kriminal. [Accessed December 17, 2018].
[4]. World Health Organization. (2012). *The Pursuit of Responsible Use of Medicines: Sharing and Learning from Country Experiences*. Available online from: http://www.who.int/medicines/areas/rational_use/en/index.html. [Accessed March 15, 2018].
[5]. World Health Organization. (2011). *The World Medicines Situation.* Available online from: http://www.who.int/medicines/areas/policy/world_medicines_situation/en.[Accessed September 19, 2018].

Footnotes

Books:
[1]. Ahmadi Miru and SutarmanYudo (2004). *HukumPerlindunganKonsumen*. Jakarta: PT. Raja GrafindoPersada. p. 137.
[2]. Mukti Fajar and YuliantoAchmad (2017). *DualismePenelitianHukumNormatif dan Empiris*. Yogyakarta: PustakaPelajar. p. 192.
[3]. Ronny HanitijoSoemitro."*PenelitianHukumSebagaiGejala Masyarakat, SebagaiInstitusiSosialAtauPerilaku yang Mempola*"on Ronny HanitijoSoemitro (1990).*MetodePenelitian dan Jurimetri*. Jakarta: Ghalia Indonesia. p. 34.
[4]. Saifuddin Azwar (2007). *MetodePenelitian.* Yogyakarta: PustakaPelajar. p. 36.
[5]. Yustina Sri Hartini and Sulasmono (2010).*ApotekUlasanBesertaNaskahPeraturanPerundang-UndanganTerkaitApotekTermasukNaskah dan UlasanPermenkestentangApotek Rakyat*. Yogyakarta: UniversitasSanata Dharma. p. 71.

Journal articles:
[1]. IsmiMarya (2014)."PeranPenyidikBalaiBesarPengawasObatdan MakanandalamPenegakanHukumPidanaTerhadapPelakuPenjualObatKerasTanpaKewenangan". *JurnalPoenali*. 2(04) : 1-11
[2]. Joseph E Sibuea I Gst. AyuPuspawati Ida Bagus Putu. (2015). "AspekHukumPerlindunganKonsumenTerhadapPeredaranObatKeras di Pasaran: Studi pada BalaiBesarPengawasObatMakanan (BB POM) Denpasar". *JurnalHukumBisnis*. 3(01) : 1-5
[3]. Siti MasithaDewi. (2017). "AnalisisYuridisPerlindunganHukumTerhadapKonsumenPenggunaObatKeras". *JurnalHukumKesehatan*. 1(01) : 17-26
[4]. Sunardy. Ivan ZairaniLisi. InsanTajali Nur. (2014). "PerlindunganHukumTerhadapKonsumenAtasPeredaranJenisObat Flu Mengandung Precursor (BahanPembuatPsikotropika) di Kota Samarinda". *JurnalBerajaNiti.* 3(08): 1-16
[5]. Yustina Sri Hartini. (2009). "RelevansiPeraturanDalamMendukungPraktekProfesiApoteker di Apotek". *JurnalIlmuKefarmasian*. 6(2): 97-106