

Distortion of Generic and Patent Medicine in Consumer Protection Law Aspect

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ABSTRACT--Medication consumption shall not be based upon its taste nor the needs. Consumers' ignorance on the ingredients medication consumed (as patient), indirectly lead to a dependency upon the doctor's suggestion on the medication, which may cause a misleading on clear and fair information. Indeed, in some cases this problem became worst when malpractice happened by doctors who prescribed generic brand medication but claimed as patent medication. This will also definitely impact on the higher value price paid by patients as the doctor's benefit in return. Thus, this study will examine on issues: whether consumers as patients in health services (especially on obtaining the generic and patent medication) have obtained their rights in accordance with the Consumer Protection Law (UUPK), and whether distortion of patent and generic medication occurs to consumers as patients who utilizes health services. Empirical legal research methods are used to identify those problems, and it has concluded that consumers as patients who utilizes health services (especially on obtaining the generic and patent medication) have obtained their rights in accordance with the UUPK Article 4 letters a, b and c. As the results of this study conducted by distributing questionnaires to the public society as consumers spreaded in the Greater Jakarta area in total 204 (two hundred and four) respondents, it can be said that the distortion of patent and generic medication happened was carried out by the doctors itself.

Keywords: consumer protection, generic and patent medication, consumer protection law

I. INTRODUCTION

Medicine is one of the irreplaceable components in health services.[1] In other words medicine is an important element in efforts to maintain healthiness. However, speaking about drugs, if a consumer needs to consume a medicine, it shall not be based on the taste or needs of the consumer at a time. Consumer who consume medicine shall be based on the type of illnessuffered and/or which medicine havea better quality. [7] As medicine is irreplaceable component in health services, consumers' ignorance on the ingredients of medication consumed (as patient), indirectly lead to a dependency upon the doctor's suggestion on the medication prescribed, which may cause a misleading on clear and fair information on the medication consumed. This cause the consumers as patients, will pay the medication prescribed or suggested by the doctors and/or pharmacists at any price. In several practice, especially by medicine business actors (medicine manufacturers) seeing this as business opportunity between doctor and patient relation. Done by approaching the doctors to recommend and

prescribing their medicine products to the patients, and the doctors will receive some certain benefits in return.

Healthiness is one of well-being life elements that must be realized in accordance with the ideals of the Indonesian society as mandated in Article 28 H paragraph 1 of 1945 Constitution "every person entitled with the right to live in prosperity, physically and mentally, to live and get a good and healthy environment and have the right to receive health services".

1.1 An overview of health phenomenon

"Eko (age 33) seems quite sad that day. He staring blankly at the poster attached on the wall of one private-hospital in South Jakarta. He was worrying on the medicine prescription price at hundred thousand rupiahs for curing his herpes illness. He did not expect that the price could be that expensive. Frankly speaking, the doctor was prescribing him with a patent medicine for his illness. He did not understand that he should be able to require the doctor or pharmacist for anunbranded-generic medicine at affordable price. "I thought what has been prescribed by the doctor shall not be able to change for curing my illness", he said. If price become his concern, somewhat it was different with Angga (age 34). Angga do not mind with doctor's prescription with patent medication as it promising "efficacy" believed by him. "I'm a bit doubting with generic medicine as it took a long recoveryusually. Although I have to pay more expensive, patent medicine will impact on a fast recovery", Angga said.[2]

This phenomenon has shown us that there is a lack of understanding in society between the existence of generic and patent medicine, caused by lack of information received or given by related parties on generic and patent medicine. This problem was in-line with research done by Forid Morison, Eka K. Untari, and InarahFajriaty that said consumer or society understanding on cheap generic medicine has a low quality.[3] The condescending view of generic drugs clearly creates problems in health services in the country.[1] Indeed, in some cases this problem became worst when malpractice happened by doctors who prescribed generic brand medication but claimed as patent medication. This will also definitely impact on the higher value price paid by patients as the doctor's benefit in return. This poor understanding of consumer as patient on generic and patent medicine will harmful themselves on one hand, on the other hand the doctor and/or pharmacist will get a lot of profit at this situation.

This phenomenon makes researchers interested in raising this issue with title “Distortion of Generic and Patent Medicine in Consumer Protection Law Aspect”.

II. PROBLEM STATEMENT

Issues appointed at this research:

- a. Are the consumers as patients in health services (especially on obtaining the generic and patent medication) have obtained their rights in accordance with the Consumer Protection Law (UUPK)?
- b. Is the distortion of patent and generic medication occurs to consumers as patients who utilizes health services?

III. METHODOLOGY

Empirical legal research methods are used in this research.

Empirical legal research is a legal research method that uses empirical facts derived from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical and archival heritage.[2] The empirical legal research conducted in this study was carried out by taking empirical facts of the community, especially those who are spread out in Jabodetabek, amounting to 204 (two hundred and four) respondents. Empirical facts taken in the form of community rights as consumers, especially as stated in Article 4 letters a, b and c of UUPK. This research uses a normative approach as well, since this study examines the application of the rules in the UUPK regarding the distortion of generic and patent medicines circulated.

Distinguished by 2 (two) data sources in this research, primary data and secondary data, primary data is obtained directly from the society, while secondary data is obtained from library materials. [8] Primary data in this study were conducted by distributing questionnaires to the public in the Greater Jakarta area, which amounted to 204 (two hundred and four) respondents.

Secondary data consists of 3 (three) legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used in this study are the Consumer Protection Law (UUPK), the Health Law, and other related laws and regulations. Secondary legal materials used in this study are literatures in the form of consumer and patient books, health law books, and journals associated to the under studyproblem. Indonesian Large Online Dictionary is as tertiary legal material in this study.

Qualitative analysis is used as well, which is carried out by analyzing research problems that refer to the norms contained in the UUPK which are systematically compiled, so a comprehensive interpretation of the issues under study is obtained and conclusions are drawn from the problem.

IV. DISCUSSION

Consumer rights regulated in Consumer Protection Law (UUPK) Article 4: (4)

1. The right to comfort, security and safety in consuming goods and/or services;
2. The right to choose goods and/or services and to obtain said goods and/or services in accordance with the exchange rate and conditions and warranty promised;
3. The right to correct, clear and honest information about the conditions and guarantees of goods and/or services;
4. The right to be heard opinions and complaints on goods and/or services used;
5. The right to obtain advocacy, protection and efforts to resolve consumer protection disputes appropriately;
6. The right to consumer guidance and education;
7. The right to be treated or served properly and honestly and not discriminatory;
8. The right to obtain compensation, requital and/or replacement, if the goods and/or services received do not comply with the agreement or are not as intended;
9. Rights regulated in other statutory provisions.

Related to health services, especially medicine reception, consumer rights are focused on Article 4 letter a, letter b, letter c, letter d of the UUPK. Referring to these rights, 10 (ten) questions are given and responded by 204 (two hundred and four) respondents who are spread out in the areas of Jakarta, Bogor, Depok, Tangerang and Bekasi (hereinafter will be abbreviated as Jabodetabek). The initial assumption of this research is the distortion of patent and generic medicine among the society who are actually the consumers of both medicine types.

Based on the results of the questionnaire distribution of 10 (ten) questions to 204 (two hundred and four) respondents/society/consumers who use generic and patent medicines, the following results and summaries are obtained:

1. Q :Have you ever seen a doctor (both doctors practice outside and inside hospitals)? 204 responding
A :99% or 202 (two hundred two) answering “yes”; and 1% or 2 (two) answering “never”.
2. Q :When you go to the doctor and you are given medicine by a doctor, is the doctor explains the type of medication given? 203 responding
A : 80,8% or 164 (one hundred-sixty four) answering “yes, explained”; 13,3% or 27 (twenty-seven) answering “not explained”, and 5,9% or 12 (twelve) answering “explained, but did not understand”.

Based on these results, referring to Consumer Protection Law (UUPK) Article 4 letter “a”, the rights of consumers to get security and safety related to the use of patent and generic medicine are seen to have fulfilled their rights due to doctor information on the medicine given to the consumers themselves.

As the doctors explain about the medicine that will be consumed by patients, it can be ensured that the right of consumers to get security and safety in consuming medicine is guaranteed.

Related to the right to obtain correct, clear and honest information can be seen from the results of this study that consumers as patients get their rights as mandated by Article 4 letter "c" of the Consumer Protection Law (UUPK).

3. Q :Do you know what kind of medicine your doctor gives you? 204 responses

A :70% or 143 (one hundred-forty three) answering "yes, I know"; 29,9% or 61 (sixty-one) answering "I don't know".

4. Q :How did you find out what type of medication your doctor gave? 200 responding

A : 64% or 128 (one hundred-twenty eight) answering "from the doctor himself"; 22% or 44 (forty-four) answering "from Google"; 2% or 4 (four) answering "from social media"; 1,5% or 3 (three) answering "from pharmacist"; 0,5% or 1 (one) answering "from pharmacy"; 0,5% or 1 (one) answering "from a friend"; 0,5% or 1 (one) answering "from parent".

It is interesting that the understanding of medicine types is known by society from doctors' information. It means that the services provided by doctors regarding the right of consumers of information on a medicine consumption have been carried out properly.

This facts strengthened by data obtained from respondents education background, questionnaire distribution location, and respondents' age. In average, respondents' educational background was bachelor program by 25 out of 196 respondents, location spread out in Jabodetabek, and average age above 20 years old.

5. Q :Do you know of generics and patent medicines? 204 responding

A : 73,5% or 150 (one hundred-fifty) answering "yes, I know" and 26,5% or 54 (fifty-four) answering "I don't know".

The understanding of patent and generic medicine problem at first we assumed that many consumers did not understand this. Based on this research, the assumption has faded by itself as consumers understanding on these generic and patents medicine has been established well.

6. Q :Do you know the difference between generics and patent medicines? 204 responding

A : 66,7% or 136 (one hundred-thirty six) answering "yes, I know" and 33,3% or 68 (sixty-eight) answering "I don't know".

7. Q :If you were given a choice by the doctor regarding the medicine you would receive, what type of medication would you choose? 200 responding

A : 55% or 110 (one hundred-ten) answering "patent medicine", and 45% or 90 (ninety) answering "generic medicine".

The right to choose medication if related to UUPK, consumer rights Article 4 letter "b", from the results of this study, it appears that consumers/patients already understand/know about the patent and generic medicine. Therefore, when they have to choose they know they will choose the medicine that suit to their needs.

But in the other hand, if we relate to question number 4 to question number 7, another interesting facts that can be said, the distortion of patent and generic medicine is done by the doctor himself, means that the doctor is the one who distorts the facts related to the medicine that will be given to patients as consumers. They believe more in the efficacy of patent medicines than generic medication.

8. Q : Which medicine do you think is more effective? 197 responding

A : 67,5% or 197 (one hundred-ninety seven) answering "patent medicine", and 32,5% or 64 (sixty-four) answering "generic medicine".

If we relating question number 7 to question number 8, it can be seen that public distortion of patent and generic medicines, our initial assumption was that there is a lack understanding on public since patent medicine is expensive but it can make patients/consumers recover quickly. And for generic medicine, some initial assumptions:

- a) Generic branded/without logo only brand, this drug is almost the same as a patent drug, but the substance is the same as unbranded generic;
- b) Generic without brand, use generic name and use logo, the price is cheap and doubtful.

This is what needs to be clarified through this research that in fact patent medicines, branded generic or non-branded generic, are having the same efficacy or in other words the substance is the same, but what we assume is proven by the results of this study that the public/ consumers prefer patent rather than generic.

9. Q :Do you think it is necessary for a doctor to explain information about the drug to be given to the patient? 204 responding

A : 98% or 200 (two hundred) answering "necessary", and 2% or 4 (four) answering "not necessary".

10. Q :Have you ever experienced problems related to drugs given by your doctor? 204 responding

A : 26% or 53 (fifty-three) answering "ever", and 74% or 151 (one hundred-fifty one) answering "never".

V. CONCLUSIONS

Based on the descriptions in previous chapters, conclusions can be obtained as follows:

1. Consumers as patients who utilizes health services (especially on obtaining the generic and patent medication) have obtained their rights in accordance

with the Consumer Protection Law (UUPK) Article 4:

- Letter "a", which are the right to comfort, security, and safety in consuming goods and/or services (at 80,8% or 164 (one hundred-sixty four) respondents responding that the doctor has explained the medicine given to patient).
- Letter "b", the right to choose goods and/or services and to obtain goods and/or services in accordance with exchange value and conditions and warranty promised. (question: "If you were given a choice by the doctor regarding the medicine you would receive, what type of medication would you choose?"). 200 (two hundred) respondents responding at 55% or 110 (one hundred-ten) answering "patent medicine", and 45% or 90 (ninety) answering "generic medicine".
- Letter "c", The right to true, clear and fair information about the conditions and guarantees of goods and/or services. (question: "When you go to the doctor and the doctor give you medicine prescription, is he/she explains the type and ingredients of medication given?"). 203 (two hundred and three) respondents responding at 80,8% or 164 (one hundred-sixty four) answering "yes, explained"; 13,3% or 27 (twenty-seven) answering "not explained", and 5,9% or 12 (twelve) answering "explained, but did not understand".

2. From the results of this study conducted by distributing questionnaires to the public as consumers spread out in Greater Jakarta area totaling 204 (two hundred and four) respondents, it can be said that the distortion of patent and generic medicine that existed was carried out by the doctor himself. (question: "How did you find out what kind of medicine your doctor gave?"). 200 (two-hundred) respondents responding at 64% or 128 (one hundred-twenty eight) answering "from the doctor himself"; 22% or 44 (forty-four) answering "from Google"; 2% or 4 (four) answering "from social media"; 1,5% or 3 (three) answering "from pharmacist"; 0,5% or 1 (one) answering "from pharmacy"; 0,5% or 1 (one) answering "from a friend"; 0,5% or 1 (one) answering "from parent".

This shown that the doctor is the one who distorts the facts related to the drugs that will be given to patients as consumers. In result, patients as consumers believe more in the efficacy of patent medicines than generic medicines.

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