



# THE 3<sup>rd</sup> INTERNATIONAL CONFERENCE AND CALL FOR PAPER

**"Legal Development in Various Countries"**



**IMAM AS SYAFEI BUILDING**  
 Faculty of Law, Sultan Agung Islamic University  
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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2017

# **The 3<sup>rd</sup> PROCEEDING**

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“Legal Development in Various Countries”

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

# Welcome to Participants on International Conference

## "LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

*This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.*

**KEYNOTE SPEAKER:**  
**Prof. Henning Glaser**  
Thammasat University, Thailand

**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

**SPEAKERS :**

1. Prof. Shimada Yuzuru  
Nagoya University, Japan
2. Prof. Dr. Ruzian Markom  
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M  
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4. Assoc Prof. Dr. Ahmad Zaharuddin S.  
Universitas Utara Malaysia, Malaysia
5. Dr. Anis Mashdurohatus, S.H., M.Hum  
Sultan Agung Islamic University, Indonesia

Indonesia, September 05<sup>th</sup> 2017

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

# International Conference

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : **Faculty of Law UNISSULA**  
Semarang-Indonesia

**5**  
September  
2017

**FACULTY OF LAW**  
Sultan Agung Islamic University

**SPEAKERS :**

1. Prof. Shimada Yuzuru  
Nagoya University, Japan
2. Dr. Hilaire Tegnau, LL.M.  
Faculty of Law, Sorbonne University
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This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5<sup>th</sup> 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3<sup>rd</sup> Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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AND CALL FOR PAPER  
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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## PREFACE

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Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5<sup>th</sup> 2017

**Chairman of the Committee,**



**Dr. Anis Mashdurohatun, S.H., M.Hum**  
**NIDN : 06-02105-7002**

## GREETING FROM THE DEAN OF FACULTY OF LAW

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*As-salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5<sup>th</sup> 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

*Wassalamu'alaikum Wr. Wb.*

Semarang, September 5<sup>th</sup> 2017

Dean,



**Prof. Dr. Gunarto, SH, SE, Akt, M.Hum**  
NIDN.062004670

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# CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS

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## Background

The safeguarding of pharmaceutical preparations and medical devices as an effort in health development shall be undertaken to protect the public from harm caused by improper use of pharmaceutical preparations and medical devices and does not meet quality, safety, and benefit requirements.<sup>1</sup>

Considering the importance of pharmaceutical preparations<sup>2</sup> in meeting the needs of healing and health care is very significant, consumers or users must more carefully choose pharmaceutical preparations, given the existence of free market and the advancement of science that produces technology that will bring a country to the welfare, prosperity and prosperity for its people. But if knowledge is not accompanied by a sense of humanity, it can affect the context of adverse and negative behavior. Concerns arise an act of breaking the law or new criminal acts in the field of science that developed the dominant effect of disturbance peace, order, security, tranquility and even resulted in material and immaterial losses for the welfare of the community.

One of the services that can not be separated from acts of unlawful acts often occurs repeatedly until the present is a pharmaceutical violation of medicine.<sup>3</sup>

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<sup>1</sup>Peraturan Pemerintah Republik Indonesia Nomor 72 Tahun 1998 tentang Pengamanan Sediaan Farmasi dan Alat Kesehatan (Lembaran Negara Republik Indonesia Tahun 1998 Nomor 138, Tambahan Lembaran Negara Republik Indonesia Nomor 3781)

<sup>2</sup> Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 144, Tambahan Lembaran Negara Republik Indonesia Nomor 5063) "Sediaan Farmasi" adalah obat, bahan obat, obat tradisional, dan kosmetika.

<sup>3</sup> Ibid "Obat adalah bahan atau paduan bahan, termasuk produk biologi yang digunakan untuk mempengaruhi atau menyelidiki sistem fisiologi atau keadaan patologi dalam rangka penetapan diagnosis, pencegahan, penyembuhan, pemulihan, peningkatan kesehatan dan kontrasepsi, untuk manusia."

Literally and however medicine is toxic, only with a fixed dosage or dose and according to a definite use will be useful and useful. When using drugs indiscriminately and not according to their designation, not following the rules of use would be detrimental, causing unwanted side effects, poisoning, addiction, anaphylaxis shock can even cause death all of it will be fatal to health.

Starting with health development efforts prioritized efforts to improve public health are in the prevention of disease, healing of disease, and health restoration, to the development of integrated and sustainable health system, and implemented with the government and society in realizing health development in Indonesia. With this, of course, affect the economic development, such as trade.

Trade, according to Marwati Djoened is an economic activity that connects between producers and consumers, as a distribution activity, trading ensures the distribution and suppliers through market mechanisms<sup>4</sup>. Business actors in this case health workers and health services in the field of distribution or trade of a good or service has a great influence in the implementation of development in the field of health and economics.

Seeing this is one of the health workers and health care facilities in charge of or who have the responsibility of distribution and sales in the field of pharmaceuticals<sup>5</sup>, especially drug is pharmacists, and pharmacy facility in a drugstore.<sup>6</sup>

One of the efforts in the form of healing is done by people who are sick. People who make healing efforts can do so by going to the doctor, health care facilities such as hospitals, community health centers (puskesmas), pharmacies or drugstores as the next step in doing the healing effort.

The doctor will check and diagnose the disease, and then the patient will get a prescription<sup>7</sup> containing the list of drugs needed for the cure of the disease.

In order to obtain these medicines patients should come to the pharmacy where pharmaceutical work and pharmaceutical supplies are distributed which the only place is believed to be the place to obtain prescription medicines.

The pharmacy has the authority to provide medicine, it is in accordance with the duties and functions of the pharmacist that is the manufacture, processing, form conversion, mixing

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<sup>4</sup> Gunawan Widjaya, Hukum Bisnis, Jakarta: PT. Raja Grafindo Persada, 2005)

<sup>5</sup> Peraturan Pemerintah Republik Indonesia Nomor 51 Tahun 2009 tentang Pekerjaan Kefarmasian (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 123, Tambahan Lembaran Negara Republik Indonesia Nomor 5044) "Apoteker" adalah sarjana farmasi yang telah lulus dan telah mengucapkan sumpah jabatan apoteker.

<sup>6</sup> Peraturan Menteri Kesehatan Nomor 9 Tahun 2017 Tentang "Apotek" adalah sarana pelayanan kefarmasian tempat dilakukan praktek kefarmasian oleh Apoteker."

<sup>7</sup> Ibid "Resep adalah permintaan tertulis dari dokter, dokter gigi, dokter hewan kepada Apotek, baik dalam bentuk kertas maupun elektronik untuk menyediakan dan menyerahkan sediaan farmasi dan/atau alat kesehatan bagi pasien."

and delivery of drugs and medicinal materials. In carrying out the service to the community, the pharmacy is done by pharmacists and pharmaceutical technical personnel who are also assisted by the presenter.

One type of delivery of medicines and sold at pharmacies and the responsibility of pharmacists are narcotic drugs and G or K drug lists. There are also other types of drugs such as over-the-counter drugs, limited free drugs, mandatory drugstores and psychotropic drugs. Narcotic drugs and drug lists G or K is a dangerous type of hazardous drugs when given freely will have a negative impact on the consumer.

Based on the Regulation of the Minister of Health of the Republic of Indonesia Number 213 / Menkes / IV / 1985 Regarding List of G or K drugs, it is determined that G or K drugs are only sold in pharmacies and must be prescribed by a doctor. To obtain a drug list of G or K and narcotic drugs then the patient must get a prescription as a guarantee of certainty that the patient must indeed take the drug for his recovery. Because not all diseases healing using this type of drug and only certain types of diseases that healing using drug list G or K and narcotic drugs. But pharmacies in this case represented by pharmacists or pharmaceutical technical personnel often provide the drug with no prescription or just by prescription coffee. This is due to a lack of public knowledge about the use and means of obtaining drug lists of G or K and narcotic drugs. This is also exacerbated by the lack of supervision by relevant agencies ie the Food and Drug Supervisory Agency and the local Health Office.

In this regard, the public must be protected from the circulation of drugs or medicines that do not meet the quality, safety and efficacy requirements or the benefits, it becomes an important existence today, because the drug is one of the irreplaceable components in health services, so the drug should not be treated as a mere economic commodity, but drugs must be guaranteed the availability, equity, affordability, safety, efficacy and quality of the drug in circulation and protect the public from false use and drug abuse.

The object of this study is the only service to G or K drug list of at health service facility that is in pharmacy. Now the sale of G or K drug list without a doctor's prescription is done by many pharmacies. This is not in accordance with the procedures and legislation in practice the pharmacists often provide the drug with no prescription. Delivery of narcotic drugs without a doctor's prescription by pharmacies is on the basis of buying and selling of pharmacies made by pharmacists with buyers. This transaction is done by the pharmacist giving the G or K drug list to the buyer and the buyer giving the money to the pharmacy,

without thinking of the harm and consequences that can be generated from the use of the G or K drug list.

The sale of G or K listed drugs should be prescribed by a doctor, and can not be traded freely, given the danger posed.

The impact of drug sales on G or K lists without a doctor's prescription can also be misused by teenagers. However, until now there has never been a realization of the legal liability of pharmacies on the sale of drug lists G or K without a doctor's prescription, given the contraindications of these drugs are very dangerous, especially the drugs referred to drink without the dose determined by the doctor. This can be seen from the sale of G or K drug list includes the type of drug Antibiotics when the drug is unattended or administered without a prescription can cause harm to the body and may result in antibiotic Resistance is a condition when a strain of bacteria in the human body becomes resistant (immune) against antibiotics. This resistance develops naturally through random evolution mutations and can also be engineered by improper use of antibiotic medications resistance (immune), as well as the type of drug Tramadol as a painkiller (analgesic) drugs given without a prescription can cause harm to the body resulting in a reaction dependence and disturbed effects of the balance of the body, the type of cough medicine such as Dextromethorphan if this drug is given without a prescription will cause unwanted things such as drug dependence, because it can cause sedative effects that cause excessive sleep effects. The three examples of drugs are in addition to the dependence on the drug, a more dangerous thing is death.

In the post-free market era where the state of local government can not control the sale of drugs to the hands of the community, because it can be seen with the economic reality up and down the rupiah price. This also results in drugs whose raw materials use imported materials so that the price of the drug becomes increased.

The number of pharmacies so that makes the competition between pharmacies and trying all pharmacies to sell drugs as much as possible so that pharmacies do not experience losses and get a very significant profit, whereas the function of health services itself as a social function.

Conditions like these that become issues in the community so that pharmacies often make the sale of drugs, especially drugs list G or K with no prescription. The reason given is for pharmacies to keep earning. Moreover, the price of drugs today is very expensive, all this is done so as not to compete with other pharmacies and also with drug stores that today can sell the same drug with the pharmacy only at the drug store can not receive a doctor's prescription, because it is not the presence of pharmacists and only its authority are



pharmaceutical technical personnel. Case studies of drug stores are localized at Jalan Pramuka Jakarta all types of requested drugs must exist based on demand even if drugs circulate are prone to the circulation of counterfeit drugs of various types and brands.

Lack of supervision as well as the interests of people who have high economic strata is caused G or K drug list in pharmacies not according to procedure. But until now there has never been any realization of legal liability by pharmacies and government policy efforts in overcoming the distribution or distribution in the sale of over-the-counter hard drugs without a doctor's prescription.

Based on a brief description of the above background, the authors are interested to examine further issues: "Criminal Policy in Legal Accountability against Health Services Facility and Health Personnel in Distribution and Sales of Hard Drugs for Sale without Prescription Doctors."

### **Problem Formulation**

Based on the research background that has been described above, it can be identified several problems as follows:

1. How is Legal Accountability Against Health Service Facilities and Health Manpower in the Distribution and Sale of Hard-Drugs Sold Free Without a Doctor's Prescription?
2. How is the Criminal Policy Against the Facilitation of Health Services and Health Personnel in the Distribution and Sale of Hard-Drugs Sold Free Without a Doctor's Prescription?

### **Discussion**

#### **1. Legal Accountability Against Health Service Facilities and Health Personnel in Distribution and Sales of Hard-Drugs Sold Free Without a Doctor's Prescription.**

In the theory of legal liability are known several principles of legal liability, which in general, can be distinguished as follows:

- (1) Legal liability based on "error: (liability based on fault);
- (2) Legal liability based on "presumption of liability";
- (3) Legal liability based on Presumption is always not accountable (presumption of non-liability);
- (4) Legal liability under strict liability; and

(5) Legal liability based on limitation of liability.<sup>8</sup>

Drugstore under Article 2 of Government Regulation No. 25/1980 is a place of professional devotion of a pharmacist, as a pharmaceutical Facility that performs compounding, deforming, mixing and delivering drugs or medicinal materials, and as a means of distributing pharmaceutical supplies that must disseminate the necessary medicines of society widespread and evenly distributed. Where in the perspective of Government Regulation No. 25 of 1980, pharmacies are no longer as trading business managed by a business entity, CV, Firma or PT. And pharmacy is a means of health services in the field of pharmacy, the management and permit pharmacies by the government submitted Pharmacists. But in the empirical level, the pharmacy is considered a corporation, because in the pharmacy is built an organizational structure in which there are directors, administrators, large cashier, assistant head, head team, pharmacist assistant, prescription, cashier, and messenger. As a corporation make a sale and purchase of drugs with patients (consumers).

The pharmacy as a corporation, in the perspective of civil law, state administration law, criminal law and consumer protection law, can be applied to the doctrine of Corporate Liability, which in principle has the same meaning as Vicarious Liability. According to this doctrine, the institution (corporation) which oversees a group of workers has a responsibility to the personnel it employs. For example, in legal relationships between pharmacies and drug buyers (patients), all responsibility for pharmacist work of pharmacy managers, chief assistants, team chiefs, pharmacist assistants, paymasters, administrators and messengers is the responsibility of the pharmacies in which they work.

This doctrine is called an ostensible agency. That is, a corporation (such as a pharmacy) suggests to the community (the patient) that the person working there (the owner of the pharmacy facility, the pharmacist's pharmacist, the pharmacist's assistant, the prescribed presenter, the messenger, etc.) are employees subject to orders / coordination of the corporation, so that it is sufficient for the corporation to be responsible vicariously with the drug buyer, as its consumer<sup>9</sup>).

In the context of the distribution of narcotics and G or K drug list in case of violation of law harmful to others, the pharmacy can be criminalized to the court with the provisions of article 1365 Civil Code and article 1367 Civil Code, can also be prosecuted criminally by using the Law Criminal and Law No. 8 of 1999 on Consumer Protection (UUPK).

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<sup>8</sup> Shidarta, *Hulum Perlindungan Konsumen di Indonesia*, Jakarta, PT. Gramedia Widiasarana Indonesia (Grasindo), 2004

<sup>9</sup> *Ibid*

In Article 61 Consumer Protection (UUPK) determines that criminal prosecution can be done to business actors and / or administrators. Understanding Business Actors in article 1 to 3 Consumer Protection (UUPK). has been granted limitation / definition, that is Business Actor is any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to organize activities business in various economic fields. While who is meant by "board" has not been described in Consumer Protection (UUPK). Therefore in the application level can cause legal problems. Who is an organizer in a pharmacy?

According to Government Regulation No. 25/1980 in conjunction with Article 3 of Regulation of the Minister of Health No. 9 of 2017 on Pharmacies, determining that those who can afford pharmacies are:

- Pharmacists may establish Pharmacies with their own capital and / or from individual and corporate capital owners;
- In the case of Apotker who established Pharmacies in cooperation with the owner of capital then the work of pharmaceutical must be done fully by the Pharmacist concerned.

Pharmacists who use the means of other parties may occur the entire capital belonging to another person or the capital of a part belonging to the Pharmacist and the other party.

The pharmacy is considered as a corporation, because in the pharmacy is built an organizational structure in which there are directors, administrators, large cashier, assistant head, head team, pharmacist assistant, prescription, cashier, and messenger. As a corporation conducts a drug sale and purchases transaction with the patient.

Pharmacy Management becomes the duty and responsibility of the Pharmacist. What if a pharmacy corporation is created under a cooperative agreement between the Pharmacist and the Capital Owner, where the pharmacist acts as the head of the pharmacist is still a Pharmacist. If there is a violation of the law, who will be responsible for the case. The capital owner can be defined as an organizer, the chief assistant, paymaster, presenter, Pharmacist assistant may be referred to as a legally accountable board.

In the doctrine of criminal law, three (3) possible liabilities are known:

- Only persons (natural persons) who can commit criminal acts and are held accountable;
- Persons and / or corporations may commit a crime. In the case of a corporation as the perpetrator, it is the board responsible for liability;

- Persons and / or corporations may be held liable for criminal acts committed.<sup>10</sup>

## **2. Criminal Policies on Health Service Facilities and Health Personnel in Distribution and Sales of Hard Drugs For Sale Without Prescription Doctors**

### **1) Criminal Law Policy**

Definition of Penal Policy (Penal Policy)

The term policy "is taken from the term "policy" in English or "politiek". According to Marc Ancel, the policy of criminal law is both a science and an art which in the end is practical to enable the rule of positive law to be better formulated and to provide guidance not only to lawmakers, but also to courts that apply the law and also to organizers or executing court decisions. Barda Nawawi said that in essence the problem of criminal law policy is not merely the engineering work of law which can be done by normative and systematic juridical dogmatic. In addition to the factual juridical approach it can also be a comprehensive approach from other social science disciplines and an integral approach to social policy and national development in general. He also proposed a pattern of relationships between penal policy and crime prevention efforts, he said that crime prevention and prevention must be done with an integral approach and there is a balance between penal and non penal. Prevention and crime approaches with penal sections are the penal policies or penalties of the Law Efficiency policy, which function through several stages such as the Formulation stage (legislative policy), Applications (judicial policy and executive policy (administrative policy).

Sudarto, once posed three meanings regarding criminal policy or criminal politics, as follows:<sup>11</sup>

- 1) In a narrow sense, criminal policy is the whole of the principles and methods that form the basis of reaction to a criminal offense in the form of a criminal.
- 2) In a broad sense, criminal policy is the overall function of the law enforcement apparatus, including the workings of the courts and the police.
- 3) In the broadest sense, criminal policy is the whole policy undertaken through legislation and official bodies, aimed at upholding central norms in society.

In an attempt to combat crime, criminal policies can be spelled out in various forms, including:

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<sup>10</sup> Sudarto, "Suatu Dilema dalam Pembaharuan Sistem Pidana Indonesia" pidato pengukuhan di Fakultas Hukum UNDIP, Semarang 21 Desember 1974, dalam Beberapa Guru Besar Berbicara tentang Hukum dan Pendidikan Hukum; Kumpulan Pidato-pidato Pengukuhan (Bandung, Alumni, 2010), hal. 68-69; Sebagaimana dikutip oleh Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, PT. Citra Aditya Bakti, Bandung, 2003, hal.289.

<sup>11</sup> Sudarto, *Kapita Selekta Hukum Pidana*, Bandung: PT. Alumni, 1981, h. 113-114, lihat juga dalam Sudrto, *Hukum dan Hukum Pidana*, Bandung : PT. Alumni, 1981, h. 161, lihat juga adalah : Barda Nawawi Arief, *Bunga Rampai Kebijakan Citra Aditya Bakti*, 1996, h. 1

First, is repressive using penal means or often called the criminal justice system (criminal justice system). Secondly, endeavor with efforts by using non-penal means. Third, utilize efforts to form public opinion about crime and socialization of law through mass media widely (this can be incorporated into non penal efforts).

The use of these non-penal measures has a key and strategic position and or this crime should be more prominent and prioritized than criminal eradication.

The use of these non-penal measures has a key and strategic position and or this crime should be more prominent and prioritized than crime prevention.

The United Nations VII Congress of 1985 in the congressional documentary on: crime prevention in the contexts of development, (ACONF.121 / L9I document, justifies this by stating the following: that eradication efforts of causes and conditions that give rise to crimes must is a fundamental prevention strategy.

Ariief Gosita also agrees with the above statement, which among others stated that<sup>12</sup>

1. Preventive action is better than repressive and corrective actions. Prevention efforts do not necessarily require an elaborate organization and bureaucracy that can lead to an adverse bureaucracy / abuse of power / authority.

Prevention efforts can be done individually and do not necessarily require expertise as in repressive efforts. For example, keep yourself from becoming a victim of criminalization, do not forget to lock homes/vehicles, installing dark forged lights and others.

2. Prevention does not have to cause negative consequences such as stigmatization of alienation, suffering in various forms of human rights abuses, hostility, hatred against each other, which can lead to, hatred against one another, which can lead to direction of rividism.

Prevention efforts can also strengthen unity, harmony and increase the sense of responsibility towards fellow members of the community.

Thus prevention efforts can help people develop people of state and society. Therefore, criminal policy in addition to repressive can be done through the criminal justice system (penal approach), can also be done through non-penal suggestions through various preventive efforts without having to use the criminal justice system (prevention without punishment). For example, community mental health efforts, legal counseling, civil law reform, administrative law, and influence the public view through mass media and so on.

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<sup>12</sup> Ariief Gosita, dikutip dari A. Kaim Nasution, *Kriminilitas dan Pembangunan, Pencegahan Dan Pengendalian*, Prisma, No. 5 Mei 1982

Based on the above description, the criminal policy (crime prevention policy) should be pursued with an integral approach / policy, either by using penal means or by non-penal means in achieving criminal political objectives.

## **2) Criminal Policies for the Suppression of Distribution and Sales of Hard Drugs**

Crime against drug circulation without a prescription today is still a concern. The negative effects of circulation are clear and dangerous especially for the health of drug users, so the reasonable focus is on efforts to overcome and control the presence of such drug circulation.

Therefore, policies in addressing issues related to economic crimes including violent drug abuse crimes must be pursued by a criminal politics approach. Related here besides legal issues (criminal, civil and administrative) is also a matter of moral ethics.

Thus, in formulating criminal politics of drug trafficking that is sold freely without a doctor's prescription can be used penal and / or non penal means.

### **(1) Use of Penal Facility**

Crime prevention efforts through the penal path more emphasis on the nature of repression (oppression / eradication / crushing) after the crime occurred.

Penal efforts are essentially the same as criminal law enforcement in the sense of an attempt to make the criminal law work or work concretely in dealing with crime.

This is especially true with the application of additional criminal and disciplinary measures as well as to be effective and appropriate as well as to include economic and administrative sanctions that directly touch the network or root of crime.

Based on these substantives, the phenomena and strategic needs of urgency in order to realize and overcome and anticipate the distribution, distribution and sale of over-the-counter hard drugs without a prescription at this time need to look at the factors that dominantly do the following approaches:

- a. Functional Aspects;
- b. Aspects of Abuse;
- c. Information Aspects; and
- d. Policy Aspects of Manufacturers.

#### **a. Functional Aspects**

Functional Aspects as a business actor such as health workers (pharmacists, pharmaceutical technical personnel) and non health workers (owners of capital, presenter,

servant or corporate member of the company (pharmacy) the dominant wheel of pharmaceutical drug rotation in pharmacy (pharmacy) vulnerable and may lead to complaints and cases related to cases in the service of distribution and hard drug sales that often occur from:

- (a) procurement;
- (b) storage;
- (c) compounding; and
- (d) submission.

#### b. Aspects of Abuse

Aspect Abuse is often the case done by patients or communities by buying hard drugs without a prescription.

Example;

- (a) the patient or the community directly purchases the drug to a pharmaceutical facility (pharmacy) under the pretext of buying the drug.
- (b) the patient or the community sometimes copies a doctor's prescription containing hard drugs with the intention of making a profit at a low price.
- (c) replace containers, containers or similar colors to deceive.

#### c. Information Aspects

Aspects of Information in the field of pharmacy is the role of information and communication technology in the field of medicine in supporting patient protection. Therefore, information can improve and optimize the treatment process of the results achieved and the management of drugs effectively and efficiently and safely. In its information, pharmaceutical and health practice also emphasizes the importance of consumer health informatics as an integral part of the drug system information as well as the overall health information system, the information of drug treatment consumed is the patient's rights protected by legislation, for example information on ways to use good and correct medicines or how to make drugs true and clean.

#### d. Policy Aspects of Manufacturers

Aspects of Producers Policy, this is where the obligations and responsibilities of government (government) stakeholders in which the producers of the drug should be monitored and evaluated related policies made by the producer's policy whether the policy

made in accordance with regulations or violate the provisions that have been set for example related information:

- (a) Vacuum supplies from producers without notice, whereas patients or communities need the drug.
- (b) Drugs that have not been produced yet but the healthcare staff, consumers or patients of the community are not given information that the necessary drugs are not circulated.
- (c) Depreciation, expansion, reduction and addition of doses for a product issued by the manufacturer.
- (d) Doctors prescribing doctors for drugs that are no longer registered by the Ministry of Health so that patients or communities seek.
- (e) The producer has no authorization and is closed without notice.

## (2) Use of Non Penal Suggestions

The use of Non Penalty Suggestions is basically an endeavor through various crime prevention efforts without having to use the prevention without punishment system.

This seems to be the difference between penal and non penal means, ie, the prevention of crime through the penal path focuses more on the repressive nature (oppression / eradication / crackdown) after the crime occurs, while the non-penal path focuses on the preventive nature (prevention / deterrence / control) ) before the crime occurred.

This non-penal enterprise can cover a very wide range of sectors throughout social policy. The main purpose is to improve certain social conditions, but indirectly have a preventive effect on the occurrence of crime.

The use of these non-penal measures has a key and strategic position and or this crime should be more prominent and prioritized than crime prevention.

Seeing above mentioned crime prevention through non-penal path is more a precautionary measure for the occurrence of crime, and then the general objective is to handle the factors conducive to the occurrence of crime. Conducive factors include, among other things, the problem of problems or social conditions that directly or indirectly can cause or grow the subcategory of crime.

In principle in anticipating the crime against the distribution and sale of hard drugs without a prescription the doctor should have a look and see in general and done a thorough and clear review. This means that all relevant and relevant phonemes that are criminogenic factors must be demonstrated and questioned and taken into account. Not to forget this to see



and pay attention to the relationship between all the phenomena that are related, influence each other, do what is clear enough.

Based on these substantives, the phenomenon and the strategic importance of the urgency in order to achieve and realize the prevention and anticipation of distribution, distribution and sales of hard drugs are sold freely without a prescription in the current need to do concrete steps and synergize to the future trip and will come full with the aspiration to achieve the development of health and welfare of society and the benefit of together, such as make efforts approaches as follows:

- a. Society participation;
- b. Private Participation;
- c. Government Participation;
- d. Education and Knowledge;
- e. Socio-economic condition of the community; and
- f. Information Systems.

a. Society participation

Increased Public Participation has a significant role, so that a crime eradication plan will succeed. The community should be directed to a better partner in combating crime, because the community itself is a dominant force that can not be ruled out in preventive and participatory objectives such as reporting on the sale of over-the-counter hard drugs.

b. Private Participation

Increased Private Participation plays an important role importantly, Private Companies in drug production should not promote openly hazardous products should be in accordance with the provisions of legislation.

c. Government Participation

Increased Government Participation has a significant and important role, especially in supervision, guidance and control of health facilities, especially to pharmacies in accordance with the planning, prioritizing monitoring and evaluation of preparation, planning, implementation, follow-up problems and optimization of human resource empowerment of Civil Servant Investigator (PPNS).

d. Education and Knowledge

Improving Education and Knowledge, education here has a very important and strategic enough, therefore the problem of distribution and sales of hard drugs without a doctor's prescription is still considered foreign by some service users, for that through

education from both the basic level to college / academics expected gradually given the character of positive thinking patterns so that the future has an established intellectual who knows which one is good which is not good and can describe in particular the problem of usage and use of appropriate drugs in accordance with applicable laws. Coaching the synergy of either physical or spiritual as a balancing of life is done in order to possess a strong mental and sturdy both ethic and logical thinking.

e. Socio-Economic Condition of Society

Increased Socio-Economic Condition The community has a strategy to prevent the emergence of drug sales, because amid the current consumer culture, has also encouraged people to own an object without further consideration, whether the drug is genuine or fake, what according to its usefulness and function or its side effects, which is important to be affordable by its economic capabilities. Especially with increasingly sophisticated technology, the original and fake drug in terms of appearance is not much different and the conditions are so used by entrepreneurs to forge. With the increasing socioeconomic community the tendency of people to prefer cheap goods by tolerating the quality is minimal and not appropriate pharmaceutical standards.

f. Information Systems

Related to Information System Improvement, drug information can be reached by means of various parties that must synergize mutually support, especially for the protection of the law either service users such as patients or buyers of the community (consumers), business actors, government, academia and NGOs.

It is underlined that no matter how the issue of distributing and selling hard drugs without a doctor's prescription is not a new thing for the service seller or the recipient of services, the core issue is the dissemination of understanding of the duties and functions, the importance and role of health workers (Pharmacists, Pharmaceutical / Pharmacist Assistant) and Non-Health Personnel (owner of capital, Recipient and Servant).

In the framework of human resources development through adequate information system such as the importance of conducting legal counseling related to health law, especially drugstore to bureaucracy apparatus or law enforcement to further improve the professionalism in carrying out the task.

Observations so far indicate that understanding of the problem may affect the level of understanding of the awareness of the drug users into consumption habits. Moreover do not understand when and how to consume good medicine and correct according to usage and rule

wear. This situation is quite worrying and concerned about the lack of information and understanding the problem of consumed drugs.

Along with these steps, the understanding and information on drugs, also need to be directed towards the community to realize its rights and obligations in its interest as a service user, and the community does not do much if deceived or fooled by counterfeit or unsafe and quality drugs.

In principle what is described above, is a strategic step to prevent the emergence of abuse of drug distribution, especially hard drugs.

## **CONCLUSION**

Based on the joint commitment between the government and all parties concerned to combat the crime it must be in accordance with political will or government policy, drug trafficking free of drugs without a doctor's prescription can be used penal and / or non penal means.

Underlined the abuse of hard drug sales without a doctor's prescription in pharmacies conducted by legal subjects whether health personnel or non-health workers was due to lack of information systems and supervision for so long, honestly acknowledged, that monitoring and evaluation of less well-targeted Agency for Drug Control and Food, Health Office or professional organization institution as joint duty in supervision, guidance and control as mandated in legislation and also lack of cooperation with law enforcement officer that is Police.

However, these efforts should be optimized and enhanced because the central government, provincial and district governments and municipal governments are basically most concerned and even accountable for the implementation of legislation and implementation. The manifestation of adagio that "everyone is considered to know the law", it is not enough to only enact a law that has been stipulated and enacted in the State Gazette but it is necessary to disseminate the understanding of material or substance of legislation to the public including the government apparatus, law enforcers without exception, and utilizing the role of mass media is the best solution and published legal products in the legal information documentation network system in Indonesia.

Service users (patients and communities) must obey the rules and emphasize here the existence of a culture of legal obedience and change the behavior of society itself.

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