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The Criminal Offense of Gratuities Committed by Pharmaceutical Companies Toward Private Practicing Physicians

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ABSTRACT

The practice of providing sponsorships by pharmaceutical companies to private physicians has raised significant ethical and legal concerns, particularly when such sponsorships are intended as compensation for the use of specific pharmaceutical products. Although, normatively, Law Number 20 of 2001 on the Eradication of Corruption Offenses limits the subject of gratuity to civil servants and state officials, private physicians nonetheless hold professional responsibilities that can affect the public interest. This study employs a normative juridical method, utilizing statutory and conceptual approaches, and relies on literature review as the primary data collection technique. The findings indicate that transactional sponsorships to private physicians may be classified as gratuities if they fulfill the elements of unlawful conduct and intent (actus reus and mens rea), even though such actions are not explicitly regulated under the Anti-Corruption Law. Therefore, the expansion of legal constructions through consumer protection frameworks, professional ethics, and regulatory reformulation is essential to ensure effective and equitable law enforcement against gratuity practices in the healthcare sector.

A. INTRODUCTION

Indonesia, as a state governed by the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution holds a strong commitment to upholding the supremacy of law in all aspects of national life. One of the most significant challenges in enforcing the law in Indonesia is the prevalence of corruption, which has infiltrated critical sectors, including healthcare. Corruption not only inflicts financial losses upon the state but also erodes morality and undermines public trust in professional institutions. In this context, gratuities constitute a frequently abused and ambiguous form of corruption, particularly in the relationship between pharmaceutical companies and medical practitioners, especially private physicians.

Gratuities, as defined in Law Number 20 of 2001 amending Law No. 31 of 1999 on the Eradication of Corruption, encompass gifts in a broad sense, including money, goods, rebates, commissions, travel facilities, free medical treatment, and other benefits. When such offerings are made to state officials or public servants in relation to their official duties, they are categorized as bribes. However, the issue becomes more complex when gratuities are provided to parties outside the scope of public service, such as private physicians.[1]

In practice, it is not uncommon for pharmaceutical companies to engage in unethical collaborations with private doctors through sponsorships, commissions, or other forms of gifts in return for the use of certain pharmaceutical products. These practices are often disguised as promotional or training expenses, yet they have the potential to compromise physicians' medical independence in determining the most appropriate treatment for patients. This clearly contradicts the fundamental principle of medicine, which prioritizes patient safety above all else.[2]

[1] Romli Atmasasmita, Sekitar Masalah Korupsi, Bandung: Mandar Maju, 2004, p. 53

[2] Trini Handayani, Tinjauan Medikolegal terhadap Perbuatan Gratifikasi Sponsorship oleh Perusahaan Farmasi, Jurnal Hukum Kesehatan Indonesia, Vol. 1, No. 1, 2021, p. 13

This issue is further highlighted by findings from the Corruption Eradication Commission (KPK), which uncovered a flow of funds amounting to IDR 800 billion from pharmaceutical companies to over 2,000 doctors in Indonesia both civil servants and private practitioners over a three-year period. Most of these funds were disguised as sponsorship for scientific or training activities, but were not channeled through official institutions such as hospitals or professional associations. This raises serious concerns about conflicts of interest and breaches of medical ethics.[3]

In the realm of medical professional ethics, every doctor is bound by the Indonesian Medical Code of Ethics (KODEKI) and their professional oath to perform their duties independently and to refrain from accepting compensation or influence from external parties that may affect their objectivity. Any violation of this principle constitutes an ethical breach that may lead to professional sanctions or even criminal penalties, depending on the nature and consequences of the act.[4]

Normatively, the structure of Indonesian criminal law does not yet provide legal certainty regarding the categorization of gratuities received by non-civil servants. In this case, private doctors who accept gratuities from pharmaceutical companies operate within a legal grey area that is not explicitly covered by current criminal regulations on gratuity. Nevertheless, some legal scholars argue that if such gratuities cause harm to consumers or patients, they may be prosecuted under the Consumer Protection Act No. 8 of 1999.[5] Furthermore, regulations issued by the Ministry of Health, such as Ministerial Regulation No. 14 of 2014 and No. 1 of 2022, explicitly prohibit gratuity practices within healthcare services, whether directed at civil servant or private doctors. These regulations mandate that all forms of sponsorship be

[3] Joko Panji Sasongko, KPK Analisa Dugaan Aliran Dana Rp800 Miliar untuk Dokter, CNN Indonesia, accessed on February 2, 2025, at 08:46 AM WIB. (Link: https://www.cnnindonesia.com/nasional/20160917091559-12-158973/kpk-analisa-dugaan-aliran-dana-rp800-miliar-untuk-dokter)

[4] Hariadi R., Sorotan Masyarakat terhadap Profesi Kedokteran, Bandung: Citra Aditya Bakti, 2010, p. 234

[5] Bambang Waluyo, Penegakan Hukum di Indonesia, Jakarta: Sinar Grafika, 2016, p. 112

routed through institutional channels, not directly to individual healthcare providers. This serves as an essential foundation for constructing an administrative and ethical legal approach to regulate the relationship between healthcare professionals and pharmaceutical companies.[6]

Theoretically, criminal liability for private doctors receiving gratuities can be examined through the lens of the doctrines of *actus reus* and *mens rea*. If it can be proven that a doctor knowingly or intentionally sought personal gain by prescribing medication in exchange for certain benefits, then the elements of criminal culpability are satisfied.[7] However, the application of these doctrines in practice remains challenging, particularly in proving intent and establishing a causal link between the gratuity and the medical decision made. Moreover, the lack of reporting and oversight exacerbates the issue and hampers law enforcement efforts to uncover such cases. Therefore, a deeper legal analysis is necessary to formulate clear boundaries concerning the criminal liability of private doctors in gratuity related offenses.

The primary issue this study seeks to examine is whether the acceptance of sponsorship by private physicians can be classified as a criminal act of gratuity under Indonesian criminal law. This research also aims to identify the legal basis that can be used to prosecute such practices and determine the applicable form of criminal liability. Thus, this study is expected to contribute both theoretically and practically to the development of a legal system that is fair, transparent, and protective of patients rights within the healthcare sector.

B. RESEARCH METHOD

This research employs a normative juridical method, which focuses on the analysis of written legal norms and relevant legal literature. The approaches applied include the statutory approach and the conceptual approach, aimed at examining legal provisions concerning gratuities, corruption offenses, and criminal liability within the context of private

[6] Ministry of Health Regulation No. 1 of 2022, Article 62

[7] Chairul Huda, Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan, Jakarta: Kencana, 2006, p. 79

medical practitioners. Primary legal materials used in this study consist of statutory regulations, such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 29 of 2004 on Medical Practice, and relevant regulations issued by the Ministry of Health. Secondary legal materials include books, scholarly journals, and expert opinions, while tertiary legal materials comprise legal dictionaries and encyclopedias. Data collection was carried out through literature study, and data analysis was conducted using a descriptive-qualitative method by correlating applicable legal norms with the issue of gratuities involving pharmaceutical companies and private physicians.

C. RESULTS AND DISCUSSIONS

Private Physicians Receiving Sponsorship in the Perspective of Gratuity as a Criminal Offense

The practice of pharmaceutical companies providing sponsorships to private physicians has drawn increasing attention from the public and law enforcement agencies in recent years. Such sponsorships have expanded beyond support for scientific activities, encompassing incentives in the form of money, accommodation, leisure travel, and other gifts. This practice raises a fundamental question: can these sponsorships be classified as a form of gratuity that constitutes a criminal act of corruption?

Under Indonesian law, gratuities are normatively regulated in Article 12B paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption. Gratuity is defined broadly as any form of gift, including money, goods, discounts, commissions, travel facilities, lodging, free medical treatment, or other benefits received by state officials or civil servants. However, when it comes to private physicians who are not state officials the scope of this provision becomes a matter of debate.[8]

[8] Romli Atmasasmita, *Op. Cit*., p. 114

Some legal experts argue that private physicians do not fall under the category of legal subjects who can be prosecuted for receiving gratuities under the Corruption Law, as they are not public officials. However, if the gratuity in question negatively impacts public service for instance, by increasing the cost of medications or violating medical ethics then alternative legal avenues must be explored, such as the Consumer Protection Law or sanctions for breaches of professional ethical codes. [9] The Indonesian Medical Code of Ethics (KODEKI) explicitly prohibits doctors from receiving any form of compensation that could compromise their independence in making medical decisions. In this regard, transactional sponsorship from pharmaceutical companies clearly violates ethical principles and may be classified as a serious ethical offense. In practice, such violations may lead to professional sanctions, including the revocation of medical licenses by professional organizations.[10]

From a criminal law perspective, the concepts of *mens rea* (criminal intent) and *actus reus* (the physical act) remain essential components in establishing criminal liability. If it can be proven that a private physician accepted a reward in exchange for prescribing certain pharmaceutical products, then the element of intent is fulfilled, and the sponsorship ceases to be a scientific activity it becomes an unlawful transaction.[11]

The Corruption Eradication Commission (KPK) previously revealed a fund transfer of IDR 800 billion from pharmaceutical companies to over 2,000 doctors, the majority of which was used to finance non-scientific activities. This practice was carried out systematically through informal agreements between pharmaceutical representatives and physicians. In some cases, pharmaceutical companies even set prescription targets as the basis for granting incentives. This indicates a strong economic motive behind these sponsorship arrangements.[12]

[9] Trini Handayani, *Op. Cit.*, p. 14–15
[10] Hariadi R., *Op. Cit.*, p. 240
[11] Chairul Huda, *Op. Cit.*, p. 98
[12] Joko Panji Sasongko, *Loc Cit.*

From a consumer protection law standpoint, a physician who exploits sponsorships for personal gain without prioritizing patient interests may be deemed to have violated the consumer's rights to accurate information, fair pricing, and proper service. In such cases, both the doctor and the pharmaceutical company may be subject to administrative or criminal sanctions as stipulated in Article 62 paragraph (1) of Law Number 8 of 1999 on Consumer Protection.[13]

Compensatory sponsorship tied to the use of specific products may also fulfill the elements of a gratuity if the provision is based on an illicitly beneficial business relationship. In this context, regulatory strengthening is necessary, particularly through more explicit definitions of who qualifies as a public service provider including private physicians practicing in public health facilities or in collaboration with government programs.[14] Thus, although private physicians are not formally categorized as state officials, they nonetheless carry ethical and social responsibilities as public service providers in the healthcare sector. Acceptance of sponsorship that affects the objectivity of diagnoses or treatments may be classified as a legal violation ethically, administratively, and criminally.

Therefore, it is necessary to reformulate policies and regulations that do not merely emphasize the formal status of legal subjects but also consider the substantive role of private physicians in delivering public services. Ethical enforcement must go hand in hand with the strengthening of criminal legal mechanisms in order to create a clean, transparent, and patient-centered healthcare system.

Criminal Liability of Private Physicians in Gratuity Cases

Criminal liability is the core of the criminal justice system, in which any act classified as a criminal offense must be accompanied by a subject

[13] Bambang Waluyo, *Op. Cit*., p. 131

who can be held legally accountable. In the context of gratuity, legal discourse evolves when the recipient is not a state official, such as a private physician. Although Article 12B of Law Number 20 of 2001 explicitly refers only to civil servants or state officials as legal subjects, this does not imply that private physicians are exempt from criminal liability if it can be proven that they accepted gifts with specific intent that compromises professional integrity.

Criminal liability is not assessed solely based on an individual's legal status, but also on their role and social function. Physicians including those in private practice occupy a strategic position in the delivery of public health services. When a physician exploits their profession for personal gain through gratuities that ultimately harm patients or the public, such conduct deserves to be examined through the lens of criminal accountability.[15] Theoretically, criminal liability requires two essential elements*: actus reus* (a wrongful act) and *mens rea* (guilty intent). In cases where physicians receive gratuities from pharmaceutical companies, such acts may be classified as ethical and legal violations if it is proven that the physician knowingly accepted such benefits to influence prescription decisions or medical procedures.[16]

In Indonesia, the principle of "no punishment without fault" (*nullum crimen sine culpa*) serves as the foundation for establishing criminal liability. This principle requires not only proof of an unlawful act but also evidence that the perpetrator committed the act with fault that is legally accountable.[17] Thus, if a private physician is aware that a sponsorship constitutes a reward for prescribing certain products, then *mens rea* is established. However, one of the main challenges in prosecuting private physicians lies in the ambiguity of positive legal norms that can be directly

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[14] Abdurrahman Hakim, Prospek Kriminalisasi Pemberian Sesuatu kepada Dokter Non-PNS oleh Perusahaan Farmasi, Yogyakarta: UII Press, 2019, p. 42

[15] Roeslan Saleh, Pikiran-Pikiran tentang Pertanggungjawaban Pidana, Jakarta: Ghalia Indonesia, 1982, p. 27

[16] Michael Jefferson, Criminal Law, Essex: Pearson Longman, 2009, p. 7

[17] Chairul Huda, *Op. Cit*., p. 4

applied. The Corruption Law (*UU Tipikor*) still limits gratuity offenses to public officials. Consequently, efforts to impose criminal liability on private physicians often rely on alternative legal instruments such as Law Number 8 of 1999 on Consumer Protection especially when the physician's actions result in consumer (*patient*) harm due to prescriptions based on profit motives rather than medical judgment.[18]

Additionally, Law Number 29 of 2004 on Medical Practice may serve as a basis for imposing administrative or ethical sanctions, such as revocation of a physician's license for violations of the code of ethics or professional discipline. The Indonesian Medical Disciplinary Honorary Council (MKDKI) has the authority to examine and sanction physicians found guilty of professional misconduct. However, such ethical or administrative sanctions do not address the criminal aspect unless elements of fraud, gross negligence, or direct causation with patient harm are present.[19]

In practice, criminal liability for private physicians who accept gratuities may be established under the concept of result-based offenses (*delik akibat*), if it is proven that their actions caused tangible harm to the public, such as increased medication costs or instances of medical malpractice. Thus, criminal law enforcement in such cases requires an integrative approach involving ethical, administrative, and criminal analyses simultaneously.[20]

The role of investigators and public prosecutors in proving *mens rea* and the financial motives behind the sponsorship is crucial in advancing these cases into the criminal justice process. Evidence such as cooperation contracts, fund transfers, and testimony from pharmaceutical representatives is essential in building a solid case against the physician. It must be shown that there is a direct link between the benefit received and

[18] Bambang *Op. Cit*., p. 126
[19] Hariadi R., *Op. Cit*., p. 248

the abuse of professional authority.[21] Thus, although private physicians are not explicitly mentioned in the gratuity provisions of the Anti-Corruption Law, criminal liability can still be established by considering their social role, professional function, and the legal consequences of their conduct. Moreover, there is an urgent need to revise or broaden the definition of "public service provider" in legislation so that the law can effectively encompass similar practices.

In conclusion, criminal liability for private physicians who receive gratuities must be framed within a progressive and multidisciplinary legal perspective. This approach should not rely solely on formal criminal statutes but also incorporate considerations of social impact, professional ethics, and consumer protection as integral components of fair and proportional law enforcement.

D. CONCLUSION

Sponsorship provided by pharmaceutical companies to private physicians, when involving compensation for the use of specific pharmaceutical products, has the potential to fall under the category of gratuity. Although, normatively, Law Number 20 of 2001 on the Eradication of Corruption Offenses still limits the subject of gratuity to civil servants and state officials, substantively, such practices violate the principles of medical ethics and may harm patients. A transactional relationship between pharmaceutical companies and private physicians can compromise medical independence, increase treatment costs, and lower the quality of healthcare services. Therefore, ethical and administrative approaches are essential in assessing the involvement of private physicians in gratuity practices, even though such conduct has not yet been fully accommodated within the current

[20] Suharto R.M., Hukum Pidana Materiel: Unsur-unsur Obyektif sebagai Dasar Dakwaan, Jakarta: Sinar Grafika, 1996, p. 109

[21] Roger Geary, Understanding Criminal Law, Oregon: Cavendish Publishing, 2002, p. 7

provisions of criminal law on gratuity. From the perspective of criminal liability, private physicians may still be held accountable if it is proven that they knowingly accepted gratuities that influenced their medical decisions. Although they are not explicitly mentioned in the Anti-Corruption Law, liability can be constructed through general criminal law principles, including the doctrines of mens rea and actus reus, as well as through the application of other legal instruments such as the Consumer Protection Law and the Medical Practice Law. The legal construction of criminal responsibility for private physicians requires proof of intent, a causal relationship, and the legal consequences of their actions. Therefore, regulatory reinforcement and integrated ethical enforcement are needed to develop a more equitable legal system capable of comprehensively addressing gratuity practices in the healthcare sector.

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