

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Juridic Philosophical Perspective and Criminalization Urgency of the Private Sector (Bribery in Private Sector) in UNCAC in Gratification of Pharmaceutical Companies for Medical Services in Indonesia

Subagyo Sri Utomo

Student, Department of Law, Catholic University of Parahyangan Bandung, Indonesia

Dwidja Priyatno

Professor, Department of Law, Catholic University of Parahyangan Bandung, Indonesia

R.B.Budi Prastowo

Lecturer, Department of Law, Catholic University of Parahyangan Bandung, Indonesia

Abstract:

The 1945 Constitution in Article 34 paragraph (1) affirms that the poor and abandoned children are nurtured by the State, paragraph (2) emphasizes that the State develops a social security system for all people and empowers weak and incapable people with human dignity, paragraph (3) confirms that The state is responsible for the provision of adequate health services and public facilities. Research Objectives to find out and understand the legal perspective of gratuities carried out by pharmaceutical companies on doctors in medical services, philosophical perspectives on pharmaceutical companies' gratuities towards doctors in medical services, gratification handling of pharmaceutical companies towards doctor in medical services in Indonesia by criminalizing the private sector (bribery in private sector) UNCAC which has been ratified by Indonesia. The research method used is normative juridical, which examines the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. Use secondary data as the main source obtained through library research, using deductive thinking methods and coherent truth criteria with deductive and inductive thinking methods.

The results showed that the legal perspective of pharmaceutical companies gratification on the profession of doctors in medical services is related to Human Rights that based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, Article 12B, it is clear that gratification given by pharmaceutical companies to doctors who aim to be selfish, namely to influence the decision to provide therapy to patients, including in one form of Corruption.

Keywords: Criminalization, private sector, gratification, medical services

1. Introduction

The 1945 Constitution in Article 34 paragraph (1) emphasizes that the poor and abandoned children are maintained by the State, paragraph (2) emphasizes that the State develops a social security system for all people and empowers weak and incapable people with human dignity, paragraph (3) states that The state is responsible for the provision of proper health services and public facilities. In the Reformation Era and the challenges of globalization, the demands of the community for the availability of health services that are fast, precise, sophisticated, quality and enjoyable and affordable costs can really be felt by the community.

Health programs related to health policy include: Health promotion program policies and community empowerment, Healthy environmental program policies, Health effort program policies, Health service program policies, Individual health effort program policies, Prevention and eradication program policies, Community nutrition improvement program policies Health policy program policies; Health development policy and management program policies.

In the Reformation Era and the challenges of globalization, the demands of society for the availability of health services that are fast, precise, sophisticated, quality and enjoyable and affordable costs can really be felt by the community. This topic is very interesting because of the different geographical conditions between one region and another so that local government creativity is needed in making policies that can provide legal certainty, and provide equitable benefits for both the Provider and the community. Indonesia gets a real protection and security in various fields of life, especially in the era of free trade that is happening in Indonesia today as a phenomenon of globalization in economic terms, so it requires significant efforts and the government in terms of cooperation agreements with other countries in health.

According to Article 50 of the Medical Practice Law, doctors or dentists in carrying out medical practice have the right:

- Obtain legal protection as long as carrying out duties in accordance with professional standards or standard operational procedures.
- Obtain legal protection as long as carrying out duties in accordance with professional standards or operational procedure standards.
- Provide medical services according to professional standards and operational procedure standards.
- Obtain complete and honest information from patients or their families,
- Receive service fees.

On the other hand, doctors' obligations can be grouped into three groups namely:

- Doctor's obligations related to the social function of health care (health care)
- Doctor's obligations related to patient's rights
- Obligations of doctors relating to or arising from the standards of the medical profession.

Doctor's obligations related to the social function of health care (health care) relating to the interests of the community, for example:

- Every doctor must be careful in the distribution of medicines that are in short supply.
- Determination / order of patients who will be hospitalized must take into account the number of existing beds.
- Not prescribing drugs that are not so needed by the patient,
- Considering cheap or expensive prescription drugs (generic / external drugs).

Obligations of doctors relating to patient rights is the obligation of doctors to pay attention / respect for the rights of patients. Obligations of doctors relating to the standards of the medical profession, relating to the accountability of doctors in civil, criminal, administrative terms. According to the provisions of Article 51 UUPK doctor or dentist in carrying out medical practice has an obligation:

- Provide medical services in accordance with professional standards and standard operating procedures and patient's medical needs.
- Referring patients to doctors or other dentists who have better skills or abilities, if unable to conduct an examination or treatment.
- Keep everything he knows about the patient, even after the patient's death.
- Carry out emergency relief on humanitarian grounds, except if he believes that someone else is on duty and is able to do so.
- Adding knowledge and following the development of medical science or dentistry.

Besides that, according to KODEKI there are four obligations of a doctor, namely:

- General obligations, for example doing a profession according to the highest standards.
- Obligations of doctors to patients, for example keeping patient secrets.
- Obligations of doctors to colleagues, for example may not take patients from other doctors.
- The doctor's obligation to himself, for example to maintain his health.

In connection with technological advances in the health sector and with the increasing need for medicines in life, this has led to the emergence of pharmaceutical companies in Indonesia which has caused competition in the distribution of medicines in various health agencies. In the case of the business world, competition is a natural matter where every company is competing to improve the quality and selling value of their respective goods, as well as in the pharmaceutical field. Often the business competition will cause losses for consumers where if the business actors do various ways to obtain profits without regard to losses suffered by third parties, in this case the patient as a consumer.

Pharmaceutical companies calculate it as a promotion fee that is included in the production costs. So the production costs become high and the price of drugs becomes expensive. The drug promotion system carried out by pharmaceutical companies is contrary to Article 13 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, that "businesses are prohibited from offering, promoting, or advertising drugs, traditional medicines, food supplements, medical devices, and also health services by promising gift giving in the form of goods from other services. "Pharmaceutical companies give gifts or facilities to doctors which in this case can be categorized as gratuities.

Gratification according to the legal dictionary comes from the Dutch language, "Gratificatie", or the English language "Gratification" which means money prize. According to the Big Indonesian Dictionary; Gratification means giving a gift of money to an employee outside the stipulated salary. According to Law Number 31 Year 1999 jo. Law Number 20 Year 2001 concerning Eradication of Corruption, Explanation of Article 12 b paragraph (1), Gratification is giving in the broad sense, which includes giving money, goods, rebates (discounts), commissions, loans without interest, travel tickets, lodging facilities, travel, free medical treatment, and other facilities. These gratuities are accepted both domestically and abroad and which are carried out using electronic or non-electronic means. There are several examples of receiving gratification, including:

- A state official receives a "thank you money" from the auction winner;
- The husband / wife / children of the official obtain shopping vouchers and overseas sightseeing tickets from his wife / husband's business partner;
- A newly appointed official obtains a car as a sign of introduction from business actors in his area;
- A licensing officer obtains "thank you" money from an applicant whose license has been served;

- Provision of assistance for facilities to certain Executive, Legislative and Judicial officials, such as: Travel and lodging assistance, high salaries to officials even though it is stated in an official decree);
- Providing sports facilities (for example, Golf.); Give prizes at certain events (for example, holiday gifts, weddings, circumcisions).

2. Discussion

2.1. Law No. 31/1999 Jo Law No. 20 of 2001 concerning Eradication of Corruption Crimes

Gratuity is defined as a gift to someone with a specific purpose and purpose. The gratuity is received both domestically and abroad and which is carried out using electronic means or without electronic means. Law Number 20 Year 2001 Article 12 C paragraph (1): The provisions referred to in Article 12B paragraph (1) do not apply, if the recipient reports the gratification he received to the Corruption Eradication Commission. Article 12B paragraph (1) of Law Number 31 of 1999 jo Law No. 20 of 2001, which regulates that: Any gratuity to a civil servant or state administrator is considered a bribe, if it is related to his position and contrary to his obligations or duties, Article 12C paragraph (1) of Law No.31 / 1999 jo Law No. 20/2001, determines that: The provisions referred to in Article 12B Paragraph (1) do not apply, if the recipient reports the gratuities he received to the KPK.

The explanation stipulates that Article 12 of Law No. 20/2001: Fined with life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a maximum fine of Rp. 200 million and a maximum of Rp. 1 billion:

- Public servants or state administrators who receive a gift or promise, even though it is known or reasonably suspected that the gift or promise is given to move to do or not do something in their position, contrary to their obligations.
- Public servants or state administrators who intend to benefit themselves or others against the law, or by abusing their power force someone to give something, pay, or receive payment in pieces, or to do something for themselves;

2.2. Minister of Health Decree No. 434 / Menkes / SK / X / 1983 Concerning Indonesian Medical Ethics Code (KODEKI) and Other Regulations

Although the collusion of pharmaceutical companies is difficult to prove, in 2002 the Food and Drug Supervisory Agency (BPOM) had anticipated it through the Decree of the Head of BPOM No. HK.00.05.3.02706 concerning Drug Promotion. Article 9 This decree contains a number of prohibitions for the Pharmaceutical Industry and / or Pharmaceutical Wholesalers. They are prohibited from (a) cooperating with pharmacies and prescribers; (b) cooperation in prescribing drugs with pharmacies and / or prescribers in a special program to increase sales of certain drugs; (c) giving bonuses / prizes in the form of cash (cash, bank drafts, loans, vouchers, tickets) and / or goods to prescribers who prescribe their production drugs and / or which are distributed. While supervision of drug promotion activities by pharmaceutical companies is carried out entirely by BPOM by forming an independent commission.

There are several ethical points for drug promotion that are worth mentioning here. First, a doctor in carrying out his medical work should not be influenced by something that results in the loss of freedom and independence of the profession. The connection with the promotion of drugs is that doctors are prohibited from directing patients to buy certain drugs because the doctor concerned has received a commission from certain pharmaceutical companies. Second, any support given by a pharmaceutical company to a doctor for attending scientific meetings must not be associated with the obligation to promote or prescribe a product. Third, pharmaceutical companies may provide sponsorship to an individual doctor in the context of continuing medical education, that is only for the costs of registration, accommodation and transportation to and from the place for continuing medical education. to attend continuing medical education, unless the doctor is a speaker or moderator. Fifth, in the case of giving donations to the medical profession, pharmaceutical companies may not offer gifts / awards, incentives, donations, financials in other forms of the same type, which are related to prescription writing or recommended use of certain company drugs. Sixth, giving donations and / or gifts from pharmaceutical companies is only allowed for medical professional organizations and not given to doctors individually. Finally, seventh, the Indonesian Doctors Association must compile and verify various official activities of the organization, especially those relating to sponsorship or funding from GP Pharmacy Indonesia members and coordinating with pharmaceutical companies for follow-up. Before the Ethics of Drug Promotion, since 1983 the Code Indonesian Medical Ethics. Article 3 KODEKI stipulates that in carrying out their work, a doctor must not be influenced by consideration of personal gain.

2.3. Collusion as a Corruption Act

That corruption occurs because power is not accompanied by accountability. The meaning of accountability is the responsibility of someone who is given the mandate to carry out the task to the party giving the mandate. The doctor as a professional has the power and authority to decide what diagnosis he believes is right, the authority to provide care and treatment for the diagnosis that has been decided. Referring to the model proposed by Syahrudin Rasul, the power and authority possessed by the doctor as a professional must be accountable. If it is not accountable or cannot be audited by its decisions, then opportunities for corruption will be created. The legal basis for auditing all doctors' decisions in the form of diagnosis and follow-up is contained in Attachment to Decree of the Minister of Health No. 434 / Menkes / SK / X / 1983 concerning the Indonesian Medical Ethics Code (KODEKI). According to this regulation, a doctor only provides

information or opinions that can be verified. Thus, it can be proven that it is a keyword that gives an opportunity for an audit of all decisions made by doctors in using their power and authority. Relevant to that, the Law on the Limitation of Corruption Crime contains provisions on gratification', namely giving in the broad sense which includes giving money, goods, rebates (commissions), commissions, loans without money, travel tickets, lodging facilities, travel tours, free medical treatment and other facilities, with the threat of life imprisonment, or a minimum of 4 years and a fine of between Rp200 million up to Rp1 billion.

2.4. Collusion Fee Attributed to Several Legal Provisions

Although the collusion of doctors and pharmaceutical companies is difficult to prove, the Food and Drug Supervisory Agency (BPOM) in 2002 anticipated the collusion of doctors and pharmaceutical companies with legal instruments regarding drug promotion, based on BPOM Head Decree No. HK.00.05.3.02706. Article 9 stipulates that 'Pharmaceutical Industry and / or Pharmaceutical Wholesalers are prohibited from: (a) Collaboration with Pharmacies and Prescription Writers, (b) Collaboration in prescribing drugs with Pharmacies and / or Prescription Writers in a special program to increase sales of certain drugs, (c) Give bonuses / prizes in the form of cash (bank draft, loans, vouchers, ticket) and / or goods to the Prescription Writer who prescribes the production drug and / or is distributed. While supervision of drug promotion activities by pharmaceutical companies is carried out entirely by BPOM by forming an independent commission. Violations of Article 9 above are regulated in Article 10, namely: 'In addition to being subject to criminal sanctions in accordance with the provisions of the applicable laws and regulations, the Pharmaceutical Industry and / or Pharmaceutical Trader who violates the provisions referred to in Article 9 may be subject to administrative sanctions in the form of: (a) Written warning, (b) Temporary suspension of activities, (c) Suspension of / or revocation of the relevant drug distribution permit, (d) and other administrative sanctions in accordance with the provisions of the applicable laws'. Referring to criminal sanctions as referred to in the BPOM Decree, Article 62 Paragraph (1) of the Consumer Protection Law No. 8 of 1999 states: 'Business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 Paragraph (2), Article 15, Article 17 Paragraph (1) letter a, letter b, letter c, letter e, Paragraph (2) and Article 18 shall be liable to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiahs)' But the reverse step actually came from the Ministry of Health which on June 11, 2007 facilitated an agreement with the Indonesian Doctors Association (IDI) and GP Pharmacy to form a 'Drug Promotion Ethics'.

In the case of a pharmaceutical company business license being issued by the Minister of Health based on Article 4 Paragraph (1) of the Republic of Indonesia Minister of Health's Decree No.1191 / Menkes / SK / IX / 2002, amendments to the Minister of Health Regulation RI 918 / Menkes / Per / X / 1993 concerning Large Pharmaceutical Companies. Likewise the doctor's practice permit was issued by the Ministry of Health under Article 37 of the Medical Practice Law No. 29 of 2004. The Ministry of Health should have been pro-active in stopping the collusion of doctors and pharmaceutical companies while protecting people from the difficulties of buying expensive drugs due to collusion by preparing legal instruments with firm and definite sanctions. It is not the other way around issuing ethics / codes of conduct which are sufficient and limited to the environment of each organization, such as the Indonesian Medical Code of Ethics (KODEKI) for physicians at IDI. The 'Drug Promotion Ethics' in full contains:

- A doctor in doing his medical work should not be influenced by something that results in the loss of freedom and independence of the profession. The connection with the promotion of drugs is that doctors are prohibited from directing patients to buy certain drugs because the doctor concerned has received a commission from certain pharmaceutical companies;
- Any support given by a pharmaceutical company to a doctor to attend a scientific meeting may not be implied / linked to the obligation to promote or prescribe a product;
- Pharmaceutical companies may sponsor individual doctors in the context of continuing medical education, that is, only for registration, accommodation and transportation costs to and from the place of continuing medical education;
- Pharmaceutical companies are prohibited from giving honorariums and / or pocket money to a doctor to attend continuing medical education, unless the doctor is a speaker or moderator;
- In the case of giving donations to the medical profession, pharmaceutical companies may not offer gifts / awards, incentives, donations, financials in other forms of the same type, which are related to prescription writing or recommended use of drugs / products of certain companies;
- Donations and / or gifts from pharmaceutical companies are only allowed for medical professional organizations and are not given to doctors individually;
- The Indonesian Medical Association (including seminar / specialist organizations and other organizations within the IDI) must compile and verify various official activities of the organization, particularly those relating to sponsorship or funding from GP Pharmacy Indonesia members and coordinating with GP Pharmacy Indonesia for follow-up.
- Cooperation of Doctors with Pharmaceutical Companies Related to Prescribing Drugs by Doctors to Patients

Doctors are a noble profession because they heal sick people. People (patients) who come to the doctor hope to get a diagnosis of what disease they are suffering from and get a prescription for what medication the patient must buy. Patients trust doctors when prescribing drugs for prescription for their recovery. However, it turns out there are unscrupulous doctors who use this to collaborate with drug companies (pharmaceuticals), where doctors are given rewards in the form of money or goods (which are delicious) by pharmaceutical companies and unscrupulous doctors The prescription drug is produced by the pharmaceutical company. This is also due to the financial interest of the

pharmaceutical company so that the drugs produced are sold in the market. The impact of this practice mainly results in the high price of the drug that the patient must buy and doubts about the quality of the drug for the patient's recovery, because of the doctor's personal interests when prescribing.

The actions taken by these doctors may be suspected of being bribery or gratuity which are considered bribes. These two criminal offenses are certainly different and contextual in nature. It is said that the crime of bribery when fulfilling the elements as referred to in Article 11 of Law no. 20 of 2001 jo. UU no. 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Corruption Act), namely:

- Civil servants or state administrators;
- Receiving a gift or promise;
- It is known or reasonably suspected that the gift or promise was given because of the power or authority related to the position or according to the mind of the person who gave the gift or promise related to his position.

Then it is said that the crime of gratification is considered a bribe when fulfilling the elements as referred to in Article 12B along with an explanation of the Corruption Act, namely:

- Gratification (Gratification is a gift in a broad sense, which includes the provision of money, goods, rebates (discounts), commissions, loans without interest, travel tickets, lodging facilities, tourist trips, free medical treatment, and other facilities. received domestically or abroad and conducted using electronic or non-electronic means).
- Government officials or state administrators are considered bribing.
- When related to his position and which is contrary to his obligations or duties.

Under the condition:

- The value of which is ten million rupiah or more, proof that the gratuity is not a bribe carried out by the recipient of gratuities;
- The value of which is less than ten million rupiah, proving that the gratuity was bribed by the public prosecutor.

It should be noted that elements of bribery or gratuity can be fulfilled if doctors are civil servants or state administrators. Given that there are doctors who are civil servants and doctors who are not civil servants. Article 12B of the Corruption Act stipulates that it is necessary to understand what categories or parameters of gratuity are considered bribes.

Permenkes No. 14 of 2014 concerning Gratification Control in the Environment Ministry of Health regulates that Gratification which is considered bribe as referred to in Article 3 letter a includes acceptance but is not limited to (Article 4):

- Transactional marketing fees or fees associated with marketing a product;
- Cashback received by agencies that are used for personal gain;
- Gratuities related to the procurement of goods and services, public services, or other processes; and
- Sponsorship related to marketing or research of a product

Then gratuities that are not considered bribery include (Articles 5 and 6):

- Gratification related to official service, namely a gift received officially by the Ministry of Health Apparatus as an official representative of an agency in an official activity, as an award or participation or contribution in the activity, obtained from:
- Other parties in the form of souvenirs in official official activities such as meetings, seminars, shops, conferences, training or other similar activities;
- Other parties in the form of compensation received related to official activities, such as honorarium, transportation, accommodation and financing as stipulated in the standard costs applicable in the donor agency, as long as there is no double financing, reasonable value, no conflict of interest and does not violate the provisions valid at the receiving agency
- Sponsorship given to institutions related to institutional development, certain celebrations that are used transparently and accountably.
- Gratuities that are not related to service, which are obtained from:
- Other people who have a family relationship as long as they do not have a conflict of interest with the recipient of gratuities;
- Other people related to weddings, religious ceremonies, traditional ceremonies, births, aqiqah, baptism, circumcision, and tooth cutting do not have the highest value limit, as long as they do not have a conflict of interest and are reported to the KPK and after verification and clarification are declared not considered bribery;
- Giving from agencies or work units originating from joint donations to the Ministry of Health Apparatus other than the ceremony as referred to in letter b which is reported to the KPK and after clarification is declared not considered bribery;
- Supervisors to subordinates of the Ministry of Health Apparatus as long as they do not use the state budget;
- Other people including fellow Ministry / Institution apparatuses related to celebrations involving his position or position such as greetings, promotions, entering retirement reported to the KPK and after verification and clarification are declared not considered bribery;
- Other people including fellow Ministry / Institution apparatus related to the disaster or disaster experienced by the recipient of gratuity or his family as long as he does not have a conflict of interest with the recipient of gratuity;

- Other people in the form of prizes, prize draws, discounts / rebates, vouchers, award points or souvenirs that are generally accepted;
- Others in the form of dishes or offerings that are generally accepted;
- Academic or non-academic achievements that are followed by using their own costs such as championships, competitions or competitions;
- Profit or interest from the placement of funds, investments or private ownership of shares generally accepted;
- Compensation or income for the profession carried out during working hours, and obtain written permission from the direct supervisor and / or other authorized party.

2.5. Forms of Gratification

Forms of gratification by doctors from pharmaceutical companies vary, not limited to money. Pharmaceutical companies often provide seminar funding or business trips. KPK has intended to dismantle the practice of gratification so as not to continue. Eradication of this practice must also be done among private doctors. The Indonesian Medical Council (KKI) should be able to revoke the registration certificate (STR) of private doctors who receive gratuities from pharmaceutical companies. This will cause a deterrent effect among doctors while eliminating the practice of gratification. He explained that the acceptance of gratification is indeed currently prohibited in the code of medical ethics in Indonesia, but there has not been strict sanctions. Therefore, there needs to be strict sanctions such as revocation of STRs for doctors receiving gratuities. So Not Objective. Separately, KPK Chair Agus Rahardjo in his written statement stated that many doctors prescribed drugs because of collusion with pharmaceutical companies, so they were no longer objective. They offered inappropriate drugs to the patient. Sometimes doctors gave prescriptions at will and gave medicines on pharmaceutical company recommendations. Regarding the KPK's duty to handle corruption cases among state administrators, he continued, giving sponsorship to doctors will be a problem if the doctor is a civil servant (PNS). Meanwhile, in developed countries, the practice of giving commissions or gratuities has been banned. In fact, the PRC has sued pharmaceutical companies. The KPK believes that gratification practices that overshadow the health world including doctors reduce the quality of health services to people in need. luxury facilities offered by many drug companies, which are now increasingly aggressively seeking profits, have the effect of eroding health services to the community. Because health is a strategic sector, the KPK does not remain silent. Corrupt behavior must be eradicated, in order to realize health services that are free of corruption and quality for the livelihoods of many people. On the other hand, receiving gratuities that violate these rules will certainly not be reported by doctors as taxable income. This is detrimental to the country's tax revenue.

3. Philosophy Physical Company Philosophy Perspective on Medical Profession in Medical Services

3.1. Fulfillment of Health as Human Rights

The development of the times has had an impact on people's lives in various aspects, this change not infrequently brings new problems including those related to the welfare problems of each individual community that exists. This welfare problem does not only occur in one aspect of community life partially but also in various dimensions of community life including the issue of health insurance. Starting from this, it is only natural that parties who are an extension of the state in the field of health are also capable of being responsible for ensuring the health of each group without exception.

Health is the basic right of every person, to realize that everyone, especially people in Indonesia, has excellent health, so the role of government in synergy with the community is urgently needed. In Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 NRI) states that everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy environment and to have health services .

Article 9 of Law Number 39 Year 1999 concerning Human Rights states that:

- Everyone has the right to live, maintain life and improve their standard of living.
- Everyone has the right to live in peace, security, peace, happiness, prosperity, physical and mental health.
- Everyone has the right to a good and healthy environment.

Guarantee on the right to obtain an optimal degree of health is also contained in Article 4 of Law No. 23 of 1992 concerning health. The government has the responsibility related to the implementation of integrated health services as a sustainable promotive, preventative, curative and rehabilitative effort, this has the consequence of the demands of the role of the hospital quality. In realizing its obligations, the Hospital as a representative of the government is obliged to provide health services in an effort to protect the entire nation of Indonesia and all of Indonesia's blood spills.

Furthermore, Article 34 paragraph (3) states that the state is responsible for providing adequate health service facilities. Based on Law Number 36 Year 2009 regarding Health, the nature of health service facilities is formulated as a tool and / or place used to carry out health service efforts, both promotive, preventive, curative and rehabilitative in nature by the Government, Regional Governments, and / or the community.

Based on the type of service provided as formulated in Article 19 Paragraph (1) of the Hospital Law, Hospitals are categorized in General Hospitals and Special Hospitals. General Hospital provides health services in all fields and types of diseases. Whereas the Special Hospital provides primary services in one particular field or type of disease based on scientific discipline, age group, organ, type of disease, or other specificities.

Article 6 of Law Number 44 Year 2009 concerning Hospitals that the government has responsibilities, namely:

- Providing hospitals based on community needs.

- Guarantee the financing of health services in hospitals for the poor, or poor people in accordance with statutory provisions.
- Fostering and overseeing the organization of hospitals.
- Providing protection to hospitals in order to provide health services in a professional and responsible manner.
- Providing protection to the public users of hospital services in accordance with statutory provisions.
- Mobilizing community participation in the establishment of hospitals in accordance with the types of services needed by the community.
- Providing health information needed by the community.
- Providing needed human resources.
- Regulate the distribution and distribution of high-tech and high-value medical devices.

3.2. *The Ideal Concept of Health Services in Fulfilling Basic Rights of Public Health*

Health is a basic right of all people, health development must be by the ideals of the Indonesian people as stated in the opening of the 1945 Constitution. In order to achieve the ideals of the nation, national development in all areas of life, sustainable development that determines a series of development that is comprehensive, integrated and directed. The development of this health on the basis of the term of life, both physical, mental and social economy. Based on the mandate of the constitution, health becomes one of the forms of public services, the field of basic needs services. This is as stated by Mashudi, who classifies public services, which must be provided by the government into two categories. main, namely; Services basic needs General services.

In the service needs, basic needs include health, education and basic necessities. Health services are essential, because Health is one of the basic needs of the community, health is the right of every citizen protected by the Basic Law. Every country feels that health is the biggest capital to achieve prosperity. Therefore, improving health services is basically a complete investment in humans to achieve a prosperous society (welfare society). The level of public health, will greatly influence the level of welfare of the community,

The low level of health is one of the triggers for poverty. This can be explained that the low level of public health will lead to low productivity levels. Low levels of productivity lead to lower incomes. Low income leads to poverty. This poverty further causes a person to not be able to reach quality education and pay for maintenance and health care costs. Because health is a major factor of community welfare that the government intends to realize, health must be the main concern of the government as a public service provider.

4. Urgency of United Bracery in Private Sector (Bribery in Private Sector) in Indonesia

4.1. *Criminalization of Criminal Acts of Bribery*

4.1.1. Definition of Criminalization

Criminalization is an object of material criminal law study which discusses the determination of an act as a criminal act that is threatened with certain criminal sanctions. Despicable acts that were not previously qualified as prohibited acts are justified as a criminal act that is threatened with criminal sanctions. According to Soerjono Soekanto, criminalization is an act or determination of the authorities regarding certain acts which are considered by the community or groups of people to be criminal acts or to make an act a criminal act and therefore can be convicted by the government by working on its behalf . Criminalization can also be interpreted as the process of determining a person's actions as acts that can be convicted. This process ends with the formation of a law where the act is threatened with a sanction in the form of a criminal.

4.2. *Principles of Criminalization*

There are three principles of criminalization that need to be considered by lawmakers in establishing an act as a criminal offense along with the threat of criminal sanctions, namely the principle of legality, the principle of subsidiarity, and the principle of equality / equality.

4.2.1. Principle of Legality

The principle of legality in Article 1 paragraph (1) of the Criminal Code has the purpose of upholding legal certainty and preventing the authority of the authorities. As a rule, legality is the most important principle in criminal law, specifically the main principle in determining criminal acts. In other words, the principle of legality is the principle principal in determining criminalization and decriminalization. The law functions as a protection of human interests

The principle of legality (Principle of legality), according to Moeljatno, is a principle that determines that no acts are prohibited and threatened with criminal sanctions if not determined in advance in legislation. Usually this is known in Latin as *nullum delictum nulla poena sine praevia lege*. (no offense, no criminal without prior rules). According to Wirjono Prodjodikoro, the Latin language that reads *nullum delictum, nulla puna sine praevia lege punali* means no crime, no criminal sentence without prior criminal law.

4.2.2. Principle of Subsidiarity

Besides being based on the principle of legality, the criminalization policy must also be based on the principle of subsidiarity. The word subsidiarity in the Indonesian English Dictionary and Hassan Shadily found the word "subsidiary"

which contains additional branch meaning. Likewise in the Legal Dictionary we get the meaning of the word *subsidaire* as a substitute, additionally if the main thing does not happen or can be done, then as a substitute. Background increasingly the need to use the principle of subsidiarity in determining illicit acts is driven by two factors. First, the use of the principle of subsidiarity will encourage the birth of fair criminal law. Second, the practice of legislation has a negative impact on the criminal law system due to overcriminalization and over-penalization so that criminal law loses its influence in society. Besides, overcriminalization and overpenalization further aggravate the workload of the legal apparatus in the criminal justice process. As a result of this, criminal law cannot function properly and hence also loses authority.

4.2.3. Principle of Equality / Equality

In addition to the principle of legality and the principle of subsidiarity, there are other principles that also have an important position in the criminalization process, namely the principle of equality / equality. Similarity is simplicity and clarity. Simplicity and clarity will lead to order. According to Servan and Lestross the principle of equality is not a statement of aspirations about a fairer criminal law. The principle of equality is more a desire for a clearer and simpler criminal law system.

In the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as UUD1945 NKRI Article 27yat (1) confirms "All citizens are at the same time in law and government, and are obliged to uphold the law and government without exception."

4.3. Criminalization Criteria

According to Bassiouni, the decision to criminalize and decriminalize must be based on certain policy factors that take into account a variety of factors including:

- The balance of the means used in relation to the results to be achieved,
- Cost analysis of the results obtained in relation to the objectives to be sought,
- Assessment or assessment of the objectives sought in relation to other priorities in the allocation of human resources,
- The social effects of criminalization and decriminalization relating to or viewed from secondary effects.

Another view put forward by Soedarto revealed that in dealing with the problem of criminalization, the following matters must be considered:

- The use of criminal law must pay attention to the goals of national development, which is to realize a just and prosperous society that is equally material and spiritual based on Pancasila. In connection with this, (the use of) criminal law aims to tackle crime and conduct granting of the countermeasures themselves for the welfare and protection of the community.
- Actions that are attempted to be prevented or dealt with by criminal law must be undesirable actions, i.e. acts that bring harm (material or spiritual) to the community members.
- The use of criminal law must also take into account the principle of cost and results (cost benefit principle).
- The use of criminal law must also pay attention to the work capacity or capacity of law enforcement agencies, that is, there must be no overbelasting.

As for Moeljatno, there are three criteria for criminalization in the criminal law reform process.

- Determination of an act as a prohibited act (criminal act) must be in accordance with the feeling of law that lives in the community.
- Second, whether the threat of criminal and criminal convictions is the main way to prevent violations of these restrictions.
- Third, whether the government by passing the instruments of the country concerned, is truly capable of actually carrying out criminal threats if it turns out that there is a violation of the prohibition.

5. The Influence of Giving Something by Pharmaceutical Companies to Non-Civil Servant Doctors on the Freedom and Independence of Profession

There are various kinds of forms of bribery carried out by pharmaceutical companies to doctors. Doctors are given rewards by pharmaceutical companies in the form of money or goods (which are delicious) if the doctor prescribes drugs produced by the pharmaceutical company. Items given by pharmaceutical companies to doctors can be in the form of anything, like money, travel tickets, attending seminars or congresses, etc.

In Indonesia the practice of bribery by pharmaceutical companies to unscrupulous doctors has been running for decades. This illegal business is an illegal form of drug manufacturing business in marketing its products. This collaboration is bridged by an intermediary called a medical representative where he serves as a liaison for doctors to write prescription drugs offered by certain drug manufacturers. The doctor is given a target within a certain period to write certain medicinal products on a prescription. Further in the explanation of article 3 it is detailed that the following actions are considered contrary to ethics:

- Individually or jointly applying medical knowledge and skills in all forms.
- Receive compensation other than what is appropriate, in accordance with his services, except with sincerity and knowledge and or the will of the patient.
- Make a bond or receive a reward from a pharmaceutical / drug company, a medical / medical device company or other entity that can
- affect the work of doctors.

- Involving directly or indirectly to promote drugs, tools or other materials for the interests and personal benefits of doctors. Based on the points above, it is very clear that the doctor's collaboration with pharmaceutical companies clearly violates the medical code of ethics.

Ideally prescribing drug doctors can not simply impose certain drugs on patients. Prescription drugs must be in accordance with the list of drugs that are already owned by the place where they work. Thus, doctors cannot just prescribe drugs for industrial products that are close to them. on the principle of drug rationalization, namely the right diagnosis, the right dose, safe, and the time of administratio

5.1. *The Policy of Criminalization of Bribery against Non-Civil Servant Doctors Based on Criminalization Criteria*

It has been explained in the literature review that criminalization cannot be done arbitrarily but there needs to be clear principles. In this case the writer has determined several principles that should be considered in criminalizing bribes of non-civil servant doctors. The principles include: 116

- The use of criminal law must pay attention to the goals of national development, which is to realize a just and prosperous society that is equally material and spiritual based on Pancasila. In connection with this, (the use of) criminal law aims to tackle crime and conduct granting of the countermeasures themselves for the welfare and protection of the community.
- Actions that are endeavored to be prevented or dealt with by criminal law must be undesirable actions, that is actions which cause harm (material or spiritual) to the community members.
- The use of criminal law must also take into account the principle of cost and results (cost benefit principle).

Criminalization of bribery of non-civil servant doctors must at least pay attention to these 3 things. Hopefully criminalization is truly a solution so that the main goal of the state in prospering and prospering the public can be achieved.

First, related to criminalization which must be in line with the goals of the Indonesian people. The goal of the Indonesian people is national development, which is to realize a just and prosperous society that is evenly materially and spiritually based on Pancasila. One prosperous indicator is public health guaranteed. The government is able to guarantee the quality and quality services. As we know that as a result of bribery doctors the quality of public health is not good. Freedom and independence of the professional doctor is not there. Drugs that are consumed by patients become expensive or even not efficacious. Legal regulation on bribery in Indonesia is still unclear. There is an injustice in government policy in making policies to overcome the problem of bribery.

The second principle, if seen from the presence or absence of victims or losses suffered by others, is very clear. Patients are severely disadvantaged by bribes to doctors by pharmaceutical companies. As a result of bribery, the price of drugs becomes expensive. The independence of doctors in prescribing drugs or drugs is disrupted. Giving drugs or prescription drugs is based on medical indications, doctors become concerned about drug products from companies that bribe them. There are even doctors who do not pay attention to medical indications but only recommend drugs from pharmaceutical companies that bribe. This is because pharmaceutical companies provide a target for the sale of drugs within a certain period to the doctor. This deviation will result in the public health sector being not good. is patient. The third principle is when viewed from the costs and results related to the criminalization of bribes of non-civil servant doctors. The existence of bribes for non-civil servant doctors has an impact on the level of quality of public health. As a result the State budget for public health is rising. In the 2016 State Budget, the health function budget has increased to 5.05 percent in the 2016 State Budget. The increase in the health budget in the APBN resulted in state financial losses.117 In 2019, the government increased the health budget to the 2019 State Expenditure Budget (RAPBN) to Rp122 trillion from before Rp111 trillion in the 2018 State Budget. In 2018, the health budget is equivalent to 5% of total government expenditure in 2018 worth Rp2,220.7 trillion.

6. Conclusion

- Juridical perspective on the gratification of pharmaceutical companies towards the medical profession in medical services is related to Human Rights that based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, Article 12B, it is clear that the gratification granted by pharmaceutical companies to doctors who aim to be selfish, namely to influence the decision to provide therapy to patients, including in one form of Corruption. Law Number 8 of 1999 concerning Consumer Protection, Article 13 paragraph (2) stipulates that business actors must not offer, promote or advertise drugs, traditional medicines, food supplements, medical devices, and health services by promising to give gifts in the form of other goods and / or services.
- Philosophical perspectives on the gratification of pharmaceutical companies towards the profession of doctors in medical services related to Human Rights. is affecting the quality of his actions in patient care. Health is a human right for everyone, if the patient is no longer served properly as a result of gartification, it means that the doctor has violated human rights. When a doctor receives a gift from a pharmaceutical company under an agreement the doctor must prescribe the drug produced by the pharmaceutical company, this clearly shows that the doctor has been affected by consideration of personal benefits in doing his work, no longer on consideration of efforts to achieve patient recovery. Patients as consumers receive health services greatly harmed by the practice of collusion of doctors and pharmaceutical companies.
- The urgency of the criminalization of the private sector (bribery in private sector) UNCAC which has been ratified by Indonesia in overcoming the gratification of pharmaceutical companies against doctors in medical services in

Indonesia is that Indonesia has ratified the United Nations Convention Against Corruption (UNCAC), 2003 through Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (United Nations Anti-Corruption Convention, 2003). The aim of the criminalization of bribery in the private sector is to strengthen the system of preventing and controlling corruption. This is important because the First approach is a violation of property fund set business, where bribery in the private sector is seen as a dirty practice both on business assets and property as well as the interests of shareholders. Second, the approach to violation of trust, loyalty in employment relations, where criminalization is done because of violations of the obligations and duties of an employee to his employer. Thirdly the free competition approach, bribery in the private sector is seen as a factor that distorts fair competition and the functioning of the market. In the first and second models the more dominant legal area is private law because it is based on interests to protect the interests of people and corporations. As a result, in the first model, the law does not function to eradicate bribery offenses in the private sector.

7. References

- i. Adji, Seno, Indriyanto, *Korupsidan Perbuatan Melawan Hukum*, CV Rizkita, Jakarta 2001.
- ii. Ali, Mahrus, 2011, *Dasar-dasar Hukum pidana*, Sinar Grafika, Jakarta.
- iii. Amir, Amri, 1997, *Bunga Rampai Hukum Kesehatan*, Penerbit Widya Medika, Jakarta.
- iv. Amirudin dan Asikin, Zainal, 2010, *Pengantar Metode Penelitian Hukum*, PT Raja Grafindo, Jakarta.
- v. Arief Sidharta, B., 2008, *Apakah Filsafat dan Filsafat Ilmu itu?*, Pustaka Sutra, Bandung.
- vi. -----, *Bahan Kuliah Sistem Filsafat Hukum Indonesia Doktor Ilmu Hukum*, Universitas Parahyangan, Bandung.
- vii. -----, 2013, *Meuwissen tentang Pengembangan Hukum, Ilmu hukum. Teori Hukum dan Filsafat Hukum*, Refika Aditama, Bandung.
- viii. -----, 1999, *Refleksi Tentang Struktur Ilmu Hukum (Sebuah Penelitian Tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia)*, Mandar Maju, Bandung.
- ix. Asshiddiqie, Jimly, 2006, *Konstitusi dan Konstitusionalisme Indonesia*, sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta.
- x. Atmosidirdjo, Prayudi, 1986, *Hukum Administrasi neva*, Ghalia Indonesia, Jakarta.
- xi. Bakhri, Syaiful, 2010, *Kebijakan Kriminal dalam Perpektif pembaharuan sistem Peradilan Pidana Indonesia*, Total Media, Jakarta.
- xii. Bertens, K., 1993, *Etika*, Pustaka Utama, Jakarta.
- xiii. Budianto, Heru, (Ed), 2009, *Panduan Praktis Etika Profesi Dokter*, Sagung Seto, Jakarta.
- xiv. Chandrawila Supriadi, Wila, 2002, *Hukum Kedokteran*, CV Mandar Maju, Bandung.
- xv. Chandrawulan, 2011, *Hukum Perusahaan Multinasional, Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*, PT. Alumni, Bandung.
- xvi. C. Kortens, David, 2002, *The Post Corporate World*, (terjemahan A. Rahman Zainuddin), Yayasan Obor, Jakarta.
- xvii. Clough, Jonathan, 2008, *"Punishing the Parent: Corporate Criminal Complicity in Human Rights Abuse"* *Brooklyn Journal of International Law*.
- xviii. Dror, Yedezkel, 1971, *Ventures in Policy Science: Concept and Applications*, New York, Oxford Amsterdam.
- xix. Ganie, Junaedy, 2010, *Hukum Asuransi Indonesia*, Sinar Grafika, Jakarta.
- xx. Gautama, Sidharta, 1984, *Pemeriksaan Klinis Umum*, Dian Rakyat, Jakarta.
- xxi. Gufron Mukti, Ali, 2007, *Reformasi Sistem Pembiayaan Kesehatan di Indonesia dan Prospek Ke depan*, PT. Karya Mukti Husada (KMH), Sleman Yogyakarta.
- xxii. Gunawan, Johannes, 2015, *Bahan Kuliah Metodologi Penelitian Hukum*, Doktor Ilmu Hukum Universitas Parahyangan, Bandung.
- xxiii. Gunawan Setiardi, A., 1993, *Hak-Hak Asasi Manusia Berdasarkan Ideologi Pancasila*. Kanisius, Yogyakarta.
- xxiv. Guwandi, J., 1991, *Dokter dan Rumah Sakit*, Fakultas Kedokteran UI, Jakarta.
- xxv. -----, 2009, *Pengantar Ilmu Hukum dan Bioetika*, Fakultas Kedokteran, Universitas Indonesia.
- xxvi. -----, 2004, *Hukum Medik*, Fakultas Kedokteran Universitas Indonesia, Jakarta.
- xxvii. Hadiati Koeswadji, Hermien, 1998, *Hukum Kedokteran (Studi Tentang Hubungan Hukum Dalam Mana Dokter Sebagai Salah Satu Pihak)*, Citra Aditya Bakti, Bandung.
- xxviii. Hamzah, Andi, 2007, *Pemberantasan korupsi Melalui hukum Pidana Nasional dan Internasional*, (Edisi Revisi 2007), Penerbit PT. Raja Grafindo Presada, Jakarta.
- xxix. Hanitijo Soemitro, Rony, 1990, *Metodologi Penelitian Hukum dan Jurimetri*, Galia Indonesia, cet ke-4 Jakarta.
- xxx. Hartono, Sunaryati, 1994, *Penelitian Hukum di Indonesia Pada Akhir Abad ke-20*, Cet.1 Penerbit Alumni, Bandung.
- xxxi. Hasibuan, Albert. Ed., 1985, *Dua Guru Besar Berbicara tentang Hukum*, Alumni, Bandung
- xxxii. Heine, Günter dan Thomas O Rose, *Private Commercial Bribery A Comparison of National and Supranational Legal Structures*, (Freiburg: Ed. Iuscrim, 2003).
- xxxiii. Henkin, Louis, Ricard Crawford Pugh, Oscar Schater and Hans Smith, 1993, *international law: theories and materials, third edition*.
- xxxiv. Henry J. Steiner, C.F., 2009, *"Organizational Irrationality and Corporate Human Rights Violations"*, *Harvard Law Review*.

- xxxv. Huda, Chairul, 2006, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana, Jakarta.
- xxxvi. Huijbers, Theo, 1995, *Filsafat Hukum*, Liberty, Yogyakarta.
- xxxvii. Husein, Sukanda, 2009, *Penegakan Hukum Lingkungan Indonesia*, Sinar Grafika, Jakarta.
- xxxviii. Ibrahim, Johnny, 2006, *Teori dan Metodologi Hukum Normatif*, Bayu Media Publishing, Malang.
- xxxix. Isfandyarie, Anny, 2005, *Malpraktik dan Risiko Medik dalam Kajian Hukum Pidana*, Prestasi Pustaka, Jakarta.
- xl. Jusuf Hanafiah, M., dan Amir, Amri, 2008, *Etika Kedokteran dan Hukum Kesehatan*, EGC, Jakarta.
- xli. Johan Nasution, Bahder, 2005, *Hukum Kesehatan Pertanggungjawaban Dokter*, Rineka Cipta, Jakarta.
- xlii. Johnson, T. j., 1991, *Profesi dan Kekuasaan*, Pustaka Utama Grafiti, Jakarta.
- xliii. Karim, Jamaluddin, 2013, *Politik Hukum Legalistik*, Imperium, Jogjakarta.
- xliv. Kartanegara, Satochid, t t, *Hukum Pidana Kumpulan Kuliah*, Bagian I, Balai Lektor Mahasiswa, Jakarta.
- xlv. Koentjaraningrat, , *Pergeseran Nilai-Nilai Budaya dalam Masa Transisi dalam BPHN, Kesadaran Hukum Masyarakat dalam Masa Transisi*, Binacipta, Jakarta, tanpatahun.
- xlvi. Komalawati, Veronica, 1999, *Peran Informed Consent Dalam Transaksi Terapeutik*, Citra Aditya Bakti, Jakarta.
- xlvii. Kritian, 2014, *Hukum Pidana Korporasi, Kebijakan Integral Formulasi Pertanggungjawaban Pidana Korporasi di Indonesia*, Nuansa Aulia, Bandung.
- xlviii. -----, 2016, *Kejahatan Korporasi di Era Modren dan Sistem Pertanggungjawaban Pidana Korporasi*, PT. Rafika Aditama.
- xlix. -----, 2006, *Sistem Pertanggungjawaban Pidana Korporasi (Tinjauan Teoritis dan Perbandingan Hukum di Berbagai Negara)*, PT. Rafika Aditama.
- I. M. Achadiat, Crisdiono, 2004, *Dinamika Etika dan Hukum Kedokteran dalam Tantangan Zaman*, Buku Kedokteran, Jakarta.
- ii. Magnis Suseno, Franz, 1994, *Etika Politik*, Gramedia Pustaka Utama, Jakarta.
- iii. Mahmudi, 2005, *Manajemen Kinerja Sektor Publik*.
- iiii. Republik Indonesia, Undang-Undang Dasar 1945.
- liv. -----, Kitab Undang-Undang Hukum Pidana.
- lv. -----, Undang-Undang Nomor 8 Tahun 1999 tentang *Perlindungan Konsumen*.
- lvi. -----, Undang-Undang Nomor 44 Tahun 2009 tentang *Rumah Sakit*.