



Online Counterfeit Drugs Trafficking in Point View of Nasional Law and Maqosid Sharia (Islamic Law)

Amouri Adi Sudiro^{1*}, Siti Farhani¹, Aris Machmud¹

¹ Universitas Al-Azhar Indonesia, Indonesia

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Abstract

The development of information technology gives two sides of the coin in the dynamic in human life, whether positive or negative, also transactions in cosmetic and psychotropic daringly, if it is not given supervision closely, it can cause losses to the consumers. The research question is how does law reviewing online spreading medicines give law protection. This research uses using the normative juridical method with a legislations approach. The result of this research is that there is a necessity for regulation that can give protection to consumers on an online transaction basis, especially relating to drugs, cosmetics, and psychotropic spreading, so there are no losses for the consumer through product and absolute manufacturer responsibilities if it is causing losses to the consumer. The role of pharmacists and BPOM in controlling the drugs and cosmetic spreading before they spread to the marketplace.

Keywords *E-Commerce, Online Spreading, Supervision, Marketplace*

INTRODUCTION

Changes in conventional transaction patterns to digital impact people's lifestyles, including in digital transactions (e-commerce). These changes require the effectiveness and efficiency of regulations to protect the public from misuse of digital technology. Without exception, sharia-based transactions guide so that the elements of the problem are met in e-commerce transaction activities, including in the payment system (Sari, 2023).

The society poisoned by false medicines, cosmetics and drugs through online transactions is already concerned that regulation relating to this term does not be arranged in law because the online spreading is regulated through UU ITE. In contrast, medicines and false cosmetics are regulated by Health Law and Consumer Protection. This term can cause difficulties in handling those spreading e-commerce transactions through marketplace platforms (Widyaningrum, 2020). This term showed the spreading result data of the inspection of the Indonesia E-Commerce Association (IDEA) toward spreading false medicines. In 2020, fifty thousand marketplace members had already been taken down because of selling illegal drugs. BPOM was corporate with law officers in eradicating these illegal and false drugs in variate online media, whether prosecution or intelligent action (Ernestia, 2021).

This issue has encouraged the urgency of this research that there are synchronization and harmonization of legislation relating to the supervision and precaution of drugs, food, cosmetics, and psychotropic online spreading to ensure the prospected and protected human rights in society based on the nation's constitution.

The research from Versita and Rahmawati (2021) states that society must be more aware of choosing drugs online to avoid harming them during consumption. The research from Ernestia (2021) states that the large amounts of false drugs spreading, especially during the pandemic caused by the limitation in society also the easiness and consumer conform during the transaction

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Corresponding author's email: amourysudiro@uai.ac.id

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in an e-commerce platform – does not need to go to the pharmacy or seek consultation from the doctor- can cause the side effect which harmed the consumer on consumption those drugs.

There is a solution that can be given by the research, which is preventive and repressive actions to producers and distributors of those false drugs, besides the physic proves on the field normatively not up to expectation as being arranged in regulation. The research from Br. Siahaan et al. (2022) stated that the optimal solution in supervising the BPOM – Tanjungpinang City POM Workshop – does not yet give an optimal solution for supervising the false drugs spreading online because there is still no standardization precaution mechanism.

Versita and Rahmawati's (2021) research emphasizes the awareness of its consumer rationally in consuming drugs online without showing the precaution or stopping the false drugs transaction from spreading, so it can potentially cause the side effect from consuming those drugs will always happen and no deterrent effect also there are no actions in asking absolute responsibility from producer or tenant marketplace.

However, Ernestia (2021) found that the involvement of law officers is only temporary- just taking down the site- without any action to give a deterrent effect and economic effect to replace the amounts of losses to the consumer is a form of producer absolute responsibility regarding the risk if anything happened to their consumer. Br. Siahaan et al. (2022) state that the producer is not always being evaluated because many producers violate the law by spreading drugs that do not base on the license issued by BPOM. Therefore, based on these issues, this research aims to study the regulation relating to false drug spreading to create prosperity in society, especially the right to get primary service in health service.

Issue Research

This research aims to find out and analyze the circulation of counterfeit drugs carried out online against the public.

LITERATURE REVIEW

Maqashid means guidance or a straight direction on the way, while the other meaning is balance – neither more nor less – the other meaning is the source of life. In conclusion, *maqashid* is a means of achieving a goal. While the meaning of Sharia is the Sharia determined by the *khalik* - The Creator – for His people to achieve a benefit. Islamic fiqh is a source of law that regulates the rules of worship and *muamalah*, which makes the relationship between God and humans and relations between humans based on the guidance of the Al-Quran and As-Sunnah which were formulated by the jurists (jurists) in the study of Islamic law. the relationship between humans and their gods takes the form of procedures and provisions in worship, while relations between humans take the form of provisions related to the economy, agreements and legal sanctions for the sake of realizing personal and social order (Hadi et al., 2023).

Free trading with economic globalization turned the transaction paradigm, along with the development of digital technology support that can ease the transaction process, nevertheless, in the health filed, especially in online shopping transactions (E-commerce). This can be seen based on transaction data from 2017-2021, which shows the increasing trend where in 2021, those trends reached three hundred ninety-five trillion rupiahs with the internet user reaching over 33.7% of the population or two hundred seventy-five million people (Halkam, 2022).

While the business people involved in E-commerce in Indonesia is from MSMEs, with an amount of 2.361.423 business in 2020, which majority of them are non-formal business that does not have a booking system (Kusumatrisna et al., 2021).

The online transaction keeps increasing is a rational thing regarding the nature of practical and effective, and efficient transactions because they can be done through marketplace portals,

such as Bukalapak, Tokopedia, Lazada, Shopee, or JnD – and also social media, such as Facebook, WhatsApp, or Instagram – also delivery online service, such as Gojek, Grab, Pos, JNE, SiCepat, and others (Halkam, 2022).

The shifting transaction paradigm during this disruption era shifts patterns and methods in all fields, including digital transactions through e-commerce platforms. This term also involves the trend of internet users, online transactions and cyber-crime because, basically, the crime exists because irresponsible people utilize a chance and opportunity. Citing the results of a survey by the Association of Indonesian Internet Service Providers (APJII) whereas 2020, the first quarter increased to 73.7% from the 2019 period, following the increase in internet crime based on data from the National Cyber and Crypto Agency (BSSN) stating that cyber-crime as 2020 increased to 41% from 2019 which record almost a half of millions of criminal cases, and also with police-cyber data there was increasing in trend cases one year prior. The cyber-world already become world attention because the violation of crime by using advanced technology can judicial cross and potentially do money laundering and white-collar crime that push the regulation supply to take care of by cyber law (Fitri, 2022).

This online pharmacy business will inevitably keep increasing along with the pharmaceutical industry development, and the need for people on those drugs will increase. However, if it does not regulate, it will harm the consumer and bring health problems to society because of these illegal drugs. Therefore, strict supervision is needed so it will be based on regulation and standards from the offline pharmacy- because basically, the spreading of drugs outside license from BOPM also involves pharmacists as an institution that has authority in recommending drug consumption, as regulated in drug and food supervision (Utami, 2019).

Human productivity, whether individual or socio-economy supported by the existence of good health; this is the promise from the constitution that has to be supplied by the government and supported by society always to keep their health is one of good collective responsibility whether physical or spiritual health (BPOM, 2020).

The minimum productive life standard arranged by WHO is the fulfilment of material and spiritual needs through supplying service health, whether medical or paramedical (BPOM, 2020).

The vital role of the pharmacist in service and education relating to proper drug usage makes the government give law protection to widening and distributing society health services as it regulated in PP No. 51 of 2009 about pharmaceuticals (Ariestiana, 2020).

The drugs and psychotropic spreading must have a license from a doctor to prevent irresponsible drug usage, which can cause health problems in society and the nation- also, it can potentially develop illegal spreading globally and abuse the internet for criminal acts in drugs transaction; therefore, it needs to be arranged its legality. Psychotropics via e-commerce can be dangerous because it does not use doctor recipes. Therefore, the government is responsible for the supervision and protection of society through the Regulation of the Minister of Health No. 9 of 2017 concerning Pharmacies, Per BPOM No. 8 of 2020 and Ministry of Information Circular No. 5 of 2016 (Ernawaty et al., 2023).

Health services to society relate to proper, legal and accord with recipes from a doctor based on the standard arranged in regulations related to pharmaceuticals to prevent drug usage without any doctor recipe. The socialization of proper drugs abused to society gives literature and awareness about the importance of legal and proper drugs. The drug spreading must be supervised by professionals appointed by legislation to secure society's prosperity through proper drug use.

RESEARCH METHOD

The authors used normative legal research forms with a legal regulatory approach and performed descriptive analyzes of various legal sources relevant to sentencing. Shidarta and

Achmad Ali said that the normative legal method is research based on legal material, both written and positive law – legal principles, legal norms, and legal rules – used to study an object (ontology) from the science of law (Bachtiar, 2019). The approach in this research is descriptive and qualitative, namely research that aims to describe and explore (to describe and explain) the object under study (Fadjarajani et al., 2020).

FINDINGS AND DISCUSSION

E-commerce has positive and negative effects on the economy. The positive side is convenience and speed, innovative spirit improvement, open market for labour, and ease of transaction, including the payment system (Kusumatriana et al., 2021). However, the negative effect is that it can become media for drugs and false cosmetic spreading that can harm society.

Counterfeit drugs are categorized as falsified drug products carried out knowingly (intentionally) – by irresponsible and only pursuing profits – from legitimate manufacturers for both patent and generic drugs, which can endanger health and even be life-threatening. It also can potentially damage society's trust in producers and health systems. Globally this grey economy practice is growing very fast – after narcotics, terrorism and arms trade. Handling Counterfeit Drugs in India involves the public in suppressing their distribution; besides that, the government, as of January 2023, requires every manufacturer to use QR codes on Active Pharmaceutical ingredients used in medicines to ensure the safety of the supply chain (Singh & Gupta, 2022). Meanwhile, in Indonesia, perpetrators can be subject to administrative fines and criminal sanctions as a criminal law remedy as a form of preventive and repressive protection (Pratama et al., 2023 see Andrianto, 2022).

Handling the circulation of counterfeit drugs in Nigeria by utilizing a special blockchain network, which is generated from serial numbers inputted by consumers, which in turn generates a QR Code as a form of verification of product authenticity so that it can reduce the number of victims of counterfeit drug abuse (Tijani & Tomiwa, 2022).

All transactions are lawful unless a text prohibits it (MR & Noor, 2014). Therefore, transactions must be based on divine, moral and noble values (morals) aimed at realizing human benefit and guaranteeing halal and *toyyiban* products (Ulfa, 2021).

Halal products – both food and medicine – based on purpose sharia are the main key in sharia aimed at benefit, wisdom, secrets and general targets based on legal instruments contained in the texts of the Qur'an and Hadith with the fulfilment of elements the main points of Islamic teachings in consuming halal food are mainly related to *hifdzun-nafs* (safeguarding the soul), *hifdzul-'aql* (safeguarding the mind) and *hifdzul* times (safeguarding property), so counterfeit drugs seen from the aspect of benefit conflict with the principles of halal (Takhim & Mashudi, 2018).

The influence of needs on benefit where in fiqh stated that guarding and maintaining religion, soul, mind, lineage, and wealth affect the fulfilment of needs (Firdaus & Sahputra, 2022) where Muslims must buy goods and services with the principles of halal and *tayyiban* (Harahap et al., 2020).

Based on BPOM data, counterfeit drugs and unregistered food products continue to increase from year to year, and according to the Directorate General of Customs and Excise (DJBC), including illegal drugs and food products, many violations are found in customs cases. Prevention of the distribution of counterfeit drugs requires an integrated team involving law enforcement officials. For this reason, Customs Officers can also be given access in order to be able to detect early in preventing the distribution of illegally imported drugs and food (Apriansyah & Munandar, 2019).

Besides that, it is necessary to use technology and socialization in education to increase public awareness in anticipating counterfeit drugs and products, whereas anticipating the effects of counterfeit drug use can be done through pharmacovigilance and toxicovigilance to prevent the

after-effects of the impact of counterfeit drugs on organ damage and patient death (Alquadeib et al. 2022 see Vida et al., 2022).

The existing regulation will protect society through administration and revocation sanction “take down” on the vendor in the marketplace if there is any suspected violation in regulation related to drugs or cosmetic transactions and illegal psychotropics. However, the existing regulation is not yet maximal, as it stated by Mitendra that the existing regulation is still not yet maximal to protect society related to drugs and food spreading so the level of legislation regulation is needed (Ernawaty et al., 2023).

The law update in digitalization drug spreading needed to fill the emptiness. The regulation relating to psychotropic e-commerce if Article 1320 of the Civil Code does not fulfil the objective elements so that it is null and void, as seen from the ITE Law (Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 about Information and Electronic Transactions (State Gazette of the Republic of Indonesia of 2016 Number 251, Supplement Republic of Indonesia State Gazette Number 5952), 2016) does not regulate the sale and purchase of psychotropic drugs. Meanwhile, the prohibition on distributing certain types of drugs that may not be displayed on e-commerce platforms is regulated in the Ministry of Information Circular No. 5 of 2016, where the sanctions for violators are administrative sanctions (Ariestiana, 2020).

The harmonization and synchronization of absolute regulation are done to synchronize the changing condition quickly and disruptively; the regulation must adapt toward changing to prevent any mischief that harms society. In Europe and America is rigid and strict to product and food spreading also health product for security and health of their people and if there unwanted thing happened, then they applying responsibility of their product and give absolute responsibility to producer, the high position makes producer more aware in spreading their product to anticipate market risk – product liability and strict liability (Sodikin, 2022).

Finally, Indonesia adopted that system through regulation related to consumer protection and also applying absolute responsibility (strict liability) in consumer protection law is being used, especially on product responsible (product liability) and professional responsible (professional liability) of the producer spreading drugs that will cause harm to the consumer. Strict liability can anticipate the producer to make primary product and makes production more carefully.

CONCLUSIONS

The researcher argues that based on the judicial review above related to spreading drugs online can protect society, that regulation that regulates relating drug spreading and food cannot give maximum protection. Besides it, in point of view of *maqosid sharia* is contrary to divine, moral and noble values (morals), as well as human welfare. Therefore, the standardization regulation, whether from capital or referring area to the same regulation beside that, needs an assessment of drugs and good whether a license or already have a license continuity following with giving supervision over spreading drugs in market- pre-market and post-market control.

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