

THE JUST DRUG DISTRIBUTION IN THE PERSPECTIVE OF WELFARE STATE*

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Abstract

States have obligations to improve equitability of welfare and prosperity of the community. Pharmaceutical is one of the important and strategic industries because of its vital role to support the development of health sector. Lack of regulation on pricing-products, and diversion of social aspects in the drugs trade, either by government or industry, are associated with the paradigm that underlies regulation of the distributions. Prospective policy analysis and functional approach of law are used to find a level of balance of various interest related to the subject, and to find concepts as a basis to construct new paradigm on drugs distribution.

Keywords: drug distribution, justice, welfare state.

Intisari

Negara berkewajiban untuk meningkatkan kesejahteraan dan kemakmuran masyarakat secara berkeadilan. Industri farmasi merupakan salah satu industri penting dan strategis karena perannya yang vital menunjang pembangunan bidang kesehatan. Terdapat kecenderungan kurangnya peran Pemerintah dalam pricing policy obat, serta diabaikannya aspek sosial dalam perdagangan produk farmasi, baik oleh Pemerintah maupun industri farmasi. Carut marut ini berkaitan dengan ketidakjelasan paradigma yang berujung pada ketidakjelasan kebijakan yang melandasi tatanan distribusi obat. Makalah ini menggunakan analisis kebijakan prospektif dan pendekatan fungsional hukum untuk mengkaji kebijakan distribusi obat yang bersifat multi disiplin dan menemukan konsep baru untuk menemukan titik keseimbangan dari berbagai kepentingan terkait.

Kata Kunci: distribusi obat, keadilan, negara kesejahteraan.

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* This paper is a summary from the results of a research by College's Flagship Airlangga University in 2013.

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A. Introduction

The state is obliged to improve the welfare and prosperity of the community evenly.¹ To achieve this goal, the areas of life that are important to the country and control the lives of many people must be the main concern of the Government, including in the field of health. The availability of drug² is an important element in the implementation of the national health system, consequently, the drug distribution system for the community also has a vital role in supporting the development of the health sector.

The concept of prosperity points at the quality of life of the individuals, families, industry or community as a whole. Therefore, those qualities of lives only present if the social system runs well. The level of welfare that is provided by the State depends on how many resources that can be shared by the State, the different means of the resources distribution, and the level of the country's establishment as the welfare state.³

There is a global tendency to associate welfare and health with the access of medicine and other pharmaceutical products. On that basis of thinking, the pharmaceutical industries then become a global economic power with the capital turnover of millions of dollars per year.⁴ As a business activity, it is natural when it is implemented based on the principles of Economics. The development of the number and type of diseases causes the pharmaceutical industry has to be based on research and innovation that are carried out continuously. The expensive cost of the research and innovation with a high

risk of big failure causes the pharmaceutical industry to be included as the industry that has the characteristic of *capital intensive*.⁵ These reasons are often used by the pharmaceutical industry not to develop drugs that are really needed by the poor, such as drugs for HIV-AIDS and TB, because of their purchasing power for medicine is very low.⁶ Therefore, the nature of such drug market produces the social gap due to different individual's ability to pay for drug prices.⁷

The pharmaceutical industry, therefore, is an industry with specific characteristic that requires special regulation to balance the needs of the community for drugs which are cheap, nutritious, safe and easily accessible, but it should also meet the needs of the industry as an economic entity that desires profit from its activities. With that characteristic, the Government should not view the trade of drugs in the same way with the trade of other consumer products. The government must be involved in the process of its distribution including in the determination of drug prices (*pricing policy*) that can create healthy condition and support the development of the pharmaceutical industry that mutually gave profits for the community and the pharmaceutical industry. In this context then the role of the State in determining the policy direction as the foundation to formulate the policy becomes important. The law must perform its function as a means to achieve social justice for community through the arrangement of drug distribution system, in order to achieve the balance of interests for the parties that are involved in that system.

¹ Preamble of the 1945 Constitution of the Republic of Indonesia.

² Decision of Health Minister Number 189/MENKES/SK/III/2006 on National drug Policy, March 27, 2006. In this study, drug means a material or the fusion of substances that are used to influenced or to investigate physiology system or pathology condition in setting the diagnose, prevention, healing, recovery, rising health and contraception.

³ Nicholas A Barr, "Economic Theory and the Welfare State: a Survey and Interpretation", *Journal of Economic and Literature*, Vol. 2, No. 30, 1992.

⁴ Adriana Petrina, *et al.*, 2006, *global Pharmaceuticals Ethics Markets and Practices*, Duke University Press, London, p. 1.

⁵ Junaidi Khotib, 2007, *Kajian Pemetaan Jalur Distribusi dan Persaingan Usaha Industri Farmasi Indonesia*, Research Result, Airlangga University, Surabaya, p. 11.

⁶ Adriana Petrina, *Op.cit.*, p. 5.

⁷ *Ibid.*, p. 7.

B. Discussion

1. The Healthcare Distribution System in Welfare State

A simple definition of the welfare state is:⁸

The form of democratic government that places the State as the institution that is responsible towards welfare of the people, through a series of public policy in integrating the economic policy and the social policy for the achievement of welfare and social justice.

Here the State's role and control for the fulfillment and distribution of welfare is very big through the *social policy*.⁹ The social policy therefore determines the country's actions that have effect of redistribution to the community through regulations in the educational field, the social insurance, pension programs and the health assurance system. In countries that tend to be individualists, the concept of the welfare state is more understood as the influence towards the *citizens' personal welfare resources* as part of *social capital*.¹⁰ Through a variety of public policy and legal regulations, the state arranges a purpose and the order of community's welfare that are oriented to: (1) promote economic efficiency; (2) reduce poverty; (3) strengthen social equality; (4) develop social integration or avoid social exclusion; (5) ensure social stability; and (6) promoting the self-reliance of individual. In the

process, due to the differences in the socio-cultural reality in each country, there are various extents of the State's role and the tendency of the state over those six orientation elements.¹¹

The roles that are played by the Government to the welfare state, as described above, are very broad so that it requires a control mechanism to limit government's action in order to remain within the scope of the State's purpose in the Constitution.¹² Though not literally implied, but implicitly it can be said that the constitution of 1945 is the Constitution that carried the concept of the welfare state because it contains the states' purpose that expresses the concept of welfare state. The concept of welfare state has been absorbed and determined as the States' purpose in the Constitution of 1945 in the preamble part¹³ and several articles in the torso, as the shape of coherence between the concept of welfare state with the states' purpose to improve the general welfare.¹⁴ The community in modern countries hopes that the state, through the legal system and the regulations, gives the assurance for justice and welfare so that they do not fall in the uncertain situation, as it is stated by Lawrence M. Friedman: "And the legal system will provide – must provide – machinery to make sure all this happens, whether by way of prevention, or cure, and certainly by payment of damages."¹⁵

⁸ Neville Harris, "The Welfare State, Social Security, and Social Citizenship Rights", in Neville Harris, *et al.*, 2000, *Social Security Law and Context*, Oxford University Press, Oxford, p. 4.

⁹ Ruut Verhoven, "Wellbeing in the Welfare State, Level No Higher Distribution not more Equitable", *Journal of Comparative Policy Analysis*, Vol. 2, 2000.

¹⁰ Mikael Rostila, 2013, *Social Capital and Health Inequality in European Welfare States*, Palgrave Macmillan, London, p. 10.

¹¹ This variation causes the various kinds of social welfare that develops in every country, so that the form of welfare state is also not the only one but materialized in various types, that can be formed into: (a) "universal welfare state" model; (b) "residual welfare state" model; (c) "Jalan Ketiga" (*the Third Way model*); and (d) "pasar sosial" (*sosial market economy*) model.

¹² According to Friedman the roles that are played by the Government in the economic interaction based on the welfare States' concept basically includes 4 (four) important aspect, which are: *as a provider, a regulator, an entrepreneur and an umpire*. According to Friedman the role that was played by the government in the interaction of economics according to the concept of the welfare state basically covered 4 (four) the important aspect that is: the USA a provider, a regulator, an entrepreneur and an umpire. W. Friedman, 1971, *The State and The Rule Of Law in A Mixed Economy*, Stevens and Sons, London.

¹³ As it is stated in the preamble of Constitution of 1945 paragraph IV, Indonesia has the purpose, "[...] to protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of people and to contribute to the establishment of a world order based on freedom, abiding race and social justice," "[...] the idea of welfare is depicted through Constitution" [...] used as much as possible for the good of people."

¹⁴ Article 27 paragraph (2) states that every citizen has the right to a job and a decent livelihood for humanity. Article 31 guarantees every citizen the right to get an education. Article 33 expressly instructed the management of nature for people's prosperity as big as possible. Article 34 affirms that the State preserve (guarantee, protect and care for/serving) poor and abandoned children. These articles then asserted that Indonesia embrace the closely the idea of a welfare State, thus legal instrument should develop a national social security system.

¹⁵ Lawrence M. Friedman, 1986, *Legal Culture and the Welfare State*, in Gunther Teubner, *Dilemmas of Law in the Welfare State*, Walter de Gruyter, Berlin, p. 25.

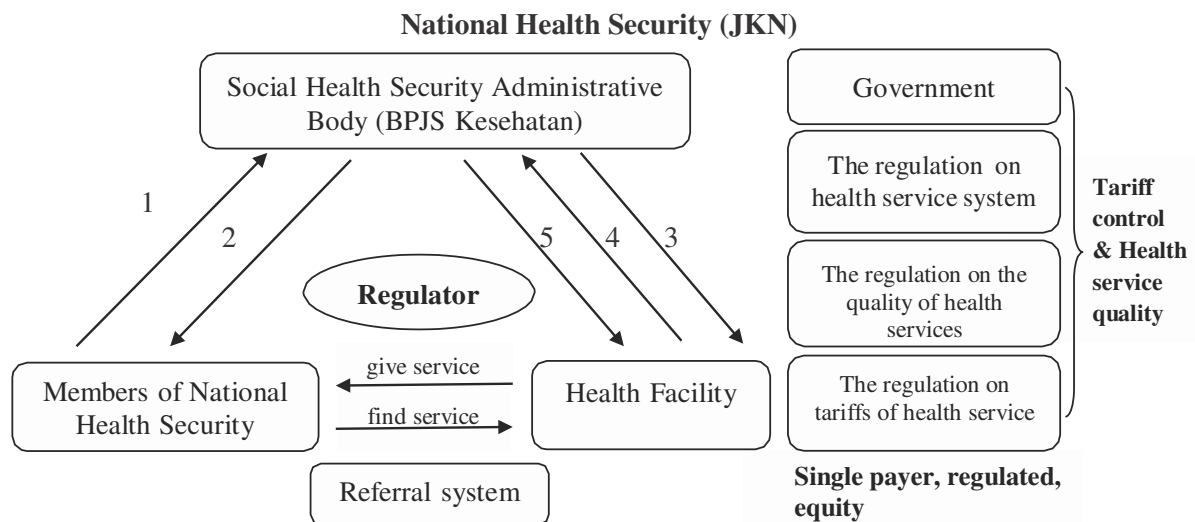
If it is associated with problems of distributing drugs that is basically an economic product, then its distribution systems should not be liberated from the efforts to achieve community welfare. The state in its function to protect all the Indonesians and to improve the general welfare must guarantee the availability and accessibility of drugs, regardless the level of their economic capabilities, considering that the fulfilment for the needs of drugs is one of the human rights' protections.

In the perspective of the welfare state, the health is viewed as the individual's right and the community's rights that must be fulfilled by the state, because it is one of the components of the protection of human rights. Thus, the state must guarantee that every citizen gets the optimal health service regardless of the social status of the individual. The health service that should be provided by the state, including the assurance of availability of complete drugs, in sufficient amount,

guaranteed quality, good quality, affordable, and easy to be accessed by the community that needed.

Literally, the Government of Indonesia has presented this concept to the policy and regulations, which is in the Long-term National development plan contained in Act No. 17 of 2007, on Long-Term Nation/Development in Act No. 36 of 2009 on health,¹⁶ and Presidential Regulation No. 72 of 2012 on National Health Systems.¹⁷ The Nasional Health System prevails *Jaminan Kesehatan Nasional* (JKN) in January 1st, 2014 through the formation of *Badan Pelaksana Jaminan Sosial Kesehatan* (BPJS Kesehatan). In the JKN implementation, the integration of various subs of health systems¹⁸ is needed, that has an aim to increase the awareness, willingness, the ability to live healthily for everyone in order to achieved the level of community's health as high as possible. Through JKN, the government widens the scope of the health assurance for the

Chart 1. Description of Health Coverage System in Indonesia



1. Pay dues
2. Takes care of complains
3. Contract of Cooperation
4. Submit Claims
5. Pay Claims

¹⁶ Act Number 36 of 2009 on Health (Stated in State Gazette Republic of Indonesia 2009 Number 1441, Supplement to State Gazette Republic of Indonesia Number 5063).

¹⁷ Act Number 36 of 2009 on health (State Gazette of the Republic of Indonesia 2009 Number 1441, Supplement to the State Gazette of Republic of Indonesia Number 5063).

¹⁸ Act Number 36 of 2009 on health (State Gazette of the Republic of Indonesia 2009 Number 1441, Supplement to State Gazette of the Republic of Indonesia Number 5063).

community by integrating all the available health assurance system.

In the report presented by the Ministry of Health, up to 2011, the population that has health assurance is 63,1%, and in 2012 increases to 64,58%. Jamkesmas contributes 32.4 including the labour assurance that covers 1.5 pregnant mothers. In 2014, it is targeted for the entire population that has health assurance of 80.53% and the assistance for health expenses for the poor to reach 96.4%.¹⁹ In the implementation of SJKN phase I in 2014, the region is still obliged to provide the budget for drugs for the basic health service in the APBD of 2014 because not all the communities get the insurance in this phase.²⁰

To control the drugs price, the Government arranges in Presidential Regulation Number 72 of 2012 on SKN that the price of generic drugs for the procurement of the Government/BPJS must be Processes through the mechanism of e-catalogue and determine the highest retail price of generic drugs. While the price of generic-branded drugs and the drug patent is determined by market mechanisms. To increase accessibility of drugs, the Government carried out strategic steps, among them: to increase the capacity of drugs management in the central and the district; to increase the capacity of the pharmaceutical industry so that it can support JKN; to increase the capacity of the logistic information system in the Central and the district; the stabilisation of affordable drugs and medical instrument; to increase the rational use of drugs; and to increase the quality of the pharmaceutical service in hospital and in community. The government also makes effort to increase the access to safe drugs, useful, good-quality, guaranteed in type and amount according to the needs of health service, which is available evenly in all over Indonesia. To achieve this aim, surely the provisions of drugs that are superior in the quality and the price became certainty.

Tabel 1. The Percentage of Coverage of Health Assurance Membership in 2011

No.	Types	SUM	%
1.	Jamkesmas	76.465.306	32,4
2.	Askes PNS, TNI, POLRI	17.205.516	7,3
3.	Jamsostek	5.183.479	2,2
4.	Private insurance, dll	5.844.789	2,5
5.	Company insurance	15.351.532	6,5
6.	Jamkesda	32.642.318	13,8
7.	No insurance	83.296.525	35,3
Total Population		235.989.469	100

Source: Results of a Research by College's Flagship Airlangga University in 2013.

Although in the implementation of the national health system, drug is a fundamental component, nevertheless it is not possible for the State to provide all the community needs for drugs, so the drugs are categorized into essential and non-essential, with the distribution channel that is also distinguished into the distribution channels that is done by the State and the distribution channel that is done by private enterprise.

The availability of essential drugs in the public sector is secured by the Government by determining the price of essential drugs for the health service, where for the low-income community is subsidised through the procurement of drugs in the basic health service. The availability of drugs through a private channel is done based on the mechanism of the market that is conducted by the pharmaceutical industry, *Pedagang Besar Farmasi* (PBF), pharmacy and drug store. This drugs trade through private's channel often causes the problem because it still has paradigm that drugs is a common consumer product whose price is not determined by the Government.

2. The Anatomy of Drug Distribution Route in Indonesia

In the context of *supply chain* the pharmaceutical industry can be categorized into 4 (four) big phases:

¹⁹ The goal of strategic issue in Government Workplan of 2014.

²⁰ *Ibid.*

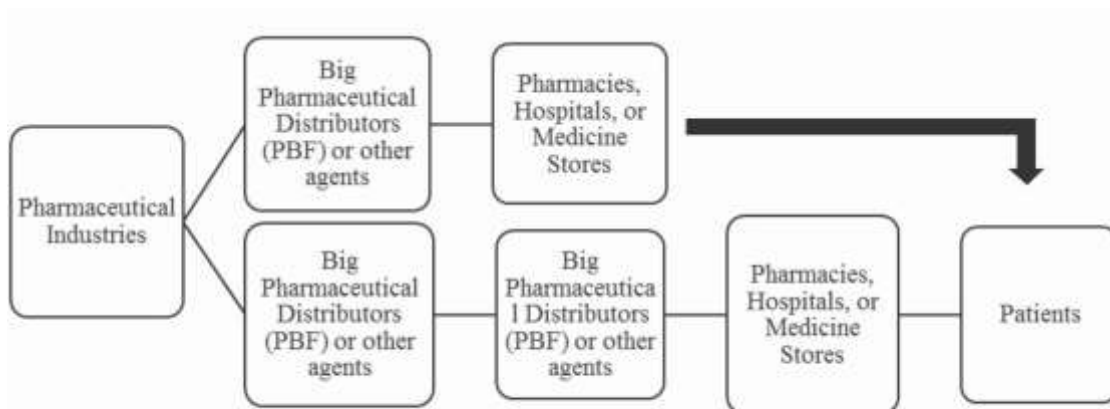
- Phase 1. Research & Development
Formula design phase of a product to produce nutritious drugs.
- Phase 2. Production & Marketing
The Drug production and marketing phases (including introduces to the medical personnel and the community).
- Phase 3. Distribution
The Phases that connects between the pharmaceutical industry and retailers such as Pharmacies and hospitals.
- Phase 4. Retail
The Phase where the pharmaceutical drug is prepared to be accepted by the patient.

The distribution system in the pharmaceutical industry must put the quality and responsibility forward. Though it should not forget the efficiency aspects that are also must be considered in conducting the economic activities, but the quality aspect has to be the prominent in this activity, considering that the drug's function as one method of healing can be dangerous to its user if it has no quality.

Every country has its own distribution system that is determined by the Government. This matter is certainly based on the health paradigm of the community that is followed by the State and the way the government views the drug, whether it is: (1) purely regarded as the economic product; (2) regarded as part of the implementation of health system by the State; or (3) the combination of those two concepts. The third concept is usually adopted by developing countries as a solution to fulfil the community's needs which are usually placed in the varieties of welfare stratification. In this system, it distinguishes the drug that is purely regarded as the economic product sold according to mechanism of the market, but the government also provides drug in the health implementation system by the State which is easy to be accessed by the community with low price.²¹ Any selected distribution system, the role of Government as the regulator and supervisor of the implementation of the drug distribution is the central role, considering the drug not only functions as a means of healing and disease prevention but also has the potential to harm if it is not used properly or misused.

Below is the system of drug distribution in Indonesia according to the type of drug and the qualification of its distribution system:

Chart 2. Free Drug Distribution



Source: Results of a Research by College's Flagship Airlangga University in 2013.

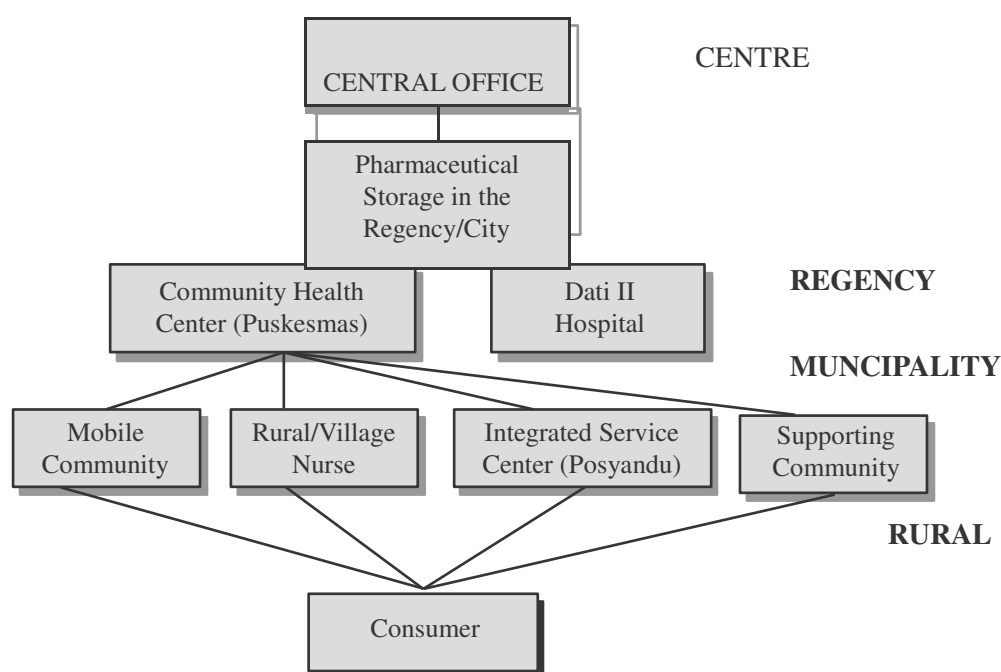
²¹ Indonesia is included as country that develops the joint system.

In order to reach the hospital and pharmacy as the last supplier of drug distribution channel, pharmaceutical industry points a national distributor, either single or multiple distributors (multi distributor). The reason to use a single distributor is because this is relatively simpler considering that the distribution that is targeted is not in a large amount. Before reaching to the retailer, sometimes in the drug distribution channel in Indonesia there is still one more door that must be passed, which is the *Pedagang Besar Farmasi* (PBF).²² The PBF existence is needed when the national distributor can not reach the locations that are outside its distribution territory because of not having the branch or representation in those places.²³

In Indonesia, the consumer can get drugs with the brand patent not only through the official channel like the pharmacy and the hospital, but also in the drug store that is not equipped with the Pharmacist. Although this matter is incompatible with the legislation regulation, but this practice has become the habit in the community that it is no longer regarded as the violation of law. The other practice that is also in contradiction with the norms of the drug trade is dispensing, which is the direct sale of the drug by the doctor that ought to be sold in the pharmacy.²⁴

The high number of inhabitants causes the drug market in Indonesia to be a very potential market. In Indonesia now there are more than 9.510 Community Health Centre units,²⁵ 2.088

Chart 2. Drug Distribution Route by the Government Sector



Source: Results of a Research by College's Flagship Airlangga University in 2013.

²² *Pedagang Besar Farmasi* (PBF) is a legal entity that has permission to the procurement, storage, distribution of pharmaceutical supplies in large amounts in accordance with applicable LAW. *Pedagang Besar Farmasi* permission is given by Ministry of Health, and applies for all during merchant's *Pedagang Besar Farmasi* concerned are active doing his business activities and applies to the entire territory of the Republic of Indonesia.

²³ Junaidi Khotib, "Distribusi Obat yang Berkeadilan dalam Perspektif Negara Kesejahteraan", *Paper*, Focus Group Discussion Research Flagship Universities Airlangga University 2013, Surabaya, July 27th, 2013.

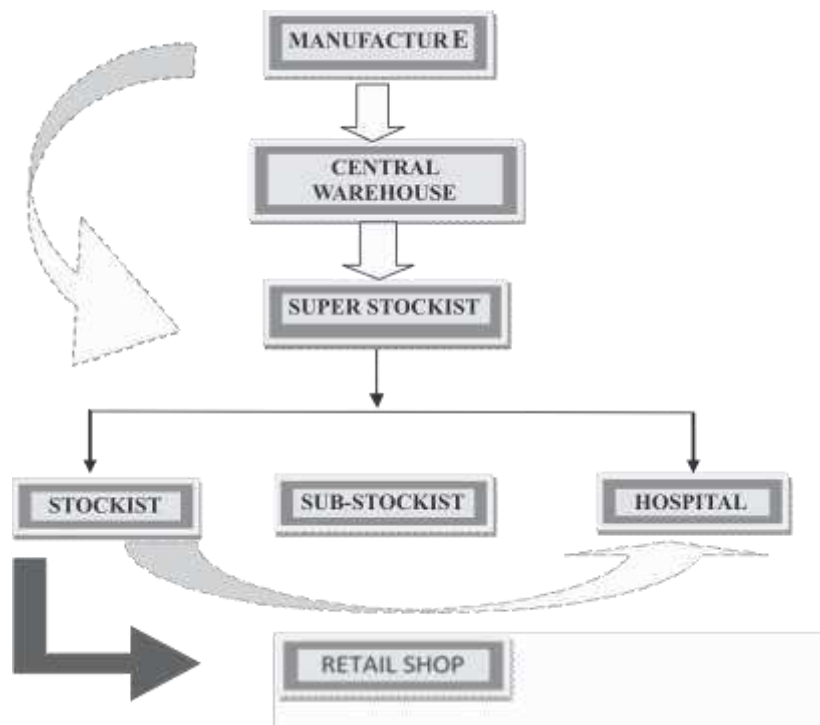
²⁴ Joice Ratnaningsih, "Distribusi Obat yang Berkeadilan dalam Perspektif Negara Kesejahteraan", *Paper*, Forum Group Discussion Research Flagship, Universities Airlangga University, Surabaya, July 27th, 2013.

²⁵ Ministry of Health Republic of Indonesia, 2013, *Profil Data Kesehatan Indonesia Tahun 2012*, Ministry of Health Republic of Indonesia, Jakarta, p. 195.

hospitals,²⁶ 17.613 pharmacies,²⁷ and 2.860 *Pedagang Besar Farmasi* (PBF),²⁸ the availability service indicates that the pharmaceutical market in Indonesia is increasingly growing and increasingly competitive. The development and the diversity of national insurance programs like JKN, *Jamkesda*, and in health also improve the needs of pharmaceutical product. With this great potential, the Government should be able to view it as a position of negotiator when determining requirements for the pharmaceutical industry who will invest in Indonesia. Inaccuracy determines the position of the Government, it is aggravated with the incomprehension that drug is a special product that should not be treated the same as other trade products. If it is based on the GATT provisions of 1994, then drug can be categorised as the product relating to human and animal health protection in the importer's countries so that the

GATT provisions of 1994 can be exempted to the trade of drug. The Commerce Minister's regulation (Permendag)/(*Peraturan Menteri Perdagangan*) Number 39 of 2010²⁹ that permits the businessman to import directly the drug shows the incomprehension of this. The direct import of this drug product has the negative side namely: (1) not all drugs that are imported have the equal quality or better compared to the national products;³⁰ (2) drug is related to the safety of the user so it need mechanism of tight supervision where this is the weakness that commonly happened in various sectors in Indonesia; (3) the pharmaceutical industry does not have to invest its capital to build the drug factory in Indonesia because it is enough to import drugs in the output form; and (4) the market mechanism that is applied to the drug trade triggers the implementation of the unethical practices such as dispensing.

Chart 3. Drug Distribution System in India



Source: Biopharm International, "Drug Distribution System in India", <http://www.biopharminternational.com>, accessed August 5th, 2012.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ The Commerce Minister's regulation Number 39 of 2010 on The Import or Products by the Producers (Official Gazette Republic of Indonesia of 2010 Number 8016).

³⁰ The Commerce Minister's regulation Number 39 of 2010 on The Import or Products by the Producers (Official Gazette Republic of Indonesia of 2010 Number 8016)

The implementation of regional autonomy also becomes the problem in the implementation of the national health system. Before decentralisation, the needs for generic drug for the community is done through the system of the supply of the Government, which through this system the Central Government guarantees the availability of essential drug for the community. The transfer of this authority to the region, on one hand gives the opportunity for the region to increase the quality of the service, adjusts the procurement of drug according to the specific needs for the local area and spends the funds according to the needs of the region. On the other hand, the autonomous region results in the procurement of essential drugs programmes hampered because the level of compliance of program execution regions is very low. However on the other side, regional autonomy makes the procurement program of essential drug to be hindered because the level of region's obedience to this implementation program is very low.

In addition, the drug procurement in the region tends to be inefficient. Mandatory procurement of drugs through tender is in fact intended to avoid the occurrence of corruption and collusion, but considering that this procurement is consumables, the tender system is at risk for the occurrence of inefficiency. The tender is usually carried out according to the requirement that is contained in the budget plan of certain year that is made within a period of one year. The determination of the type of drug is consequently based on estimation of one year needs, while in the health field it is often the needs for drug for the certain kind of illness, especially for pandemics disease is difficult to be predicted. So it is often the available drug in the supply is not suitable with the community's needs within a specific time. The procurement through the tender also requires the purchase of

drug in a huge number, which needs a big and adequate storage so that medicine's quality does not declined. This procurement in a large number is also potential to be unused and can not be used anymore as a result of exceeding the period of expired date.³¹ For this weakness, the Government organized a new drug procurement system, which is the e-catalogue system. This system is expected to make the procurement of drugs that are transparent and accountable.³² Although with various weaknesses, if it is compared with the distribution system of drug in India, the system in Indonesia is relatively better, considering there is assurance and greater protection for the people who cannot afford. The procurement and distribution of drugs in India are only performed by the private, and the procurement of drugs by the Government of India is done through the mechanism of government procurement. With such systems, the producer of the drug in India is encouraged to perform efficiency so that drug price in India is cheaper than the price in other countries, though layered distribution system that keeps drug price at the domestic level becomes expensive (see chart 3). The problem is, that most of the inhabitants of India are poor population that live in the countryside so eventhough it is cheap, but it is not accessible to the majority of the population. This can become a lesson for the Indonesian Government if they wish to encourage the efficiency of national drug price through the mechanism of the free market.

3. The New Paradigm of Drug Distribution Arrangement in Indonesia

As it has been previously stated that drug distribution is part of the national health security system of a country. The formation of concepts which base the paradigm of settings and the policy of the drug distribution system should be placed within the framework of the drug as a commercial

³¹ This often happens in regional hospitals, like that happened in Bangkinang. Redaktur Riau Pos, "Obat Kedaluwarsa karena Sistem Tender", <http://www.riaupos.co/35410-berita-obat-kedaluwarsa-karena-sistem-tender.html>, accessed on October 7th, 2013.

³² Bayu Teja Muliawan, "Implementasi Program Prioritas Dit. Bina Obat Publik dan Perbekes Tahun 2013", <http://www.binfar.depkes.go.id/bmsimages/1362061267>, accessed on October 7th, 2013.

product that is adherent with the values of humanity.

In order to compile the paradigm correctly, it must be understood first the nature of medicine, whether in medical, social, economic and anthropologis. Drug in Greek is known as *pharma* that refers to two conditions that exist in two different poles: healing or toxins, healthy or die, medicine or drugs. Therefore, the goodness or vileness is born not from what is contained within a substance, rather than the underlying intentions, the amount consumed, aspects influenced the context, as well as the management. To become the product that is consumed by an individual, a drug has gone through the long way with various factors that influenced: the research and development policy, the process of the production, controlling, marketing, the policy of the government in health, the pattern of community's consumption, and so on; also related to the actors who are involved: government apparatus, international organizations, the Non-Governmental Organization, the corporation and professional, where decisions which are made by these actors influence the health and welfare of the community. The multinational company in the pharmaceutical field is the actor that gets bigger influence to the pattern of consumption of the community's drug. The drug market has changed the interpretation of drug as the healer substance to the scale that spreads including the social aims and politics in it. Therefore, decisions and policies regarding medication and treatment are no longer just a matter of human body, but also interpersonal relationships, kinship and community. The medicine market also produces the social grouping that is based on the individual

capacity to pay the drug price, so the problem of drug can not be only viewed as individual problem, but also as the cultural and social process.

In the context of thinking in such way, if the paradigm of drug distribution arrangements in Indonesia shall be developed, by paying attention to several factors below.

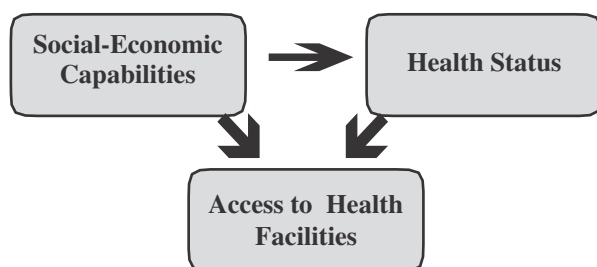
(1) The Disparities in the Distribution of Drugs

The social background is greatly determining the quality of health and access to one's health facilities, and considering the social disparity exists in the social reality, as a result there is also a health disparity.³³ Disparities in the distribution of drug is not only related to the ability to buy drug, but also a geographical location, considering in Indonesia there are many areas that have not been covered by adequate means of transportation. In the view of Rostila, this gap is more rooted in the process and the social structure that causes injustice, compared to inherent factors or input from the individual.³⁴ Lack of awareness for taking steps to reduce the level of this gap causes the mistake in making the policy of the drug distribution. If, for a high social-economic group, the price of a high quality medicine does not impose a large problem, this of course, would not apply for the middle and lower class of the community. If for the high social economics group, the price of high-quality medicine is not a problem, surely it is not the same with the middle and poor group. If it is being described in the diagram, it will be seen the connection as follows.

³³ Further see Charlene Harrington and Carroll L. Estes, 2008, *Health Policy Crisis and Reform in the U.S. Health Care Delivery System*, Jones and Bartlett, Massachusetts, p. 39.

³⁴ Mikael Rostila, *Op.cit.*, p. 7.

Chart 4. The Disparities in the Distribution of Drugs



Source: Results of a Research by College's Flagship Airlangga University in 2013.

JKN system gives guarantee for everyone, including the poor and medium groups (workers, workers, civil servants, employees of State-Owned Enterprises and armed forces) access to medication and treatment, but the problem is that often the quality of drug and the treatment which are covered by the health security system is not believed by the middle-class community that has other options.³⁵ Regarding to this, then the task of the Government is to increase the quality of drug and medical treatments which are entered the system of the health security to increase the community's trust to this system. In the JKN system there is still group of people that have to pay the health insurance premium in JKN that is paid personally, which is for them that are not including in this coverage, the entrepreneur that is not poor. Their willingness to take part in as well as in the JKN system depend on their perception on the benefit that can be obtained as compensation for their obligation

to pay for premium to the Government.

(2) The Politics of Health and the Distribution of Drugs

National politics of the health should be aimed for increasing the interests of the community's health, only not through curative methods but also with preventive steps. Although the distribution of medicine is social, the policy and the regulation should not eliminate the efficiency factor. Government procurement system of drug that is done by government procurement creates an issue of drug procurement system that is not suitable with the needs of the particular drug which often cannot be predicted, so that many cases of accumulation of the drug expired in health facilities owned by the Government. In the field of health, the Government often faces with the question of the selection of who is healed and who is left, and what diseases are handled or left. In determining the choice the Government should use the principles of justice, so whatever the choice the Government will be received and honoured by the community.³⁶

Theoretically John Rawls has given the guidance on how a social system is designed so it enables the State to distribute resources evenly for the community. In his view, the social system must be built upon the basic structure that is set out in a just Constitution and ensures the freedom of its citizens.³⁷ The government runs four functions that are: allocation,³⁸ stabilization,³⁹ transfer,⁴⁰

³⁵ This is worsen with wrong the perception of public that the good drug always expensive.

³⁶ Nicholas Barr, 1998, *The Economics of the Welfare State* (3rd ed.), Oxford University Press, New York, pp. 77-91. Considering that drug is not a common consumer products, then the intervention by Government is needed in order to the redistribution that is just for all the community to achieve price efficiency and social justice.

³⁷ John Rawls, 1999, *A Theory of Justice*, Belknap Press of Harvard University Press, Cambridge, p. 320. According to John Rawls with the freedom to enable the formation of a procedure so that the community takes part in determining the existence of the just Government, the legislator who made just regulations, as well as got the similarity of the just opportunity.

³⁸ *Ibid.*, p. 32. The function of the allocation was meant to maintain the price system could be carried out competitively to prevent the formation of strength of the extraordinary market that could cause the occurrence of inefficiency. Therefore must have the grating exactly about the cost and the social profit the community.

³⁹ *Ibid.*, This function guaranteed the availability of the work and the freedom of the community of choosing the work.

⁴⁰ *Ibid.*, p. 325. The function of the transfer was carried out by considering basic requirements for the community (the minimal requirement) and determined his weight exactly, considering in the mechanism of this aspect market did not become the point to be considered, and consequently the market might not become the only distribution implement.

and distribution.⁴¹ Based on the functions that must be carried out and considering that drug is the human needs of a healthy community, then the Government should not allow its distribution system falls on market mechanisms alone, even for patent drug that is non-essential.

(3) The Power of the Pharmaceutical Industry in the Era of Globalization

After the World War two up to this era of globalization, the pharmaceutical industry is developing and transforming from chemical commodity business where a pharmacist must be preparing its own drugs to be a drug industry that concentrates on a few big corporations with investments for research and giant marketing that concentrates in a few developed countries only. As the economic commodity, the investor will always want result that as maximally as possible from the investment that is invested. Therefore it is reasonable if the pharmaceutical companies tend to prefer the research and production of drugs related to lifestyle, such as drugs and supplements for diet and sedative drugs, compared to the drugs for infections that are mostly suffered by people in the developing countries, such as drugs for malaria and tuberculosis. This produced the moral problem in the health law because appears the impression that the illness can be considered economically and treated differently. Even worse, the public is discriminated because of political and economic reasons, which are their chances to be healthy, are being ignored because the industry tends to make drugs for a lifestyle that is more economically profitable.⁴² To overcome this, the State and

international health system under WHO must make the mechanism that adjust the needs of the poor community for the drugs that can cure their illness.

Eighty percent of the world market of drugs are now controlled by ten big pharmaceutical industries.⁴³ Dealing with the power of the global pharmaceutical industry, the States should have the power to determine its own needs and interests through institutional assets and politics. The country must uphold his sovereignty by carrying out the restriction on the measurement of the market share of the pharmaceutical industry in order to the prevent monopoly system. The State must restrict the behaviour of pharmaceutical giants through regulation and strict procedures to set product approval and advertisements, and also able to show its power to determine its own priorities of public's health and the research without being influenced by the pharmaceutical industry's hidden agenda.⁴⁴

The taking effect of ASEAN Economic Community (AEC) during 2015 as continuation of ASEAN Free Trade Area (AFTA) must be paid close attention to by the Government in connection with the function of the supervision in the trade of drug. AEC will enlarge the number of doctors and the perpetrators of the other health services as well as enlarge the import flow of drug and the remedy from ASEAN countries and the other ASEAN trade partner such as India and China.⁴⁵ The government must continue to place drug as the special trade product that is linked with the safety and the health of humankind. The increase in the trade flow

⁴¹ *Ibid.*, p. 326. The distributive function balanced between the community's contributions in the distribution (for example through the tax) and determined certain restrictions in ownership. This function in stages and continually corrected the distribution of the wealth and prevented the concentration of the authority through the freedom of politics and the similarity of the opportunity.

⁴² This is worsen with wrong the perception of public that the good drug always expensive.

⁴³ Novartis, *et al.*, "The Changing Face of the Top 10 Pharmaceutical Companies", http://www.imshealth.com/deployedfiles/ims/Global/Asia%20Pacific/Content/Insights/Top10%20Pharma%20Companies%20WP%20final_for%20clients.pdf, accessed on May 30, 2013.

⁴⁴ This is worsen with wrong the perception of public that the good drug always expensive.

⁴⁵ This is worsen with wrong the perception of public that the good drug always expensive.

of drug, therefore must be followed with the increase in the role of the Government in carrying out the supervision of the circulation and the standardisation of the drug by the *Pengawasan Body of Medicine and Food (PBOM)* to prevent the circulation of low quality drug that is dangerous for the health, or even illegal.⁴⁶

(4) The Public's Obligation by the State in the Drug Distribution

The Study on welfare state is always struggling in the discourse concerning the division of tasks between the state and private related to the efforts to make the society prosperous; question where is the end of the task of welfare to secure the state welfare by the state and where the private sector job starts. This discussion changes from extreme socialism to extreme liberalism. President Obama's attempt to invite the *Patient Protection and Affordable Care Act*⁴⁷ is greatly opposed by the Republicans, which resulted in a political and economic crisis in the United States which is the evidence of the complexity of determining these limits.⁴⁸ Republicans want to continue to place the health insurance as the territory that becomes the private domain without the government interference.⁴⁹

As the concept and the systematisation, in fact the role of the Government in the distribution of medicine in Indonesia was ideal enough based on constitutionalism of the protection on welfare and the health of the community in Constitution, the Department of the Health compiled a policy of *Kebijakan Obat Nasional (KONAS)* through Health Minister's Decision the

number 189/MENKES/SK/III/2006, on March 27, 2006. In this system was stressed that each community was guaranteed by his access towards the high-quality, just and equitable health service. In order to carry out this assurance the Government affirmed its commitment to provide essential medicines for the people in need, with a conceptual foundation that access to drug (essential) is a basic human right that should be protected.

4. The Distribution Arrangement and the Supervision of Drug Price as a Form of State Care of the Availability and Affordability of Drugs Quality by the Community

From the explanation above it can be concluded that in carrying out the function of the implementation of welfare, the Government has an obligation to provide the best health service for the individual and the community widely. Towards that effort in health service, then the availability of complete medicine, the number that was enough, was high-quality and was guaranteed by his usefulness, the price was covered, was easy to be accessed, safe, as well as effective was the target that must be achieved. In view of the fact that the government can not personally carry out the provisions of medicine for the community, then the implementation of this obligation must be supported by the active role of the pharmacy industry to reach it. As the perpetrators of the activity of economics, the pharmaceutical industry must also join in as well as in the achievement of the societal objectives without forgetting the aim of economic objective that must count on the loss, the profit and his prospect.⁵⁰

In Indonesia, the price of medicine is generally considered expensive as well as the structure

⁴⁶ This is worsen with wrong the perception of public that the good drug always expensive.

⁴⁷ This is worsen with wrong the perception of public that the good drug always expensive.

⁴⁸ Marie Gottschalk, 2000, *The Shadow Welfare State*, ILR Press, London, pp. 22-26. As one of the richest countries in the world, health insurance system in America is included as the worst, compared to other developed countries.

⁴⁹ Jacob S Hacker, 2010, *The Divided Welfare State*, Cambridge University Press, New York, pp. 51-66. Concerning the concept conflict of the distribution of social capital between the public's domain and private enterprise.

⁵⁰ Mossialos, "Pharmaceutical Pricing in Europe: Weighing up The Options", *Journal International Social Security Review*, Vol. 59, No. 3, June 2006.

of the price of his medicine was it was thought not transparent. The WHO research during 2007 showed the range of the price that was relatively wide between one make and the make that was other in the category of the same medicine kind. The Government needs to know the fee structure on each of the drugs manufactured by pharmaceutical companies in order to resolve the relevant price policies such as the policy on the application of the direct cost controls or indirect cost controls, and not the free pricing.⁵¹ The transparency factor that not all that and was aggravated with unfair-practices that was carried out by the pharmacy industry, was accused of becoming the height reason of the price of medicine in Indonesia This situation depicted the importance of the existence of the policy of the government concerning the pricing policy. The Government needs to know the cost structure on each of the drugs manufactured by pharmaceutical companies in order to resolve the relevant price policies such as the policy on the application of direct cost controls or indirect cost controls, and not the free pricing. Especially for branded generic drug trade, the firmness of the government is needed to continue to implement the price regulation that now is undertaken and the tighter supervision by the government especially in level of retail.⁵²

The arrangement policy of the pricing is the key element in formulating the pharmacy industry's policy. As the trade of economic product, then the pricing of drug is carried out based on consideration of the balance between the request and product bargaining in the market, but as the product which attaches to the social aspects, the market mechanism runs perfectly without the government's intervention in pricing regulation. Government's intervention in the market of drugs is possible considering the drug consumers do not have the bargaining positions that are balanced

with drug manufacturers and health ministers, this shows the nonexistence of the patient's right to choose the drug.

When the market mechanism does not work properly and coupled with the lack of strict government regulation, then feared large-scale pharmaceutical industry can control the market, resulting the unhealthy competition between market participants. The aim of the big industry in this condition is clearly to guarantee the stability and continuation of the market for its product although with way that violated the law, as that is carried out by the Pfizer business group and PT Dexa Medica when carrying out the pricing of medicine anti hypertension with the active substance amlodipnine besylate.⁵³ This situation can be used by one of the sides until it occurs the violation of marketing ethics of the medicine product.

In this case, the applicable legislation, namely Act Number 36 of 2009 on Health reinforced by *Health Minister's Regulation* No. 1148/Menkes/Per/VI/2011, pharmaceutical manufacturer requires to channel their products through the PBF. From PBF, the previous pharmacy product was distributed to the pharmacy, the hospital, the polyclinic, and puskesmas directly and through the sub-distributor. Although the distribution channel of the drug product has been arranged, but the implementation in the field mentioned that there is the indication of deviation. Pharmaceutical manufacturers through its sales force as well as retailer are allegedly cooperating with doctors to prescribe specific branded drug to patients, although formally this practice is difficult to prove.⁵⁴

C. Conclusion

Systemically and technically the drug distribution in Indonesia is ideal enough because

⁵¹ WHO/HAI, 2008, *Measuring Medicine Prices, Availability, Affordability and Price Component*, 2nd Edition, WHO, Switzerland, p. 5.

⁵² Junaidi Khotib, *Op.cit.*, p. 81.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

it gives big access for the community for the drug that is needed through the distribution channel of essential drug in public health security system. But if it is analysed from the perspective of paradigmatic, the national drug trading system contains flaws, namely the tendency of drug trade that is only seen as part of the economic activity and do not placed firmly as part of the implementation of the system of welfare States. Drug as a product that inherent with the social aspects of humanity is often only seen and treated as a common consumption product. The role of the Government as the trade regulator in drug trade is not carried out maximally so that the practices of monopoly and the oligopoly are still carried out in the distribution system, consequently the understanding that Indonesia is the welfare state with various implications must be understood by the organiser of the country and became the

reference in taking the policy and the compilation of the legislation regulation.

The drug distribution in Indonesia should be placed in the perspective of the implementation of community's welfare not just seen as a mere economic activity, therefore each component in the drug distribution system which starts from the pharmaceutical industry to the consumer, their interests should be protected. In connection with the interests between the pharmaceutical industry and the community, then the State must take control as the balancer with the aim of protecting all the Indonesians (including the industry and the community) by being guided to promote welfare of the public through arrangement of the concept of the welfare state that is more implementatif to be used as the reference indetermining the equitable distribution of drug policy.

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