

# Gerwith's Theory of Justice Cases in the Pharmaceutical Industry

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## Abstract

This article explains Gerwith's theory of justice cases in the pharmaceutical industry, the pharmaceutical industry is an inseparable part of human life. Where the pharmaceutical industry is related to human health which has the same level as the needs of clothing, food and shelter in basic human needs. Gerwith's theory argues that health requires strong knowledge and should be managed by those who have strong knowledge and should be managed by those who have that knowledge. Therefore, laws must be drafted by experts in the principles of a just society. According to Gerwith's theory of justice, the goal is to provide rational justification for moral principles to objectively distinguish morally right actions and institutions from morally wrong actions. The goal of Gerwith's theory of justice is to rationalize moral principles to objectively distinguish morally right actions and habits from morally wrong actions and habits. Gerwith recognizes the rights, freedoms and welfare of all persons involved in the activities of the company and proposes the establishment of institutional arrangements to guarantee these rights.

**Keywords:** Gerwith's Theory of Justice, Pharmaceutical Industry.

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## INTRODUCTION

Gerwith's theory of justice is to provide rational justification for moral principles to objectively distinguish morally right actions and institutions from morally wrong actions. Medicine began as a religious and largely philosophical exercise, unique to each region and tribe (Herodotus) (Horstmanshoff, Stol, & Van Tilburg, 2004), (Breslaw, 2012) (Harper, 2005). Modern healers are not looking for or inventing pain-relieving drugs, at least not the same people. Doctors are currently diagnosing and administering the drugs needed to cure diseases, while the task of creating those drugs has shifted to a new entity of drug companies. Despite the rapid advances in social science we have not quite accepted this change (Chang, 2006) (Huebner, 2014). We continue to view doctors and pharmaceutical companies through the same lens and apply the same ethical standards. Drug companies, however, see themselves as businesses with all relatively foreign ethics. This perception problem has become the hallmark of the gap between public expectations and the actual behavior of these companies. Nowhere are these differences more pronounced than when it comes to the ever-increasing price of drugs (Blendon, Brodie, Benson, Altman, Buhr, 2006) (Levy, 2017). On the other hand, drug companies try to minimize damage to their public image by educating the masses about the need for increased costs due to expensive research budgets for the development of new drugs.

Gerwith's theory of justice claims that health requires strong

knowledge so it must be handled by people who have that expertise. Therefore, laws must be prepared by experts within the framework of the principles of a just society. Looking at one of the cases in the pharmaceutical industry, namely the case of PT ASA, it is known that the company is not in accordance with the theory of justice proposed by Gerwith. This can be seen from the immoral actions carried out by PT ASA such as hoarding and increasing the price of drugs that are currently needed by the Indonesian people. Departing from the thought that is a problem for justice seekers to the most common problem, namely the issue of justice in relation to the law. This is because the law or a form of legislation that applies and is accepted with different views, views that consider the law to be fair and vice versa the law is unfair.

The treatment of human life as a commodity for profit-seeking business ventures. On the other hand, drug companies try to minimize the damage to their public image by educating the masses about the need for increased costs due to expensive research budgets for the development of new drugs. Meanwhile, countries cater to populist sentiments and adopt collective bargaining measures to lower prices (eg Germany, France) or create tax incentives for new drug researchers (eg USA). Although somewhat effective, these measures question the ethical implications of the claims and the solutions implemented to address these problems.

The pharmaceutical industry is an inseparable part of human

life. Where the pharmaceutical industry is related to human health which has the same strata as the needs of clothing, food and shelter in basic human needs. Health itself is a state of well-being of body, soul and social that allows everyone to live productively both socially and economically. To ensure the quality of health, it is necessary to have a Health Law which regulates the health insurance itself. So the Law of the Republic of Indonesia Number 36 Year 2009 was formed regarding health. Based on this background, the authors examine the case of the theory of justice in gerwith in the pharmaceutical industry. The focus of the study in this journal, namely (1) What is Gerwith's theory of justice? And (2) How is the application of Gerwith's theory of justice in the pharmaceutical industry?

## LITERATURE REVIEW

### 1. Gerwith's Theory of Justice

Basically, fairness can be seen as a moral concept of justice which is the subject of three interdependencies that exist in the notion of distributive justice. Therefore, the end result is the possibility to see and compare the concept of fairness through a distributive justice framework. In order for honesty to be considered as a concept of moral justice, a match must be made between the main theories dealing with distributive justice. Gerwith's contribution, the goal of Gerwith's theory is to rationally justify moral principles in order to be able to objectively distinguish between morally wrong actions and habits. The action in question is divided into two, namely volunteerism and expediency. The goal of Gerwith's theory of justice is to provide rational justification for moral principles to objectively distinguish morally right actions and institutions from morally wrong actions.

Gerwith presents his doctrine of the structure of justice in three main respects, namely:

1. Each agent implicitly makes evaluative judgments about the benefits of his goals and further about the benefits of freedom and welfare which are the conditions needed to take action to achieve these goals.
2. Every agent implicitly makes judgments of obligations in which he claims that he is deprived of freedom and welfare.
3. Each agent must claim these rights with sufficient grounds that he is a prospective agent who has the right to freedom and welfare.

This theory can be applied in accounting because this theory emphasizes the rights of freedom and welfare for all people who are affected by the activities of the company and for the establishment of institutional and accounting rules to ensure the implementation of these rights.

In the theory of justice, there are two steps towards a just society. The first step is the discussion of the principles of justice in the initial situation, the second step is the preparation of the law to form the system. Gerwith's theory of justice argues that health requires strong knowledge and

should be managed by those who have that knowledge. Therefore, laws must be drafted by experts in the principles of a just society. On the one hand, health is a broader concept than just treatment and rehabilitation services, and preventive public health interventions and services that address the social determinants of health play an important role in maintaining and maintaining good health.

Health is a human right and one of the elements of happiness that must be realized in accordance with the ideals of the Indonesian nation as stated in the Pancasila and the 1945 Constitution of the Republic of Indonesia. Spiritual and social, enable everyone to live a socially and productive life economy. This is the status and definition of health as regulated in Law Number 36 Year 2009 concerning Health. It is the pharmaceutical industry that has the power to improve public health and is responsible for the distribution of medicines to the public.

The goal of Garwith's theory of justice is to rationalize moral principles to objectively distinguish morally right actions and habits from morally wrong actions and habits. Gerwith recognizes the rights, freedoms and welfare of all persons involved in the activities of the company and proposes the establishment of institutional arrangements to guarantee these rights. Looking at one case in the pharmaceutical industry,

### 2. Corporate Social Responsibility

The current debate around the ideal behavior of private drug manufacturers, although complex, is quite old. Literature evaluating the role of business in the socio-economic health of society can be found in the 20th century, starting around the 1930s. A more modern analysis of corporate social responsibility (CSR) is found in Bowen's *Social Responsibility of the Businessman* (Bowen & Johnson 1953). Operating on the assumption that large industries are centers of power and affect the lives of most people, he questions what reasonable expectations can be made of the business executives in charge of these industries. The answer to this question provides the first formal definition of CSR as:

*This refers to the obligation of business people to teach these policies, to make these decisions, or to follow desired lines of action in terms of goals and the values and values of our society.*

His thoughts were then passed on through the works, giving shape to the modern definition of CSR [(Davis, 1960) (Davis, 1973) (Davis & Blomstrom, 1966) (McGuire, 1963) (Walton, 1967)]. Fulfilling CSR is something to be commended, but not something that can be forced and cannot be demanded from the company. In practical terms, CSR is nothing more than a tool to spread the goodwill of the company (Siboro et al., 2018). Thus, in terms of pure business ethics, there is no obligation for companies, including pharmaceuticals, to comply with what the public

might consider to be the right thing to do.

### 3. Ethical Arguments and Counter Arguments

There are a number of valid arguments demanding that drug manufacturers comply with public mandates and lower the cost of medicines, especially for those with rare diseases. Although many of them argue from the point of view of accepted ethical philosophies, there are serious flaws in the soundness of these arguments. As pointed out earlier, these arguments often stem from intuitive thought processes as opposed to national perspectives. Thus the observation of the same commodification in the form of drug prices causes anger (Huebner, 2014). Justifications for assigning liability for failure to save lives through unethical drug pricing come in the following categories:

#### Intentional agency and closeness

This argument suggests that because drug manufacturers are in the best position to provide assistance to those who are suffering, there is an obligation for these companies (DeGeorge, 2005), (Singer, 1972). The validity of this argument comes from a consequentialist point of view because it promotes the scope of welfare that can be provided to society at large. Since States are limited in terms of their jurisdiction while international companies are not, they can overcome this obstacle. Furthermore, it plays a good role in the libertarian approach to solving social problems through private enterprise. However, the similarities of these ideas end there.

At the heart of this rationale is the amalgamation of communal-focused care and private sector business, serving profit-driven goals, which is an entirely different approach. Furthermore, the comparison of the State and private companies is inherently unjustified: because the legal power of the State is assumed to be directly and responsible for the welfare of its people. It could also be argued that a waste of government resources could be better utilized in buying drugs from manufacturers and distributing them to consumers instead of shifting responsibility.

#### Reciprocal

Here proponents (Banerjee, 2006) argue against viewing drug companies as isolated sources of innovation. Instead, they argue that any drug discovered was done using additional research work on which the work of others has been built. Thus, they suggest their work is not an isolated achievement but something that is achieved through a communal spirit and the benefits of it should be shared in the same spirit. To support this reasoning, they point to a number of sources used in the research and development of new drugs. Because some of these sources are funded through public taxpayer money, research on new drugs is essentially funded by the public who have to pay for it again at the pharmacy. Since these claims are not made for other public sector funding industries such as aerospace and

textiles, consistency in moral theory demands that similar concessions be made to the pharmaceutical industry.

### METHOD

This study uses a qualitative approach. Qualitative is an analytical method based on the philosophy of post-positivism, used to examine the condition of natural objects, where the researcher is the key instrument. The method used in this research is case study research. Case study research is research that is carried out intensively and in detail.

### RESULTS AND DISCUSSION

#### 1. Case Study: Policy implementation and its consequences

We will now consider cases that reflect the practical consequences of policy-making based on ethical considerations that we dispute and suggest possible alternatives. First among these examples are well-known drug companies.

#### Invasion fee: United States & Europe

Widely cited as an example of a company's 'ethical' behavior (Wicks, 1995) (World Bank 2014), Merck's corporate drug donation program to support corporate goodwill arguments that are usually lost. We acknowledge that this is indeed an example of the company's generosity in the public interest. But it is very important to investigate the reasons that allow this to happen. Hernando et.al (Hernando, Colwell, & Wright, 2016) identified this need and estimated the benefits that Merck received from donating this drug in a forty year collaboration with the United States government. This drug in a forty year collaboration with their research shows that although This drug donation is free of charge. Merck is estimated to have cost US\$ 600 million for the period 2005-2011, but the tax deductions received as a result of this effort resulted in costs of US\$ 180 million; this coupled with the indirect market benefits and goodwill generated among the public is a good bargain for the company. This example is positionally relevant because in this case it was the US tax payment that effectively subsidized the cost of the donated drug. This is not a case of ethical corporate behavior, but rather a somewhat erroneous attempt by the US public: as a result all parties involved are ultimately better off.

However, this is not an isolated example of US society 'bearing the bill' for people in other countries. European countries generally apply the price court method to lower drug prices in their local markets. However, this creates more problems than it solves; Although price control solves the symptoms of increasing problems, price control requires more careful monitoring of market trends and limits open market pricing systems. As a result, innovation and discovery are hampered. Research has shown that an open and free market system like the US has produced more new

drugs than all European companies combined. This is generally associated with a control system that reduces growth incentives.

However, proponents of 'cost control' argue that this system has reduced the patient burden. While this may seem so on the surface, there are indirect ways in which consumers are charged, such as through government-sponsored R&D subsidies provided to local producers, co-payments and funding for government monitoring activities. In addition, there are other administrative problems because there is no pan-European control system, so there are price ranges available across national borders. This leads to an uncontrolled parallel distribution system, where the more expensive local retailers are undermined by lower prices. For international drug manufacturers, this means higher drug prices for the US public so that higher market penetration in Europe can be achieved (Burstall, 1991) (Rietveld & Haaijer-Ruskamp, 202).

On the other hand, the US system is relatively free for trade and producers. This is reflected in the statistics on new drug innovation mentioned above. However, mechanisms to avoid increasing drug prices for rare diseases exist, although they are different in shape compared to their European counterparts. The Orphan Drug Act is one example (Herder, 2017); this program supports drug manufacturers in developing new drugs that would otherwise be deemed unprofitable. Through this program, the government subsidizes drug development or provides tax breaks afterward, thereby creating incentives for its development. Despite the benefits of their relatively open market system, manufacturers face difficulties in obtaining Food and Drug Administration (FDA) approval for new drugs whereas the European system for the same is much quicker. Overall, however, the US and European systems largely accommodate their public needs through either direct or indirect government intervention. However, on a global scale, examination reveals another factor that has helped these western countries maintain a strong drug industry – patent protection.

### Pharmaceutical industry PT. ASA

One of the most common cases in the pharmaceutical industry that violates the rights of justice for citizens is the case of drug hoarding. As happened to PT ASA where the current case of hoarding Covid drugs is very much needed by the community. Reported from Kompas.com, YP (58), Director of PT ASA, and S (56), President Commissioner of PT ASA, were named suspects for hoarding drugs for handling Covid-19 at a drug warehouse in Kalideres, West Jakarta. PT ASA itself is a large pharmaceutical company (PBF) that can distribute drugs in large quantities. Both were charged with Article 107 in conjunction with Article 29 paragraph (1) of Law Number 7 of 2014 concerning Trade, Article 62 paragraph (1) in conjunction with Article 10 of Law No. RI. 8 of 1999 concerning Consumer

Protection, as well as Article 14 in conjunction with Article 5 paragraph (1) of the Law of the Republic of Indonesia No. 4 of 1984 concerning Infectious Disease Outbreaks. According to Ady, the hundreds of boxes of Azithromycin stored in this warehouse can be used by at least 3,000 Covid-19 patients.

Not only hoarding, Ady said PT ASA also sells Azithromycin above the highest retail price (HET). In fact, based on the Decree of the Minister of Health Number HK.01.07/MENKES/4826/2021 concerning the Highest Retail Price of Drugs During the Covid-19 Pandemic, the price of Azithromycin is Rp. 1,700 per tablet. In fact, PT ASA is also said to have falsified bills so as not to be caught selling drugs above the retail price. Seeing this case, PT ASA can be said to have snatched justice from various parties. Justice is the morally ideal truth about a thing, whether it concerns things or people. Justice can also be interpreted as a matter related to attitudes and actions as well as relationships between humans that contain demands so that humans can be treated in accordance with their rights and obligations. With this justice, the life of the nation and state can be better in accordance with the behavior of human life. Every human being, in this case the patient, in obtaining rights in health sciences must pay attention to the concept of justice which can be used as a benchmark in acting in the world of health.

### The rise of India's pharmaceutical industry

The Indian market is notoriously protectionist for most of its independent creation, as a result, many of its legislative policies do not promote a competitive free market environment; if allowed, technologically superior foreign companies will dominate. One example is India's patent law which recognizes 'process patents', which guarantee the rights of manufacturers to protect the processes used to manufacture drugs. This regulation allows local companies to develop alternative methods that are essentially imitating new drugs with different mechanisms. As a result, foreign companies are forced to sell cheaper drugs.

However, this is a barrier to the development of a completely new drug. This coupled with poor economic conditions means reduced welfare for the needy. However, when Intellectual (TRIPS) is reached. This forced the government to abolish process patents and enforce product patent laws. Due to the export-oriented nature of the Indian pharmaceutical industry, this leads to higher foreign investment into local markets, where foreign companies partner with local companies to produce and distribute goods more efficiently (Chaudhari, Park, & Gopakumar, 2010) (Palit & Gopakumar, 2010) (Palit & Bhattacharya, 2008). This led to higher investment in the development of new drugs and led to the emergence of India's generic pharmaceutical industry.

A well-known case study related to patents is *Notary v. Union of India & More*. This important case highlights the administrative and logistical problems that create complications when international drug companies plan to enter new markets. Much to the dismay of foreign companies, India's patent law does not recognize the additional drug development process, thereby forcing the expiration of drug patents from essentially the same drug.

## CONCLUSION

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia. One that has the authority to improve public health is the pharmaceutical industry, which plays a role in distributing drugs to the public. Gerwith's theory of justice claims that health requires strong knowledge so that it must be handled by people who have these skills. Therefore, the law must be drafted by experts within the framework of the principles of a just society.

One of the most common cases in the pharmaceutical industry that violates the rights of justice for citizens is the case of hoarding drugs. As happened to PT ASA where the case of hoarding Covid drugs which is currently very much needed by the community and PT ASA also increased the price of the drugs it sells. It is known that the company is not in accordance with the theory of justice proposed by Gerwith. This can be seen from the immoral actions carried out by PT ASA.

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