

**UNIVERSITI TEKNOLOGI MARA**

**A STUDY ON THE ADEQUACY OF  
THE LAWS GOVERNING THE SALE  
OF MEDICINES BY  
ONLINE PHARMACIES  
IN MALAYSIA**

**MUHAMAD HELMI BIN ISMAIL  
MOHD ZAIRUL KHUSAIRY BIN MOHD  
ZAWAWI**

Dissertation submitted in partial fulfilment  
of the requirements for the degree of  
**Master of Enforcement Law**

**Faculty of Law**

January 2015

## AUTHOR'S DECLARATION

I declare that the work in this thesis was carried out in accordance with the regulations of Universiti Teknologi MARA. It is original and is the results of my own work, unless otherwise indicated or acknowledged as referenced work. This thesis has not been submitted to any other academic institution or non-academic institution for any degree or qualification.

I, hereby, acknowledge that I have been supplied with the Academic Rules and Regulations for Post Graduate, Universiti Teknologi MARA, regulating the conduct of my study and research.

Name of Student : Muhamad Helmi Bin Ismail  
Student I.D. No. : 2013287484  
Name of Student : Mohd Zairul Khusairy Bin Mohd Zawawi  
Student I.D. No. : 2013464114  
Programme : Master of Enforcement Law  
Faculty : Law  
Dissertation Title : A Study on the Adequacy of the Laws Governing Sales of Medicines by the Online Pharmacies In Malaysia

Signature of Student : ..... Signature of Student : .....

Date : ..... Date : .....

## **ABSTRACT**

The risk and danger associated with illegal online sale such as online prescriptions without prior physical examination by a doctor, purity and quality of drugs, medical and financial privacy concerns, and abuse of medicines has been elaborated in this research. This research focus on the adequacy of the current laws in governing the online sale of medicines. This study is to focus on two (2) main statutes namely the Poison Act 1952 and the Sale of Drug Act 1952. In addition, other cyber laws such as the Computer Crimes Act 1997 and the Communications and Multimedia Act 1998 have also been analyzed in this research. A comparison with other jurisdiction such as the UK and the USA has also been discussed in this research. This study adapted a combination of doctrinal and empirical research approach. The semi structured interviews had been conducted during the period of research with the respondents from the Pharmaceutical Enforcement Department (PED). This research found that the current laws governing the online sale of medicines are not adequate. The inadequacies can be found in the aspects of dealing evident in internet medium and limitation of power in investigation. There are several recommendations that had been suggested in this research. One of them is to come out with a clear guideline related to the online sale of medicines. Another recommendation is to amend the Poison Act 1952 and the Sale of Drug Act 1952 in order to adequately govern the online sale of medicines.

## TABLE OF CONTENTS

Author's Declaration	ii
Abstract	iii
Acknowledgement	iv
Table of Contents	v
List of Abbreviations	x
List of Statutes	xii

### **CHAPTER ONE: INTRODUCTION**

1.0	Introduction	1
1.1	Background	1
1.2	Problem Statement	4
1.3	Research Question	4
1.4	Objectives	5
1.5	Research Methodology	5
1.6	Scope and Limitation of the Study	6
1.7	Significance of the Study	6
1.8	Outline of the Research Structure	6
1.9	Conclusion	7

### **CHAPTER TWO: OVERVIEW OF THE ONLINE SALE OF MEDICINES**

2.0	Introduction	8
2.1	Sales of Medicine by Brick and Mortar Pharmacies	8
2.2	Online Sale of Medicines in Cyberspace	11
2.2.1	Types of Online Pharmacies	12
2.2.2	Danger of Rogue Online Pharmacy	13
2.2.3	Safety Concern of Foreign Online Pharmacies	15
2.3	Online Sales of Medicines in Malaysia	15
2.4	Risks of Brick and Mortar Sales of Medicines	17

2.5	Risks of Online Sales of Medicine	18
2.5.1	Online Sale of Medicine in the Risk Society	18
2.5.2	Risks Associated With Online Sales of Medicines	19
2.5.2.1	Abuse of the Traditional Doctor-Patient Relationship	19
2.5.2.2	Purity and quality of drugs	20
2.5.2.3	Medical and financial related security concerns	21
2.5.2.4	Drug antibiotic resistance	21
2.5.2.5	Fraud	22
2.5.2.6	Abuse of medicines	22
2.5.2.7	Foreign labels and different drug names	24
2.6	Control of Online Sale of Medicine	24
2.6.1	Legal Control	24
2.6.2	Technology Control	27
2.6.3	Self-Regulation	30
2.7	Conclusion	31

### **CHAPTER THREE: LEGISLATIVE FRAMEWORK IN GOVERNING SALE OF MEDICINES IN MALAYSIA**

3.0	Introduction	33
3.1	Legislative Framework for Online Sale of Medicines in Malaysia	33
3.1.1	Poison Act 1952	33
3.1.2	Sales of Drug Act 1952	34
3.1.3	Cyber Laws	35
3.1.4	Traditional Laws	38
3.2	Laws Governing Sales of Medicines in Malaysia	40
3.2.1	Licensing and Authorization	40
3.2.1.1	Poison Act 1952	40
3.2.1.2	Sales of Drug Act 1952	42
3.2.2	Personal Importation	45
3.2.2.1	Poison Act 1952	45
3.2.2.2	Sales of Drug Act 1952	45
3.2.3	Criminal Offences	46
3.2.4	Consumer Protection	46
3.3	Conclusion	47