

LEGAL PROTECTION OF CONSUMERS AGAINST THE CIRCULATION OF ILLEGAL AND DANGEROUS COSMETICS THAT HARM CONSUMERS IN INDONESIA

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ABSTRACT

Cosmetics are products that are widely used by the public for personal care and appearance purposes. However, the circulation of illegal and dangerous cosmetics poses a serious threat to the health and safety of consumers. This research aims to study the challenges faced in protecting consumers from the circulation of illegal and dangerous cosmetics, and analyze how legal protection is provided to consumers regarding the circulation of illegal and dangerous cosmetics that cause harm to consumers. The research method used in this research is normative juridical. This is based on the provisions of Law Number 8 Year 1999 concerning Consumer Protection which regulates the production of cosmetics and also guarantees consumer protection in purchasing cosmetic products. In the event of circulation of illegal cosmetics, warnings, coaching of business actors, and withdrawal of products will be given which will harm consumers themselves. Therefore, increasing supervision of the use and monitoring the circulation of cosmetics without BPOM licenses because this is one of the many illegal cosmetics at this time.

Keywords: *Cosmetics, circulation, illegal, consumer protection*

I. Introduction

Beauty is a desire shared by all women. Today, improving one's appearance is a top priority, along with basic needs like food, shelter and clothing. Beautification is usually done by applying makeup and enhancing the appearance by wearing attractive clothes and cosmetics. Cosmetics are mixtures of ingredients used on body surfaces such as skin, hair, nails, and lips

to cleanse, change appearance, enhance attractiveness, maintain skin health, and deodorize, but do not treat or cure disease.¹

One of the human needs that has existed and is growing from time to time is cosmetics. In addition to enhancing one's appearance, cosmetics have become very important for people with increasingly complex lifestyles. Along with the changes in people's lifestyles, including their consumption patterns, the consumption of cosmetic products tends to continue to increase.² According to the Food and Drug Administration (BPOM), the number of cosmetic companies will increase by 20.6% by 2022. As a result, cosmetic products on the market today have various brands and innovations to attract consumers.

However, the intention of consumers, especially women, to use cosmetic products is not proportional to their knowledge on how to choose good and safe cosmetic products. As a result, many women use harmful cosmetic products because of the quick change and low price. They do not realize that the cosmetic products they use have not been licensed by BPOM, which means that the products have not been tested.

The Head of POM RI Regulation No. on the Second Amendment to the Head of POM Regulation No. on Technical Requirements for Cosmetic Ingredients (HK.03.1.23.08.11.07517 Year 2011) contains a list of hazardous ingredients that are prohibited to be used when making cosmetics. Among them are medicinal chemicals (BKO), which can endanger human health. K3 red dye, K10 red dye, retinoic acid, mercury, and hydroquinone are prohibited BKOs. Mercury, retinoic acid, red dye K3, and red dye K10 each have the potential to cause cancer (carcinogenic) and birth defects (teratogenic) in the fetus. In contrast, hydroquinone can cause ochronosis-the irreversible, lifelong change in skin color to black.

Cosmetics can be considered illegal if they are sold without a distribution license, and are not registered with the BPOM. there are many women who are more interested in buying cosmetic products that are cheap and have a quick visible effect. Therefore, many women use alternative methods to purchase

¹ Retno Iswari Tranggono and Fatma Latifah, *Handbook of Cosmetic Sciences*, Jakarta, PT. RadjaGrafindo Persada, 2007

² Ahmad Thalib, *Legal Responsibility of Business Actors for the Circulation of Cosmetics That Do Not Have a Distribution Permit*, Jurnal Legalitas, 2019

cosmetics, even if the cosmetics they purchase do not meet the requirements and are not registered with BPOM. Consumers to date are still using cosmetics that contain harmful ingredients because they do not know the side effects. One of the reasons why cosmetics containing harmful ingredients are still in demand by women is the fact that consumers usually do not conduct a thorough examination of the product before purchasing.

Article 4 of the Consumer Protection Law covers a number of consumer rights, including the right to comfort, security, and safety when using goods or services. In addition, consumers have the right to choose goods and services that are in accordance with the promised conditions, guarantees, and exchange rates. In addition, consumers are entitled to accurate, straightforward, and honest information about the terms and warranties of the products and services they purchase.

Businesses must uphold consumer rights by providing safe and high-quality goods to consumers. However, cosmetics businesses often overlook these things. If consumers are not careful when choosing cosmetics, irresponsible businesses risk taking advantage of them. The government created consumer protection laws to fulfill the need for legal certainty and protection of citizens' rights. If someone violates these regulations, they will be punished accordingly.

Because it is difficult to obtain adequate information, consumers are in a state of imbalance. The concept of paternalism underlies consumer protection law, which refers to consumers' distrust of their ability to protect themselves from predictable physical or financial losses. Based on the description above, the question arises as to how legal protection is given to consumers regarding the circulation of illegal and dangerous cosmetics that cause harm to consumers? This is the background for researchers, so they are interested in researching and with the title "**LEGAL PROTECTION OF CONSUMERS OVER THE TRADE OF ILLEGAL AND DANGEROUS COSMETICS IN INDONESIA**".

II. Research Methods

The type of research conducted in this study is normative juridical, which means that the method used is to evaluate theories, ideas, and laws and regulations. The reference legislation is Law Number 8 Year 1999.

III. Result and Discussion

Legal protection provided to consumers regarding the circulation of illegal and dangerous cosmetics that cause harm to consumers.

The term "consumer protection" is used to protect the interests of consumers from things that harm consumers.³ Article 1 point 1 of Law No. 8/1999 on Consumer Protection sets out the basis of consumer protection, namely "Consumer protection is all efforts to ensure legal certainty to provide protection to consumers". Based on this article, consumer protection includes all efforts to ensure legal certainty to protect consumers.

In Consumer Protection Law, there are principles that serve as the main reference both in the legislative system and in aspects of daily life related to efforts to protect consumers by all parties involved in it.⁴ Namely in article 2 of the Consumer Protection Law:

- a) The principle of benefit, which means that all efforts made to protect consumers must benefit consumers and business actors as a whole;
- b) The principle of justice, intended to maximize the participation of the entire community and provide rights and obligations to consumers and business actors;
- c) The principle of balance, intended to maintain material and spiritual balance between the needs of consumers, entrepreneurs, and government;
- d) The Principle of Consumer Safety and Security, can be responsible for the safety and security of customers when using and using goods and services consumed or used;
- e) The Principle of Legal Certainty, intended so that both business actors and consumers comply with the law, get fair consumer protection, and the state guarantees legal certainty.

According to Article 1 point 1 of the Consumer Protection Law, "any power that ensures legal certainty to provide protection to consumers" is the definition of consumer protection. An important factor that must be considered is the current

³ Janus Sidabolok, *Indonesian Consumer Protection Law*, Bandung, PT. Citra Aditya Bakti, 2006 p.9

⁴ Ahmadi Miru and Sutarman Yodo, *Consumer Protection Law*, Jakarta, PT. RadjaGrafindo Persada, 2004. p.27

consumer protection. Law No. 8/1999 on Consumer Protection is expected to resolve issues regarding consumer protection against the sale of illegal and dangerous cosmetics that harm consumers.

The author is interested in researching cosmetic products by gathering information about the current phenomenon from various sources, including the internet. There are cosmetic products sold in the market without a label indicating a POM license. Therefore, the author may imply that the product may be illegal and dangerous, and may harm consumers.

As a result of research conducted through literature and documentation data collection, the author found that this phenomenon occurs because of businesses that produce or sell cosmetics and consumers who buy and consume cosmetics. They argue that this is not caused by the POM Agency's carelessness in conducting supervision.

With the increasing use of cosmetics and the circulation of cosmetics without a license from the Food and Drug Administration, the supervision of cosmetics must be improved. In addition, companies that openly promote such cosmetics can be a strong basis to bring this issue to a more serious discussion in order to be resolved.

Referring to Article 1 point 3 of the Consumer Protection Law, a business actor is "every individual or business entity, both in the form of a legal entity and not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement, organizing business activities in various economic fields". Meanwhile, in paragraph 1 point 2 of the Consumer Protection Law, consumers are "every person who uses goods and/or services available in the community, both for the benefit of themselves, families, other people and other living things and not for trade".

Consumers are one of the main stakeholders for businesses to achieve the highest level of profit. As every business strives to make the most profit after conducting business activities, however, as some businesses only think about profits, they are unable to meet consumers' expectations. Consumers must be protected by law from this vulnerable position.

According to Article 7 paragraph 1, businesses are responsible for creating a positive work environment to assist economic development and to support national development in an effort to achieve success in the business world and national economic development as a whole. Therefore, business actors are responsible for carrying out their responsibilities.

Article 19 paragraph 1 of Law Number 8 of 1999 concerning Consumer Protection states that "Business actors are responsible for providing compensation for damage, pollution, or losses suffered by consumers as a result of consuming goods / or services produced or traded" In other words, businesses must be responsible for losses experienced by customers such as damage, pollution, or other losses that occur after using or consuming these illegal and dangerous cosmetic products. Compensation may be in the form of a refund, replacement of equivalent or similar goods or services, health care, or compensation in accordance with applicable laws or regulations. Compensation must be provided within 7 days after the transaction.

Consumers who feel they have suffered losses after using or consuming illegal and dangerous cosmetics can protect their legal rights as stipulated in Article 1365 BW regarding unlawful acts which explains that "Every act that violates the law and brings harm to another person, obliges the person who causes the loss through his fault to compensate for the loss". The main point of the article is that, in cases where business actors commit legal actions that harm consumers, business actors must compensate consumers for their losses.

Furthermore, it is also contained in the Minister of Health Regulation Number 1175/Menkes/Per/XII/2010 concerning Cosmetic Notification which regulates the liability of cosmetic products through contracts, which is contained in article 16 which reads:

- 1) "The cosmetics industry, cosmetics importer, or individual/business entity that conducts contract production is responsible for the cosmetics distributed."
- 2) "In the event of a loss or unfortunate event due to the use of cosmetics, the cosmetics industry, cosmetics importer, or individual/business entity that has contracted production has the

responsibility to handle the complaint and/or withdraw the cosmetics from circulation."

- 3) "The cosmetics industry, cosmetics importer, or individual/business entity that conducts production contracts must report to the Head of the Agency if the notified cosmetics are no longer produced or imported."
- 4) "The cosmetics industry, cosmetics importers, or individual/business entities that conduct production contracts are responsible for cosmetics that are no longer produced or imported that are still in circulation."

Cosmetic products available in the market today are of great concern. During routine surveillance, the Food and Drug Administration (FDA) checks reports on the production of illegal cosmetics without a distribution permit (TEI) containing banned ingredients. An illegal cosmetics factory located in Sentra Industri 1 and 2 Block 1/28, RT 02/03, North Jakarta, produced such illegal cosmetic products. Specifically, the evidence secured included raw materials in the form of medicinal chemicals such as hydroquinone, retinoic acid, dexamethasone, mometasone Furoate, salicylic acid, fluecinole, metronidazole, ketoconazole, betamethasone, and tranexamic acid worth Rp.4.3 billion in packaging materials in the form of empty pots and bottles for cosmetic products worth Rp. 164 million, intermediate products in the form of lotions worth Rp. 1.2 billion, and finished products in the form of night lotions and various creams without brands worth Rp. 1.4 billion. In addition, several production equipment such as mixing machines, filling machines, coding machines, packaging machines were confiscated and secured from the location. According to the Head of BPOM, the circulation is in Java (DKI Jakarta, West Java, Central Java, East Java), Bali (Denpasar), and parts of Sumatra (South Sumatra, North Sumatra, and Lampung). "These illegal cosmetic products are very dangerous. In addition to products that do not meet the standards and/or requirements for safety, benefits, and quality, we also see that these facilities do not apply the Good Manufacturing Practice of Cosmetics (GMP), especially the sanitary hygiene aspect of the facilities is very lacking".⁵

Badan POM monitors the circulation of cosmetics in the market on a large scale, conducting surveillance not only several times a week, but almost every day. If the agency

⁵ Badan Pengawas Obat dan Makanan, "Dokumen Informasi Produk," last modified 2022, <http://istanaumkm.pom.go.id/module-kosmetik/dokumen-informasi-produk>. diakses pada 23 Juni 2023 pukul 19.30 WIB.

is aware of the circulation of illegal and dangerous cosmetics, the agency's investigation division immediately coordinates with other departments to conduct inspections. One or two cosmetics are purchased with state funds and tested in the laboratory during the inspection, but the illegal and dangerous cosmetics are not immediately confiscated or destroyed. And if it turns out that dangerous cosmetics are sold in a cosmetic shop, the POM Agency will act in accordance with the SOP (Standard Operational Procedure), after confiscation, the investigator will destroy the cosmetics in a landfill with the permission of the court. Only product safety and product confiscation are included in the supervision carried out by the POM Agency.⁶

Touching on law enforcement of business actors who trade illegal and dangerous cosmetic products that are likely to harm consumers will be carried out :

a) Given a warning

Business actors who distribute illegal and dangerous cosmetics will be given a statement letter which warns that it is true that the business actor has sold cosmetics without a distribution permit that can endanger consumer health and asks the business actor to promise not to repeat it again. However, if the business actor continues to sell the illegal and dangerous cosmetic products even though they have made a statement letter, the business actor will face legal action and their location will be closed.

b) Business coaching

Business coaching is counseling provided to business actors with the aim that they no longer sell illegal and dangerous cosmetics products.

c) Product recall, product confiscation and destruction of cosmetic products.

This is done after a trial based on laboratory findings that show the circulation of dangerous and illegal cosmetics that do not follow the rules in making cosmetics. Product recall, product confiscation and destruction of cosmetic products must be in accordance with established regulations and cannot be carried out carelessly as stipulated in the Regulation of the Head of the National Agency of Drug and Food Control of the Republic of

⁶ Badan Pengawas Obat dan Makanan, "Public Warning Tentang Kosmetik Mengandung Bahan Berbahaya," accessed June 23, 2023, <http://bbpom-yogya.pom.go.id/berita330/public-warning-tentang-kosmetik-mengandung-bahan-berbahaya.html>. diakses pada 23 Juni 2023 pukul 22:24 WIB.

Indonesia Number 11 of 2017 regarding criteria and procedures for withdrawal and destruction of cosmetics.

Before the BPOM conducts direct examination and laboratory examination and if the laboratory results are found to be inconsistent with the provisions regarding the content of cosmetics as regulated, then business actors who sell illegal and dangerous cosmetic products can be sentenced to criminal penalties in accordance with the provisions of the Decree of the Head of the BPOM of the Republic of Indonesia Number HK.00.05.4.1745 of 2003 concerning cosmetics and then will be given to investigators to be prosecuted in accordance with the law. Based on the article above, the sanctions that can be given to business actors are:

- 1) "violations of the provisions in this decision may be given administrative sanctions in the form of" :
 - a. "written warning"
 - b. "withdrawal of cosmetics from circulation including advertising withdrawal"
 - c. "destruction of cosmetics"
 - d. "temporary suspension of production, import, distribution, storage, transportation, and delivery of cosmetics"
 - e. "revocation of the certificate and or distribution license as referred to in article 8 paragraph (2) and or article 10 paragraph (1)".
- 2) "in addition to being subject to administrative sanctions as referred to in paragraph (1), criminal sanctions may also be imposed in accordance with the provisions of the applicable legislation". The applicable legislation is Law Number 36 of 2009 concerning Health, namely:
 - a. Business actors who commit fraud regarding illegal and dangerous cosmetic products that have been properly regulated may be subject to Article 196 in the form of a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).
 - b. For business actors who do not have a distribution license to distribute cosmetic products that are made, sold, or distributed, they can be subject to Article 197 with a maximum penalty of 15 (fifteen) years in prison and a maximum fine of Rp.1,500,000,000.00 (one billion five hundred million rupiah).

IV. Conclusion

Beauty is synonymous with a woman who beautifies herself by applying makeup. Time to time cosmetics continue to grow rapidly in the market with various brands and innovations to attract consumers. Women are cautioned not to make the mistake of choosing dangerous cosmetics due to affordable prices and rapid changes. Most cosmetic products today are illegal because they are traded without a distribution license and are not registered with BPOM. There must be a law that regulates the production of cosmetics and also ensures consumer protection in the purchase of cosmetic products. If there is a circulation of illegal cosmetics, warnings, guidance for business actors, and product withdrawals will be given, which will harm consumers themselves. Therefore, increasing supervision of the use and monitoring the circulation of cosmetics without a BPOM license because this is one of the many illegal cosmetics at this time.

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