

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 widely used by the public for personal care and appearance. However, the circulation of illegal and dangerous cosmetics poses a severe threat to the health and safety of consumers. The main problem in this research is how legal efforts can be given in the process of legal protection against consumers as users of illegal and dangerous cosmetics. This research aims to study the challenges faced in protecting consumers from the circulation of illegal and hazardous 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 of 1999 concerning consumer protection, which regulates cosmetics production and guarantees consumer protection when purchasing cosmetic products. In the event of the circulation of illegal cosmetics, warnings, coaching of business actors, and withdrawal of products that will harm consumers will be given. Therefore, increasing supervision of the use and monitoring of 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.*

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 occasionally 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. 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.²

However, the intention of consumers, especially women, to use cosmetic products is not proportional to their knowledge of how to choose excellent and safe cosmetic products. As a result, many women use dangerous cosmetic products because of their quick turnaround and low price. They do not realize that the cosmetic products they use do not have a distribution permit from the Food and Drug Administration (BPOM), meaning the products have not been tested.³

The regulation of the Head of the Food and Drug Supervisory Agency (BPOM) RI contains a list of hazardous materials that are prohibited to be used in the manufacture of cosmetics. Among them are medicinal chemicals (BKO) that 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 have the potential to cause cancer (carcinogenic) and birth defects

¹ R Ayunda and V Z A Kusuma, "Perlindungan Hukum Bagi Konsumen Muslim Terhadap Produk Kosmetik Yang Memiliki Kandungan Non-Halal Di Indonesia," *Maleo Law Journal* 5, no. 1 (2021): 123–38, <https://doi.org/https://doi.org/10.56338/mlj.v5i1.1466>.

² Mutia Ch Thalib, "Legal Responsibility Of Perpetrators Against Illegal Cosmetiic Circulation," *Jurnal Legalitas* 12, no. 2 (2020): 100–109, <https://doi.org/https://doi.org/10.33756/jelta.v12i2.5797>.

³ Leny Rosdiana, "Hukum Dan Sosial Media: Tanggung Jawab Selebgram Dalam Melakukan Endorsement Kosmetik Ilegal Di Instagram," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 10, no. 1 (December 30, 2021): 35, <https://doi.org/10.14421/sh.v10i1.2348>.

(teratogenic) in the fetus, respectively. Hydroquinone, however, can cause ochronosis- an irreversible blackening of the skin that lasts a lifetime.⁴

Cosmetics are illegal if they are sold without a distribution license and are not registered with the Food and Drug Administration (BPOM). Many women are more interested in buying cheap cosmetic products that have a quick effect. Therefore, many women use alternative ways to purchase cosmetics, even though they do not meet the requirements and are not registered with BPOM. Consumers still use 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 that consumers usually do not conduct a thorough product inspection before buying.⁵

In addition, some cosmetic products in the market do not have a distribution license from the Food and Drug Administration (BPOM). As a result, there is no guarantee that the cosmetics are safe to use. This is not in accordance with and violates Article 8 of Law No. 8 of 1999 concerning Consumer Protection, which mandates the prohibition of business actors in terms of production and circulation of trade in goods. This law defines consumer protection as all legal rules and principles that regulate the problematic relationship between business actors and consumers. Cases that have negative consequences for consumers are not in accordance with the consumer protection legislation in Indonesia.

As a state of law,⁶ Indonesia has established laws and regulations that protect consumers thoroughly and thoroughly, but the position of consumers when dealing

⁴ F R F Dai, R Kasim, and N K Martam, "Perlindungan Hukum Bagi Konsumen Terhadap Peredaran Kosmetik Ilegal," *SemanTECH* 1, no. 1 (2019): 316-31, <http://jurnal.poligon.ac.id/index.php/semantech/article/view/498>.

⁵ Erina Sintha Sari, B Rini Heryanti, and Dharu Triasih, "Perlindungan Hukum Bagi Konsumen Terhadap Problematika Kosmetik Yang Tidak Terdaftar Dalam Bpom," *Semarang Law Review (SLR)* 1, no. 2 (2022): 121, <https://doi.org/10.26623/slr.v1i2.2763>.

⁶ Muwaffiq Jufri, *Hukum Dan Hak Asasi Manusia; Dasar Teori Dan Praktiknya* (Depok: Rajawali Pers, 2023), 77, <https://www.rajagrafindo.co.id/produk/hukum-dan-hak-asasi-manusia-dasar-teori-dan-praktiknya-muwaffiq-jufri/>.

with business actors is still minimal. The inability of consumers to confront business actors is detrimental to consumer interests.

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 exploiting them.⁷ The government created consumer protection laws to fulfil the need for legal certainty and protection of citizens' rights. If someone violates these regulations, they will be punished accordingly.⁸

Consumers are unbalanced because it is difficult to obtain adequate information. 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: how can legal efforts be made in the legal protection process related to the circulation of illegal and dangerous cosmetics that cause harm to consumers? This is the researcher's background, so he is interested in researching and with the title "Legal Protection of Consumers on the Distribution of Illegal and Dangerous Cosmetics in Indonesia".

Methods

A research method is a scientific approach carried out rationally, empirically, and systematically to collect data with specific purposes and benefits. The author used a qualitative research method, which focuses on data collection and uses theory as support. In this study, the object to be studied is Consumers.

The type of research conducted in this research is normative juridical, which means that the approach used is through analysis of theories, concepts, and laws

⁷ Muwaffiq Jufri, "Regulation Model of Religious Rights and Freedoms for Local Religious Believers in the Majapahit Constitution," *HAM* 1, no. 1 (2022): 57–67, <https://ejournal.balitbangham.go.id/index.php/ham/article/view/3112>.

⁸ Theresia Gabriella and Handar Bakhtiar, "Perlindungan Hukum Kepada Konsumen Terkait Peredaran Kosmetik Ilegal," *Jurnal Panorama Hukum* 8, no. 1 (July 15, 2023): 17–23, <https://doi.org/10.21067/jph.v8i1.8521>.

and regulations related to the topic of this research or an approach based on laws and regulations. Normative juridical research is a type of legal research that views law as a system of norms.⁹ The system of norms in question includes principles, norms, and rules from legislation, agreements, and doctrine. This normative research aims to identify concepts or fundamentals in law and systematically analyse the law.¹⁰

Discussion

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

Based on the description in the background of the problem, the author states that the circulation of illegal and dangerous cosmetics in the community is mostly not registered with the Food and Drug Administration and due to the lack of consumer knowledge of the composition or ingredients contained in cosmetic products so that it is very detrimental to consumers. From the basis of the legal rules of consumer protection based on Law Number 8 of 1999 concerning consumer protection, where business actors should offer products to consumers, must be accompanied by correct information so that consumers do not have a wrong understanding of these cosmetic products by including them in the product packaging.

In this case, the law has a very important role as a system of laws to protect consumer rights by ensuring that business actors can be responsible for the cosmetics they sell. Consumers have the right to obtain goods of good quality and quantity that are safe and secure, and consumers should also have the right to obtain quality goods and consumers have the right to seek compensation for the goods or

⁹ Johny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006). 54.

¹⁰ Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018). 77-78

products they have purchased if they feel that the product is defective, damaged or has caused harm during or after use.¹¹

The author is interested in making cosmetic products an object of research by finding facts about existing phenomena from various sources, including the Internet. Because cosmetic products circulating in the market do not include a Food and Drug Administration license on the label, the author most likely means there is a high probability that the product is illegal and dangerous and can endanger consumers.

Indonesian laws and regulations have regulated legal protection of consumers regulated in the Consumer Protection Act explains Consumer Protection as "all efforts that ensure legal certainty to protect consumers". Consumer protection involves interdependence and interrelationships between the government, entrepreneurs, and consumers. Because they are the ones who buy and consume the goods and services produced by business actors, consumers also play a very important role in the economy and are a significant factor in the smooth running of a business.

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 due to consuming goods / or services produced or traded." in other words, business actors must be responsible for losses experienced by consumers such as damage, pollution, or other losses that occur after using or consuming these illegal and dangerous cosmetic products. Compensation or compensation can be in the form of a refund, replacement of equivalent and similar goods and/or services, health care, or compensation in accordance with applicable laws or regulations and with compensation given seven days after the transaction occurs.

¹¹ Ni Putu Gita Padmayani, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Konsumen Bagi Pengguna Kosmetik Ilegal Yang Diiklankan Influencer Di Media Sosial," *Jurnal Preferensi Hukum* 3, no. 2 (April 30, 2022): 312-17, <https://doi.org/10.55637/jph.3.2.4936.312-317>.

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 of the Civil Code 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 due to his fault to replace the loss". The main point in this article is that business actors must compensate consumers when conducting business activities that result in legal actions that harm consumers, especially in this study regarding consumers who use illegal and dangerous cosmetics.¹²

The Food and Drug Administration routinely supervises the circulation of cosmetics in the market, conducting surveillance several times a week and almost every day. If the Food and Drug Administration learns of the circulation of illegal and harmful cosmetics, the investigation division of the Food and Drug Administration immediately coordinates with other departments to conduct inspections. One or two cosmetic products are purchased with state money and tested in the laboratory during inspections, but illegal and dangerous cosmetics are not immediately confiscated or destroyed. If hazardous cosmetics are found to be sold in cosmetics stores, the Food and Drug Administration will act according to the SOP (Standard Operational Procedure); after confiscation, the investigator will destroy the cosmetics in the landfill with the court's permission. Only product safety and product confiscation are included in the supervision conducted by the Food and Drug Administration.¹³

The legal protection provided to consumers of illegal and dangerous cosmetics is in the form of preventive and repressive legal protection. Preventive legal protection is a prevention carried out by BPOM and related agencies with the circulation of illegal and dangerous cosmetics in the community, it can also be by

¹² Jaidatul fikri Binti Muhammad, "Makanan, Obat-Obatan Serta Kosmetik Ilegal Dalam Efektivitas Hukum Islam Dan UUJPH Di Aceh," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam* 11, no. 1 (October 23, 2019): 23–43, <https://doi.org/10.32505/jurisprudensi.v11i1.1061>.

¹³ Muwaffiq Jufri, Agung Ali Fahmi, and Saiful Abdullah, "Peran Strategis Kiai Pesantren Dalam Diseminasi Gaya Hidup Halal Di Madura," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 5, no. 1 (2023): 1–19, <https://doi.org/https://doi.org/10.19105/alhuquq.v5i1.7872>.

providing socialization related to the consumption and use of safe cosmetic products. Meanwhile, repressive legal protection is carried out with strict sanctions given to producers who produce illegal and dangerous cosmetics by BPOM or related institutions, The form of sanctions can be in the form of administrative sanctions from revocation of production licenses to business licenses of cosmetics manufacturers. Business license of the cosmetics manufacturer. There are also sanctions in the form of civil channels used to deter producers who produce illegal and dangerous cosmetics by imposing fines for losses suffered by consumers.¹⁴

Regarding supervising cosmetic products, BPOM can take preventive measures by developing and implementing quality improvement policies and standardizing production quality. The Consumer Protection Law establishes preventive legal protection that aims to provide justice and legal certainty for goods and services supplied or produced by producers to benefit consumers. In addition, to avoid violating all the provisions stipulated by law related to the principle of balance between sellers and buyers.

Business actors are responsible for avoiding consumer losses while running the business. Business actors should be responsible for providing correct, transparent and honest information about the condition and guarantee of the goods sold and explaining how to use the goods. Labels on cosmetics must be included so that consumers can know whether the cosmetics will be suitable for use. Consumers have the right to submit complaints about what they feel when experiencing side effects from these cosmetic products. Therefore, consumers should read and follow all instructions listed to ensure the product is safe for consumers.¹⁵

¹⁴ Rizal Satria Heryansyach and Rosalinda Elsin Latumahina, "Perlindungan Hukum Terhadap Konsumen Atas Peredaran Kosmetik Ilegal Secara Online," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 1 (April 30, 2022): 130–40, <https://doi.org/10.53363/bureau.v2i1.19>.

¹⁵ Ni Putu Gita Padmayani, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Konsumen Bagi Pengguna Kosmetik Ilegal Yang Diiklankan Influencer Di Media Sosial," 109.

Business actors have been deemed to have violated their responsibilities by distributing illegal and dangerous cosmetic products, which, in Article 7 letter (a) of Law Number 8 Of 1999, states that "business actors are obliged to behave properly during their business activities." The circulation of illegal and dangerous cosmetics is contrary to Article 8, paragraph 1 letter (e) of Law Number 8 Year 1999, which explains that "business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the quality, level, composition, processing, style, fashion, or specific use as stated in the label or description of the goods and/or services." People who consciously do something that harms others must be held responsible. Business actors who harm consumers when running their businesses must take the risk of being responsible for these harmful actions and pay the compensation requested by consumers.¹⁶

Article 23 of the Consumer Protection Law states that consumers have the right to sue business actors and resolve disputes through consumer settlement bodies or through the courts if the business actors refuse or do not respond to demands. In this case, consumers can sue business actors through the Consumer Dispute Resolution Agency (BPSK) or through the courts in the general judicial environment if the business actor refuses the consumer's request to provide compensation in the form of compensation for losses that should be borne. The Consumer Dispute Resolution Body (BPSK) has the authority to handle problems between consumers and business actors. The Consumer Dispute Settlement Body (BPSK) can resolve consumer disputes through mediation and arbitration. Through mediation, arbitration, and conciliation.¹⁷

The Consumer Dispute Resolution Body (BPSK) has the authority to handle and resolve disputes between consumers and business actors. BPSK can use

¹⁶ Isnaeni Ardan, Hambali Thalib, and Lauddin Marsuni, "Efektivitas Penyidikan Terhadap Penjualan Kosmetik Ilegal Di Kota Makassar," *Journal of Lex Generals (JLG)* 2, no. 3 (2021): 1410–24.

¹⁷ Lisa Nursyahbani Muhlis, Muhadar Muhadar, and Hijrah Adhyanti Mirzana, "Penegakan Hukum Pidana Terhadap Pelaku Peredaran Kosmetik Ilegal Di Kota Makassar," *Jurnal Ilmiah Ecosystem* 22, no. 1 (April 30, 2022): 82–100, <https://doi.org/10.35965/eco.v22i1.1389>.

mediation, arbitration, and conciliation approaches in settlement. Because it is not tiered, the parties can choose which way to resolve the dispute.

However, if an out-of-court consumer dispute resolution effort is chosen, then a lawsuit through the court can only be brought if one or all parties to the dispute state that the effort has been unsuccessful. Article 45, paragraph (4) of the Consumer Protection Law states that if there is no agreement, a civil lawsuit must be filed in court to claim compensation or compensation for the victim.¹⁸

In addition, there is also a collective legal effort (class action) of consumers against violators of the law, namely:¹⁹

- a) Getting justice together: A collective legal remedy, also known as a consumer class action, is a process by which a group of consumers who have suffered similar losses due to the same legal violation of illegal and harmful cosmetics can band together to file a lawsuit against the offending party (the business).
- b) Pressuring Lawbreakers to Take Responsibility: Consumer class actions are also associated with pressure violators to take responsibility for their actions. Here are the collective legal remedies that can put pressure on infringers:
 - 1) Collective Power Is that by combining individual consumer claims in one more giant lawsuit, these collective legal remedies create greater collective power than individual claims. This makes violators of the law face more severe and significant charges than they would face individually.
 - 2) Public disclosure class actions often receive extensive media attention. This open and public legal process can reveal law

¹⁸ Safira Novayani and Diman Ade Mulada, "Perlindungan Hukum Bagi Konsumen Atas Penjualan Kosmetik Ilegal Berupa Krim Wajah," *Commerce Law* 3, no. 1 (June 28, 2023): 45-57, <https://doi.org/10.29303/commercelaw.v3i1.2797>.

¹⁹ Rista Veria Dewi and Djulaeka Djulaeka, "The Legal Protection of Consumers for Acquisition PDAM Clean Water Service (The Case Study Of PDAM Surabaya City)," *Trunojoyo Law Review* 2, no. 2 (January 10, 2021): 98-117, <https://doi.org/10.21107/tlr.v2i2.9498>.

violations by certain parties to the general public. This public disclosure can lead to reputational damage and pressure on lawbreakers, who are illegal and harmful business actors here.

- 3) Financial Impact: if the lawsuit is successful, then the violator of the law can be penalized by paying compensation or damages to the consumers of illegal and dangerous cosmetics. This class action can potentially harm the finances and reputation of the law.
- 4) A deterrent effect, through collective legal action, law violators can be sanctioned more severely. A court decision that punishes law violators collectively can have a deterrent effect on future perpetrators of illegal and harmful cosmetics. This encourages lawbreakers to take responsibility and avoid similar offences in the future.

Conclusion

The legal protection provided to consumers regarding the circulation of illegal and dangerous cosmetics that cause harm to consumers is sufficient to protect consumer rights, but in practice, it is still ineffective because business actors continue to distribute illegal and dangerous cosmetic products that harm consumers. Legal efforts that can be made in legal protection against consumers as users of illegal and hazardous cosmetics are by resolving consumer disputes through the court and outside the court.

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