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. 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 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

Introduction

(Retno Iswari Tranggono & Fatma Latifah, 2007) 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 (Ahmad Thalib, 2019)\(^2\). 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 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), which means that the products have not been tested.

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 BKO. Mercury, retinoic acid, red dye K3, and red dye K10 have the potential to cause cancer (carcinogenic) and birth defects (teratogenic) in the fetus, respectively. Hydroquinone, on the other hand, can cause ochronosis-an irreversible blackening of the skin that lasts a lifetime.

Cosmetics can be said to be illegal if they are sold without a distribution license, and are not registered with the Food and Drug Administration (BPOM) (Erina Sintha Sari dkk., 2020). Many women are more interested in buying cosmetic products that are cheap and have a quick effect. Therefore, many women use alternative ways to buy cosmetics, even though the cosmetics

\(^1\) 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
they buy 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 because consumers usually do not conduct a thorough product inspection before buying.

In addition, some cosmetic products available in the market do not have a distribution license from the Food and Drug Administration (BPOM) (Pande & Ni Putu Januaryanti, 2017). 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 used to regulate the problematic relationship between business actors and consumers. Cases that have negative consequences for consumers are definitely not in accordance with the consumer protection legislation in force in Indonesia.

As a state of law, Indonesia has established laws and regulations that protect consumers thoroughly and thoroughly, but the position of consumers when dealing with business actors is still very limited. The inability of consumers to confront business actors is clearly detrimental to consumer interests (Gunawan Widjaja & Yani Ahmad, 2000).

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 an unbalanced state. 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 legal efforts can be made in the process of legal protection related to the circulation of illegal and dangerous cosmetics that cause harm to consumers? This is the background of the researcher, so he is interested in researching and with
the title "Legal Protection of Consumers on the Distribution of Illegal and Dangerous Cosmetics in Indonesia".

**Research Methods**

The research method is basically a scientific approach that is carried out rationally, empirically, and systematically to collect data with specific purposes and benefits. The research method used by the author is a qualitative research method, which is a research approach that 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 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. 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 conduct systematic analysis of the law (Bambang Sunggono, 2003).

**Result and Discussion**

**Legal protection 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

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accompanied by correct information so that consumers do not have a wrong understanding of these cosmetic products by including them in the product packaging.

The law in this case 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 (Yana Indah Pertiwi & Azhari Yahya, 2019). 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 products they have purchased if they feel that the product is defective, damaged or has caused harm during or after use.

By finding facts about existing phenomena from various sources, including the internet, the author is interested in making cosmetic products an object of research. The fact that there are cosmetic products circulating in the market but do not include the Food and Drug Administration license on the label, the author most likely means that there is a high probability that the product is illegal and dangerous and can endanger consumers (Elfiana C A, 2014).

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 provide protection to consumers". Consumer protection involves interdependence and interrelationship between the government, entrepreneurs, and consumers (Artha dkk., t.t.). 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 major 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.
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 (Enik Isnaini, SH.MH, t.t.).

The Food and Drug Administration routinely supervises the circulation of cosmetics in the market, conducting surveillance not only several times a week, but 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. And if dangerous cosmetics are found to be sold in cosmetics stores, the Food and Drug Administration will act in accordance with the SOP (Standard Operational Procedure), after confiscation, the investigator will destroy the cosmetics in the landfill with the permission of the court. Only product safety and product confiscation are included in the supervision conducted by the Food and Drug Administration (Badan Pengawas Obat dan Makanan, t.t.)

The form of legal protection provided to consumers of illegal and dangerous cosmetics is in the form of preventive legal protection 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 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 (Ni Kadek Ayu Padmi Ari Sudewi dkk., 2020). 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 provide a deterrent effect on producers who produce illegal and dangerous cosmetics, by imposing fines for losses suffered by consumers.
In terms of supervision of cosmetic products, BPOM can take preventive measures through the development and implementation of quality improvement policies and standardization of production quality. The Consumer Protection Law establishes preventive legal protection that aims to provide justice and legal certainty for goods and services provided or produced by producers so as to provide benefits to 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, clear and honest information about the condition and guarantee of the goods sold, as well as an explanation of how to use the goods. Labels on cosmetics must be included so that consumers can know that the cosmetics will be suitable for use or not. Consumers have the right to submit complaints from what they feel when experiencing side effects from these cosmetic products (Rizky Adi Yuristyarini, t.t.). Therefore, consumers should read and follow all instructions listed to ensure the product is safe for consumers.

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 Year 1999 states that "business actors are obliged to behave properly during the course of their business activities." The circulation of illegal and dangerous cosmetics is clearly 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 business must take the risk to be responsible for these harmful actions and pay the compensation requested by consumers (Elia Wuria Dewi, 2015).

Article 23 of the Consumer Protection Law states that consumers have the right to be able 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, arbitration, and arbitration through mediation, arbitration, and conciliation (Muhammad Alfan NurZuhaid dkk., 2016).

The Consumer Dispute Resolution Body (BPSK) has the authority to handle and resolve disputes between consumers and business actors. In the settlement process, BPSK can use mediation, arbitration, and conciliation approaches. Because it is not tiered, the parties have the freedom to choose in 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 of the parties or all parties to the dispute state that the effort has been unsuccessful. As contained in Article 45 paragraph (4) of the Consumer Protection Law, only then if there is no agreement, a civil lawsuit must be filed in court to claim compensation or compensation for the victim. 

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

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) (Muh. Syahrul R. Lamsu, 2014).

b. Pressuring Lawbreakers to Take Responsibility

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Consumer class actions are also associated with putting pressure on 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 larger lawsuit, these collective legal remedies create greater collective power than individual claims. This makes violators of the law face more serious 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 violations of the law by certain parties to the general public. This public disclosure can lead to reputational damage and pressure on lawbreakers, which here are illegal and harmful business actors.

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. In this class action, it 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 violators of the law collectively can have a deterrent effect on future perpetrators of illegal and harmful cosmetics. This encourages lawbreakers to take responsibility and avoid similar offenses 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 not effective because business actors continue to distribute illegal and dangerous cosmetic products that harm consumers. and Legal efforts that can be made in the process of legal protection against consumers as users of illegal and dangerous cosmetics are by resolving consumer disputes through the court and outside the court.

References


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