



Criminal Acts of Circulating Cosmetics Without a Distribution Permit and Not Meeting the Standards of Safety Requirements

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Abstract

In general, women are interested in buying cosmetic products at low prices and the results look faster. There are two types of illegal cosmetics, namely cosmetics without a distribution permit (TIE) and fake cosmetics. Less strict law enforcement causes business actors to feel unable to circulate dangerous cosmetics that do not have a distribution permit. Fines that are not too heavy for small business actors also make law enforcement not afraid of these business actors. This study aims to understand and analyze the provisions of permits to distribute cosmetics in accordance with the standard safety requirements applicable in Indonesia. This research uses normative legal research methods, namely research methods that refer to legal norms to understand the application of legal norms related to cosmetic safety requirements standards.

Keywords: *Criminal Acts; Cosmetics; Distribution*

Introduction

The desire of women to always look beautiful, perfected in all respects is used by some people or a group of irresponsible business actors by producing or circulating cosmetics yang do not meet the requirements to the community. Most of the main targets are women who want to look beautiful, and most women are easily tempted by cosmetics at low prices and the results are quickly visible, therefore many women use alternative paths to buy a beauty product and do not care too much about the quality of the cosmetic products they buy do not meet the requirements at BPOM. Because these cosmetics are easy to get on the market at very affordable prices because there is no distribution permit number from BPOM, no cosmetic raw material labels, and no expiration date for cosmetic products. Consumers' lack of understanding of the effects that will be caused by cosmetics that contain harmful ingredients can be used as an excuse for them to still use these harmful cosmetics.

In general, women are interested in buying cosmetic products at low prices and the results look faster. On the other hand, cosmetic products at low prices do not guarantee quality. Not a few of these products can cause adverse and harmful side effects to health. Women who are obsessed with wanting to look beautiful with low-priced cosmetic products, are widely used by business actors who are not responsible for producing or trading cosmetic products that are not worthy of circulation in society.

Even though the Regulation issued by the Minister of Health of the Republic of Indonesia No. 1176 / MenKes / PER / VIII2010 concerning Notification Cosmetics article 2, every cosmetic in circulation must meet the standards and / or requirements for the quality of safety and expediency in accordance with the provisions of laws and regulations. There are two types of illegal cosmetics, namely cosmetics without a distribution permit (TIE) and fake cosmetics. Cosmetics that are classified as TIE cosmetics are those that do not have a notification number from BPOM. Meanwhile, fake cosmetics are cosmetics that are made by not meeting the rules of good cosmetic manufacturing methods (CPKB) and using ingredients that should not be used.

Deputy for Supervision of Traditional Medicines, Cosmetics and Complementary Products of BPOM explained that there are two types of illegal cosmetics, namely cosmetics without a distribution permit (TIE) and fake cosmetics. Cosmetics that are classified as TIE cosmetics are those that do not have a notification number from BPOM. While fake cosmetics are cosmetics that are made by not meeting the rules of good cosmetic manufacturing methods (CPKB) and using ingredients that should not be used. In the era of free trade now many cosmetics are circulating in the market with various types of brands. Consumers' ignorance of various chemicals contained in cosmetics containing a lot of mercury is used by irresponsible business actors by trading cosmetics that do not meet the requirements to be circulated to the public.

The Food and Drug Administration (BPOM) said there are a few cosmetics that contain harmful ingredients, including medicinal chemicals (BKO) that can harm the human body. These medicinal chemicals (BKO) include antibiotics, *dexamethasone*, to *hydroquinone*. So what is meant by cosmetics without a distribution permit is cosmetics that contain harmful ingredients and are not registered with the Food and Drug Supervisory Agency (BPOM) so that the cosmetics do not have a distribution permit with the NA code (Notification) from the Food and Drug Supervisory Agency (BPOM) so they do not have the quality standards of the cosmetics.

In carrying out the task of drug and food supervision, BPOM has the authority as stipulated in Article 4 of Presidential Regulation Number 80 of 2017, including: 1. Issue product distribution permits and certificates in accordance with standards and requirements for safety, efficacy/benefits and quality, as well as drug and food testing in accordance with the provisions of laws and regulations, 2. Conducting intelligence and investigations in the field of drug and food supervisors in accordance with the provisions of laws and regulations, 3. Provision of *administrative* sanctions in accordance with the provisions of laws and regulations.

Supervision carried out by the Food and Drug Supervisory Agency is not only carried out when a cosmetic product is already in circulation, but the Food and Drug Supervisory Agency can also provide technical guidance and supervision in the context of supervision before circulation and supervision during circulation including standardization, registration, production supervision, and supervision of the distribution of traditional medicines, health supplements, and cosmetics, this is regulated in Article 17 letter d of Presidential Regulation Number 80 of the Year 2017.

In the case of suspected health crimes and or the prevention and eradication of money laundering crimes by circulating pharmaceutical preparations and/or medical devices that do not have a distribution permit and or producing and or circulating pharmaceutical preparations and or medical devices that do not meet the standards and or safety requirements, efficacy or expediency and quality and or carrying out producing business activities and or any person who places, transfers, transfers, spends, pays, gives, entrusts, brings out the country, change the form, exchange for currency or securities or other acts of property rights that he knows or reasonably suspect to be the result of a criminal act as referred to in Article 197 and or Article 196 of Law Number 36 of 2009 concerning health and or Article 3 of Law Number 8 of 2010 concerning the prevention and eradication of money laundering crimes in connection with Police Report Number: LPA/84/IX/RES.2.1/2019/SUS/JATIM, dated 4 September 2019.

Even though it has been strictly prohibited, the circulation of illegal cosmetics is still traded through online shopping. One of the factors that make consumers continue to buy illegal cosmetics is that these cosmetic products are easy to get and affordable because there is no distribution permit number from BPOM, there is no label for product raw materials, and there is no expiration date for the product. However, business actors can provide attractive advertisements and promise that the cosmetics they sell will provide good results so that products without a distribution permit are easily obtained and favored by the public. Public ignorance of the side effects that will be caused by the product is one of the factors that consumers still buy illegal cosmetic products (Buchari Said. H, 2017). Illegal circulation of cosmetics is a criminal act as stated in Article 197 of Law No. 36 of 2009 concerning Health where "Any person who intentionally produces or circulates pharmaceutical preparations and/or medical devices that do not have a distribution permit as referred to in Article 106 paragraph (1) shall be punished with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp1,500,000,000, 00 (one billion five hundred million rupiah)".

Method

This research uses normative legal research methods. that is, a research method that refers to legal norms to understand the application of legal norms to the facts presented which in this case are to change the circumstances and offer potential solutions to solve any concrete legal problems (Ibrahim, 2005). The research approach used is the statute approach and conceptual approaches (Isnaini & Utomo, 2019). The legal materials used in this study consist of legal materials taken/obtained directly from literature studies, and primary, secondary, and tertiary legal materials.

Discussion

The definition of cosmetics according to the Regulation of the Minister of Health of the Republic of Indonesia No. 1175 / MENKES / PER / VIII / 2010, concerning Cosmetic Production Permits pasal 1 number 1 Cosmetics are ingredients or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips and external genital organs) or teeth and oral mucous membranes especially to clean, perfume, change the appearance and or improve body odor or protect or maintain the body in good condition.

Cosmetics are used by the community as cleansers, moisturizers, protectors, thinning, makeup or decorative and fragrances. Perfume, for example, is needed to increase the appearance and mask body odors that may be less pleasant for others (Tranggono, 2007). The main ingredients used in the manufacture of cosmetics are efficacious basic ingredients, active ingredients, and additional ingredients such as dyes, fragrance ingredients, in the mixture of these ingredients must meet the requirements for making cosmetics in terms of cosmetic manufacturing technology including chemical pharmacology and others.

Cosmetics are a component of clothing that is very important in the life of society, where certain communities are very dependent on cosmetic preparations on every occasion. In the market in general, there are many circulating cosmetic preparations that play a role in the beauty of facial skin. In its further development, a cosmetic preparation will be added to a follow-up substance or added that will add artistic value and marketability to the product, one of which is the addition of bleaching agents.

According to the Regulation of the Minister of Health of the Republic of Indonesia, cosmetics are divided into 13 kinds, namely: 1) used for babies, for example baby powder, baby oil, baby perfume and others; 2) used for bathing, for example bath soap, bath capsule and others; 3) for eyes, e.g. mascara, eye-shadow, eyebrow pencil and others; 4) used for fragrant preparations, such as perfume, toilet water and others; 5) used for hair, for example hair spray, hair dye and others; 6) hair dye, e.g. hair dye and others;

7) used for make-up preparations (except eyes), e.g. powder, lipstick, blush and others; 8) used to maintain oral hygiene, for example toothpaste, mouth washes and others; 9) used for skin coloring, e.g. cleansers, moisturizers, etc.; 10) used for nails, for example, nail polish, nail lotion and others; 11) used for skincare preparations, e.g. cleansers, moisturizers, protectors, creams and others; 12) used for shaving, e.g. shaving soap and others; 13) used for suntan and sunscreen, for example sunscreen foundation, etc..

In general, both theory and practice the purpose of cosmetics is to maintain and care for the beauty of the skin regularly. It is closely related to the regulations and ways of production, storage, and use of cosmetics. Studying the properties of cosmetic ingredients used to maintain and care for the health and beauty of the body, face, and other parts of the body. In connection with it, then the purpose of the use of cosmetics can be grouped as follows:

- a. Protects the skin from damaging external influences such as sunlight, weather changes, and so on.
- b. Prevents the outermost layer of skin from drying out, especially people living in cold climates such as mountainous areas that are always humid and shrouded in clouds.
- c. Prevents the skin from drying and wrinkles quickly, because cosmetics penetrate under the outer layer and introduce the active ingredients into the layers of the deeper layers.
- d. Attached above the surface of the skin to change the color or hue of certain skin areas.
- e. Improve skin condition such as dry, normal, oily skin, and so on.
- f. Keeping skin juvenile (firm).
- g. Changing the appearance / appearance, for example, if you have used the desired cosmetics so that people look at us there is a feeling of changing, can change to be more beautiful / fresh or vice versa.

The ingredients contained in a cosmetic have different functions. Where the functions are as follows:

- a) A solvent (solvent) is a solution consisting of a solvent and a substance dissolved in it. The dissolved substance can be solid, liquid, or gaseous. soda, dam so on. Generally, as a solvent used water, alcohol, ether, oil and so on;
- b) Emulator is an ingredient that allows the mixing of fats/oils with water into a homogeneous mixture. This emulator is known to have two types of emulsions, namely w/o emulsions (water oil) meaning that the amount of oil is more than water, for example: butter. And the other one is called oil water which means that the amount of water is more than oil, for example: coconut milk. In addition, an emulator has the property to lower the surface tension between two liquids (sulfactants) examples of some emulators are, lanolin, wax, alcohol or daisies, fatty acids such as senti alcohol, glyceryl monostearate, trietanolamena, meaning that from the three examples of fatty acid esters are the basic ingredients for making cream. (Every cream-shaped cosmetic contains these basic ingredients);
- c) *Preservatives* are used to eliminate the influence of germs on cosmetics, so that cosmetics remain stable. As a preservative, benzoic acid compounds (Nipagin M, Nipagin A, Nipagin M) alcohol, formaldehyde, and others are widely used;
- d) *Adhesives* are usually found in cosmetics such as, talcum powder. So that the powder easily adheres to the skin and does not come off or run out. The adhesive materials that are often used are zinc stearate and magnesium stearate (a kind of chemical substance) in the powder. Thus, the powder will last a long time, avoiding the interference of other pests or germs that cause the powder to be less good to use and of course will damage the skin, especially the skin of the face. This would be very sad, because the face obviously cannot be enveloped as the rest of the body;
- e) *Astringents* have the power to constrict and shrink skin tissue. In order for this skin-tightening cosmetic to work perfectly, it is usually used substances that are fatty acids in low calories, alcohol, and other special substances. So that the enlarged/widened pores will become small and eventually shrink;

- f) *Absorbent* has the power to absorb liquid, meaning that it contains high absorption. For example, calcium carbonate in talcum powder, magnesium oxide, and so on. It is very useful for absorbing sweat on the face / other body;
- g) Antiseptic is a very useful substance for pest killers, and germs. In cosmetics is very necessary, so that the cosmetics used are safe and do not cause unwanted things. And every consumer is more confident and trusting in the types of cosmetics they wear.

The sale of illegal cosmetics is a criminal act because illegal cosmetics have an impact that can interfere with the health of its user's criminal act is a human behavior formulated in the law as an unlawful act, which deserves to be punished and committed with guilt. The person who commits a criminal act will be held accountable for the act with a criminal if he has a mistake, a person has a mistake if at the time of doing the deed seen from the point of view of society showing a normative view of the mistakes made (Hamzah, 1993). A criminal offense that is also called a criminal act or *delict* is an act or series of acts that can be subject to criminal penalties (Hatta Isnaini Wahyu Utomo, 2019). An event of a legal event can be declared a criminal event if it meets its criminal elements. The criminal elements consist of two elements, namely: the objective element, namely an act or act that is contrary to the law and heeding the consequences that are prohibited by law with legal threats and the subjective element, namely a person's actions that result in unintended consequences by law. The nature of this element prioritizes the presence of a perpetrator (a person or several people) (Djamali, 2010).

Based on the definition of criminal acts and elements mentioned above, it can be said that the sale of illegal cosmetics is a criminal act that contains criminal elements both objective and subjective. The impact or consequences of a person who commits an act that contains criminal elements is to get criminal sanctions in accordance with applicable rules. Criminal prosecution, besides that, is also defined by other terms, namely punishment, punishment, punishment (Ali, 1999).

Criminal sanctions are a causal punishment, therefore the person committed criminal act will get a sanction either going to jail or being subject to other punishments from the authorities (Utomo, 2020). Criminal sanctions are a type of sanction that is threatened or imposed on acts or perpetrators of criminal acts or criminal acts that can interfere with or harm legal interests. Criminal sanctions are basically a guarantor to rehabilitate the behavior of the offender, but it is not uncommon that criminal sanctions are created as a threat to human freedom itself (Andrisman, 2009). In Black's Law Dictionary Henry Campbell Black defines criminal sanctions as punishment attached to conviction at crimes such fines, probation, and sentences (a criminal imposed to punish a criminal (crime) such as with fines, supervision, and imprisonment) (Isnaini & Wanda, 2017). The imposition of criminal sanctions is a form of criminal law enforcement which is an effort to establish or function legal norms in a real way as a guide to legal behavior in social and state life (Rahardjo, 1987).

Criminal law enforcement is an attempt to realize the ideas of inequality in criminal law in legal certainty and social expediency into legal reality in legal certainty and social expediency into legal reality in every legal relationship (Marzuki, 2012). Law enforcement is more or less an effort made to make the law, both in a narrow formal sense and a broad material meaning, as a guideline for behavior in every legal act, both by the subjects of the law concerned and by the law enforcement apparatus that is officially assigned the duty and authority by the law to ensure the functioning of legal norms that apply in social and state life (Abidin, 2007). Furthermore, the stages in the law enforcement process are divided into three stages, namely: formulation, application, and execution. Formulation is the stage where the formulation of the law is formed, then applied to the community through the state apparatus that has been appointed by the government (Police and Courts), and as well as the stage of execution or implementation of the law where the law enforcement officers implementing the criminal are in charge of enforcing the laws and regulations that have been made by the law-forming body through the application of criminal provisions determined by the court.

Conclusion

Illegal sale of cosmetics is a criminal act because this sales act meets the criminal elements, namely objective and subjective elements. So that the perpetrators who sell illegal cosmetics are considered to have committed a criminal act so that these perpetrators will face legal consequences, namely being subject to criminal sanctions. Criminal sanctions themselves are a manifestation of responsibility for criminal offenses committed by a person while trading illegal cosmetics. A person who commits an illegal cosmetic trade will face a process called criminal law enforcement where there are two main stages, namely the application stage where the state apparatus will carry out the investigation process until the trial process to determine the criminal sanctions imposed on illegal cosmetic sellers. After undergoing the application stage, illegal cosmetic sellers will undergo an execution stage where they will receive rewards for the actions they have done.

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