



Legal Perspective of Consumer Protection in Indonesia Regarding Illegal Skincare Products

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Abstract

Protecting consumers against harmful skincare and cosmetic goods that shouldn't be marketed or given to the general public is another aspect of consumer protection. One important consideration for consumers is the safety of cosmetic goods. Cosmetics must have a halal accreditation and adhere to quality and safety regulations. Cosmetic items must not include any hazardous ingredients. Before and after cosmetic items are put on the market, the Food and Drug Supervisory Agency (BPOM) plays a crucial role in their oversight. The assessment and inspection of product safety at the point of sale is part of this oversight. The research method used is the legislative method with a normative legal framework, case method, and conceptual method. The purpose of this study is to determine the legal problems related to the use of illegal or unregistered skincare/cosmetics according to BPOM. The implementation of legal protection for consumers is demonstrated by the withdrawal and discontinuation of products that are illegally distributed without BPOM's permit. This is because it is challenging for BPOM to monitor the circulation of cosmetics sold online, so the public is advised to exercise greater caution when making purchases online. BPOM penalizes items that breach, not the intents of the offenders, and requires business actors to hold a Certificate of Good Cosmetic Manufacturing Practices.

Keywords: *BPOM; Consumer Protection; Illegal Cosmetics*

Introduction

Cosmetics are mixtures of substances used on the human body for cleaning, caring for, enhancing attractiveness, or changing appearance, as well as maintaining healthy skin. Cosmetics are formulated with various active ingredients and chemicals that interact with the skin when applied (Anissa, 2018). In addition to the government regulations mentioned, the Food and Drug Supervisory Agency (BPOM) has also tightened its supervision to ensure consumer safety and security. This action was taken because the negative impacts of cosmetic products are not only limited to the outer skin but also have the potential to affect overall health. For example, some cosmetic products contain chemical drugs, such as clindamycin and theophylline, which should not be found in cosmetic products. In addition, the presence of dangerous ingredients such as mercury in skin-whitening cosmetic products can have carcinogenic effects (cause cancer) (Natalia, 2018).

Consumer protection law In addition to providing legal protection to consumers, the Consumer Protection Act is intended to promote fair transactions or trade activities when conveying accurate and reliable information in the public environment. For example, in terms of the use of a product, such as cosmetics or beauty products, the government requires a comprehensive statement from business actors regarding information about the product, especially related to safety or public health. Along with the development of the cosmetic product market, business actors are required to meet consumer demand. As a result, those who make cosmetics illegally or without permission from the Food and Drug Supervisory Agency (BPOM) want to make more money. Consumers continue to use cosmetics without distribution permits, especially among teenagers, because they are not aware of the negative implications. There are various cosmetics available on the market in this free trade period, all with varying names, prices, and characteristics. Because of the existence of free traders, many irresponsible entrepreneurs make more money by making or trading cosmetics that do not comply with public distribution standards (Nomani et al., 2020).

Therefore, Law Number 8 of 1999 concerning Consumer Protection, also known as UUPK, and other laws that are intended and still in force to provide consumer protection, both in the field of Civil Law (Perdata) and Public Law, qualitatively determine their size to provide a guarantee of legal certainty (Criminal Law and State Administrative Law). Law Number 8 of 1999 concerning Consumer Protection, also known as UUPK, regulates the interaction between consumers and actors in Indonesia. The phrase "all efforts to guarantee legal certainty," which is included in Article 1 Number 1 of UUPK, is intended to provide consumers with legal certainty regarding arbitrary actions that can harm themselves and business actors (Miru & Yodo, 2004).

Because it is illegal or not yet registered with BPOM, cosmetics purchased at low prices are far below market prices. This refers to manufactured goods that are prepared for sale and have a permit to sell. However, in this study of cosmetics that are dangerous for consumers, if there is customer ignorance of the negative effects caused by cosmetics whose components are not clear in the product, this can be used as justification for those who continue to use these cosmetics (Benöhr, 2020). One of the reasons why cosmetics that are not registered with BPOM are still circulating is that consumers are usually not careful in choosing the products they will buy. Traditional markets, small shops, and some growing online retailers can all be used to distribute cosmetics.

Based on the Regulation of the Head of the POM Agency of the Republic of Indonesia No. 2 of 2014 concerning the Second Amendment to the Regulation of the Head of the POM Agency No. HK.03.1.23.08.11.07517 of 2011 concerning Technical Requirements for Cosmetic Materials, there are materials included in the list of hazardous materials that are prohibited for use in the manufacture of cosmetics. Some cosmetics contain hazardous materials, including chemical drugs (BKO) that can harm the human body. These chemical drugs (BKO) include red dye K3, red dye K10, retinoic acid, mercury, antibiotic drugs, dexamethasone, and hydroquinone. Hazardous substances (chemical drugs) in cosmetics are thus defined as medical chemicals whose use in raw materials for cosmetic production is prohibited because they can harm human organs. Therefore, the use of pharmaceutical compounds that are hazardous for consumption and the manufacture of cosmetics is prohibited. BPOM will try to carry out supervision and warning efforts to business actors not to sell cosmetics containing hazardous materials, and BPOM will withdraw these cosmetics from circulation as part of efforts to increase consumer protection and supervision of traded goods and/or services (Nizioł, 2021).

The purpose of this study is to find out more about consumer legal protection against illegal cosmetic sales. Cosmetics that are prohibited or do not have a distribution permit from BPOM are very bad for society, especially among teenagers. As well as contributing to consumer awareness regarding the implementation of consumer protection against illegal cosmetic products and providing recommendations for improving the system.

Research Method

This research is normative juridical research. Normative legal research is a scientific research procedure to discover the truth based on scientific logic from the normative side (Marzuki, 2017). Norms are not only defined as positive laws, namely rules made by politicians in higher positions (Efendi & Ibrahim, 2018). The normative side here is not limited to statutory regulations only. Legal research is normative research, but it does not only research positivist law. Based on this opinion, legal research seeks to find the suitability of legal rules by legal norms, which contain sanctions and obligations under legal principles, and whether a person's actions are by legal norms or legal principles. The research approach used is normative juridical with a statutory approach and a conceptual approach, namely, a problem approach seen from a legal aspect, which is then used to explore information and legal materials to analyze the research objectives.

Result and Discussion

The safety of cosmetic products is a very important aspect and must be seriously considered by consumers in their daily activities. Affordable cosmetic products must meet quality standards that emphasize health and safety and must have a halal certificate. Cosmetic products must not contain hazardous materials. All cosmetic products circulating in the community must be registered by BPOM Regulation Number 44 of 2013 concerning cosmetic requirements, including labeling that provides complete information on the safety and characteristics of cosmetic products that will be conveyed through brochures that will be used in marketing (Natah & Marwanto, 2020).

A set of laws and regulations known as consumer protection regulates the legal protection of consumer interests and the rights and obligations of consumers and producers resulting from efforts to fulfill demands. Indonesian consumers face much more complex problems than just how to choose a product. These issues involve increasing everyone's awareness of how important it is to protect consumers who use products produced or made by entrepreneurs, including business owners, the government, and even consumers themselves (Arindrajaya, 2022). An entrepreneur must also respect the rights of consumers by producing goods that are safe to use and following the standards set by the government. According to Article 1 Number 1 of the UUPK, "Consumer protection is all efforts that guarantee legal certainty to protect consumers." Therefore, the role of the government in defending the community against the circulation of skin care products containing mercury is very important. There are four approaches to implementing legal protection for customers who use cosmetics containing mercury or are not registered with BPOM (Humaira, 2021):

1. Revocation of distribution business and cosmetic industry permits;
2. Administrative sanctions in the form of removing cosmetic goods containing hazardous materials from circulation;
3. Use of penalties and compensation;
4. Legal protection from criminal law aspects.

Unfortunately, a common problem is the rampant circulation of cosmetic products that do not have legal status from BPOM. Not infrequently, these products also have fake certification from BPOM, which indicates manipulative actions in trying to deceive consumers. The impact of this is that consumers face serious health risks due to the use of these products that cannot be accounted for. This should be able to be overcome by having legal certification from BPOM before the product is sold to the market. According to Article 3 of the Regulation of the Head of BPOM Number 14 of 2014, BPOM has several tasks, including regulating the standards of products in circulation, providing licenses and certification for the pharmaceutical industry, evaluating products before marketing, testing products in the laboratory, conducting supervision before and after the product is distributed, and providing information and education to the public about products and warnings for product use, such as how to use them and their side effects (Gabriella & Bakhtiar, 2023).

In the UUPK, business actors are required to compensate consumers if, at a later date, the consumer experiences health problems due to goods produced by the business actor or used by the consumer. This has been explained in Article 19 of the UUPK, which reads:

1. Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded;
2. Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of the same type or equivalent value, or health care and/or the provision of benefits by the provisions of applicable laws and regulations;
3. Compensation is carried out within a period of 7 (seven) days after the transaction date;
4. The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error.

Not only in UUPK, business actors are required to compensate for losses suffered by consumers. The form of responsibility that consumers can file other than those in UUPK is through a lawsuit from the Civil Code because business actors who harm consumers are caused by their actions. It is explained in Article 1365 of the Civil Code, which reads, "Everyone who acts unlawfully, which causes harm to another person, requires the person who is at fault to compensate for the loss of the other person." So if the business actor distributes or distributes cosmetic products that contain hazardous or illegal ingredients, consumers have the right to file for compensation according to the losses they experience (Wicaksono & Saufi, 2013).

BPOM cannot guarantee that a product is dangerous or not depending on the composition of the product. According to BPOM Regulation No. 2 of 2020 concerning Supervision of Cosmetics Production and Distribution, cosmetics distributed in the community, outside of creams or cosmetics formulated by doctors, must have a distribution permit from BPOM. Registered cosmetic products are guaranteed to meet the quality tests set by BPOM. During product testing, many parameters must be met by business actors or manufacturers. Cosmetic products that have been registered with BPOM can be guaranteed to be safe, of high quality, and meet their benefits and health claims. The legal protection provided by BPOM for a product is by providing a distribution permit as stated in BPOM Regulation No. 2 of 2020 concerning the Supervision of Cosmetics Production and Distribution (Soemarwi & Ridzka, 2023).

There are 3 (three) layers of supervision systems carried out by the POM Agency in the distribution of cosmetics or skincare (Noviani Putri & Sahrudin, 2022):

1. Manufacturers who have obtained a distribution permit from the POM Agency must be responsible for ensuring the safety and benefits of their products;
2. The government, in this case, the BPOM Agency is a regulatory body to supervises its facilities and infrastructure (Prastyanti, 2021). Infrastructure inspections are divided into 2 (two), namely:
 - a. Premarket (before the product is distributed)
 - b. Postmarket (after the product is distributed);
3. Society: The role of society is very important in reporting illegal products that do not comply with regulations and reporting them to the BPOM Agency.

To prevent negative impacts from the use of these products or services, UUPK stipulates some prohibitions, which include the following (Sari & Tan, 2021):

1. Business actors are prohibited from producing and/or trading goods and/or services that do not meet or do not comply with the required standards and applicable laws and regulations;

2. Business actors are prohibited from trading damaged, defective, used, or contaminated goods without providing complete and correct information regarding the goods;
3. Business actors are prohibited from trading damaged, defective, used, or contaminated pharmaceutical and food supplies, either with or without providing complete and correct information;
4. Business actors who violate the provisions in paragraph (1) and paragraph (2) are prohibited from trading the goods and/or services and are required to withdraw them from circulation.

To prevent the use of illegal cosmetics or the use of fake IDs, BPOM conducts inspections and investigations at various business locations. The sale of illegal products is still quite rare, especially because it is done through online/darknet markets. Post-market control measures for cosmetic products that already have a distribution permit are then further checked with the relevant distribution permit number, which can be fictitious or official and obtained transparently from BPOM before samples are taken and examined. The results of the study highlight the importance of quality control in cosmetic production to ensure that manufacturing facilities meet the established production and quality standards. For example, socialization by inviting students to the community to provide them with information on how to choose the right cosmetics. In this way, the community does not only rely on BBPOM to carry out outreach like this; instead, the community can make the right decisions in choosing safe and non-hazardous cosmetic products. Thus, the approach involves the use of mitigation strategies (socialization, education), foresight, and foresight (Asirah et al., 2023).

Conclusion

The Indonesian government needs to improve supervision and enforcement of regulations related to imported cosmetic products. This includes ensuring that all cosmetic products entering the market are registered and meet the quality and safety standards set by BPOM. Strict action must be taken against business actors who violate these regulations. Consumer education and awareness need to be improved about the risks of using illegal and dangerous cosmetic products. The government and related institutions can hold information campaigns to help consumers make wiser decisions in choosing cosmetic products. The role of BPOM is to provide protection for consumers against the circulation of skincare containing mercury, where every business actor is required to have a Certificate of Good Cosmetic Manufacturing Practices (CPKB). This aims to protect consumers because several stages must be passed by business actors. After that, business actors will receive a cosmetic notification, and then BPOM will provide a distribution permit number, which is given to business actors so that they can distribute their products. In addition, to the sanctions of BPOM regulations, it is hoped that it will increase consumer protection against illegal cosmetic products in Indonesia and reduce their negative impact on consumer health. Violators only lead to product sanctions, not to the perpetrator's malicious intentions. Increasing cooperation between BPOM, the government, and other authorities is essential to combat the distribution of illegal cosmetic products. This involves the exchange of information and cross-sector cooperation to address this problem effectively. With these steps, it is hoped that it will increase consumer protection against illegal cosmetic products in Indonesia and reduce their negative impact on consumer health.

References

- Anissa, I. (2018). Perlindungan hukum konsumen terhadap peredaran produk kosmetik ilegal yang mengandung zat aditif. *Universitas Islam Negeri Syarif Hidayatullah*.
- Arindrajaya, S. C. (2022). Legal Protection Against Cryptocurrency Investors: Overview of Indonesian Consumer Protection Law. *Journal of Human Rights, Culture and Legal System*, 2(2). <https://doi.org/10.53955/jhcls.v2i2.32>.
- Asirah, A., Sofyan, A. M., & Muin, A. M. (2023). Upaya Penegakan Hukum Peredaran Kosmetik Ilegal Melalui E-Commerce Oleh Ppns Bbpom Makassar. *UNES Law Review*, 5(3).

- Benöhr, I. (2020). The United Nations Guidelines for Consumer Protection: Legal Implications and New Frontiers. *Journal of Consumer Policy*, 43(1). <https://doi.org/10.1007/s10603-019-09443-y>.
- Efendi, J., & Ibrahim, J. (2018). Metode Penelitian Hukum Normatif dan Empiris. In *Kencana* (2nd ed., Vol. 2, Issue Hukum). Prenadamedia Group.
- Gabriella, T., & Bakhtiar, H. (2023). Perlindungan Hukum Kepada Konsumen Terkait Peredaran Kosmetik Ilegal. *Jurnal Panorama Hukum*, 8(1). <https://doi.org/10.21067/jph.v8i1.8521>.
- Humaira, A. et al. (2021). Perlindungan Hukum Bagi Konsumen Terhadap Pengguna Kosmetik Yang Tidak Terdaftar Badan Pengawasan Obat dan Makanan. *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 2(3).
- Marzuki, P. M. (2017). Penelitian Hukum: Edisi Revisi, 13th ed. In *Prenadamedia* (Vol. 151, Issue 2).
- Miru, A., & Yodo, S. (2004). *Hukum Perlindungan Konsumen* (1st ed., Vol. 2). Rajawali Pers PT Raja Grafindo Persada. <https://inlislite.uin-suska.ac.id/opac/detail-opac?id=18650>.
- Natah, L. C. B., & Marwanto. (2020). Perlindungan Hukum Terhadap Konsumen Yang Mengonsumsi Produk Kosmetik Impor Ilegal Yang Mengandung Bahan Berbahaya. *Jurnal Kertha Semaya*, 8(2).
- Natalia, K. (2018). Perlindungan Hukum Terhadap Konsumen Kosmetik yang di jual Bebas secara Online Berdasarkan UU No 8 Tahun 1999 tentang Perlindungan Konsumen. In *New England Journal of Medicine* (Vol. 372, Issue 2).
- Nizioł, K. (2021). The challenges of consumer protection law connected with the development of artificial intelligence on the example of financial services (chosen legal aspects). *Procedia Computer Science*, 192. <https://doi.org/10.1016/j.procs.2021.09.185>.
- Nomani, M. Z. M., Lone, A. A., Rahman, F., Alhalboosi, A. K. K., & Raj, A. A. (2020). Medico-legal profiling of Sher-i-Kashmir institute of medical sciences Srinagar under consumer protection laws of union territories of Jammu and Kashmir. *Medico-Legal Update*, 20(1). <https://doi.org/10.37506/v20/i1/2020/mlu/195250>.
- Noviani Putri, R., & Sahrudin, S. (2022). Perlindungan Konsumen Terhadap Peredaran Kosmetik Yang Tidak Mencantumkan BPOM. *Private Law*, 2(3). <https://doi.org/10.29303/prlw.v2i3.1569>.
- Sari, N., & Tan, W. (2021). Analisis Hukum Produk Kosmetika Yang Di Impor Untuk Digunakan Secara Pribadi Oleh Konsumen. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(3).
- Soemarwi, V. W. S., & Ridzki, Y. (2023). Perlindungan Hukum Konsumen Terhadap Peredaran Kosmetik Palsu Berdasarkan Uu Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Dan Peraturan Bpom Nomor 23 Tahun 2019. *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana*, 5(1). <https://doi.org/10.46930/jurnalrectum.v5i1.2864>.
- Wicaksono, A. B., & Saufi, M. (2013). Prinsip-prinsip perlindungan hukum bagi konsumen di Indonesia. *Prosiding*, 9(4).

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