



REVEALING THE LEGAL LOOPHOLES OF “CONSUMER PROTECTION AGAINST ILLEGAL COSMETIC PRODUCTS”

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Abstract:The rampant free trade of illegal cosmetics through social media has caused many consumers to be interested and buy these cosmetic products without knowing the ingredients contained in the cosmetic products. As a result, consumers' skin becomes damaged because of using these cosmetics. Consumers who feel disadvantaged can seek legal protection by reporting it to BPOM. BPOM has an important role in supervising the circulation of illegal cosmetics in order to protect consumers from things that can be detrimental. This study uses a normative approach method. This study aims to determine how legal protection is provided for illegal products that are freely circulated on social media.

INTRODUCTION

With the development of the digital era, it has supported economic growth for business actors so that they are able to produce goods or services. The development of the advanced era has an influence on human lifestyle in the use of goods and services which is increasing from year to year, one of which is in the use of cosmetics. The increase in the need for the use of cosmetics is strengthened by the emergence of various types of cosmetic products that are used by humans as primary needs to support appearance and beauty is increasingly visible. The definition of cosmetics according to the Regulation of the Minister of Health of the Republic of Indonesia No. 20 / MenKes / Per / X / 76 concerning the production and distribution of cosmetics and medical devices states that "cosmetics are materials that are rubbed, poured, sprayed, and used on parts of the human body with the intention of cleaning, caring for, increasing attractiveness, and are not included in the group of drugs ". Cosmetics that will be distributed must have a distribution permit issued by the Food and Drug Supervisory Agency (BPOM).

The circulation of cosmetics that do not meet standard requirements is quite worrying. The number of illegal cosmetics circulating on the market is increasing as evidenced by the inspection report by BPOM which stated that in the period from June to September 2024, BPOM found 970 items with a total of 415 thousand illegal cosmetic products worth 1.4 billion.



Illegal cosmetic products containing hazardous materials in the form of lip gloss, facial whitening cream, eye shadow, blush, and facial soap with the brands Brillian and SVMY, most of which come from China, the Philippines, Thailand, and Malaysia (Liputan 6, 2024).

In addition to the cosmetic products above, there are also many cosmetics that are produced and distributed in Indonesia, from the results of BPOM supervision for the period November 2023 to October 2024, some of the products are Dr Pure Night Cream, Elcy Beauty Night Cream, Glowingin Night Cream, Mira Hayati Cosmetic Toner, Starlite Night Cream, Umi Beauty Care Brightening Cream (Head of BPOM, 2024). According to (Qoshy Soraya, 2016) pThe distribution of illegal cosmetic products has violated Article 2 of BPOM Decree Number HK.00.05.04.1745 concerning cosmetics, namely: “First, the use of materials that meet the established standards. Second, produced with good manufacturing procedures. Third, registered and licensed by BPOM. The existence of the Consumer Protection Law is expected to guarantee legal protection for the rights that consumers have in Indonesia. Although the Law is the source of the Consumer Protection Law, it does not mean that only consumers are protected, but the interests of business actors must also be considered. Because economic growth in Indonesia is largely determined by business actors, the Law also protects business actors. This guarantees legal certainty to prevent arbitrary actions.

Therefore, it is necessary to have security to protect consumers from the products they buy. Therefore, cosmetic production business actors are subject to legal sanctions if their product numbers violate Article 19 (1) and Article 62 (1) of the UUPK. And inform business actors to fulfill their products using BPOM permits when starting their operations and consumers are advised to be more careful and wise in choosing cosmetic products that they will use. Therefore, from the problem above, the author raises the title "Revealing the Legal Loophole "CONSUMER PROTECTION AGAINST ILLEGAL COSMETIC PRODUCTS".

RESEARCH METHODS

This research uses a normative legal method by conducting case studies in the form of legal behavioral products, for example examining laws. The author will find ideas that give birth to legal understanding, concepts that are relevant to the problems faced. The types of legal materials in this study are books, journals, legal cases, opinions of scholars, and articles that are in accordance with the research problem. The data collection technique used in this study is a literature study by reading, reviewing, taking notes, making reviews in library materials that are related to this study. The analysis of legal entities in this study uses the normative analysis

method, by evaluating and analyzing research results based on legal understanding, legal norms, legal theories, and doctrines related to research problems, where this normative method will be used to examine the problems in this study.

RESULTS AND DISCUSSION

The circulation of illegal cosmetics has now increased. There are many victims, most of the victims do not dare to report to BPOM and only report to medical personnel or beauty doctors. Cosmetics are currently a necessity that can no longer be considered trivial considering the increasingly modern human lifestyle. This makes the cosmetics industry compete to produce cosmetics with various forms of packaging and different types. In general, what is meant by cosmetics is a care substance used to improve the appearance of the human body which is generally a mixture of various natural sources and mostly synthetic materials. According to (Iqlimatul Annisa, 2018) Cosmetics are said to be illegal if they are produced or distributed without meeting the requirements of safety, benefits, and quality to the point of causing adverse effects on use because they use hazardous materials and are detrimental to economic growth in Indonesia because they do not have a permit from BPOM as stipulated by the Law. While cosmetics are said to be legal if they already have a BPOM permit in their distribution, such as:

1. Product packaging must clearly state product information.
2. Using materials that comply with BPOM regulations.
3. Produced well and correctly.
4. Registered and has a distribution permit from BPOM.

BPOM is a government agency tasked with regulating, standardizing, and certifying food, drug, and cosmetic products, covering all aspects of manufacturing, sales, use, and safety. The role of BPOM in the circulation of illegal cosmetics is very important because in the current era, many illegal cosmetic products are freely traded through online transactions on social media. According to articles (1), (2), (3) of Presidential Regulation No. 80/17, According to (Sujud, nd) BPOM has the following authorities:

1. Formulate national policies in the field of drugs and food.
2. Supervisory policy implementer.
3. Establish regulatory standards, procedures and criteria in the field of supervision.
4. Expert guidance and advice in the field of supervision.
5. Taking action against violations of the provisions.
6. Imposing administrative sanctions in accordance with statutory provisions.

ImprovementCosmetic production has quite broad implications for control and supervision. This effort is the responsibility of the government and demands an active role from the community, in this case the government has established the following supervision system:

- a. Direct supervision, this supervision is carried out directly by visiting directly or conducting on-site inspections of the objects being supervised.
- b. Indirect supervision, this supervision is carried out without going directly to the location of the supervised object, but by analyzing documents concerning the supervised object submitted by the implementer or other sources including work implementation reports, complaint letters from the public, news or articles on social media.

In principle, cosmetic products must go through a series of tests before being freely traded on the market and BPOM is tasked with testing and reviewing the manufacture of cosmetic products first, whether they are safe for consumption or not by consumers. Violations of the sale and distribution of illegal cosmetics are a form of criminal acts.criminal acts regulated in the Health Law, Article 197. Discusses consumer protection against the sale and purchase of illegal cosmetic products,(Elfrida Mayangsari HTP, 2021)Consumer protection is a description of legal protection for consumers from things that are detrimental to consumers. According to Law No. 8/99 Article 1 (1) concerning consumer protection, it states that "Consumer protection is all efforts that guarantee legal certainty for consumer protection". It can be concluded that consumer protection is an effort to guarantee legal protection in order to provide protection to consumers in obtaining goods or services.

What is meant by a consumer is stated in the Consumer Protection Law in Article 1 paragraph 2 which states that "*A consumer is any person who uses goods or services available in society, either for their own benefit or for the benefit of others, not for trading.*" (Riris Nisantika, 2021).So it is necessary to know what the rights and obligations are between consumers and business actors, namely as follows:

According to(Dewi & Sh, nd)Consumer rights Law No. 8/99 Article 4 concerning legal protection states that:

1. The right to comfort, safety and security in consuming goods or services;
2. The right to choose goods or services according to the exchange rate and conditions that are appropriate;
3. The right to correct and clear information regarding the condition of the goods or services;
4. The right to have opinions and complaints heard regarding goods or those used;



5. The right to receive protection and efforts to resolve consumer protection disputes.
6. The right to receive consumer guidance from the government.
7. The right to be treated and served properly.
8. The right to receive compensation if the goods or services received are not in accordance with what has been agreed.
9. Rights that exist in other consumer protection.

Consumer obligations, in article 5 of Law 8/99 concerning Consumer Protection, state that consumer obligations include:

1. Read and follow the information instructions on the packaging.
2. Have good intentions in carrying out transactions to purchase goods or services.
3. Pay according to the agreed exchange rate.
4. Following efforts to properly resolve consumer protection disputes.

The rights of business actors are contained in Article 6 of Law 8/99 concerning consumer protection, including the following:

1. The right to receive payment commensurate with the exchange value of the goods or services traded.
2. The right to obtain legal protection from consumers who act in bad faith.
3. The right to self-defense in dispute resolution.
4. Other rights regulated in other laws and regulations.

The obligations of business actors in Article 7 of Law 8/99 concerning consumer protection explain the obligations of business actors as follows:

1. Have good intentions in carrying out his business.
2. Provide correct and clear information regarding the condition of the goods or services produced.
3. Treating and serving consumers properly without discrimination.
4. Guaranteeing the quality of goods or services produced and traded based on applicable goods or services quality standards.
5. Provide compensation if the goods or services received do not comply with the agreement.

The relationship between consumers and business actors is established if the business actor has provided a promise of information regarding goods or services, because from that point on the rights and obligations of the parties arise.both consumers and business actors. Based on article 1320 and article 1338 of the Civil Code, where business actors agree to what

is promised when making a promise with an advertisement or brochure, so that the promise will apply as a law for the parties who make it. From the use of illegal cosmetic products that damage consumers' skin, they can seek justice through legal channels. Consumers can file a lawsuit or compensation against business actors who cause losses. Regulated in Law 8/99 article 19 paragraph 27 concerning consumer protection, explaining the responsibilities of business actors to consumers as follows:

1. Business actors are responsible for providing compensation for consumer losses resulting from consuming the goods or services they produce.
2. Compensation as referred to in paragraph 1 may be in the form of a refund, return of similar goods or services, health care and compensation.
3. Compensation will be provided within 7 days at the latest.
4. Criminal charges are based on evidence.

If the agreement relationship between the consumer and the business actor is a breach of contract because what the consumer wants is not carried out by the business actor. If the consumer uses a lawsuit for unlawful acts, then the agreement relationship between the consumer and the business actor is not required. The sanctions against the business actor imposed on the business actor are as follows:

a. Administrative Sanctions

Article 2 paragraph of Law 8/99 explains that administrative violators can be subject to a fine for losses of up to Rp. 200,000,000.00. And if the business actor cannot provide compensation within 7 days from the transaction, then administrative sanctions will be imposed.

b. Criminal Sanctions

Consumers can file a lawsuit in the form of criminal sanctions against business actors because they have been harmed. Criminal sanctions can be in the form of imprisonment for a maximum of 5 years and a fine of Rp. 2,000,000,000.00. This regulation is regulated in Law 8/99 article 61 concerning consumer protection.

c. Civil Sanctions

These civil sanctions usually take the form of a refund or medical expenses and compensation. These sanctions must be given within 7 days after the transaction.

Within the scope advertising in the digital era is not unfamiliar with the term influencer, along with the development of the times, influencers take a fairly large portion in digital marketing. Currently, many digital platforms are used by influencers to seek profit such as endorsements from business actors. The word influencer is taken from English which means



to influence. Generally, influencers are groups that build social networks through social media. Usually influencers will look for ideas to get a large number of followers so that they can present their popularity in public opinion (Aprida Nafliana, 2023).

One example of the case is VV, NR, NK, an influencer and singer who promoted Derma Skin Care (DSC) products on their Instagram accounts with the caption "100% original, herbal, safe for pregnant women, and can be used by men and women". DSC claims that its products can remove dark spots, whiten the face, and protect from sunlight. DSC also states that its products are made from herbal ingredients that are good for skin care. In fact, BPOM clearly stated that the product was mixed with chemicals and without a distribution permit from BPOM. DSC has quite a lot of customers, reaching a turnover of IDR 300,000,000.00/month, not only that, this cosmetic product has been circulating in the market for 2 years. Finally, the East Java Regional Police named the owner of DSC as a suspect and confiscated 1,600 ready-to-distribute products. During the examination process, the suspect admitted that he produced these cosmetics at his home in Kediri. And the influencers were named as witnesses because they had promoted DSC products and they did not know that the cosmetics were illegal products. (Ismi Azizah, nd).

The activity of promoting illegal products is an act that violates the law, and the perpetrators are responsible for this. However, this is not optimal because in its implementation there are no clear legal regulations for influencers. This has resulted in many influencers promoting illegal cosmetic products through social media. Law enforcement should also help consumers to be protected.

CONCLUSION AND SUGGESTIONS

In the process of making cosmetics must go through a series of laboratory tests before being sold and distributed widely. BPOM is tasked with testing and reviewing the type of cosmetics first. Violations in the form of selling illegal cosmetic products are a criminal act regulated in article 197 of the Health Law. Protection of consumers is regulated in Law 8/99 concerning consumer protection, especially cosmetics, which is clearly regulated regarding business actors to provide complete information in order to avoid losses for consumers. Although the law is clear, BPOM must monitor product safety before it is distributed to the market. Therefore, the author advises sellers to be aware of the safety of the products they sell. In addition, the government must cooperate well with BPOM and law enforcement agencies to protect consumers from the circulation of illegal cosmetic products.



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