



LEGAL PROTECTION FOR CONSUMERS AGAINST THE DISTRIBUTION OF ILLEGAL COSMETIC PRODUCTS

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Abstract: *The purpose of this article is to examine legal protection for consumers related to the distribution of illegal cosmetic products. Various legal aspects are discussed in this research, including consumer rights, producer responsibilities, and the role of supervisory authorities. Many fake cosmetic products are marketed by influencers on social media without seeing the product first. This product does not meet the current requirements for distribution to the public so it could cause harm to consumers. This article uses normative research methods and refers to statutory regulations. This research shows that Law Number 8 of 1999 can provide a strong legal basis to protect consumers from dangerous cosmetic products. However, there are still challenges in implementing this law, such as supervision that is not yet optimal and sanctions that are not always severe enough for violators. This article also identifies several recommendations to strengthen consumer protection against illegal cosmetic products, including increased oversight, stricter law enforcement, and increased consumer awareness of their rights. It is hoped that this research will provide useful information for the government, regulatory agencies and the general public in an effort to protect consumers from potentially dangerous cosmetic products on the market.*

Keywords: Law, cosmetics, consumers

I. INTRODUCTION

At this time, beauty products are being widely discussed. many women want to have white and healthy skin. it's not surprising that many people, especially women, are looking for cosmetic products and even skin care to have clean skin. Most women choose to apply the instant method, namely by using whitening products such as whitening cream and collagen,

to get clean and healthy skin ¹. The lack of a food and drug supervisory agency (bpom) permit number means these cosmetic items are obtained at very low costs. Many corporate players ignore their responsibility to protect their customers. They commit fraud in order to obtain high profits but do not consider consumer safety when using their cosmetic products. As we know, Indonesia's economic growth is currently experiencing ups and downs, whether caused by natural or non-natural disasters. As is happening throughout the world, namely with the emergence of the infectious disease corona virus or covid-19. This virus is also spreading in Indonesia which can disrupt economic stability². This is what causes many people to try hard to make a profit.

Providing consumers with ambiguous information and unclear instructions for use on the products they use or will use is considered abuse on the part of business actors ³. Consumers continuing to use these cosmetics may be due to their ignorance about the negative impacts that will arise. Both consumers and traders must benefit from Law Number 8 of 1999 which discusses consumer protection. In order to protect customers' interests, this law is intended as a legal basis for limiting arbitrary behavior by business actors ⁴. With this regulation, the seller or producer also gets the same rights which means that the seller's rights can be fulfilled ⁵.

According to Article 1 of Law Number 8 of 1999 concerning Consumer Protection, a consumer is every individual who uses goods/services available in society, whether for personal, family, social or other purposes and not for trading ⁶. Consumers also have the right to legal protection that guarantees safety and prevents harm to buyers as consumers. Various steps can be taken to ensure legal certainty in consumer protection ⁷. According to Regulation of the Head of BPOM of the Republic of Indonesia Number 29 of 2019, cosmetic products are defined as substances that are applied outside the human body, such as on the lips, nails, or hair, and are intended to be used to clean, perfume, change the appearance, or maintain the body ⁸.

¹ Sri Arlina, "Perlindungan Konsumen Dalam Transaksi Jual Beli Online Produk Kosmetik (Pemutih Wajah) Yang Mengandung Zat Berbahaya Berdasarkan Undang-Undang Nomor 8 Tahun 1999," *UIR Law Review* 02, no. April (2018): 317.

² Nur Qomariyah; Anang Dony Irawan, "PERLINDUNGAN HUKUM TERHADAP DEBITUR DALAM PINJAMAN DANA TANPA AGUNAN DIMASA PANDEMI COVID-19" 5, no. 2 (2021): 156–69.

³ Wiwik Afidah and Anang Dony Irawan, "Perlindungan Konsumen Terkait Peredaran Produk Impor Tanpa Label Halal Di Indonesia," *ERA Hukum, Jurnal Ilmiah Ilmu Hukum* Vol. 19, no. 2 (2021): 267.

⁴ Enik Isnaini, "Perlindungan Hukum Terhadap Konsumen Kosmetik Ilegal Yang Mengandung Bahan Kimia Berbahaya," *Jurnal Independent* 6, no. 1 (2018): 105, <https://doi.org/10.30736/ji.v6i1.86>.

⁵ S S Benedicta, "Perlindungan Hukum Terhadap Penjual Dalam Transaksi Jual Beli Online Dengan Metode Pembayaran Cash on Delivery (Cod)," *UNES Law Review* 5, no. 4 (2023): 2536–48.

⁶ Rahmadi Islam, "PERLINDUNGAN HUKUM TERHADAP PEREDARAN KOSMETIK YANG MERUGIKAN KONSUMEN," *العدد الحا* □□□□□□ □□□□□□□□ □□□□□ □□□□, no. 3 (2018): 1–13.

⁷ Maya Novira Purwanti and Achmad Hariri, "Perlindungan Hukum Bagi Konsumen Atas Kelangkaan Minyak Goreng Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 2, no. 1 (2022): 1, <https://doi.org/10.51825/sjp.v2i1.15055>.

⁸ Gita Saraswati, Anak Agung Istri Ari Atu Dewi Program Kekhususan Hukum Bisnis Fakultas Hukum Universitas Udayana, and Abstrak, "Pertanggungjawaban Pelaku Usaha Bagi Konsumen Yang Menggunakan Produk Kosmetik Ilegal Dan Berbahaya?," *Paper Knowledge . Toward a Media History of Documents*, 2014, 1–15.

The distribution of cosmetics distributed on the market must comply with legal and regulatory requirements. Due to the lack of a distribution permit and not being registered with BPOM, several cosmetic items circulating in Indonesia are considered illegal⁹. Cosmetics that contain chemicals and dyes which are prohibited based on the Regulation of the Minister of Health of the Republic of Indonesia Number 455, concerning Ingredients, Coloring Substances, Preservatives and Sunscreen in Cosmetics, are considered illegal cosmetic goods. Mercury is a dangerous chemical and is often found in cosmetics because it can prevent the skin's surface from forming and quickly turn the skin white¹⁰.

As technology develops, the circulation of illegal cosmetic products continues to increase. Consumer knowledge about the use of illegal cosmetics is still quite low, so many business people are dishonest and cheat¹¹. The Food and Drug Administration claims that certain cosmetic items include dangerous substances known as medicinal chemicals. The use of these medicinal chemicals in cosmetics is strictly prohibited because they can damage human organs¹². Drugs such as hydroquinone, dexamethasone, and antibiotics are categorized as medicinal chemicals.

BPOM is a non-departmental based government institution, namely a central government institution which was formed based on the Presidential Decree of the Republic of Indonesia Number 103 of 2001 to carry out certain tasks and is directly responsible to the President¹³. The current wave of technological progress has brought about significant changes in Indonesia's pharmaceutical, food, cosmetics and medical equipment industries, leading to the formation of BPOM. This illegal cosmetic product is clearly dangerous but is instead given a platform to be promoted by several influencers. Many products sold by online retailers on social media do not match the items received by customers. This action is called an illegal action because the goods that arrive do not match what they see on social media¹⁴. Even though there are regulations regulated in Law No. 8 of 1999 concerning Consumer

⁹ Reza Matulatan³ Siti Ajeng Putriana¹, Aura Nur Maulida², "RESTRUKTURISASI KEWENANGAN BPOM DAN SISTEM KOOPERATIF PENANGGULANGAN PEREDARAN KOSMETIK ILEGAL SECARA ONLINE," n.d., 3.

¹⁰ Desiana Ahmad and Mutia Ch Thalib, "TANGGUNG JAWAB HUKUM PELAKU USAHA TERHADAP PEREDARAN KOSMETIK YANG TIDAK MEMILIKI IZIN EDAR 'Legal Responsibility Of Perpetrators Against Illegal Cosmetics Circulation,'" *Jurnal Legalitas* 12, no. 2 (2020): 100–108.

¹¹ Rahmadany Jiyana Puspitasari and Al-qodar Purwo Sulistyono, "Eksaminasi: Jurnal Hukum Perlindungan Hukum Bagi Korban Penipuan Online Shop Dengan Merujuk Pada Undang - Undang Nomor 19 Tahun" 2, no. 1 (2022): 1–8.

¹² Arif Wicaksana and Tahar Rachman, "PERLINDUNGAN KONSUMEN DARI PEREDARAN CREAM KOSMETIK BERBAHAYA YANG MENGANDUNG MERKURI DITINJAU DARI UNDANG-UNDANG NOMOR 8 TAHUN 1999 TENTANG PERLINDUNGAN KONSUMEN DAN PERATURAN BPOM NOMOR 23 TAHUN 2019 TENTANG BAHAN KOSMETIK," *Angewandte Chemie International Edition*, 6(11), 951–952. 3, no. 1 (2018): 10–27.

¹³ 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.

¹⁴ Anang Dony Rahadian Irhamil, "Perlindungan Hukum Bagi Konsumen Jual Beli Online Atas Barang Tidak Sesuai," *Jurnal Education and Development* 10, no. 3 (2022): 264.

Protection, there are still shortcomings in implementing them. So that legal certainty in legal regulations is difficult to achieve.

This article uses a normative legal research approach as its research methodology. Because the main emphasis of this research is the analysis of consumer protection laws contained in Law Number 8 of 1999 and other related laws. This method can be applied to identify, analyze and interpret legal provisions in the context of consumer protection against illegal cosmetic products. This research approach provides instructions on how to understand and analyze the problems faced, so that it is believed that someone will be able to find and analyze certain problems to find the truth.

This research involves collecting secondary data such as government regulatory laws, court decisions, and related legal literature. Through this method, it is also possible to compare and link existing regulations with issues related to consumer protection in the context of illegal cosmetic products. Thus, this method provides a strong basis for discussing the role of law in protecting consumer rights in situations involving health and safety such as dangerous cosmetic products.

II. DISCUSSION

Legal protection for consumers who use illegal cosmetic products

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state of law, meaning that all actions must have a governing legal basis. Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia then states that every person has the right to legal certainty, protection, guarantees and recognition. Therefore, all people in Indonesia are expected not to discriminate in various aspects. Because everyone has the right to be protected from discriminatory treatment and the right to be free regardless of the basis for such treatment. Legal protection is a place that can protect all aspects of unlawful acts because it can protect victims and can also promote equality for all of society ¹⁵. In addition, legal protection refers to the state's efforts to uphold people's rights through relevant laws and regulations, which have the aim of creating trust and legal certainty regarding the rights of its citizens ¹⁶.

The following is the legal protection provided to consumers :

- 1) Protect consumer safety. Public safety when consuming commodities is a guarantee, meaning that the food or drink purchased is guaranteed not to harm a person's life or bodily integrity;

¹⁵ Muridah Isnawati, Rahmadhani Maghfirahtul Fitri, and Ahmad Yulianto Ihsan, "Perlindungan Hukum Bagi Anak Korban Perdagangan Online," *ACADEMOS Jurnal Hukum Dan Tatanan Sosial* 1, no. 1 (2022): 67–81.

¹⁶ Ari Ardianto and Achmad Hariri, "Perlindungan Hukum Atas Pengguguran Kandungan Korban Penderitaan Di Tinjau Dari Hukum Nasional," *Media of Law and Sharia* 2, no. 3 (2021): 218–37, <https://doi.org/10.18196/mls.v2i3.11535>.

- 2) Protection of the right to obtain information. The public as consumers must be given complete, accurate and transparent information about the products they buy and use to meet the needs of themselves and their families;
- 3) Protection of rights in choosing products. Consumers have the right to choose goods that best suit their needs, preferences and financial situation;
- 4) The right to replacement and/or exchange in the event that the product is defective, unsuitable, or not as it should be.

To achieve legal certainty, there must be legal provisions that regulate it. Strict compliance with legal provisions is necessary to prevent problems that could harm both parties ¹⁷. Efforts to protect and empower consumers have been implemented through the Consumer Protection Law Number 8 of 1999 which is a joint responsibility between the government and the community. Article 4 of Law Number 8 of 1999 concerning Consumer Protection regulates consumer rights, one of which is the consumer's right to receive information regarding the requested product and the opportunity to receive payment for the requested product, if the product is damaged, lost, or the buyer does not receive it. A consumer protection council was created to develop consumer protection measures. The National Consumer Protection Agency is an institution formed to collaborate in developing consumer protection and has the task of providing warnings and reporting to the government regarding developments in consumer protection in Indonesia.

There are many illegal cosmetics on the market today, namely those that do not have a distribution permit from BPOM. Apart from that, currently there are many forms of crime that anyone can become a victim of ¹⁸. In accordance with the Regulation on Technical Requirements for Cosmetic Ingredients Number 18 of 2015 by the Head of BPOM, cosmetic product chemicals are classified into two categories: prohibited chemicals and permitted chemicals with a history of limited use. Prohibited chemicals are mercury and retinoic acid. Mercury has been declared a dangerous ingredient, therefore mercury is prohibited from being used in cosmetic ingredient mixtures.

Government Regulation Number 74 of 2001 concerning Dangerous and Toxic Materials states that mercury is a dangerous substance. Likewise, retinoic acid is prohibited because it can cause dry skin, burning sensation, and can even cause skin cancer. Hydroquinone has a maximum use limit of 0.002%, formaldehyde has a maximum use limit of 5%, triclosan

¹⁷ D ade Aprilia and agus Supriyo, "Jual Beli Tanah Yang Bersertifikat Dijaminkan Hutanh Menurut UU No 5 Tahun 1960," *Madani Legal Review* 6, no. 2 (2022): 18.

¹⁸ Rani Kusuma Wardani and Levina Yustitiantingtyas, "Perlindungan Hukum Terhadap Anak Perempuan Sebagai Korban Tindak Pidana Perdagangan Manusia," *Perspektif Hukum* 21, no. 1 (2021): 110-33.

has a maximum use limit of 0.3%, and resorcinol has a maximum use limit of 0.5%. This is a chemical that is permitted in cosmetic items with usage limits ¹⁹.

In order to ensure legal certainty regarding consumer protection, Law Number 8 of 1999 concerning Consumer Protection regulates the provision of sanctions to sellers and buyers if something happens between the two parties.

A. Administration sanctions

Article 60 of Law Number 8 of 1999 concerning Consumer Protection states:

- 1) Business actors who violate Article 19 paragraphs (2) and (3), Article 20, Article 25 and Article 26 may be subject to administrative sanctions by the Consumer Dispute Resolution Agency.
- 2) Administrative sanctions which include maximum compensation of IDR. 200,000,000.00 (two hundred million rupiah).
- 3) Legislative regulations further regulate the process of determining administrative sanctions as intended in paragraph (1).

B. Criminal sanctions

Criminal prosecution of business actors and/or their management is based on Article 61 of Law Number 8 of 1999 concerning Consumer Protection. According to the guidelines in Law Number 8 of 1999 Article 62 concerning Consumer Protection, it is stated that:

- 1) Business actors who violate the provisions as intended in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letters a, b, c, d, e, paragraph (2) , and Article 18 carries the risk of a maximum sentence of 5 (five) years in prison or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).
- 2) The maximum penalty for business actors who violate the provisions as intended in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and f is 2 (two) years, or can be fined a maximum of IDR 500,000,000.00 (five hundred million rupiah).
- 3) Relevant criminal provisions will apply to offenses resulting in serious illness, permanent disability, death or serious injury.

Law Number 8 of 1999 concerning Consumer Protection, Article 63, regulates that criminal sanctions as intended in Article 62 can be applied as further punishment in the form of:

- 1) Withdrawal of some products;
- 2) Publication of the judge's decision;
- 3) Payment of compensation;
- 4) Directions to stop specific actions that harm customers;
- 5) Obligation to remove products from distribution; or

¹⁹ Ahmad Dzulfikri Nurhan, "Pengetahuan Ibu-Ibu Mengenai Kosmetik Yang Aman Dan Bebas Dari Kandungan Bahan Kimia Berbahaya," *Jurnal Farmasi Komunitas* 4, no. 1 (2017): 122–26.

6) Revocation of business license.

Apart from Law Number 8 of 1999 concerning Consumer Protection, sanctions imposed for violations that give rise to evidence of unlawful acts refer to articles 1365, 1366, 1367 of the Civil Code. These three articles include that any activity that violates the law and harms other people is required to be compensated by the party who caused the loss.

The role of the Food and Drug Supervisory Agency (BPOM) in dealing with the circulation of illegal cosmetic products in Indonesia

The Food and Drug Supervisory Agency (BPOM) is an institution that operates in Indonesia to control the marketing of medicines, food and cosmetic products which are classified as medicines. The president has supreme authority over the Food and Drug Monitoring Agency, an independent agency established by the government. Presidential Decree Number 103 of 2001 which established the Food and Drug Supervisory Agency states that BPOM is responsible for carrying out government functions in the field of drug and food control in accordance with the provisions of applicable laws and regulations.

Based on Article 68 of Presidential Decree Number 103 of 2001, BPOM carries out the following tasks to fulfill the obligations referred to in Article 67:

- a. Evaluate and develop national policies for food and drug control;
- b. Application of certain laws relating to food and drug regulations;
- c. BPOM carries out tasks through coordinating functional activities;
- d. Observe, advise and provide guidance on the actions of the community and government institutions in the field of drug and food control;
- e. Implementation of general administration and consulting services in the fields of finance, archives, law, coding, equipment and household, personnel, as well as general planning, administration, organization and administration.

Based on Article 69 of Presidential Decree Number 103 of 2001, the Food and Drug Supervisory Agency (BPOM) has the authority to carry out duties to fulfill the duties as intended in Article 68:

- a. The fundamental process of creating macronational planning;
- b. Creation of laws in their field to facilitate macro development;
- c. Determination of information systems in the field;
- d. Establish criteria to control the distribution of medicines and food, and decide which additives can be used in food;
- e. Granting permits, monitoring drug distribution, and supervising the pharmaceutical sector;
- f. Making regulations for the use, development and management of medicinal plants.

The Food and Drug Administration has been carrying out routine operations in an effort to stop the distribution of prohibited cosmetic items. Through this initiative, BPOM hopes to prevent rogue traders from selling illegal products and stop the sale of goods with potentially dangerous components that do not have a distribution permit. Another effort made is by distributing pamphlets or brochures containing information that needs to be considered when selecting cosmetic products, as well as cosmetic books containing warnings about cosmetics that are not suitable for use.

The next effort is the repressive stage, this effort is a law enforcement effort against sellers of cosmetic products who do not comply with regulations or who deliberately distribute illegal products. This step was taken when illegal cosmetics were found circulating in drug and food stores, markets, salons and cosmetic shops. Public reports indicate that people have been cheated because the goods they purchased were illegal and contained dangerous chemicals. So that BPOM can resolve this, the public can submit complaints via telephone, SMS, or directly to the BPOM office.

Health Law Number 36 of 2009 Article 197 regulates that every person who is proven guilty of intentionally producing or distributing pharmaceutical preparations and/or medical devices without a distribution permit as intended in Article 106 paragraph (1) shall be sentenced to imprisonment for a maximum of 15 (five) twelve) years and a maximum fine of IDR 1,500,000,000,000.00 (one billion five hundred million rupiah). This law can be applied to suspects who knowingly produce or distribute cosmetics without a permit. To protect the public from the dangers of illegal cosmetic products, BPOM has the task of preventing the spread of illegal cosmetic products by first evaluating and testing the products before they are distributed. Regulation Number 12 of 2018 by the Food and Drug Supervisory Agency relating to the Organization and Work Procedures of Units. Within BPOM, the technical implementation unit functions as a separate work unit to complete certain additional technical tasks related to drug and food monitoring. The following are the procedures followed by the Food and Drug Supervisory Agency:

- 1) Facilities Inspection which includes:
 - a. Analyzing the cosmetics sector;
 - b. Inspection of cosmetic importers as well as certain companies or facilities that outsource production to the cosmetics industry and already have production permits;
 - c. Inspection of distribution facilities;
 - d. Inspection of sales via electronic media.
- 2) Supervision of advertising and promotion of cosmetics includes:
 - a. Monitoring of advertising and promotional materials; And
 - b. Evaluate advertising and promotional materials.

III. CONCLUSION

The aim of legal protection is to uphold the rights that the state has given to the community through relevant laws and regulations. Law number 8 of 1999 concerning consumer protection functions as the basis for efforts to protect and empower consumers. There are many illegal cosmetics currently circulating on the market, namely those that do not have a BPOM distribution permit. Those operating in the cosmetics industry are still not fully responsible on the pretext that consumers are to blame. There is no monitoring or reporting from related parties regarding this matter. Therefore, Law number 8 of 1999 concerning consumer protection was issued. In Indonesia, the task of supervising the marketing of medicines, food and cosmetics falls under the purview of BPOM. Established by the government as a non-departmental organization, BPOM is directly responsible to the president for the implementation of its duties. Law number 8 of 1999, as well as the regulation of the head of the Indonesian Food and Drug Supervisory Agency and government regulations (PP), explain that good cosmetics are cosmetics that comply with the protocols and guidelines set by BPOM standards. Therefore, to prevent the sale of cosmetic items containing dangerous chemicals to consumers in Indonesia, several steps must be taken by the government, society and ourselves.

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