

Legal Review of Consumer Legal Protection Against the Distribution of Illegal and Dangerous Cosmetics (Case Study at Semarang Food and Drug Supervisory Agency)

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Abstract. *The intense offer of cosmetic products through advertising media and online media as if the product is trusted and safe to use. Whereas consumers have the right to receive goods in safe and secure conditions, from these facts it is clear that business actors do not fulfill consumer rights. This means that the actions of business actors can be categorized as an act that violates the law and results in losses to consumer rights. This study aims to determine and analyze consumer legal protection against the circulation of illegal and dangerous cosmetics; to determine and analyze the obstacles that affect consumer legal protection against the circulation of illegal and dangerous cosmetics. This study uses a sociological legal approach. Based on the results of the study, it was obtained that The Food and Drug Supervisory Agency (BPOM) has provided legal protection efforts based on the Consumer Protection Law carried out by Consumers can be done through 2 settlement methods, namely litigation and non-litigation. If the parties dispute outside the court, BPOM provides a solution for dispute resolution using the Alternative Dispute Resolution mechanism through the Consumer Dispute Resolution Agency (BPSK). One of the factors of weakness or obstacles faced in obtaining legal protection is that there are still many people who are consumers of cosmetic product users, namely regarding the level of consumer awareness of their rights which is still low. For this reason, the Consumer Protection Law is also intended to be a strong legal basis for the government and also independent consumer protection institutions in the community to carry out empowerment for consumers. Some of the obstacles often faced by BPOM Semarang in supervising the circulation of illegal and dangerous cosmetic products are: 1) Community Factors; 2) Internal BPOM Factors; 3) Business Actor Factors.*

Keywords: Consumer; Cosmetics; Dangerous; Illegal; Protection.

1. Introduction

Consumer interests are consumer rights granted by law as a consequence of the rights of all people, because in fact all people are consumers. In other words, consumer interests must be protected. If consumers are harmed, let alone become victims, then it is certain that at the right time such producers will be abandoned by their consumers. The proverb says, "the buyer or consumer is king", so customer satisfaction becomes a barometer of the success of a product launched or issued.¹Concerning consumer interests, Ali Mansyur expressed his opinion that consumer interests can be divided into four types, namely as follows:²In order to realize consumer interests, consumer protection efforts are needed. Consumer protection is any effort that guarantees legal certainty to provide protection to consumers. Consumer protection efforts still require hard work and campaigns regarding the protection of consumer rights and producer responsibilities must continue to be carried out, so that the relationship between producers and consumers becomes balanced, meaning that the treatment or principle of producers who consider consumers to be only objects of business activities to reap the greatest possible profit by business actors through promotional tips, sales methods, and the implementation of standard agreements that are detrimental to consumers, so that business actors only pursue the greatest possible profit with the least possible capital. This principle has the potential to harm consumer interests, both directly and indirectly. Based on the conditions as explained above, consumer empowerment efforts are needed through the formation of laws that can protect consumer interests in an integrated and comprehensive manner and can be implemented effectively in society.

The aggressive offering of cosmetic products through advertising media in newspapers, radio, television, internet networks as if the cosmetic products are trusted and safe to use, is solely so that people are interested in buying them. This is clearly very dangerous because the cosmetics contain dangerous chemicals and have not been clinically tested. Various methods are used by business actors to market their products, one example is by stating that the product is made abroad and imported directly to Indonesia. The Semarang Food and Drug Monitoring Agency (BBPOM) confiscated 328 items of illegal and dangerous cosmetic products with a value of around IDR 61 million. Of the 328 illegal and dangerous cosmetic products confiscated, imported products dominate more than local products, the details of the imported products confiscated amounted to 208 items or 63.4 percent with an economic value of IDR 38,789,200. While for local products amounted to 120 items or 36.6 percent which amounted to IDR

¹A. Mashdurohaturun, 2019, Consumer Protection Law (Theoretical and Practical Study), article: Sultan Agung Islamic University Journal Portal, accessed on August 1, 2024.

²Eli Wurua Dewi, 2015, Consumer Protection Law, Yogyakarta: Graha Ilmu, p. 20-21.

22,641,900.³International competition can have negative implications for consumers.⁴Due to the popularity of skin care products, it is not surprising that many business actors take advantage of the conditions to cheat in order to gain large profits from their business. Then the unclearness of a product issued by the business actor is often not registered for a permit for the products they produce to BPOM, so that the products they distribute and sell do not have a distribution permit number issued by the Food and Drug Supervisory Agency (BPOM).⁵

BPOM said that prohibited or hazardous materials found in facial cream products are dominated by mercury, retinoic acid, and hydroquinone. Meanwhile, in facial makeup products, the addition of red dye K3 and red K10 is often found. Because the use of chemical drugs containing hazardous materials in the manufacture of cosmetics is prohibited.⁶The definition of chemicals itself is raw materials that are usually used in a mixture of making cosmetic products. Although prohibited, there are still manufacturers who produce cosmetic products with a mixture of dangerous chemicals.⁷One of the dangerous chemicals, namely Arsenic, has side effects, namely if inhaled for a long period of time it will cause skin and nerve disorders, increase the risk of lung cancer, gastrointestinal cancer and cancer of the urinary system.⁸

As a consumer, we are certainly very disadvantaged by the condition of products that do not comply with health standards and are distributed without a distribution permit from BPOM which can have a negative impact on people's lives.⁹At this time there is one case that was found and investigated in the district court that the case occurred in the area still within Central Java, where there was a cosmetic shop that was known to have sold 16 cosmetic products that were included in the public warning from BPOM. The categories found and included in

³Muhammad Fahni Alfian, 2022, BBPOM Semarang Confiscates Hundreds of Illegal and Dangerous Cosmetics. article: <https://hlm.osemarang.id/bbpom-semarang-sita-ratusan-produk-kosmetik-ilegal-dan-berbahaya>, accessed on August 1, 2024 at 11.00 WIB.

⁴Gunawan Widjaja and Ahmad Yani, Law on Consumer Protection, Jakarta: PT. Gramedia Pustaka Utama, 2000, p. 12.

⁵Mufidatul Khasanah and Adi Suliantoro, Consumer Protection Against Cosmetic Products That Do Not Have a Distribution Permit Registered with BPOM Semarang, article: Jurnal Ilmiah Dinamika Hukum, Vol.21 No. 2 (2020), accessed on August 24, 2024.

⁶BPOM, Beware of Cosmetics Containing Hazardous Ingredients: Be Careful Before Choosing Cosmetics, article: Bureau of Law and Public Relations of the Food and Drug Supervisory Agency <https://www.pom.go.id/siaran-pers/waspada-kosmetika-mengandung-bahan-berbahaya-oe-teliti-sebelum-memilih-kosmetika>, accessed on August 1, 2024 at 11.00 WIB.

⁷Ana Syarofatun, 2018, The Impact of Chemically Harmful Cosmetics on Business Development, article: IAIN Metro scientific work, accessed on August 25, 2024, at 17.00 WIB.

⁸Retno Haryanti, Auliya Suwantika, Marline Abdasah, Review of Hazardous Ingredients in Skin Lightening Creams, article: Jurnal Farmaka Vol.16, No.2, accessed on August 25, 2024, at 19.40 WIB.

⁹Jennifer Oktaviana Rumagit, Legal Protection of Consumers in the Circulation of Dangerous Cosmetic Products, article: Jurnal Lex Privatum Vol XII/03/November/2023, accessed on August 1, 2024 at 15.00 WIB.

this public warning were 119 cosmetics that did not have a distribution permit from BPOM and 109 cosmetics without a distribution permit. The case has been examined by the Semarang District Court and sentenced to 6 (six) months in prison with a probation period of 10 (ten) months, because it has been proven legally and guilty of committing a crime that intentionally distributed pharmaceutical preparations in the form of cosmetics without a distribution permit.

Regarding the BPOM Semarang case above, regarding consumer protection, especially to determine the obligations of business actors to consumers who suffer losses due to product defects, the facts that cause the loss are first qualified as an unlawful act and violate consumer rights. According to the principle of *al-amanah*, every business actor is a trustee for the future of the world and all its contents (*kholifah fi al-ardhi*), therefore whatever he does will be accounted for before humans and before the creator Allah SWT.¹⁰In fact, it is clearly regulated in Law Number 8 of 1999 Article 4 concerning consumer rights, one of which is the right to comfort, security, and safety in consuming goods and/or services. The form of consumer protection in general and without limitation in scope is regulated in Article 378 of the Criminal Code, namely "Anyone with the intention of benefiting themselves or others unlawfully by using a false name or false dignity (*hoedaningheid*); with trickery, or a series of lies, moves another person to hand over something to him, or to give debt or write off receivables, is threatened, because of fraud, with a maximum imprisonment of four years". This study aims to determine and analyze consumer legal protection against the circulation of illegal and dangerous cosmetics and to determine and analyze the obstacles that affect consumer legal protection against the circulation of illegal and dangerous cosmetics.

2. Research Methods

The approach method used is sociological juridical. The writing specification uses descriptive analysis, the sources and types of data used are primary and secondary data. Data collection methods are by interview, library research, document study, and using qualitative data analysis methods. The problems are analyzed using the theory of legal protection, the theory of the legal system, and the theory of responsibility.

3. Results and Discussion

3.1. Legal Protection for Consumers Against the Circulation of Illegal and Dangerous Cosmetics

The Food and Drug Supervisory Agency (BPOM) is a non-ministerial government agency that has the function of implementing supervision of the distribution of drugs and food in Indonesia. As a Technical Implementation Unit, of course the

¹⁰Hasan Aedi, *Theory and Application of Islamic Business Ethics*, Alfabeta, Bandung, 2011, p. 59.

Food and Drug Supervisory Agency (BBPOM) in Semarang has a very important role in the extension of the Food and Drug Supervisory Agency (BPOM) of the Republic of Indonesia in implementing policies in the field of product supervision such as therapeutics, narcotics, psychotropics and other addictive substances, traditional medicines, cosmetic products, complementary products, as well as food safety and hazardous materials.¹¹An example of a case that was tried at the Semarang District Court in 2013 was the case of alleged deliberate distribution of pharmaceutical preparations in the form of cosmetics without a distribution permit. In his ruling it was explained that the Defendant had been proven legally and convincingly guilty of committing a crime "by intentionally distributing pharmaceutical preparations in the form of cosmetics without a distribution permit". Although supervision has been carried out by the Semarang Food and Drug Monitoring Agency (BBPOM) routinely, there are still many illegal cosmetic products containing dangerous ingredients circulating on the market. It is known that there are still many cosmetic products that contain hazardous materials sold on the market which actually contradict Article 2 of the Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.00.05.42.1018 concerning Cosmetic Materials.

The provision of information to consumers is conveyed by the BPOM enforcement section, namely that consumers can find out which cosmetic products are safe and notified by the Food and Drug Supervisory Agency by accessing the official BPOM website, namely www.cekbpom.pom.go.id which has been provided by the Food and Drug Supervisory Agency (BPOM). Ms. Kurnia santi also added an explanation regarding the handling of crimes in the circulation of illegal cosmetic products containing hazardous materials that can harm consumers, the Semarang Food and Drug Supervisory Agency (BBPOM) has two stages in handling the circulation of illegal cosmetic products, namely the preventive stage and the repressive stage.¹² That the dependence between consumers and business actors (product producers or distributors) is a key component of legal protection. Safe and comfortable products can serve as free advertising for business owners. Nothing is produced if no one will consume it.¹³

It is not possible to only focus on conducting inspections on registered distribution facilities, but it is important for the Semarang Food and Drug Supervisory Agency (BBPOM) to seek information as accurately as possible and in accordance with the reality on the ground. This aims to reduce illegal cosmetic products that are detrimental to the community or even eliminate illegal cosmetic products

¹¹BBPOM Semarang, "Background of BBPOM Semarang", accessed from <https://semarang.pom.go.id/view/direct/background>, On August 27, 2024.

¹²Interview Results with Ms. Kurniasanti, as the enforcement section at the Semarang Food and Drug Monitoring Center, on August 27, 2024

¹³Muchsin, 2003, Protection and Legal Certainty for Investors in Indonesia, Surakarta: Sebelas Maret University, p. 55.

containing hazardous materials that can harm consumers. One of the ways carried out by the Semarang Food and Drug Supervisory Agency (BBPOM) is by optimizing public knowledge to become smart consumers through education, communication, and information. In addition, the Semarang Food and Drug Supervisory Agency (BBPOM) also provides public complaint services both directly and online. This aims to make it easier for consumers to find out information related to the cosmetic products they use, whether they are safe or not.

Cosmetic products that can damage the skin and pose a risk to the health of consumers could be dangerous cosmetic products. Dangerous cosmetic products can be interpreted as cosmetic products that are produced, distributed, and traded to consumers that have contents that do not meet standard requirements. In 2018, the Semarang Food and Drug Monitoring Agency (BBPOM) along with the Ditreskrimsus Polda Central Java took action by searching and confiscating illegal cosmetic products in the Pedurungan area, Semarang, as many as 165 items of illegal cosmetic products were found, in the discovery of these cosmetic products were capsules, whitening creams, and whitening injection products that are used by injection.

In the case of dangerous cosmetic products, it is very rare to find consumers who report this to the Consumer Complaints Service Unit (ULPK) of the Semarang Food and Drug Supervisory Agency (BBPOM) and take legal action for the losses they have experienced. According to Syamsul Anwar, loss is any disturbance that befalls a person, either concerning himself or concerning his wealth, which is manifested in the form of a reduction in quantity, quality, or benefits.¹⁴ Regarding law enforcement against business actors who sell illegal cosmetic products containing hazardous materials which can cause harm to consumers, this can be done by: 1) warning; 2) coaching for business actors; 3) destruction, withdrawal, and confiscation of cosmetic products. Consumer protection is actually identical to the protection provided by law for consumer rights.

Based on this opinion, it can be concluded that legal protection for consumers is protection of consumer rights that have been regulated in several paragraphs in Article 4 letters a, c, d, and e of Law Number 8 of 1999 concerning Consumer Protection, then added with the rules in Article 19 and Article 45 paragraphs (1) and (2) then it can be concluded that consumers who experience losses due to the use of cosmetics containing hazardous materials, efforts to resolve disputes in this case through mediation facilities first to find a solution, then the form and amount of compensation depend on the agreement between the two disputing parties. If the parties dispute outside the court, it can be done through the institution that handles it, namely the Consumer Dispute Resolution Agency (BPSK). In order to protect the rights of every consumer, especially cosmetic users, the effectiveness of the implementation of this Law is still considered to not be working effectively

¹⁴Syamsul Anwar, *Sharia Contract Law*, PT. Raja Grafindo Persada, Jakarta, 2007 p. 331.

because there are still many incidents in the field that are not in accordance with applicable regulations, therefore not only the role of the government is needed in optimizing the work of this Consumer Protection Law but also the active role of the community to always be vigilant and care about incidents that have the potential to violate the rights of consumers, especially in the field of illegal and dangerous imported cosmetics.

The theory of legal protection is used solely to emphasize the existence of clear and consistent rules. In the context of the circulation of illegal and dangerous cosmetics, conclusions are drawn from the perspective of the Consumer Protection Law which provides the legal basis, then BPOM regulations as one of the elements of supervision that sets the safety and quality standards of a cosmetic product, and a clear licensing mechanism for cosmetic products. As a theory that can be used in analyzing consumer protection, the statement regarding the legal system according to Lawrence M. Friedman can be used by BPOM as the Food and Drug Supervisor in Semarang, which can be interpreted that the application of the legal system can be drawn that as a supervisor BPOM and related parties can identify areas that need to be improved in an effort to protect consumers from illegal and dangerous cosmetics. A holistic approach that includes improving the structure, substance, and culture of the law is expected to increase the effectiveness of consumer protection in Indonesia and is also used to analyze the focus of the problem of the reduction of illegal and dangerous cosmetics that are not covered by BPOM inspections where several business actors and victims need protection as consumers.

3.2. Obstacles Affecting Legal Protection Against the Circulation of Illegal and Dangerous Cosmetics

That in accordance with Law Number 8 of 1999 concerning Consumer Protection, the existence of illegal cosmetic products containing hazardous materials that can harm consumers is very contrary to the provisions that have been formulated in the Consumer Protection Law, and also illegal cosmetic products containing hazardous materials are contrary to Law Number 36 of 2009 concerning Health. In the Health Law, the legal protection explained is in the form of health efforts. Health efforts themselves explain that every activity or series of activities carried out in an integrated, integrated, and sustainable manner in maintaining and improving the level of public health in the form of prevention of a disease, as well as health recovery carried out by the government and the community. The existence of these regulations is certainly to protect consumers in the community against things that can interfere with or have a negative impact on health and protect consumers from losses caused by illegal cosmetic products.

One of the factors that weakens consumers as users of cosmetic products is the low level of consumer awareness of their rights. This is due to the low level of knowledge. For this reason, the Consumer Protection Law is also intended to be a

strong legal basis for the government and also independent consumer protection institutions in the community to carry out empowerment for consumers. The existence of various weaknesses in consumers causes consumers to not have a safe position when compared to the position of business actors who are relatively stronger in many things, for this reason consumers will feel many of the impacts. Thus, efforts to provide adequate protection to consumers for the interests of consumers are very important to be followed up.

In an effort to provide certainty and legal protection from illegal cosmetic products containing hazardous materials and to be able to improve the position of consumers, there needs to be improvement and increased integration by law enforcement officers so that they can provide legal protection for the rights owned by consumers. As explained in the provisions of the Consumer Protection Law, consumer protection is currently very important considering the development of the national economy in the era of globalization and free trade which greatly supports the growth of the business world which produces various kinds of goods or services that are profitable and the products produced have modern content. Therefore, this must be balanced with efforts regarding consumer protection against the risks resulting from the use of these cosmetic products.

Supervision carried out by BPOM in Semarang on the circulation of illegal cosmetics is not yet comprehensive. This causes the distribution of cosmetic sales facilities that are free from BPOM Semarang's supervision. In carrying out its duties in society, BPOM also has obstacles or constraints that arise from various directions. Fraudulent business actors but have a way so that they can still cheat through their sales because they want to get a lot of profit easily without having to pay attention to or comply with existing laws. Some obstacles that are often faced by BPOM Semarang in supervising the circulation of illegal and dangerous cosmetic products are: 1) Community Factors, Lack of participation of business actors or traders, makes the community still less cooperative in revealing reports from the community regarding these illegal cosmetics to the BPOM Office in Semarang. Understanding to the community needs to be given more in-depth information about cosmetics that are good to use, socialization must be carried out so that the community participates and participates in supervising the circulation of illegal and dangerous cosmetics. Some legal cultures that need to be improved in society are: a) Public awareness of the dangers of illegal cosmetics; b) Consumer behavior in choosing and using cosmetics; and c) Attitudes of producers and distributors towards regulations.

Public education about the dangers of illegal cosmetics and how to choose safe cosmetics needs to be improved. BPOM can work with the media and influencers to disseminate this information. In addition, there needs to be an effort to increase awareness of producers and distributors about the importance of complying with

existing regulations. Therefore, it is hoped that BPOM in Semarang will conduct socialization more often in order to improve supervision and to minimize the circulation of illegal and dangerous cosmetic production in Semarang; 2) Internal BPOM Factors, Implementation of supervision of the number of personnel at the Semarang POM Center (BPOM) has many gaps in personnel competency that are not evenly distributed because the relatively small number makes supervision not comprehensive. Although BPOM Semarang has collaborated with the Health Service on counseling issues by providing food and drug health training to officers who are given the mandate.

However, the constraint is that several related officers who have been given training, after several months have moved fields of work or been transferred to other areas, then BPOM cannot do anything because if they hold training again it will take quite a long time because it is constrained by the budget for the training procurement. Another constraint is the performance factor of BPOM itself which always makes mistakes over and over again bypassing dangerous products. As expressed by Mrs. Kurniasanti, consumers are not as often as possible always harmed by producers, and according to her, it is an old problem that is always discussed endlessly, especially BPOM supervisors often get caught out by imported products that enter illegally. However, YLKI has protested and given warnings to authorized institutions such as BPOM, Customs, and the Department of Industry and Trade; 3) Business Actor Factor, BPOM Semarang often has difficulty in tracking cosmetics without distribution permits. This is because business actors who sell online or sell home industries (production at home) without a shop. This makes it difficult for BPOM to check and take action against these business actors.

Judging from the above obstacles, there are indeed efforts made by BPOM Semarang to protect consumers, especially for cosmetic users, namely by holding counseling on good production procedures and good sanitation for business actors who will open a business. Based on the author's opinion, there are still many consumers and business actors who do not pay attention to or even do not know about cosmetics without a distribution permit even though counseling has been carried out by BPOM Semarang. This can be based on an interview with Mrs. Kurniasanti that the provision of counseling also requires a lot of time and energy. In one counseling session, many people must be gathered, provide adequate space, require props, the right time, and several counselors, so the POM Center took an alternative by distributing leaflets about cosmetics without a distribution permit that are dangerous and the impacts that can be caused by consuming these illegal and dangerous products. The POM Center also provides information about dangerous cosmetic products through print and electronic media. The distribution of leaflets and information through the media is considered more effective by the POM Center.

Analysis of the theory of responsibility etymologically itself is an obligation to everything or the function of accepting the burden as a result of one's own actions or those of others. This theory is also used to analyze the constraints that affect consumer legal protection. In this case, the theory of responsibility includes various principles and approaches that can help identify and overcome problems in consumer protection, such as the following applications: 1) Responsibility of producers and suppliers; 2) Responsibility of regulators; 3) Responsibility of consumers; 4) Legal Responsibility. Some of the constraints that are mostly influenced by community factors which act as consumers and need to protect their rights as consumers. According to Hans Kelsen in his theory of legal responsibility, he states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means he is responsible for a sanction in the event of a conflicting act". This means that the legal subject here is a business actor who distributes cosmetic products illegally and has dangerous content. Of course, this theory is very important in understanding the obligations and legal consequences for irresponsible business actors. This theory of responsibility based on error requires proof of error from the business actor. The implementation in the case of illegal and dangerous cosmetics is that consumers who are harmed must prove that there was an error or negligence on the part of the producer or distributor of illegal and dangerous cosmetics.

By applying this theory of responsibility to the problem of obstacles affecting consumer legal protection against the circulation of illegal and dangerous cosmetics, all parties involved such as producers, regulators, consumers, and the legal system can be more effective in protecting consumers from the circulation of illegal and dangerous cosmetic products. This creates a more comprehensive and responsive protection system to the challenges faced in the future.

4. Conclusion

The Food and Drug Supervisory Agency (BPOM) has provided legal protection efforts based on the Consumer Protection Law carried out by consumers who experience losses due to using cosmetic products that do not have a distribution permit can be done through 2 settlement methods, namely litigation and non-litigation. That the provision of legal protection through litigation is carried out through the courts, while through non-litigation channels, the provision of legal protection efforts to consumers can be done outside the courts such as peaceful settlement of consumer disputes by the parties concerned, between consumers and business actors. If the parties dispute outside the courts, BPOM provides a solution for dispute resolution using the Alternative Dispute Resolution mechanism through the Consumer Dispute Resolution Agency (BPSK). Some of the obstacles often faced by BPOM Semarang in supervising the circulation of illegal and dangerous cosmetic products are: 1) Community Factors; 2) Internal BPOM Factors; 3) Business Actor Factors. As a consumer, buyers of cosmetic products

must be more careful in choosing the cosmetics to be consumed. Must seek information in advance in using a cosmetic whether the content of the cosmetic product is safe and free from hazardous materials and verified by the POM Center. The role of business actors as producers must have good intentions in carrying out their business. It is necessary to improve through supervision by BPOM Semarang to be further improved in counseling about the dangers of illegal and dangerous cosmetics without a distribution permit so that cosmetic consumers better understand the dangers of cosmetics without a distribution permit. Legal protection for consumers against the circulation of illegal and dangerous cosmetics needs to be improved by carrying out activities such as counseling or socialization and BPOM can collaborate with beauty vlogger influencers or related governments to try to optimize cases of illegal and dangerous cosmetics so that the contents can be known by the public as end consumers.

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