

## **Legal Protection for Consumers as Users of Illegal Cosmetics who are not Registered by BPOM Based on Law no. 8 of 1999 concerning Consumer Protection**

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### **Abstract**

Human needs in modern times are very diverse. Existing human needs, not just the need for food, clothing, and boards. Currently, human needs are more than that, because in fact the fast-moving era will bring many changes in human needs, one of which is the use of cosmetics. In modern times, cosmetics are needed to support everyone's appearance, especially for women. Current technological developments are a factor influencing the emergence of various cosmetic products. This study aims to obtain accurate data and truth in accordance with the applicable rules for legal certainty as stipulated in the provisions of Law no. 8 of 1999 concerning Consumer Protection This study uses a normative legal research method that focuses on the Law. The legal materials used in this journal are primary legal materials and secondary legal materials. This research uses a statutory approach, where researchers will examine laws related to legal issues raised in this research, and later it will be necessary to conduct further studies. This research is expected to have a positive influence on business actors and consumers to minimize arbitrary actions from business actors so as to guarantee the achievement of a guaranteed protection for consumers in Indonesia. This research illustrates that, the public as consumers of a cosmetic product, must be wise and careful in buying a cosmetic product, and there is a need for increased regulations on consumer protection and also on the application of sanctions from business actors who are not responsible in carrying out their business activities.

**Keywords:** Human Needs, Cosmetics, Technological Developments, Business Actors, Consumers



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### **INTRODUCTION**

Humans in their lives have many needs that need to be fulfilled for the sake of their survival. Human needs in every development of the era, will continue to develop and change according to the lifestyle of each individual. In this modern era, human needs are no longer about clothing, food and shelter but needs that are complex in nature, for example the use of cosmetics. The widespread use of cosmetics has resulted in the emergence of various types of cosmetics offered according to the interests and desires of consumers.

For women, cosmetic products have always been a part of their daily life, in order to get and maintain their beauty from time to time. Cosmetics are also widely used by women because they can give a fresh effect on a woman's face. Not only that, nowadays, especially in the world of work, workers are also asked to look and use makeup to support their appearance, so as to create an attractive impression. For women, having a clean white face is still a beauty icon today, so women do everything they can to support their facial appearance.

One effort that can be done by women is to use cosmetic products. Cosmetics offered in the market are very diverse, the difference is seen in terms of price, brand and quality. Consumers will adjust their choices according to what is needed and desired. In this modern era, there are lots of advertisements both on TV and on social media that offer cosmetics with

all their tricks, for example advertisements for facial washing soap, which state that if consumers use this soap, it can have an effect on facial skin that becomes brighter. . Situations like these are capable of bringing or inciting consumers to advertise a product, which in turn creates a desire to try the product because of the claims made by the advertising media. Unknowingly, it is this situation that can lead consumers to buy cosmetics without knowing in advance the clarity of a certain cosmetic product, for example about what is contained in it, or at least the consumer knows that the product has been registered with the Food and Drug Supervisory Agency (BPOM). .

Based on its use, cosmetics are divided into two groups, namely make-up cosmetics or make-up which are cosmetics needed to make up or beautify the appearance of the skin and cosmetic skin care or skin care cosmetics which are prioritized to maintain cleanliness and skin health, sometimes even to remove abnormalities in the skin. Cosmetics according to the Regulation of the Minister of Health of the Republic of Indonesia No.1175/Menkes/PER/VIII/2010 cosmetics are "materials or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips and external genital organs) or teeth and mucous membranes of the mouth especially for cleaning, deodorizing, changing appearance, and/or correcting body odor or protecting or maintaining the body in good condition. Cosmetics are not used to treat disease, so cosmetics are not medicine. If there are cosmetics that are claimed to be able to treat or heal wounds, inflammation, infections or other diseases and or when they are used, they are injected into the human body through injections, those products are medicines and not cosmetics.

As cosmetic users, most people are very unaware of and do not care about the side effects that will arise when using dangerous cosmetics that contain chemical substances. In addition, the community also does not yet have a lack of understanding in understanding a good and healthy lifestyle. Bad lifestyles are often influenced by the surrounding environment, for example wrong diet, what we consume can affect skin conditions which will later cause various kinds of skin problems, such as rough, dull skin and black spots on the face. Skin problems can be dangerous for health outside and inside the body. This problem is very complex, because based on the existing percentage, as many as 40% occur in Asian women, who live in tropical climates.

The Association of Indonesian Cosmetic Companies and Associations (PPAK) said that as much as 85% of cosmetic products circulating in the domestic market are classified as illegal. The number of illegal cosmetic products increased rapidly to around 20%. Based on data from BPOM, the number of cosmetic issuance permits has reached 215 thousand products, while the number of illegal cosmetics that can be sold has reached 8,788 products. In December 2020, BPOM also confiscated online cosmetics sales in three locations that became warehouses for illegal imported cosmetics and during these confiscations, BPOM confiscated tens of thousands of pieces of illegal cosmetics equivalent to IDR 10 billion. The rise of sales of illegal cosmetics can have a direct impact on reducing state tax revenues, because in this case unscrupulous sellers of illegal cosmetics will definitely not pay taxes. Another thing, cosmetics business actors in Indonesia will suffer losses in the form of theft of intellectual property rights.

The country of Indonesia is also inseparable from the sale of cosmetic products originating from abroad, for example, cosmetics that are traded in Indonesia, where cosmetics come from China which enter this country freely, then are sold at affordable prices. In terms of management, it is very clear that the Indonesian government does not give permits for illegal goods, so some imported goods are illegal to use because they do not have permits in accordance with BPOM standards which have collaborated with the minister of social welfare

and the minister of health by assigning them the task of supervising distribution of Indonesian medicines and food in all provinces in Indonesia.

In this case the government has a very important role in carrying out efforts to protect consumers, by establishing regulations and law enforcement that are more stringent to oversee the activities of exchanging goods in the interests of business actors and consumers so that both parties, when carrying out buying and selling activities can run smoothly. good and right according to the rules, without harming one another. Consumer protection is not only the duty of the government but also the duty of entrepreneurs. This research is important to do, so that the public, especially consumers of illegal cosmetics users, have broader thoughts and awareness of various types of cosmetics on the market or online media platforms. In addition, this research is also useful for analyzing sanctions given by law enforcement officials.

Based on the background of this problem, researchers will conduct research entitled "Legal Protection of Illegal Cosmetic Users who are not registered with BPOM in accordance with the provisions of Law no. 8 of 1999 concerning Consumer Protection". Problem Formulation: What is Legal Protection for Illegal Cosmetic User Consumers who are not registered with BPOM? What are the Legal Sanctions given to Illegal Cosmetic Sellers who are not registered with BPOM? What factors can influence consumers to use Illegal Cosmetics that are not registered with BPOM?

## **RESEARCH METHODS**

The research method used in writing this journal is a normative legal research method that focuses on Law no. 8 of 1999 concerning Consumer Protection. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand. In the Normative Legal Research Method, the discussion of the subject matter is based on a law in accordance with the research topic. The legal materials used in this journal are primary legal materials and secondary legal materials. This research also uses a statutory approach, in which researchers will examine laws related to legal issues raised in this research, and later it will be necessary to conduct further studies.

## **RESEARCH RESULTS AND DISCUSSION**

### **Legal Protection for Consumers Using Illegal Cosmetics who are not registered with BPOM**

Consumer Protection according to Consumer Protection Law Number 8 of 1999 Article 1 paragraph 1 is all efforts to ensure legal certainty to provide protection to consumers. Consumer protection really needs to be considered, for the comfort and safety of its consumers. In order to realize consumer protection, cooperation between business actors and the government is needed. Apart from the government and business actors, consumers who use cosmetics must also be wise in choosing the cosmetic products they will use. Distribution of cosmetics illegally or without a distribution permit, can violate article 197 jo 106 paragraph (1) Health Law No. 36 of 2009 concerning health with criminal sanctions for those who endanger the public by distributing cosmetics without a distribution permit based on Article 197 of the Health Law, namely: With a maximum criminal threat of 15 years in prison and a maximum fine of 1.5 billion five hundred million rupiah (Rp 1,500,000,000 ,00).

The purpose of the distribution permit granted by the Food and Drug Supervisory Agency (BPOM) is to protect the public from the spread of harmful cosmetics. The regulation authorizes the government to revoke licenses and withdraw products that have been approved. This legal regulation aims to prevent business actors from selling cosmetics

without a distribution permit for a product. As for the consequences, for those who endanger the public by distributing cosmetics without a permit, namely: the product can be revoked by the government and withdrawn from the circulation of pharmaceutical preparations and medical devices, if it does not meet the quality requirements for safety and/or benefit, and can also be confiscated and destroyed in accordance with the provisions legislation.

In its context, consumer protection concerns the rights and obligations of consumers as users of cosmetics. The rights obtained by consumers are regulated in Article 4 of Law no. 8 of 1999 concerning Consumer Protection. The rights regulated include::

1. The right to comfort, security and safety in consuming goods and/or services
2. The right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised
3. Right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services
4. The right to hear opinions and complaints about the goods and/or services used,
5. The right to obtain proper advocacy, protection and efforts to resolve consumer protection disputes;
6. The right to receive guidance and consumer education;
7. The right to be treated or served properly and honestly and not discriminatory;
8. The right to receive compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be;
9. The rights regulated in the provisions of other laws and regulations.

In addition to having rights, consumers also of course have obligations regulated in Article 5 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, including: reading or following information instructions and procedures for using or utilizing goods and/or services for security and safety, in good faith in making purchases of goods and/or services, etc. pay according to the agreed exchange rate; following efforts to settle consumer protection dispute law properly.

The above statement very clearly states the rights and obligations of consumers, so that business actors in creating products must be able to pay close attention to the materials used in the manufacturing process. This is done to avoid the use of prohibited materials that should not be used in making a cosmetic product. Cosmetics that will be distributed in the public market must obtain a permit from the Food and Drug Supervisory Agency (BPOM). According to Article 4 of the Drug and Food Control Agency Regulation Number 17 of 2022 concerning Amendments to the Drug and Food Control Agency Regulation Number 23 of 2019 concerning Technical Requirements for Cosmetic Materials, the cosmetic ingredients referred to in Article 1 point (1) include:

1. Materials that are permitted to be used with restrictions and requirements for their use in Cosmetics as listed in Appendix I which is an integral part of this Agency Regulations;
2. Materials permitted as Coloring Materials in Cosmetics as listed in Appendix II which is an integral part of this Agency Regulations;
3. Materials permitted as Preservatives in Cosmetics as listed in Appendix III which is an integral part of this Agency Regulations; And
4. Materials permitted as Sunscreen Ingredients in Cosmetics are as listed in Appendix IV which is an integral part of this Agency Regulations.

With the existence of regulatory provisions regarding cosmetic ingredients, cosmetic business actors are required to pay attention to every ingredient that will be used in creating

their products. If, however, business actors are still found to have violated existing regulations, then these business actors have caused huge losses to consumers and the government. Consumers will be disadvantaged in terms of costs incurred when using illegal cosmetics and the government will be disadvantaged because they cannot provide guarantees and legal certainty to consumers regarding products circulating in their communities.

Article 8 of the Consumer Protection Law Number 8 of 1999 which explains that business actors are prohibited from producing and/or trading goods/and or services that:

1. Does not meet or does not comply with the required standards and provisions of laws and regulations. The purpose of the statement above is that business actors cannot trade their products on the market if they violate the conditions that have been determined
2. Not in accordance with the net weight, net or net content, and the amount in the count as stated on the label or label of the goods. The purpose of this statement is that products issued with labels on these products are different and if there are differences in the product and label, then the clarity of a product cannot be ascertained that the product is an original product.
3. Not in accordance with the size, measure, scale and number in the calculation according to the actual size. This means that the product created must be in accordance with the size and measure, so it is not permissible to reduce or increase the size and measure of a product outside of the actual calculation.
4. Not in accordance with the conditions, guarantees, features or efficacy as stated in the label, etiquette or description of the goods and/or services. This means that when a consumer receives a cosmetic product, the condition or efficacy of the product must be felt by the consumer in accordance with the statement on the product label.
5. Not in accordance with the quality, grade, composition, processing, style, mode, or certain uses as stated in the label or description of the goods and/or services. This means that the product that reaches the hands of consumers must have a clear and accurate quality according to what is displayed on the product label
6. Not in accordance with the promise stated in the label, etiquette, description, advertisement or sales promotion of the said goods and/or services. This means that business actors may not lie about the products they create, but business actors must be able to guarantee promises that have been made to consumers when using the products they create, so that these promises can be properly realized when consumers use their products and enjoy their benefits.
7. Does not include the expiration date or the best use/utilization period for certain goods. The purpose of this statement is that business actors must really pay attention to the expiration date of their products, so that consumers can find out the validity period of a product.
8. Does not follow the provisions of halal production, as stated in the "halal" statement on the label. This means that business actors must be able to provide guarantees that their products are halal and accompanied by a halal certificate, so that consumers increasingly believe that it is clear that their products are halal certified.
9. Do not put labels or make explanations of goods containing the name of the goods, size, net or net weight/content, composition, rules for use, date of manufacture, side effects, name and address of the business actor and other information for use which according to the provisions must be posted/ made. The purpose of this statement is, if the business actor does not include an explanation of the goods, both the name of the goods, the size, the weight which is the identity of an item, then the goods may be counterfeit because there is no identity regarding the goods, in which case may be one of the goods Illegal cosmetics.



10. Does not include information and/or instructions for using the goods in the Indonesian language in accordance with the provisions of the applicable laws and regulations. This means that business actors must be able to provide clear instructions for using the product, because if there are no instructions for use, consumers may use the product inappropriately which can result in problems with certain parts of the body, due to the absence of guidelines for using the product.

Consumer protection is a very important effort to guarantee the emergence of legal certainty, because the position of consumers as buyers of cosmetic products tends to be used as a means to sell something that is not good for business actors. For the implementation of Legal Protection for Consumers as Users of Illegal Cosmetics who are not registered with BPOM, it can be done in three ways, namely: Revocation of distribution permits, Withdrawal of Cosmetic Products which contain substances that can be harmful to the face, Imposing a penalty of compensation and carrying out legal protection to the realm of criminal action. In addition, this can be done by protecting consumer rights as regulated in article 19 number 1 Concerning Accountability of Business Actors "Consumer rights according to Sudikno Martokusumo are legal interests that are protected by law. Self-interest means demands that are expected to be met. So it can be said that the right is a demand whose fulfillment is protected by law.

#### **Legal Sanctions given to Illegal Cosmetic Sellers who are not registered with BPOM**

A legal entity can give or impose sanctions on anyone, including business actors who are not responsible for their business activities. Sellers who have committed violations in trading an illegal cosmetic product that are not in accordance with the BPOM quality standards, may be subject to legal sanctions as regulated in the law as follows:

1. Law Number 8 of 1999 Concerning Consumer Protection regarding regulations on sanctions that can be imposed on business actors who have committed violations are formed in 2 matters, namely:
  - a. Criminal sanctions that can be given to business actors are principal criminal sanctions and additional criminal sanctions, while additional criminal sanctions are certain limitations aimed at protecting the community. There are civil sanctions in (Article 19 paragraph (1); Article 18 paragraph (3) ) UUPK) and state administrative sanctions are contained in article 18 paragraph 4 (UUPK)
  - b. In terms of Administrative sanctions, the Administrative Sanctions for a consumer dispute resolution agency (BPSK) to be able to impose sanctions, according to Article 60 paragraphs (1) and (2) of the UUPK, states that Administrative sanctions have the form of a stipulation for those who have violated the obligation to compensate a maximum of Rp. 200,000.00 (two hundred million rupiah)
2. Law Number 36 of 2006 Concerning Health, the Health Law can impose sanctions on perpetrators who have sold a cosmetic product that is not in accordance with standards and is also not registered with BPOM, this can be reviewed in article 196 of the Health Law which reads, "Every person who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or benefits, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."
3. Government Regulation of the Republic of Indonesia Number 27 of 1998 concerning Security for Pharmaceutical Preparations and Medical Devices. Business actors who have produced and distributed a product that is very dangerous to health will later be subject to

a sanction in the form of a fine of up to Rp. 1000,000,000.00 (one hundred million rupiah) in accordance with the provisions of Article 82 paragraph (2) of the Health Law.

4. Regulation of the Head of BPOM Republic of Indonesia Number HK.03.1.23.04.11.03724 of 2011 concerning Control of Import of Perka Cosmetics BPOM No. HK.03.1.23.04.11.03724 concerning Control of Import of Cosmetics, states that imports must be able to comply with regulatory provisions in per law -invitations that have been approved by the BPOM Agency. Cosmetics that can only be distributed in Indonesia are cosmetics that have been approved by the parties concerned and do not use prohibited ingredients that can cause harm to consumers. Violations of actions committed by business actors can later be subject to administrative sanctions according to Article 9 paragraph (1) in the form of: Written warning, Withdrawal of illegal cosmetics from circulation and Stopping dangerous cosmetic products or destroying cosmetics.

### **Factors that can influence Consumers to use Illegal Cosmetics that are not registered with BPOM**

Factors that can influence consumers to use illegal cosmetics that are not registered with BPOM, namely:

1. Lack of legal awareness in the community, which causes consumers (community) to be unaware of the rights that must be obtained as consumers.
2. Advertising media which can also be a major factor for consumers in buying or using illegal cosmetics, due to public ignorance about licenses and authorizations for genuine distribution and counterfeit distribution.
3. There is a difference in the price level of cosmetics that have been registered with BPOM and those that have not been registered with BPOM, where goods that have been registered will have a relatively more expensive price, so that people start looking for cosmetics that are more economical by buying retail cosmetics or other goods. - Counterfeits made to look like the original.
4. The inadequate economy of business actors can also affect the sale of illegal cosmetics, where business actors try to make a profit first from cosmetic products that have been created but are not registered with BPOM, because they are still looking for profit, and only after getting a profit then the business actor registers his cosmetic product with BPOM, because he has sufficient capital.
5. The quality of human resources who still lack understanding related to globalization which is able to bring big changes in everyday life can also be a factor in the illegal cosmetics trade, because only by reaching internet media, consumers can get these cosmetics easily, without understanding the contents what's in it.
6. Socialization from the government to the public about cosmetic ingredients that need to be avoided, so that socialization can provide new knowledge to the community, where in the future the community will be more vigilant and wise about the cosmetics they will use.
7. People's mindset that focuses on instant results. The consumer's need for an attractive appearance but with a short period of time, makes it an opportunity for illegal cosmetic business actors to use this opportunity to attract consumers' attention and market their products, so that there is an offer of instant results, consumers are interested in buying it without guaranteeing product authenticity. Hazardous substances used by business actors, including mercury, bleach, retinoic acid, etc.

### **CONCLUSION**

Based on the results of this study, it can be concluded as follows: Consumer Protection according to the Consumer Protection Act Number 8 of 1999 Article 1 paragraph 1 is all

efforts to ensure legal certainty to provide protection to consumers. Consumer protection really needs to be considered, for the comfort and safety of its consumers. Legal sanctions for cosmetic distributors who are not registered with BPOM have been stipulated in Law Number 8 of 1999 concerning Consumer Protection. The Act explains that business actors can be subject to criminal sanctions such as principal criminal sanctions and additional criminal sanctions, in addition to criminal sanctions there are also administrative sanctions that can give authority in resolving a consumer dispute problem to be sanctioned according to Article 60 paragraph (1) and (2) which states that administrative sanctions for violators must compensate a maximum of Rp. 200,000.00 (two hundred million rupiah). The government and business actors, in their business activities, must also pay attention to the rights and obligations of consumers when using the products they create.

According to Article 4 of Law no. 8 of 1999 concerning Consumer Protection as for consumer rights, one of which is the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services. So what is meant in this statement is that both the government and business actors must be able to provide correct guarantees about the condition of the goods they want to trade in the community, so that later people who use these products can feel the comfort and safety of their products. Not only from the government and business actors, but consumers also have obligations that need to be fulfilled. According to Article 5 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, one of the obligations of consumers is to read or follow information instructions and procedures for using or utilizing goods and/or services for security and safety. This confirms, so that consumers can carefully and wisely when buying a cosmetic product, when they want to make a purchase they must read what ingredients are used, so they can avoid harmful cosmetics. Lack of public understanding and awareness of technological developments that bring major changes in the sphere of life, can also be a factor causing a society (consumers) to quickly absorb information without paying attention to the clarity of the information, so that they are instigated to obtain goods or other things offered through various media. Legal protection for consumers, so far in our opinion, is still not enforced, because until now there are still business actors who have been caught by the police or the authorities, in creating cosmetic products that are dangerous, for example in the use of mercury in cosmetic products. From the many business actors who have been caught by the police, it can be concluded that legal protection for consumers is still weak and lacks attention, so this is the motivation for business actors to continue creating illegal cosmetic products, as well as the application of sanctions imposed on business actors. those who commit violations still lack a deterrent effect.

Suggestion: As consumers, we should not be easily tempted or tempted by an item that is sold at a lower price by business actors and we as consumers should have a critical nature, so that we can be more careful in choosing a cosmetic product that will be purchased later and use it, one way is to seek information in advance about what ingredients are in cosmetic products, and pay attention to whether the product already has a distribution permit from BPOM and is not an illegal cosmetic. In the industrial world, especially trade, there must be cooperation between the government and law enforcement officials to protect consumers from the distribution of cosmetics that do not comply with regulatory standards or are illegal. This collaboration can be carried out by carrying out regular supervision of cosmetic business actors and holding monthly outreach to the public so that they have an open and wise mindset when using a cosmetic product.

With the widespread circulation of illegal cosmetics, it is hoped that BPOM can be more vigilant, thorough in inspection and must always supervise the circulation of cosmetics on the



market, so that if there are cosmetic products that do not have a brand and are not registered at BPOM, they can be directly examined further to know the authenticity and truth of the product. It is hoped that the consumer protection agency will pay more attention to consumer complaints about the many cosmetic products that are not in accordance with regulations that can endanger the health and safety of cosmetic product users. In addition, the consumer protection agency can also provide information to women so that they are wiser and more observant in making decisions to use a product in their role of maintaining the health of their facial skin so they can be careful when using a cosmetic product.

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