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Forms of Consumer Protection Due to Illegal Distribution of Blue Etiquette Cosmetics by Manufacturers for Profit

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ABSTRACT

In the modern era, beauty and appearance have an important role in social culture. The diversity of the cosmetics market reflects consumer needs for beauty products. However, supervision of imported cosmetic products is still lacking, which allows the circulation of dangerous products. This research aims to identify the obstacles faced by BPOM in tackling the distribution of illegal cosmetics, a step taken by the government to improve public health and carry out supervision through the establishment of BPOM. Illegal cosmetic products that do not have a distribution permit or do not comply with existing regulations are still a problem in society. The research approach uses qualitative methods with a normative legal approach. The literature review involves relevant legal literature to understand applicable legal norms.

KEYWORDS

BPOM Supervision;
Distribution; Cosmetic
Products



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INTRODUCTION

In the current era of globalization, the development of cosmetics is always changing, ranging from positive to negative changes. Almost every city today has a beauty clinic that is very sophisticated and equipped with doctors who are qualified in their fields. As a result of the development of the beauty world, opens up business opportunities for some people to take advantage of it to attract the interest of each individual to take care of themselves, especially women.

The most favored cosmetic products by women are products that have the effect of brightening the skin. So they are willing to spend more money to get a product that promises to change the skin color to become brighter. From this, manufacturers increase the number of products sold many times over without paying attention to the quality of the cosmetic formulations produced.

Cosmetics with blue etiquette labels cannot be traded. Because these cosmetics can only be obtained with a doctor's prescription from the results of the patient's examination, because every consumer who uses cosmetics is part of the community who has the right to protection. So if there is a circulation of this type of cosmetics, it is very detrimental to consumers, the problems of each different skin but applied cosmetics that are not following the needs of the skin will be fatal. Medication etiquette is a label given by a health organization such as hospitals, health centers, and clinics. The label is usually affixed to the front of the drug or medical device. The etiquette for pharmaceutical preparations consists of 2 (two) types, namely white etiquette and blue etiquette, white etiquette is for internal medicine, and blue etiquette is for external medicine, in other words, white etiquette is intended for use that requires the drug to enter through the esophagus (drinking medicine), while blue etiquette is consumed by applying it, for example, such as ointments, creams, and creams.¹

This is the beginning of fraud and sabotage by irresponsible cosmetic manufacturers. Manufacturers who enjoy instant ways to make money quickly, deliberately engineer raw materials that should be following procedures, but are replaced with cheap raw materials so that the intensity of the side effects of the product is prone to negative impacts on consumer protection.

Consumer protection is regulated in the Consumer Protection Law, this UUPK is a legal umbrella for consumers to fulfill their needs from things that can harm consumers themselves.² Whereas it has been clearly explained in Law Number 8 Year 1999 in Article 4 which reads:³ (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 these goods and/or services in accordance with the exchange rate and the conditions and guarantees promised; (3) the right to correct, clear, and honest information about the conditions and guarantees of goods and/or services; (4) the right to have their opinions and complaints about the goods and/or services used heard; (5) the right to obtain advocacy, protection, and efforts to resolve consumer protection disputes properly; (6) the right to receive guidance and consumer education; (7) the right to be treated or served correctly and honestly and non-discriminatorily; (8) the right to compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with

¹ Dewinta, "Perlindungan Hukum Bagi Konsumen terhadap Peredaran Bebas Kosmetik Beretiket Biru" (2023) 4:3 J Juristic 272–289.

² Janus Sidabaiok, *Hukum Perlindungan Konsumen Di Indonesia* (Bandung: Citra Aditya Bakti, 2006).

³ Law No. 8 of 1999 on Consumer Protection, State Gazette No. 22 Year 1999, Supplement to State Gazette No. 3821, Article 4.



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the agreement or not as they should be; (9) the rights stipulated in the provisions of other laws and regulations.

Based on the meaning of the points of each paragraph contained in Article 4, a clear form of protection has been explained, almost everyone who shops knows that they have the right to get their money back if the goods purchased are defective or damaged.⁴ In addition, consumers have the right to obtain clear information related to the goods to be purchased, this has been explained in Article 7 b of Law Number 8 of 1999 which reads: "provide correct, clear and honest information regarding the condition and guarantee of goods and/or services and provide an explanation of use, repair and maintenance".

This is what makes the need for supervision related to cosmetics with blue etiquette that are sold without clear product information and content that does not match the dosage because the origin of the contents of these products to the provision of drugs with blue etiquette that is not by pharmaceutical service standards and the maximum level of mixing hydroquinone in cosmetics is not by Law Number 36 of 2009 concerning Health, and Regulation of the Head of the Food and Drug Supervisory Agency (BPOM) of the Republic of Indonesia No. 23 of 2019 concerning Technical Requirements for Cosmetics Ingredients as well as in Regulation of the Minister of Health of the Republic of Indonesia Number 35 of 2014 concerning Pharmaceutical Service Standards in Pharmacies. For this reason, this research is a study in the form of preventive efforts that can be overcome as much as possible in strengthening normative studies on consumer losses due to the circulation of cosmetic products with blue etiquette.⁵

The government, especially BPOM, must be more careful in granting a product distribution license and routinely checking every product that was initially registered but over time, the entrepreneurs changed the product formulation which was initially appropriate but was misused to obtain more profit, thus violating the rules of law in consumer protection itself.

METHOD

The normative qualitative research method is doctrinal legal research or research sourced from libraries. It is called doctrinal legal research because this research is only aimed at written regulations so, this research is closely related to the library because it will require secondary data in the library. Because normative research focuses on literature studies using various secondary data sources such as articles of legislation, legal theories, and scientific works of scholars.

RESULT & DISCUSSION

Consumer protection has been regulated in Law Number 8 of 1999 concerning Consumer Protection. Consumer protection is a form of effort to provide a sense of legal security to consumers in the fulfillment of their rights from the losses experienced by consumers. Consumers are those who use goods or services that are already available, either for individual or group needs. Article 1 point 2 of the GCPL describes consumers as follows: "Consumers are every person who uses goods and/or services available in the

⁴ Arthur Lewis, *Dasar-Dasar Hukum Bisnis Introduction to Business Law* (Bandung: Nusa Media, 2009).

⁵ Dilla Nurfiana Astanti & Eny Sulistyowati, "Kesadaran Hukum Konsumen Terkait Penandaan pada Produk Kosmetik yang Diproduksi oleh Klinik Kecantikan" (2020) 7:4 Novum J Huk 10–19.



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community, both for the benefit of themselves, families, other people, and other living things and not for trade”.

Regulation of consumer protection can be done by creating a consumer protection system that contains elements of open access and information guarantees legal certainty, and protects the interests of consumers.⁶ It is explained in GCPL Article 29 paragraph (1) that “The government is responsible for fostering the implementation of consumer protection that ensures the rights of consumers and business actors are obtained and the obligations of consumers and business actors are carried out”.⁷ In some aspects, consumer protection law is closely related to the laws of civil ties.⁸ There are aspects of consumer protection law that are in public law, especially civil law and criminal law. So, to be precise, consumer protection law is in the area of private law (civil) and public law.⁹

The following is a form of legal protection for consumers from the use of blue etiquette cosmetics:

a. Criminal Law

Criminal sanctions on producers who cheat are regulated in Articles 61 through 63 of the Consumer Protection Law.

b. Civil Law

Consumers can file a civil lawsuit against business actors who produce cosmetics that contain harmful substances that cause dependence or negative effects from the use of these products, which are regulated in Article 1365 and Article 1371 of the Civil Code.¹⁰

Advances in science and technology have led to increased productivity and efficiency of goods and services. This has also led to higher consumer demand for various products. Along with this progress, people need to be more careful in choosing products, because many producers are not honest in marketing their goods. Therefore, consumer protection is very important to protect them from irresponsible producer practices.¹¹ Therefore, consumer protection is very important as a protector from irresponsible producers.

In general, illegal or unlicensed cosmetic products on the market do not grow rapidly if public demand is low. However, the public also plays a role in this, often tempted by advertisements or low prices, without considering the adverse effects that may arise from using these cosmetics both in the short and long term. The distribution permit is a form of registration approval given by BPOM to ensure product safety by what is stated in the Consumer Protection Law Number 8 of 1999.¹²

The Food and Drug Supervisory Agency (*BPOM*) is generally responsible for overseeing the circulation of various products, including cosmetics, medicines, traditional medicines, and food. Its duties, functions, and authorities are regulated in Presidential

⁶ Bambang Sugeng Ariadi, Zahry Vandawati Chumaida & Trisadini Prasastinah Usanti, “Pola Penyelesaian Sengketa Konsumen pada Transaksi Elektronik” (2021) 5:1 Lex J Kaji Huk dan Keadilan 119–136.

⁷ Law No. 8 of 1999 on Consumer Protection, State Gazette No. 22 Year 1999, Supplement to State Gazette No. 3821, Article 29.

⁸ Suyikati, “Kewenangan Penyelesaian Sengketa Konsumen Perjanjian Kredit Motor dalam Perpektif Hukum” (2021) 5:2 Lex J Kaji Huk dan Keadilan 201–220.

⁹ Dewinta, *supra* note 1.

¹⁰ Isdiana Syafitri, “Analisis Perlindungan Hukum terhadap Konsumen atas Produk Skincare Ilegal Universitas Amir Hamzah Medan” (2022) 5:2 J Insitusi Politek Ganesha Medan Juripol.

¹¹ Happy Susanto, *Hak-Hak Konsumen Jika Dirugikan* (Jakarta: Visi Media, 2015).

¹² Karmila Mokodongan, Rafika Nur & Asdar Arti, “Pengawasan Peredaran Kosmetik Ilegal oleh BPOM di Gorontalo” (2023) 1:1 J Huk dan Sos Polit 210–222.



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Regulation No. 80/2017 on the Food and Drug Supervisory Agency. One of the products that are currently widely produced and used is cosmetics, increasing public awareness of appearance causes cosmetics to have various variants and benefits such as giving fragrance, cleaning, improving or changing appearance, and protecting or caring for the body, which is applied to the outside of the body or teeth and oral mucosa. With so many cosmetic consumers, some cosmetic manufacturers do not comply with existing regulations and violate consumer rights. Based on Ministerial Regulation Number 1176/MENKES/PER/VII/2010 in Article 3 paragraphs (1 and 2), Article 4 paragraph (1) and Article 6.

The regulation stipulates that cosmetics must have a distribution license before they can be marketed to the public. All cosmetic products must meet health standards and ensure quality. The process of granting a distribution license involves applying the Good Manufacturing Practice (GMP) and meeting technical requirements such as safety, ingredients, marking, and claims. This is also regulated in regulation No. 1176/MENKES/PER/VII/2010 Article 5 paragraphs 1 and 2. Cosmetics that do not meet GMP standards must be held accountable by the manufacturer and are prohibited from being marketed to consumers. Some cosmetic products that do not meet GMP standards and are not registered with BPOM should not be circulated in the community. These products should be stopped from distribution early on, to protect consumers from adverse effects that can be fatal to users.

The safety of cosmetic products is a very important aspect and needs serious attention from consumers in their daily activities. Cosmetics at affordable prices must still meet quality standards that prioritize health and safety. Cosmetic products must not contain harmful ingredients. Unfortunately, the problem that often arises is the number of cosmetic products that circulate without having official legality from BPOM. Often, these products also have fake certificates from the BPOM, indicating a manipulative attempt to deceive consumers. As a result, consumers are at risk of facing serious health problems from using these products that cannot be accounted for.¹³ This problem should be solved with official BPOM certification before the product is marketed.

The circulation of illegal cosmetics violates consumer rights listed in Article 4 paragraph (1) letter a of Law Number 8 Year 1999 concerning Consumer Protection which states the right to comfort, security, and safety in using goods and services. Consumers are entitled to full protection. Currently, cosmetic users are not only limited to women, but men are also increasingly using them to support their appearance. Many people now view cosmetics not only as a secondary need but as a primary need. From the previous explanation of BPOM's duties, it can be seen that BPOM has the authority to supervise cosmetic products both before and after the product is marketed. Regarding the legal aspect, sanctions are given to business actors who violate by selling illegal cosmetic products that do not meet the requirements of applicable regulations. The provision of these sanctions aims to prevent violations committed by these business actors from recurring in the future.

CONCLUSION

The form of consumer protection is very clear in Law Number 18 of 1999 and BPOM regulations, but legal protection for consumers based on the GCPL is not enough to become a legal umbrella to protect consumer rights. In addition, the implementation of

¹³ Anyelir Puspa Kemala et al, "Tindak Pidana dalam Pengedaran Produk Kosmetik Ilegal: Perspektif Hukum Perlindungan Konsumen di Indonesia" (2024) 2:1 Postul J Law 23–28.



the articles of the GCPL is not effective enough, because currently there are still business actors who deliberately sell blue etiquette cosmetics freely and illegally. The enactment of the GCPL makes it difficult for consumers' rights to be fulfilled and protected from the existence of consumer protection law. BPOM as a state institution is deemed unable to maximize the regulations issued to monitor the circulation of illegal blue etiquette cosmetics, as the role of BPOM is stated in Presidential Regulation Number 80 of 2017 that BPOM is generally responsible for overseeing the circulation of various products, including cosmetics, medicines, traditional medicines, and food. Its duties, functions, and authorities. So there needs to be strict supervision of the Indonesian cosmetics market in the future, to avoid losses from consumers.

DECLARATION OF CONFLICTING INTERESTS

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