



REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES IN BEAUTY CREAMS IN INDONESIA

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Abstract

This study aims to determine and analyze the implementation of consumer protection in the distribution of dangerous cosmetic creams containing mercury in accordance with the Law on Consumer Protection and BPOM regulations Number 23 of 2019 concerning Cosmetic Ingredients and Knowing and analyzing law enforcement against dangerous cosmetics containing mercury. The research method employed is qualitative and combines a legal and conceptual approach. According to the findings of the study, corporate actors are accountable for compensating customers for any harm, pollution, or losses incurred as a result of consuming the goods/services they create or trade. The compensation that must be accounted for by the manufacturer is proportional to the harm, pollution, and losses incurred by customers as a result of using these illicit cosmetics.

Keywords: Regulation; Consumer protection; Chemicals; Cosmetic Products

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1. Introduction

There has been a rise in the number of companies producing cosmetics since the age of free trade began. Many domestic and international cosmetics companies have set up shop in Indonesia to meet the booming demand, particularly among women. Many consumers get taken in by low-priced goods that don't live up to their expectations because corporations fail in their legal obligation to protect them. The urge to enhance one's appearance through the use of cosmetics is one of humanity's oldest and most resilient desires. In addition, cosmetics serve an important purpose in improving one's appearance and are now considered a necessity, even among those with increasingly hectic schedules. The public's preference for cosmetics naturally shifts over time as people's lifestyles and, by extension, their spending habits, change. (Ahmad & Thalib, 2019)

Active substances that cause undesirable reactions and are harmful to the skin and the body in the long and short term are considered dangerous ingredients. Consumers only know that whitening cosmetics work to diminish the appearance of dark spots, brighten face skin, and increase self-esteem. A further contributing factor to this trend is the rise in popularity of whitening cosmetics due to the accessibility of low-cost options for their purchase and use on the internet. Many cases of skin problems can be traced back to the inappropriate and excessive use of cosmetics, however it seems that youngsters do not yet fully grasp the hazards associated with using whitening cosmetics. (Dewi & Suriana, 2013)

Even inexpensive cosmetics should be viewed with skepticism because there is always the possibility that they are either fake or have outlived their expiration date. Fake cosmetics are frequently consumed by people because to the low cost of these products and the availability of markets for them. It is possible that consumers' lack of awareness regarding the potentially hazardous effects of cosmetics containing unidentified components is being used as an excuse by individuals who continue to use such goods. Consumers, in general, do not engage in sufficient research prior to making a purchase, and this is one of the reasons why fake cosmetics are still available on the market.

Cosmetic users who choose carefully, especially mercury-containing cosmetic whitening solutions, usually have sparkling white skin. So, users must choose whitening cosmetics more carefully. To avoid adverse reactions to whitening cosmetics, learn to know your skin type, don't be misled by low cosmetic prices and promises of white skin in a short period, study the label or ingredient composition, and ask bleach experts. Beware of shiny cosmetics that may contain mercury-based

whitening agents; Avoid perfumed cosmetics and those without BPOM or Ministry of Health registration numbers. (Azgara & Nurul, 2011)

The public health threat posed by cosmetics containing toxic chemicals is a major worry, despite the fact that illegal cosmetic items containing hazardous components continue circulating freely on the market. Consumers often don't give much thought to whether or not the cosmetics they're buying are actually healthy before making a purchase. People are more likely to stick with a trusted brand when shopping for cosmetics because they want to avoid the potential negative consequences of trying out something new. This is especially true given the prevalence of cosmetics on the market that promise instant results, such as whitening and smoothing the skin.

Many cosmetics, says BPOM, contain ingredients such Medicinal Chemicals (BKO), which are toxic to humans. Some examples of these chemicals with medical applications are antibiotics, dexamethasone, and hydroquinone. When we talk about harmful medical compounds in cosmetics, we're referring to pharmaceuticals that are banned from use in cosmetics' base ingredients because of the potential harm they provide to the human body. This means that no compounds with known or suspected toxicity can be used in the creation of cosmetics. (Triana, 2022)

The Cosmetics Technical Criteria Regulation (Persyaratan Direktur Badan Kontrol Farmasi dan Makanan Nasional Republik Indonesia Nomor 19 Tahun 2015) governs the rules pertaining to the technical requirements for cosmetics in Indonesia. Test findings or other applicable empirical or scientific sources must verify that a cosmetic product is safe and effective before it may be sold. Traditional medicine, dietary supplements, and cosmetics containing Medicinal Chemicals (BKO) or banned substances continue to be considered hazardous to public health by the BPOM. The BPOM found that 53 products in the category of traditional medicine, 1 product in the category of health supplements containing BKO, and 18 products in the category of cosmetics contained ingredients prohibited/hazardous materials based on sampling and testing conducted between July 2020 and September 2021. (www.pom.go.id)

Due to a lack of consumer protection, customers have become second-class citizens while dealing with businesses, especially in the cosmetics industry. The paucity of options for consumers has become common knowledge among Indonesia's corporate and industrial elite. Consumers' helplessness in interacting with commercial entities is extremely harmful to the public interest.

An initiative codenamed "Consumer Protection" has been launched to develop uniform legal protections for the public and its customers. The information about products and services available

to consumers today flows from business entities. Although information from the Food and Drug Administration is frequently distributed via advertising and product labeling, the significance of information from other business owners is not diminished. (Kristiyanti, 2014)

Consumers, particularly those who make use of counterfeit cosmetics, are deserving of legal protection because it is the duty of the state to provide such protection. The Bureau of Pharmacy and Oversight of Medicine (BPOM) is a government entity that is responsible for organizing actions to supervise drugs and food. As such, it plays a crucial role in assuring the safety of all consumers, including those who use cosmetics.

Article 7 requires business actors to ensure the quality of goods and services produced and exchanged based on the applicable quality standards and to compensate, compensate, and reimburse for losses resulting from their usage, use, and utilization. Article 4 of the consumer protection law protects customers' rights to comfort, security, and safety when using products and services and to recompense, compensation, and reimbursement if they don't get their goods. Corporate actors abuse consumers' rights. (Hamid & Ermanto, 2019)

Consumers disobey cosmetic product ingredient labels because they want to look good at a reasonable cost. To preserve consumer-producer legal connections for cosmetic sales and purchases, Law Number 36 of 2009 concerning Health requires a distribution authorization under Article 105 (2). Since the consumer protection law has limitations in the area, Article 8 (3) only regulates the absence of permits for business actors to trade damaged and pharmaceutical, contaminated, and faulty food sedans without or by providing proper information. The cosmetic consumer protection law has an empty standard since harmful cosmetics are not strictly regulated. (Rahmawati, et.al., 2019)

2. Methods

This study uses normative-empirical law, which combines normative legal techniques with various empirical elements. Empirical normative research on applying legal norms to each legal event. Empirical normative legal research involves two phases. Phase I examines the normative legislation of Law No. 8 of 1999, and Phase II examines the practice law of BPOM Regulation No. 23 of 2019 Concerning Cosmetic Ingredients. This Research requires secondary and primary data. This study uses normative juridical methodology. Library or secondary materials are examined in normative juridical study. This normative legal research addresses consumer protection from mercury-containing cosmetic creams under Law Number 8 of 1999 on Consumer Protection and BPOM

Regulation Number 23 of 2019 on Cosmetic Ingredients. (Seokanto & Mamudji, 1994)

Consumers in the Widespread Distribution of Mercury-Containing Cosmetic Creams

Legal protections should extend to everyone who uses the term "consumer" to describe themselves or someone else. Consumers of cosmetics in Indonesia are the intended beneficiaries of this legal shield. Unfortunately, many people in Indonesia still don't know that they have access to a guardian or that the Consumer Protection Act even exists. However, there is still a sizable quantity of counterfeit beauty products available. More consumer protection is needed in Indonesia due to the prevalence of potentially dangerous cosmetics on the market.

While foreign investment has contributed to Indonesia's economic growth, consumer protection must be prioritized. Consumer protection covers dangerous and low-quality items. Consumer protection is legal protection for customers from harmful products and services. Consumer protection is valuable. Consumer Protection is the legal protection given to customers trying to meet harmful product demands. Protection of consumer rights is legal protection. Businesspeople are motivated by profit at the expense of many consumers, therefore this is often neglected. (Nahara & Lisa, 2020)

Indonesia has many consumer protection legislation. The 1999 Consumer Protection Act (Law No. 8) protects consumers. Article 1 paragraph (1) of Law No. 8 of 1999 on Consumer Protection defines consumer protection as all legislative measures to protect customers. Good cosmetics must meet BPOM standards, according to Law No. 8 of 1999, the Head of the Indonesian National Food and Drug Supervision Agency, and government laws. It is difficult to supervise illegal cosmetics distribution without definite and trustworthy data on the quantity and condition of cosmetics distribution facilities.

Companies are required to reimburse customers for any damage, pollution, or losses that arise as a direct result of utilizing such companies' products or services, per the first paragraph of Article 19 of Law No. 8 of 1999 on Consumer Protection. Hence, the compensation the manufacturer is responsible for is directly related to the degree to which the consumer is harmed, polluted, or loses money as a result of using the prohibited Product. Compensation may take the form of monetary recompense, refund, replacement of products or services of the same or equal value, medical care, or anything else permitted by law. All payments must be made no later than seven days after the date of the transaction.

Following the rules of Article 1365 BW concerning unlawful acts, which stipulate that criminal acts

create injury to others—an error to make up for the loss—any person or legal entity harmed by the distribution of illegal cosmetics that are identical to their own may assert its legal rights. This article's goal is to prove that a customer is entitled to recompense if a corporate actor takes legal action while conducting business and causes harm to others.

Dangerous cosmetics distribution involves many aspects and conditions that cannot be solved with one action. Good cosmetics must comply with the Consumer Protection Law, Law Number 8 of 1999, the Head of BPOM's Regulations, and government laws. Even though it is controlled, there are many anomalies associated to this harmful cosmetic in the field. Because legitimate cosmetics are more expensive, gamers' temptation to counterfeit cosmetics to make as much profit as possible is the main cause of their spread. Commodities entering Indonesia, especially at ports and airports, are unmonitored. Hence, some fakes are made outside Indonesia. The public's inability to distinguish real from phony cosmetics also helps counterfeiters. Most people want cheap prices. The counterfeiters must also know the composition of fake cosmetics and have access to essential materials.

Educating the public is crucial for raising new levels of consciousness about the dangers of cosmetics and encouraging them to take an active role in monitoring the distribution of potentially harmful cosmetics in Indonesia and reporting any problems to the BPOM. Due to the fact that BPOM would struggle to address this potentially life-threatening cosmetic issue without correct and up-to-date information and data.

Use the BPOM Strategic Plan in Indonesia for 2015-2019 as a guide for carrying out the organization's major obligations and duties over the next five years. Attempts to prevent counterfeit cosmetics through boosting consumer education and awareness to distinguish and comprehend the repercussions of using fake products. Article 4 letter c stipulates the right to correct, transparent, and honest information regarding the conditions and guarantees of products and services. Article 7 states that good faith in conducting business activities ensures the quality of goods and services produced and traded in accordance with the acceptable quality standards for items.

One can face up to ten years in prison and a fine of one billion rupiahs for manufacturing or distributing pharmaceutical preparations or medical devices that do not meet the standards and requirements for safety, efficacy, benefits, and quality, as stated in Article 196 of Law Number 36 of 2009 on Health. The maximum penalty for manufacturing or distributing pharmaceutical preparations or medical equipment without a distribution permit, as indicated in Article 106 paragraph (1), is fifteen years in prison and a

maximum fine of one billion five hundred thousand rupiahs, as confirmed in Article 197.

Users' health should not be put at risk, thus cosmetics that are expired, are not properly packaged, do not have distribution licences, are suspected of carrying dangerous chemicals, or have damaged packaging are not allowed. Therefore, even though cosmetics are intended to make people look better, it is against the law to use them if they have not been legally distributed to your area, if the packaging is damaged or inappropriate, if they are suspected of containing hazardous materials, or if they have passed their expiration date. Article 4 letter h of the consumer protection law grants the right to compensation, compensation, and reimbursement if products and services do not meet expectations. According to Article 7 letter g of the consumer protection law, the business actor shall compensate, compensate, and repay if the products and services obtained or used are not as agreed. (Khotimah & Chairunnisa, 2016)

Legal enforcement against unsafe cosmetics containing mercury

Jakarta's BPOM regulates cosmetics distribution in Indonesia. Controlled ingredients include toxic and non-harmful. For example, cosmetic samples are purchased and evaluated in the lab to ensure quality, safety, efficacy, and quality. It always involves coordinating programs other cross-sectors use to monitor medicine and food use, especially harmful cosmetics. We must understand how BPOM supervises unlawful cosmetics in Indonesia, as mentioned in BPOM regulation Number 23 of 2019 on Cosmetic Ingredients.

BPOM has been trying to find out the number and quality of cosmetics distribution facilities in Indonesia due to illegal cosmetics. BPOM works with the Department of Trade to supervise. Therefore, BPOM searches are not certain only because cosmetics distribution facilities have illegal cosmetics. The implementation time is not always carried out, so BPOM works with appropriate agencies to supervise illegal products in the field to reduce their circulation in Indonesia.

There are still some vendors who do not adhere to the regulations, so they do not dare sell cosmetics illegally, therefore it is preferable if the control were even stricter; you must check more frequently. The author believes that the BPOM's oversight is effective, despite the fact that it is not performed on a monthly basis. Yet, the author still thinks the supervision is satisfactory.

Crimes that can be committed by anybody are regulated by Articles 191–200; thus, every person is both an individual and a legal entity. Two types of illegal activity are distinguished by the structure of the Health Act: those that involve formal criminal offences and those that involve material criminal acts. Activities, whether lawful or illicit,

are simply categorized without any mention of their outcomes. A crime is considered material if it results in a specific matter, regardless of the nature of the crime itself. (Wirjono, 2003)

According to Decision No. 1087/Pid.Sus/2020/PN.Jkt.Pst, Denny Halim marketed cosmetic products without distribution permission after a lab test showed they contained mercury (hazardous substance). Denny Halim was legally and convincingly found guilty of "Deliberately distributing cosmetics without a distribution permit as stated in the single charge; Sentenced punishment against the Defendant, therefore with imprisonment for three months and a fine of ten million rupiahs with a provision that the penalty is replaced with confinement for one month if it is not paid; Determine to remove the Defendant's complete arrest and incarceration from the sentence; Detains the defendant and orders the destruction of 6,710 pieces of evidence. Court fees were 2,000 rupiahs for the Defendant.

Cosmetic products containing hazardous chemicals according to BPOM

Mercury (Hg) or Mercury is a hazardous heavy metal that can be harmful even in minute amounts. Mercury (Hg) exposure can result in a wide variety of adverse effects, including but not limited to: skin discoloration (which can lead to permanent black patches on the skin), allergies, skin irritation, lasting damage to the neurological system, brain, and kidneys, and fetal abnormalities. High doses, even for a short time, can induce nausea, vomiting, diarrhea, and renal damage; and carcinogens can lead to cancer in humans.

A prescription from a medical professional is required in order to make use of hydroquinone, which belongs to the category of more severe medications. When this powerful medication is used without the supervision of a medical professional, there is a risk that it can irritate the skin, resulting in the skin turning red and burning, as well as the appearance of dark spots on the skin. Blue-black skin and cancer are the long-term effects of use. Due to inexperience and misconceptions, individuals often make blunders when using cosmetic whitening products. The goal at first was to achieve white and beautiful skin, but the results were quite the opposite.

Many factors in the cosmetics industry strive to improve the cosmetics' end result on the skin. The effects of cosmetics on the skin can be either beneficial or harmful. While the anticipated benefits are welcome, any unintended side effects, such as the promotion of skin diseases, need to be avoided.

Just as important as the work they do is the way they behave and carry themselves in the community. Hence, the degree of professionalism displayed by an officer is directly related to how

effectively they are able to carry out their duties and use their authority as an enforcer.

According to BPOM regulation Number 23 of 2019 concerning Cosmetic Ingredients, businesses that violate the provisions outlined in Article 2, Article 6 paragraph (2), and Article 7 are subject to administrative sanctions in the form of a). a written warning; b). a temporary ban on the distribution of cosmetics for a maximum of one year; c). the withdrawal of cosmetics from circulation; d). the destruction of cosmetics; e). the temporary suspension of cosmetics production; and I the destruction of the cosmetics.

This is done to ensure that businesses are held accountable for the products they sell and to safeguard consumers from dishonest ones. Yet, in practice, corporate players employ a wide variety of strategies—including the use of false distribution permit numbers and misleading product information—to advertise their cosmetic items.

The legal system is essential for holding businesses liable for the products they sell and for protecting consumers' legal rights. Consumers should be guaranteed access to a sufficient supply of high-quality, risk-free products, as well as legal protection for their right to do so, as stated, for instance, in Andrian Sutedi's book *Consumer Protection: A Guide to Product Responsibility*. But when customers buy a product, it encourages the manufacturer to ignore safety regulations and create harmful goods. Consumers also have the right to sue for damages if they believe a product they bought was flawed and ultimately caused them harm. The consumer is not entitled to payment in excess of the price of the items unless the goods or products produce bodily disturbances or flaws in the consumer's body. (Rahmawati, et.al. 2019)

Due to the public's lack of understanding and comprehension as customers, consumers are often impacted by the conduct of corporate actors who are not accountable for their activities. So, product accountability encompasses any legal obligation for the person or business actor who issues a product, the person or business actor whose actions lead to the manufacturing of the product, or the person who trades and distributes the product. (Karolina, et.al. 2021)

3. Conclusions

Statute Number 8 of 1999, rules from the Head of BPOM, and government laws all make it clear that good cosmetics are ones that meet the standards set by BPOM. According to the first sentence of the first paragraph of Article 19 of Law Number 8 of 1999 Concerning Consumer Protection, "Business Actors are Responsible for Compensating for Damage, Pollution, or Losses Sustained by Consumers as a Result of Consumer Goods or Services Produced or Traded," businesses are

required to pay for damage, pollution, or losses caused by consumer goods or services. If the user gets hurt, loses something, or gets rusty because they used an illegal cosmetic product, the person who made it has to pay for their losses. Only cosmetic ingredients that can prove their safety, effectiveness, and quality according to the criteria set out in BPOM rule Number 23 of 2019 about Cosmetic Ingredients are allowed to be used, and even then, only if there is scientific or empirical evidence to back them up. If a Business Actor broke the rules, one of the administrative punishments could be that the Cosmetics in question could no longer be sold or distributed.

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