

Research Article

Legal Review of Consumer Protection for Illegal Cosmetic Products in Electronic Trade According to Law Number 8 of 1999 Concerning Consumer Protection

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Abstract: This study discusses consumer protection in the circulation of illegal cosmetic products through electronic commerce systems, focusing on the implementation of Law Number 8 of 1999 concerning Consumer Protection. The main problems of the research include legal regulations related to illegal cosmetics, legal provisions regarding electronic commerce, and consumer protection mechanisms against the circulation of illegal cosmetics on e-commerce platforms. This study uses a qualitative method with a normative legal research approach through literature studies, which involves primary, secondary, and tertiary data sources. The results of the study show that cosmetic distribution permits are regulated in the Regulation of the Food and Drug Supervisory Agency Number 12 of 2023 concerning the Supervision of the Manufacture and Circulation of Cosmetics. In electronic commerce, transactions occur electronically between sellers and buyers by involving a third party as the platform provider. Dispute resolution between consumers and business actors is regulated in the Consumer Protection Law through two channels, namely litigation and out-of-court dispute resolution. The research concluded that every cosmetic in circulation must have a distribution permit in the form of a BPOM Notification, and business actors are responsible for providing compensation in the form of refunds or product replacements. The research recommendations emphasize the importance of consumer prudence, honesty of business actors, and the government's firmness in handling consumer problems.

Keywords: Consumer Disputes; Consumer Protection; Distribution Permit; Electronic Trading; Illegal cosmetics

1. Introduction

Cosmetics are substances or mixtures to be rubbed, applied, sprinkled, or sprayed on the human body or body parts for the purpose of cleansing, maintaining, enhancing attractiveness, or altering appearance, protecting, and maintaining good condition, but not for healing. There are many cosmetic products on the market, all in attractive packaging. However, many contain hazardous and prohibited ingredients. This is due to the lack of supervision of these cosmetic products, so that often local and imported products that do not have adequate permits and product standards, and are unsafe for use, can enter and be easily sold on the market.

As technology advances, it's easier for people to purchase products simply with a mobile phone and cellular data, including cosmetics. Simply stay at home and your order will be delivered by courier. E-commerce also offers a wide variety of beauty products, with various brands and diverse skincare functions. Affordable prices and product descriptions promising perfect results attract consumers, regardless of whether the product is suitable or authentic.

Consumers typically don't pay attention and don't research before purchasing an item. This is one reason why counterfeit (unlicensed) beauty care products are still circulating on

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the lookout. Counterfeit beauty care products generally flow through the business sector, small, shallow shops, and even through online stores that are mushrooming among today's customers. Buyers usually purchase them in these areas because they are straightforward. This often becomes a business opportunity for malicious businesspeople due to a lack of knowledge about legal protections for online buying and selling, which protect buyer freedom. Consumer protection is crucial where the legal relationship between producers and consumers is high. The growing economy in the era of globalization must be able to support the growth of the business world so that it can produce a variety of goods and services that contain technology that can improve public welfare and at the same time ensure the goods and services obtained from trade without causing consumer harm.

Consumer rights also need to be known by the wider community as consumers to guarantee legal certainty and protection for consumers. Legal certainty includes all efforts to empower consumers to obtain or determine their choices of goods and services. This is also very contrary to the provisions of Article 8 of Law Number 8 of 1999 concerning Consumer Protection regarding what prohibitions are permitted for business actors to produce and trade goods. In the buying and selling process, consumers have rights that must be fulfilled by business actors. Consumer protection according to Law Number 8 of 1999 "Consumers are every person who uses goods and or services available in the community for their own interests, family, other people or other living creatures and not for trading .

The consumer relationship between legal subjects and objects in the form of any rights, which are controlled by the legal subject over the object, whether tangible objects, movable objects, or immovable objects. The legal relationship between business actors and consumers, Civil Law which is more widely used or related to the legal principles regarding the relationship is regulated in the third book of the Civil Code, which is a legal relationship agreement (*rechtbetrekking*) is a relationship between two parties dealing with the rights and obligations of the other party. The sale of illegal and dangerous cosmetics and drugs is not only from the perpetrator's website but also from e-commerce which is commonly used by the public.

An example of a case that occurred in electronic commerce, namely: there was a victim named Achmad Supardi, he became a victim of the e-commerce site Lazada. The Lazada e-commerce site has violated the Consumer Protection Law Number 8 of 1999. There are 3 articles violated by Lazada e-commerce, namely: article 9, article 10, and article 16. Article 9 is "business actors are prohibited from offering, producing or advertising goods and services incorrectly, or as if the goods have met discounts, special prices, quality standards, the goods are in good condition, the goods and services have received sponsorship or approval, using excessive words such as safe, cheap and offering something that is not certain Another case also occurred through the Shopee platform, where a business actor with the initials EC sold illegal cosmetics marketed through the Sintren Olshop account on the Shopee application. In this case, the business actor made cosmetic products with his own concoction or processing and did not register them with BPOM before being marketed and did not attach the usage date or expiration date. This situation is of course very detrimental to consumers because they have purchased the product. Not only financial losses, expired products certainly reduce product quality and can damage the skin if used in the long term.

2. Literature Review

Understanding Legal Review

A review is the activity of summarizing a large amount of raw data, then grouping or separating relevant components and parts, and then linking the collected data to answer problems. A review is an attempt to describe consistent patterns in data so that the results of the analysis can be studied and interpreted and have meaning. While legal is all things that have legal meaning that are recognized as valid by the government. These rules are standard and

binding on everyone in the areas where the law applies, so that if anyone violates the law can be punished.

Understanding Consumer Protection

Article 1 number 1 of the Consumer Protection Law (UUPK) defines protection as any effort to guarantee legal certainty to provide protection to consumers. Consumer protection is a term used to describe the protection provided to consumers in their efforts to meet their needs in matters that may be detrimental to the consumers themselves. Philipus M. Hadjon stated that "Protection is an action to protect or provide assistance to legal subjects by using legal instruments".¹⁷ Satjipto Rahardjo stated that "Protection is stating that there is an effort to protect a person's interests by allocating a power to him to act in his interests Muktie A. Fadjar stated that, "Protection is a narrowing of the meaning of protection, in this case only legal protection. Protection provided by law, is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with other humans and their environment Consumers are basically defined as the final users of a product that is intended to be consumed, and obtained from business actors must be used not to be resold. Consumers according to Hornby, "consumers are people who buy goods or use services, Hondius stated that, "Consumers as the final users of goods and services (uiteindelijk gebruiker van goederen en diensten), With this formulation Hondius wants to distinguish between consumers who are not final users (intermediate consumers) and final consumer consumers Consumers in the broad sense include both criteria, while consumers in the narrow sense only refer to final consumer users. Janus Sidabalok stated that "Consumer Protection Law is a law that regulates the provision of protection to consumers in order to fulfill their needs as consumers.

Consumer law is also classified under business law or commercial law because the fulfillment of goods or services is always related to business aspects or trade transactions. Some also classify consumer law under civil law, because the relationship between consumers and producers or business actors in the fulfillment of goods or services is a civil legal relationship. Legal protection leads to a form of legal certainty provided by the government. This is done by protecting a person's interests by allocating power to them in a measured manner to act to protect their rights.

Understanding Illegal Cosmetics

The term cosmetics, which in English "cosmetics", comes from the word "kosmein" (Greek) which means "to decorate". The materials used in this effort to beautify oneself, were previously mixed from natural ingredients found in the surrounding environment. However, now cosmetics are made not only from natural ingredients but also artificial ingredients with the intention of enhancing beauty. According to the Big Indonesian Dictionary, the definition of cosmetics and cosmetics, namely: "Cosmetics are drugs (materials) to beautify the face, skin, hair, and so on such as powder and lip gloss. While cosmetics are the science of beauty, the science of procedures for beautifying the face, skin and hair.

The definition of cosmetics is also found in the Regulation of the Minister of Health of the Republic of Indonesia Number 1176/MENKES/PER/VIII/2010 concerning Cosmetic Notifications, namely in Article 1 paragraph (1) which reads: "Cosmetics are materials or preparations for the external parts of the human body (epidermis, hair, nails, lips and external genital organs) or teeth and oral mucosa, especially for cleaning, perfume, changing appearance and/or improving body odor or protecting or maintaining the body in good condition.

The definition of cosmetics is also stated in the Regulation of the Food and Drug Monitoring Agency (BPOM) Number 2 of 2020 concerning Supervision of the Production and Distribution of Cosmetics, namely in Article 1 paragraph (1) which reads: "Cosmetics are materials or preparations intended for use on the outside of the human body such as the epider-

mis, hair, nails, lips, and external genital organs, or teeth and oral mucous membranes, especially for cleaning, perfume, changing appearance, and/or improving body odor or protecting or maintaining the body in good condition.

Furthermore, what is meant by "illegal" is something that is legally invalid, contrary to law, or in this case, violating the law. Therefore, in this context, illegal cosmetics can be interpreted as beauty products mixed with or supplemented with dangerous chemicals that, when used, can damage body tissue and skin. It is said to be illegal because the cosmetics are distributed and sold using additional dangerous chemical substances that can harm consumers, for example using bleach, preservatives, high doses of strong drugs and other ingredients prohibited by the Health Law.

According to Laudon and Laudon, electronic commerce is a process of buying and selling products electronically by consumers from company to company with computers as intermediaries for business transactions. Meanwhile, according to David Baumer, E-Commerce or electronic commerce is a dynamic set of technologies, applications, and business processes that connect companies, consumers, and certain communities through electronic transactions and the trade of goods, services, and information conducted electronically.

Meanwhile, Choi, Stahl, and Whisnton define e-commerce as a new market offering new types of commodity products, namely digital products, through digital processes. E-commerce is part of a business development approach that involves the application of information and communication technology to the production and distribution of goods and services on a global scale.

3. Method

This research is descriptive. Descriptive research aims to describe a situation in a specific area and at a specific time. Typically, researchers have obtained an overview in the form of initial data about the problem. Researchers often use theories or hypotheses. This research merely describes an object to draw generally applicable conclusions.³¹ This research aims to describe the Legal Review of Consumer Protection for Illegal Cosmetic Products according to Law Number 8 of 1999 concerning Consumer Protection.

This type of research uses normative legal research. Normative legal research is a process of discovering legal rules, legal principles, and legal doctrines to address the legal issues at hand. In this type of legal research, law is often conceptualized as rules or norms that serve as benchmarks for what is considered appropriate human behavior.

4. Results and Discussion

Cosmetic Regulations According to Minister of Health Regulation Number 63 of 2013 concerning Cosmetic Production Permits.

Cosmetics are a long-standing human need that has been growing over time. They also play a vital role in enhancing one's appearance. For people with increasingly complex lifestyles, cosmetics have become a basic necessity. Public consumption of cosmetic products tends to increase, in line with changes in lifestyles, including consumption patterns. Meanwhile, public knowledge remains inadequate to select and use products appropriately, correctly, and safely.

In carrying out supervision of Drugs and Food, the Minister of Health has issued a cosmetic production permit written in the Regulation of the Minister of Health Number 63 of 2013 concerning Amendments to the Regulation of the Minister of Health Number 1175/MENKES/PER/VIII/2010 concerning Cosmetic Production Permits. Article 1 states that: 1. 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 oral mucous membranes, especially for cleaning, perfume, changing appearance and/or improving body odor or protecting or maintaining the body in conditions 2. Production permit is a permit that must

be owned by a cosmetics factory to carry out cosmetic manufacturing activities. 3. The cosmetics industry is an industry that produces cosmetics that has an industrial business permit or industrial registration certificate in accordance with the provisions of laws and regulations. 4. Good Cosmetic Manufacturing Practices, hereinafter abbreviated as CPKB, are all aspects of cosmetic manufacturing activities that aim to ensure that the resulting product always meets the quality requirements set in accordance with its intended use. 5. Minister is the Minister who organizes government affairs in the health sector. 6. Director General is the Director General of the Ministry of Health whose duties and responsibilities are in the field of pharmacy and medical devices. 7. Head of Agency is the Head of Agency whose duties and responsibilities are in the field of drug and food supervision. 8. Head of Service is the Head of Provincial Health Service. 9. Head of Center is the Head of Technical Implementation Unit within the Agency whose duties and responsibilities are in the field of drug and food supervision.

Classification of cosmetics according to the Regulation of the Minister of Health of the Republic of Indonesia includes: 1. Preparations for babies, for example baby oil, baby powder, 2. Preparations for bathing, for example bath soap, 3. Preparations for eyes, for example mascara, eye-shadow, 4. Fragrant preparations, for example perfume, 5. Preparations for hair, for example shampoo, 6. Hair coloring preparations, for example hair dye, 7. Makeup preparations (except eyes), for example powder, lipstick, 8. Preparations for oral hygiene, for example toothpaste 9. Preparations for body hygiene, for example deodorant 10. Nail preparations, for example nail polish, 11. Skin care preparations, for example, cleansing lotion, moisturizer, protector, 12. Shaving preparations, for example shaving soap, razor, 13. Preparations for sun-tan and sunscreen, for example sunscreen foundation.³⁸ Cosmetics in circulation must meet the requirements of quality, safety, and efficacy. As stated in Article 3 of the Regulation of the Minister of Health of the Republic of Indonesia Number 1175/Menkes/Per/VIII/2010 that "The manufacture of cosmetics can only be carried out by the cosmetics industry" and explained again in Article 4 that "(1) The cosmetics industry that will make cosmetics must have a production permit. (2) The production permit as referred to in paragraph (1) is granted by the Director General" Cosmetic production permits are granted according to the form and type of cosmetic preparation to be made, the forms and types in question can be divided into two groups: 1. Group A, namely production permits for cosmetics industries that can make all forms and types of cosmetic preparations; 2. Group B, namely production permits for cosmetics industries that can make certain forms and types of cosmetic preparations using simple technology³⁹ Production permits for cosmetics industries for Group A are granted with the following requirements: a. Have a pharmacist as the person in charge; b. Have production facilities in accordance with the products to be made; c. Have laboratory facilities; and d. Must implement Good Cosmetic Manufacturing Practices (CPKB). A Class B cosmetics industry production permit is granted with the following requirements: a. Having at least one pharmaceutical technical person in charge b. Having production facilities with simple technology according to the product to be made, capable of implementing hygiene and sanitation and documentation according to the CPKB.

Standardization of Cosmetic Distribution in Electronic Commerce According to the Regulation of the Food and Drug Supervisory Agency Number 12 of 2023 concerning Supervision of the Manufacture and Distribution of Cosmetics.

Cosmetics are not only used by women; men also widely use them to enhance their appearance. In fact, today's society considers cosmetics not merely a secondary need, but rather a primary one. Therefore, cosmetics distributed in Indonesia must have a Marketing Authorization in the form of a Notification issued by the Food and Drug Monitoring Agency (BPOM).

Article 2 of the Regulation of the Food and Drug Monitoring Agency Number 12 of 2023 concerning Supervision of the Manufacture and Distribution of Cosmetics states that

Supervision of the Manufacture and Distribution of Cosmetics is carried out through inspections of: 1. Facilities; and/or 2. Cosmetics. In Article 18 paragraph (1) Inspection of Cosmetics as referred to in Article 2 letter b includes inspections of: a. Legality of Cosmetics; b. Safety, benefits, and quality of Cosmetics; c. Labeling and claims of Cosmetics; and/or d. Cosmetic Advertisements.

In Article 19 paragraph (1) Cosmetics distributed as Refill Cosmetics as referred to in Article 18 paragraph (2) must be made and distributed according to the Cosmetics category which includes: a. Bath soap (liquid); b. Antiseptic bath soap (liquid); c. Hand soap (liquid); d. Shampoo; e. Dandruff shampoo; and f. Conditioner. (2) Cosmetics distributed as Refill Cosmetics as referred to in paragraph (1) are prohibited from being made and distributed in the category of Baby Cosmetics. (3) Refill Cosmetics as referred to in Article 18 paragraph (2) distributed to consumers must include information on the Labeling and be included on the Refill Cosmetics container. (4) The Labeling as referred to in paragraph (3) must meet the following requirements: a. Clear and easy to read; and b. Not easily detached or separated from the packaging, faded, or damaged. (5) Information on the Labeling as referred to in paragraph (3) must include information at least regarding: b. Name of Cosmetic; c. Notification number; d. Batch number; Name and address of the manufacturer; f. Filling date; and g. Expiration date. All cosmetics in circulation must meet the requirements, be registered and have a registration number from the Food and Drug Supervisory Agency of the Ministry of Health. The following are the technical requirements for cosmetics, namely: 1. General Requirements a. Cosmetics in circulation must meet technical requirements b. These technical requirements include safety, efficacy, quality, labeling, and claim requirements 2. Safety Requirements Cosmetics must meet safety requirements in accordance with the safety requirements as stated in the Regulation of the Head of the Food and Drug Supervisory Agency on Cosmetics. 3. Quality Requirements There are (two) 2 things that must be considered: a. Cosmetics must meet quality requirements in accordance with the provisions as stated in the Indonesian cosmetics codex, other recognized standards, or in accordance with the provisions of applicable laws and regulations b. Fulfillment of cosmetic quality requirements, in accordance with the provisions as stipulated in Article 9 (Article 9) of the ASEAN Cosmetic Directive of 2003 and or its additions.

Marking or Labeling Requirements Marking or labeling must contain complete, objective, and non-misleading information about cosmetics. The marking must also be clear and easy to read. The marking must include information, at least: a. Cosmetic Name, b. Use, c. How to Use, d. Composition e. Name and Country of Manufacturer, Name and Complete Address of Notification Request, f. Batch Number, g. Size, Contents/Net Weight, h. Expiration Date, i. Warnings or Cautions and Other Information, If Required 5. Product Expiration Date. 6. Product expiration date in the order of date, month and year. Writing begins with the word expiration date or best used before, or in clear English. Related to e-commerce platforms, namely sites that bring together sellers and buyers. E-commerce platforms act as intermediaries between business actors and consumers or are also known as marketplaces, such as Tokopedia, Shopee, and Lazada. Some e-commerce platforms have regulations prohibiting the sale of certain goods on their platforms, including cosmetics without distribution permits. However, these platforms do not vet the products businesses intend to sell on their platforms.

E-commerce platforms also regulate the sanctions that will be imposed on business actors who violate the terms or agreements stipulated in the e-commerce platform. The e-commerce platforms that have been analyzed regarding the terms of use of their sites, namely Tokopedia, Shopee, and Lazada, have expressly stated that users, both consumers and business actors, must agree to the terms set forth if they wish to access the e-commerce platform. Users are not permitted to access if they do not agree to the terms set by the e-commerce

platform. Therefore, when opening the e-commerce platform's site or application, there are terms that must be read first and agreed to in order to access the e-commerce platform.

E-commerce platforms not only prohibit the distribution of certain products, but also regulate the limits of their responsibilities. Because e-commerce platforms are considered merely third parties in transactions between businesses and consumers within the platform, they determine that responsibility for the products sold rests with the business owner. Therefore, liability for products such as the distribution of cosmetics without a distribution permit falls on the business owner as the product provider within the platform.

According to the Consumer Protection Law (UUPK), regarding the obligations of business actors, in this case e-commerce platforms as service providers, e-commerce platforms have acted in good faith by setting their own terms of use. E-commerce platforms are obligated to ensure that the products sold on their platforms are safe for consumers.

5. Conclusion

Based on Law Number 8 of 1999 concerning Consumer Protection, consumers have rights that must be protected, including the right to obtain accurate information regarding the products they consume. In the case of illegal cosmetic products circulating in the market, consumers have the right to receive protection to avoid being trapped into using products that are harmful to their health. Therefore, business actors are obliged to fulfill their obligation to provide honest and clear information regarding the cosmetic products they sell, including ensuring that the products are registered and have obtained a valid distribution permit from the Food and Drug Monitoring Agency (BPOM). Electronic commerce (e-commerce) plays a crucial role in facilitating transactions between sellers and consumers, including in the distribution of cosmetic products. Although e-commerce makes it easier for consumers to purchase cosmetic products, it also opens up opportunities for illegal products to be marketed without adequate controls. Therefore, it is important for e-commerce to function as a third party to ensure that products sold through their platforms meet applicable standards and regulations. In the event of a dispute between consumers and business actors regarding illegal cosmetic products, the Consumer Protection Law provides two resolution options: through the courts or alternative dispute resolution outside the courts. This provides additional protection for consumers who feel disadvantaged by the use of illegal cosmetic products sold through e-commerce. Businesses that distribute illegal cosmetics through e-commerce must be responsible for any losses suffered by consumers. This responsibility includes the obligation to provide compensation in the form of a refund or replacement of products that do not meet standards or are harmful to consumers' health. In addition, business actors must ensure that every cosmetic product sold complies with applicable legal provisions, including having a valid distribution permit from the BPOM. For consumer protection to be effective, strict law enforcement against businesses that trade in illegal cosmetics is essential. The government and relevant institutions must work together to monitor and take action against businesses that violate applicable regulations, as well as educate consumers about the importance of choosing safe and registered cosmetic products.

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