

Legal Protection of the Consumer Illegal Cosmetics Circulation (Study on Decision Number 873/PID.SUS/2019/PN BPP)

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ABSTRACT

This study aims to analyze legal policies, inhibiting factors in case resolution and the ideal concept of law enforcement against cases of selling illegal cosmetic products online by the BPOM Civil Servant Investigators (PPNS). The method used in this research is a sociological descriptive. The results of this study indicate that the criminal law policy at BPOM is implemented through coordination between Police investigators and Civil Servant investigators (PPNS), by having to put aside several obstacles such as legal factors, lack of law enforcement resources, supporting facilities, and community culture, then ideal concept, enforcement of the law on the distribution of illegal cosmetics begins with making/revising comprehensive regulations regulating the distribution of cosmetics online.

Keywords: *Consumer Protection, illegal cosmetic, BPOM,*

1. INTRODUCTION

Indonesia as a country that always follows the development of the times should open access to international business relations with other countries. The opening of access to trade between countries has resulted in many products originating from abroad being consumed by the Indonesian people, one of which is cosmetics. The number of cosmetic products that are present in the community is caused by the development of free economic markets that are growing in developing countries.

Departing from curiosity, consumers began to try to consume cosmetic products that have been promoted and disseminated with the support of increasingly rapidly digital technology. With the increasing use of gadgets, consumers can see new things outside the surrounding environment, such as seeing advertisements on online sites, entertainment abroad or artists who are endorsed to review or review certain cosmetic products, thus influencing consumers to buy them. .. The rapid growth of a product and the large demand for consumers to try cosmetics make business actors, especially online business actors, to market products without providing legal certainty over whether the cosmetic product is suitable for consumption or not.

One example of the case of illegal distribution of cosmetics that occurred in a case that was decided by the

District Court in Decision Number 873/Pid.Sus/2019/PN Bpp, whose ruling stated, among other things, that "the defendant had deliberately circulated pharmaceutical preparations without a distribution permit"

Whereas in the a quo case, basically the Defendant traded cosmetic goods that did not have a BPOM permit. In the trial, it was proven that the Defendant sold/distributed Cosmetics, Traditional Medicines and Drugs without a Circulation Permit through online media, namely Instagram under the name Novita Cosmetics, which is located at Novi Kosmetik Store, Jl Mes Projakal No 57 RT 029 Kel. Muara Rapak, Kec. Balikpapan Utara City of Balikpapan and on that account displays photos of Cosmetics, Traditional Medicines and Drugs without a Marketing Permit that are sold. In addition, the defendant also displays a list of product prices so that consumers already know the price before placing an order and the defendant takes a different profit for each product of approximately Rp. 5,000 up to Rp. 10,000 of the products sold.

1.1. Related Work

Based on the above background, it is relevant to conduct a research entitled "Consumer Legal Protection for Illegal Cosmetics Circulation (Study of Decision Number 873/PID.SUS/2019/PN BPP)"

1.1.1. Manual interactive assumption generation

To further clarify the conceptual framework in this paper, the author provides an overview of the conceptual framework by formulating meaning which is intended to provide a clear understanding of them: Protection law is the protection will be the dignity and dignity, as well as the recognition of human rights that are owned by the legal subject under the provisions of the law A consumer is any person who has the status of a user of goods and/or services. Consumers are defined in Law No. 8 of 1999 concerning consumer protection is every person who uses goods and or services available in the community, both for the benefit of himself, his family, other people and other living creatures and not for trading. the conclusion that the understanding of the consumer is everyone who uses goods and services for their own purposes, together with others without seeking profit. Cosmetics Defined according to BPOM (Supervision Agency, Drug and Food Cosmetics) is a guide for materials that are ready to be used on the outside of the body (epidermis, hair, nails, outer teeth and oral cavity to clean, increase attractiveness, change appearance to keep it in good condition). good

1.1.2. Legal protection is divided into 2 types

Preventive legal protection: namely the protection provided government which has the aim of preventing violation. This is regulated in the laws and regulations with the aim of preventing a violation and providing limitations or signs in carrying out an obligation. Repressive legal protection: namely the final stage of protection that in the form of sanctions, such as imprisonment, fines, and punishments additions that are given if there has been a violation, or dispute.

1.1.2.1. Our Contribution

Based on the background and problem formulation described above, the objectives to be achieved in The research is to find out the form of legal protection for the product cosmetics that are illegal according to UUPK and statutory regulations related

1.1.2.2. paper structure

The structure of this paper uses research methods to collect data, manage data, and conclude from data according to problem to be investigated by the author. this law research is to study certain legal phenomena, one or more of the symptoms. This legal research is carried out with a series of scientific activities based on certain methods, systematics, and thoughts. Research The method used by the author in this study is as follows: Types of Research. The types of research in this legal research are normative research. The definition of normative research is research that provides a

systematic explanation of the rules regulate certain legal categories, as well as analysis of a relationships between regulations that describe areas difficulties and can predict future developments. And also

Legal Resources and Materials In this paper, the author using 4 legal materials obtained from the results of the review decisions or library materials relating to a problem or a material from research that often referred to as legal material.

2. BACKGROUND

2.1. Consumer Right

Consumer In general, rights can be interpreted as claims or ownership individual or something, a person is said to have rights if he has a claim to act in a certain way or if someone else is obligated to act in some way certain to him. Rights can come from a legal system that allow or permit someone to act in certain way towards it, this is what is called a legal right. The most important moral rights are those that determine prohibitions or obligations to other people who allow a person freely chooses any interest or activity else to do. These moral rights (meaning types rights covered by the term moral rights) identify activities or interests that may be exercised by a person in carry out these activities within the limits that have been Certain rights may be set, this kind of moral rights have three important characteristics that give the "possibility" and functions"protection" 7 In the development of the company's progress to provide services, of course, cannot be separated from the protection of the rights available to consumers because of any freedom or activities to be carried out. Consumer rights are also explained in Article 4 of the Law Number 8 of 1999 concerning Consumer Protection states that consumer rights are:

1. the right to comfort, security, and safety in consume goods and/or services;
2. the right to choose goods and/or services and obtain goods and/or services in accordance with the exchange rate and conditions as well as promised guarantee;
3. the right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services;
4. the right to have their opinions and complaints heard on goods and/or services used;
5. the right to get advocacy, protection, and efforts proper settlement of consumer protection disputes;
6. the right to receive consumer guidance and education;
7. the right to be treated or served correctly and honestly and not discriminatory;
8. the right to obtain compensation, compensation and/or reimbursement, if the goods and/or

services received are not in accordance with the agreement or not as it should be;

9. rights regulated in the provisions of laws and regulations other.

The consumer rights contained in Article 4 of the UUPK above, show that there is a necessity for the government to provide legal protection in accordance with the applicable laws and regulations. As in the case of repressive legal protection, the law is present as a warning and signs before a violation or dispute occurs between business actors and consumers.

2.2 Rights And Obligations Of Business Actors

In addition to consumers, business actors also have the right to regulate of the entrepreneur. As explained in Article 6 of the Law Number 8 of 1999 concerning Protection of Consumers who States that The rights of business actors are:

1. the right to receive payments in accordance with the agreement regarding the conditions and exchange rates of goods and/or services traded;
2. the right to obtain legal protection from the actions of consumers who bad faith;
3. the right to self-defense his shoes in the settlement consumer dispute law;
4. the right to rehabilitation of good name if it is legally proven that consumer losses are not caused by goods and/or services traded;
5. rights regulated in the provisions of laws and regulations other. In addition to rights, obligations are also imposed on business actors who contained in Article 7 of Law Number 8 of 1999 concerning Consumer Protection which states that The obligations of business actors are:
 - A. have good intentions in carrying out their business activities;
 - B. provide true, clear and honest information regarding the condition and guarantee of goods and/or services and provide an explanation of the use, repair and maintenance;
 - C. treat or serve consumers correctly and honestly and non-discriminatory;
 - D. guarantee the quality of the goods and/or services produced and/or traded based on the provisions of the quality standard of goods and/or applicable services;
 - E. provide an opportunity for consumers to test, and/or try certain goods and/or services and provide guarantees and/or guarantee on goods manufactured and/or traded;
 - F. provide compensation, compensation and/or compensation for losses resulting from the use,

use and utilization of goods and/or servicesatau traded;

- G. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with theagreement.

The obligations of business actors are to treat and serve consumers properly and correctly, as well as being honest and not discriminatory, The obligation of business actors to be able to guarantee the quality or quality of goods and/or services sold or traded according to the provisions of the applicable quality standards of goods and/or services, Business actors have an obligation to provide opportunities for consumers to test and try the said goods and services and provide guarantees

guarantees for goods sold and/or traded by business actors, Business actors are required to provide compensation or compensation and/or compensation to consumers for losses resulting from the use, use of goods, and utilization of goods and services sold or traded by business actors to consumers, The obligation of business actors must of course provide compensation or compensation and/or reimbursement to consumers if the goods and services received are not appropriate or are used not in accordance with the agreement

2.3 Principles of Consumer Protection

Protection of consumers is also an effort to ensure legal certainty. Consumer protection is held as a joint effort of all relevant parties, namely the community, business actors and the government. Based on that, Article 2 of the UUPK stipulates 5 principles: The principle of benefit, The principle of justice, The principle of balance, The principle of consumer safety and security, The principle of legal certainty Referring to Law Number 8 of 1999 concerning Consumer Protection, which existed in 1999, however, in that year there were not yet widespread online transactions. online as it is today, where everything is easier, faster and more practical. Each shopping and transaction system has its advantages and disadvantages, and in all of that there are all rights and obligations for business actors and consumers contained in Law Number 8 of 1999 concerning Consumer Protection. It has become mandatory for transactions both online and offline.the principles in article 2 UUPK need to be a concern in transactions both to business actors and consumers. The existence of the principle of benefit, the principle of justice (acting fairly and not cheating) in transactions, the principle of balance, the principle of security in transactions and consumer safety , and most importantly the principle of legal certainty for business actors or consumers

Legal protection is all efforts made by everyone, both the government and the private sector to seek peace, security and welfare of life in accordance with existing human rights. Satjipto Rahardjo also added that legal protection is an act of providing protection to a person's rights resulting from a loss caused by another person and

that protection is given so that his rights can be enjoyed. can provide justice, order, benefit, and peace to each individual.

Before discussing further about consumer protection for the circulation of illegal cosmetics, the author would like to first explain about consumer protection. Consumer Protection is all efforts that guarantee legal certainty to provide protection to consumers. Consumer protection according to Mr. Az Nasution, that consumer protection law is part of consumer law. Consumer protection law is the entirety of principles or rules that regulate and protect consumers in the relationship between supply and use in order to ensure safe conditions for each product and are equipped with correct, clear, and honest information. In this case, it can be seen that consumer protection is nothing but the function of law to provide justice, order, benefit and justice for each individual.

The definition of cosmetics is contained in the Regulation of the Head of the POM RI Number 19 of 2015 the definition of cosmetics is a material or preparation intended for use on the outside of the human body (epidermis, hair, nails, lips, and external genital organs), or teeth and oral mucous membranes. , mainly to clean, perfume, change appearance, and/or correct body odor or protect or maintain the body in good condition.

In terms of selling and distributing cosmetics, it is a must to meet the standards and/or requirements for quality, safety, and benefits in accordance with the provisions of the legislation, this can be seen in Article 2 of the Regulation of the Minister of Health of the Republic of Indonesia Number 1176/Menkes/Per/VIII /2010 About Cosmetic Notifications. In addition, as a business actor, it is obligatory to carry out obligations as stated in Article 7 of Law Number 8 of 1999 concerning Consumer Protection, namely:

The obligations of business actors are:

1. have good intentions in carrying out their business activities;
2. provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance;
3. treat or serve consumers correctly and honestly and non-discriminatory;
4. guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
5. provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or guarantees for goods manufactured and/or traded;
6. provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services;
7. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement."

Case Position in Decision Number 873/PID.SUS/2019/PN BPP where the perpetrator businesses that carry out their business activities within the territory of the Republic of Indonesia. The defendant named Novita Ariani, the owner of the Novi Cosmetics shop and owner of the Novita Cosmetics Instagram account to run his business. The defendant deliberately traded cosmetics and drugs that were not have distribution authorization on Instagram account and in the shop owned by the defendant. In the decision Number 873/PID.SUS/2019/PN BPP, it was started from information by society regarding the distribution of cosmetics and drugs that without having permission from authorized party. So that when they are tried, the business actors are snared with Article 197 in conjunction with Article 106 paragraph (1) UURI Number 36 of 2009. If seen With UUPK, it turns out that UUPK can be used to ensnare business actors, if the consumer himself reports the loss caused by the businessmen.

A. Forms of Preventive Protection Against Illegal Cosmetic Products according to UUPK and related regulations Preventive protection is legal protection provided by government with the aim of preventing violations before they occur. Thing This is contained in the legislation with the aim of preventing a violation and provide signs or limitations in perform an obligation. With preventive protection is a form of legal protection that is directed at protecting a person's rights from the possibility of violations by other people or third parties against the law. 4 With this preventive legal protection, It is hoped that this protection can encourage the government to consider every decision making, and the public can critically objected to the decision. 5 As for the form preventive protection is contained in the Protection Act Consumer.

1. According to Law No. 8 of 1999 concerning Consumer Protection Article 2 explains that consumer protection is carried out as joint efforts based on 5 (five) relevant principles in development national, namely: Benefit Principle This principle is intended to mandate that all efforts in implementation of consumer protection must provide maximum benefits in the interest of consumers and business actors as a whole. Principle of justice This principle is intended so that the participation of all people can be realized effectively maximum and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly. Principle of balance This principle is intended to provide a balance between the interests of consumers, business actors, and the government in a material and spiritual sense. The point is that in the consumer protection law it is regulated so that:

the position of business actors and consumers in a balanced position and influence each other, no party is stronger than the only one. Consumer Safety and Security Principles. This principle is intended to provide guarantees for the safety and consumer safety in the use, use, and utilization goods and/or services consumed or used. Principle of Legal Certainty This principle is intended so that both business actors and consumers obey the law and obtain justice in the implementation of protection consumers and guarantee legal certainty. If there are

business actors who Doing acts that are prohibited for business actors, it is certain that there will be sanctions law for these business actors because of legal certainty. The five principles mentioned above, if the substance is considered, can be divided into 3 (three), namely:

- a. The principle of expediency which includes the principle of safety and security consumer safety,
- b. The principle of justice which includes the principle of balance,
- c. The principle of legal certainty.

B. Forms of Repressive Protection Against Illegal Cosmetic Products according to UUPK and related regulations According to Satjipto Rahardjo in his book entitled Legal Studies, legal protection is "Providing protection for human rights" human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by

law". 7 The legal purpose of repressive legal protection is to resolve disputes. Handling in resolving the dispute carried out by the competent judicial body, both in absolute and relatively. Dispute resolution can be done by litigation and non-litigation. Dispute settlement by litigation is resolved through the Court and non-litigation dispute resolution by establishing a Protection Agency National Consumers, Non-Governmental Consumer Protection Agency Society, and the Consumer Dispute Settlement Agency. Article 4 of Law Number 8 of 1999 concerning Protection Consumers who declare that consumer rights are:

1. the right to comfort, security, and safety in consume goods and/or services;
2. the right to choose goods and/or services and obtain goods mendapatkan and/or services in accordance with the exchange rate and conditions as well as promised guarantee;
3. the right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services;
4. the right to have their opinions and complaints heard on goods and/or services used;
5. the right to get advocacy, protection, and efforts proper settlement of consumer protection disputes;
6. the right to receive consumer guidance and education;
7. the right to be treated or served correctly and honestly and not discriminatory;
8. the right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as it should be;
9. rights regulated in the provisions of laws and regulations other.

In protecting consumers against illegal cosmetic products and protect consumer rights contained in Article 4 of Law No 8 of 1999 concerning Consumer Protection, consumers

are proven that their rights have been violated can file a lawsuit contained in article

Article 45

- a. Every consumer who is harmed can sue business actors through the agency tasked with resolving disputes between consumers and business actors or through the courts located in general court environment
- b. Consumer dispute resolution can be reached through the courts or out of court based on the voluntary choice of the parties who dispute
- c. Settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as regulated in law
- d. If a consumer dispute resolution effort has been chosen outside, court, a lawsuit through the court can only be taken if: the attempt is declared unsuccessful by either party or by disputing parties.

In Article 45 of Law No. 8 of 1999 concerning Protection Consumers provide two options, namely suing business actors through: an institution in charge of resolving disputes between consumers and actors business or through a court within the general court environment. If

The settlement is carried out out of court, namely through the Agency for Consumer Dispute Resolution (BPSK). Consumer Dispute Resolution at the Consumer Dispute Settlement Agency prioritizing protection against consumer rights and also create a protection system consumers that contain elements of legal certainty so as to foster awareness for business actors to be honest and responsible in producing goods or services. The Consumer Dispute Settlement Agency handles cases that generally civil in nature, which is generally in the form of direct compensation experienced by consumers due to errors / negligence of business actors. Solution disputes at the Consumer Dispute Settlement Agency are carried out by: conciliation, mediation, and arbitration.

3. CONCLUSION

Legal protection against illegal cosmetic products includes legal protection (preventive and repressive). Preventive protection This means that prevention is carried out in the form of the formation of regulations and policies in the form of Law No. 8 of 1999 concerning Consumer Protection, Law No. 36 on Health and Minister of Health Regulation No. 1175 concerning Cosmetics Production Permit While repressive legal protection is law enforcement in in the event of a violation of the Act. In this case consumers can file legal remedies through institutions that tasked with resolving disputes between consumers and business actors or through the courts in the general court environment. If settlement is carried out out of court, namely through The Consumer Dispute Settlement Agency (BPSK) is carried out by: conciliation, mediation, and arbitration. the results of the decision No.

873/Pid.Sus/2019/PN Bpp, business actors are only imprisonment for 1 (one) month and a fine of IDR 3,000,000.00 (three million rupiah) The author considers this Decision to be appropriate with the Health Act but not yet in accordance with the Consumer Protection Act which can provide legal protection in the form of preventive and legal protection in the form of repressive legal protection for cosmetic products illegal activities that are still being traded by business actors who do not responsible while according to Article 62 paragraph (1) of the Law Number 8 of 1999 concerning Consumer Protection Regulations regarding administrative sanctions, business actors can be imposed with sanctions additional, namely in the form of a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah) because legally the violation has been fulfilled business actors in Article 8 UUPK.

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