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Consumer Protection Against Illegal Cosmetic Products Produced by Beauty Salons (Study on BPOM Semarang)

*Perlindungan Konsumen Terhadap Produk
Kosmetik Ilegal yang Diproduksi oleh Salon
Kecantikan (Studi pada BPOM Semarang)*

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Abstract

The purpose of this research is to identify and examine legal protection efforts against consumers who use illegal cosmetic products produced by beauty salons, as well as identify and examine the implementation of Law Number 8 Year 1999 on Consumer Protection against beauty salons that produce illegal cosmetics in Semarang City. This research uses qualitative research methods with empirical legal research. The theories used in this research are legal protection theory and supervision theory. The results of this study show that (1) consumer protection efforts against illegal cosmetics have been implemented well and in accordance with the theory of legal protection, and (2) supervision carried out by BPOM and LP2K



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against illegal cosmetics has been implemented well and in accordance with the provisions of the Consumer Protection Law. Based on the research that has been conducted, it can be concluded that (1) the existence of illegal cosmetic products circulating in the community is caused by the lack of government supervision of illegal cosmetic products, products that are cheap and easily obtained by consumers, and the lack of information for consumers regarding the dangers of illegal cosmetics; (2) the government's efforts to supervise the circulation of illegal cosmetics are in accordance with Law Number 8 of 1999 concerning Consumer Protection, Law Number 17 of 2023 concerning Health, Regulation of the Food and Drug Supervisory Agency Number 23 of 2019 concerning Technical Requirements for Cosmetic Ingredients.

KEYWORDS *Illegal Cosmetics, Beauty Salon, Consumer Protection.*

Tujuan dari penelitian ini adalah untuk mengidentifikasi dan menguji upaya perlindungan hukum terhadap konsumen yang menggunakan produk kosmetik ilegal yang diproduksi oleh salon kecantikan, serta mengidentifikasi dan menguji implementasi Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen terhadap salon kecantikan yang memproduksi kosmetik ilegal di Kota Semarang. Penelitian ini menggunakan metode penelitian kualitatif dengan penelitian hukum empiris. Teori yang digunakan dalam penelitian ini adalah teori perlindungan hukum dan teori pengawasan. Hasil dari penelitian ini menunjukkan bahwa (1) upaya perlindungan konsumen terhadap kosmetik ilegal telah dilaksanakan dengan baik dan sesuai dengan teori perlindungan hukum, dan (2) pengawasan yang dilakukan oleh BPOM dan LP2K terhadap kosmetik ilegal telah dilaksanakan dengan baik dan sesuai dengan ketentuan Undang-Undang Perlindungan Konsumen. Berdasarkan penelitian yang telah dilakukan, dapat disimpulkan bahwa (1) adanya produk kosmetik ilegal yang beredar di masyarakat disebabkan oleh kurangnya pengawasan pemerintah terhadap produk kosmetik ilegal, produk yang murah dan mudah diperoleh oleh konsumen, serta kurangnya informasi bagi konsumen mengenai bahaya kosmetik ilegal; (2) upaya pemerintah untuk mengawasi peredaran kosmetik ilegal sesuai

dengan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Peraturan Badan Pengawas Obat dan Makanan Nomor 23 Tahun 2019 tentang Persyaratan Teknis Bahan Kosmetik.

KATA KUNCI *Kosmetik Ilegal, Salon Kecantikan, Perlindungan Konsumen*

Introduction

In this modern era, cosmetics have become a major necessity for both men and women. Even teenagers or adults cannot be separated from these products. Based on the Regulation of the Minister of Health of the Republic of Indonesia No. 445/MenKes/Permenkes/1998 concerning Ingredients, Dyes, Substratum, Preservatives and Sunscreens in Cosmetics, cosmetics are a combination of materials that are ready for use on the outside of the body (epidermis, hair, nails, lips, and external genital organs), teeth, and oral cavity which functions to clean, increase attractiveness, change appearance, protect to stay healthy, and improve body odor. According to data from the Central Statistics Agency (BPS), the cosmetics industry, which includes the pharmaceutical, chemical, and traditional medicine industry sectors, experienced growth of 9.61% in 2021. In addition, the Food and Drug Supervisory Agency of the Republic of Indonesia (BPOM RI) also noted that the cosmetics industry experienced an increase in the number of companies by 20.6%, namely 819 cosmetics industries increased to 913 industries from 2021 to July 2022. This causes the beauty products on the market to be more diverse. This diversity makes consumers confused in determining which cosmetic products are good. In fact, not a few consumers want fast and instant results. So that there are business actors in the beauty sector who take advantage of these conditions by producing their own cosmetic products using hazardous ingredients.

Beauty salons as one of the business actors in the beauty sector can easily produce and sell their own cosmetic products. In fact, these cosmetic

products are products without a distribution permit (TIE) that has been determined by BPOM. This is a clear violation of Law No. 8 of 1999 concerning Consumer Protection in article 8 paragraph 1 letter a which states that business actors are prohibited from producing and/or trading goods and/or services that do not meet or do not comply with the required standards and statutory provisions.

BPOM is a government agency that plays a role in monitoring the circulation of food and drugs, BPOM emphasizes to the public to avoid illegal cosmetics that contain hazardous ingredients. According to Article 4 of Presidential Regulation No. 80/2017 on the Food and Drug Supervisory Agency, BPOM has the authority to issue product distribution permits and certificates in accordance with safety, efficacy/benefit and quality standards and requirements, as well as drug and food testing in accordance with statutory provisions; conduct intelligence and investigations in the field of drug and food control in accordance with statutory provisions; and impose administrative sanctions in accordance with statutory provisions.

Indonesia has ratified the Agreement Establishing the World Trade Organization and has also established Law No. 8/1999 on Consumer Protection. However, in practice, consumer protection still causes many problems that are influenced by several factors. Broadly speaking, the problems faced in the implementation of the GCPL are the low level of consumer awareness of their rights, the low level of consumer education, and the wrong perception of business actors who think that accommodating consumer protection will cause losses to them.

Methods

The research method used by the author in this study to analyze is to use qualitative research methods. Qualitative research method is a method with descriptive research, namely by recording all events seen, heard, and read (through interviews, field notes, photos, recordings, documents, and others) (Nasution, 2008).

The type of research used in this research is empirical legal research. Empirical legal research is research that examines primary data. Empirical legal research is carried out by directly reviewing the legal elements that

exist in reality in the field and digging up information related to legal behavior in accordance with the research theme. Researchers use this type of empirical legal research, because data sources are obtained based on subjects in the field through interviews and observations to obtain the data needed in this study. So that the results obtained from this research will reveal various factors that can be used as a reference related to the factors that cause problems and their resolution obtained directly by the relevant sources.

The research focus in this study is to discuss legal protection efforts for consumers who use illegal cosmetic products and the roles and responsibilities of the Semarang Food and Drug Supervisory Agency (BPOM) preventively and repressively against the circulation of illegal cosmetic products in Semarang City. Meanwhile, the research locations chosen by the researchers are BPOM, LP2K Semarang City, and LBH Rupadi Semarang City. This research uses two types of data sources, namely primary data in the form of data from interviews, observations, and documentation; secondary data in the form of literature review on consumer protection, especially against illegal cosmetic products; and tertiary data as a complement in the form of KBBI.

Result & Discussion

1. Implementation of Law Number 8 Year 1999 on Consumer Protection on Illegal Cosmetics in Semarang City

Policy or a policy made by the government, is a translation of the word policy. Wisdom can be interpreted as a series of actions that have a specific purpose which will certainly be followed and carried out by the parties involved in this case the policy maker to solve a problem (a purposive course of problem or matter of concern). Another definition is a collection of several decisions carried out by a policy maker or political group in an effort to choose goals and ways to achieve these goals. Basically, it is the party that makes the policy that has the power to implement (Fatkuroji, 2016).

Analysis in a policy becomes an applied social science discipline which uses rational argumentation by providing facts in explaining, arguing, assessing with the aim of producing thoughts in order to solve public problems. Policy analysis is divided into three broad categories regarding its function, namely:

- 1) Allocation, namely in analyzing a policy it is necessary to allocate the research, development and policy analysis agenda itself which is based on a study of policy issues at a more macro and strategic level.
- 2) Inquiry, in this case it can be done if all or part of the research and development agenda has been implemented and has achieved its results.
- 3) Communication, this function can be carried out if the policy analysis has produced various ideas or policy proposals that are truly realistic. This includes the process of delivering policy alternatives or ideas to all parties involved in order to get feedback on applicable policies or ideas that have been proposed.

Talking about implementation will discuss the output that occurs after a policy is made. The task of an implementation is to form an activity which will facilitate the objectives of a policy to be carried out as an output of government activities. It includes the formation of "a policy delivery system" where certain means are designed and implemented in the hope of reaching the desired goal (Winarno, 2014). Policy implementation is an action taken by an individual in the public or private sector (or group) which is directed towards achieving the objectives set out in the previous policy decision (Van Meter & Van Horn, 1975).

There are six factors that measure the success or failure of an implementation, namely:

- 1) Clear and consistent policy objectives or targets, which detail the targets expected through the policy and the standards for measuring their achievement.
- 2) Strong theoretical support in designing policies, which is the basis for formulating policies that are implemented.
- 3) The implementation process has a clear legal basis so as to ensure compliance by policy makers either in the field or target groups, where the regulations contain the stages of policy implementation.

- 4) Stakeholder support, namely support from parties related to the implementation of the implemented program.
- 5) Commitment and expertise of policy implementers, where knowledge and understanding of the definition and objectives of the policy; the attitude of stakeholders regarding the policies that have been made; and the intensity of this attitude.
- 6) Stability of social, economic and political conditions including aspects of the adequacy of economic resources, how much and how policies can affect existing socio-economic conditions, and how the public responds to these policies.

The writing of this article discusses legal protection for consumers of illegal beauty salon cosmetic products, in this writing using Law Number 8 of 1999 concerning Consumer Protection. The law explains the purpose of the regulation, including:

- 1) Increase consumer awareness, ability, and independence to protect themselves;
- 2) Raising the dignity of consumers by preventing them from negative excesses in the use of goods and / or services;
- 3) Increase consumer empowerment in choosing, determining, and demanding their rights as consumers;
- 4) Creating a consumer protection system that contains elements of legal certainty and information disclosure and access to information;
- 5) Raising awareness of business actors about the importance of consumer protection so that an honest and responsible attitude in business grows;
- 6) Improve the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security, and safety of consumers;

It should be taken into consideration that the author in this case discusses the implementation of Law Number 8 Year 1999 on Consumer Protection of Illegal Cosmetics in Semarang City. This writing only discusses how the protection of cosmetics over illegal cosmetics is implemented within the scope of Semarang City.

The Consumer Protection Law was established with several considerations, including legal provisions to protect consumer interests. Consumers as one of the interacting parties often feel disadvantaged by the

actions of business actors who do not fulfill their obligations. Therefore, the Consumer Protection Law does not only regulate consumers, but also regulates business actors. This is in line with the fact that products in the form of goods or services will not be absorbed without consumers and consumers will always need goods or services originating from business actors.

Regulations regarding the rights of business actors are regulated in Article 6 of the Consumer Protection Law. Specifically, the rights owned by the clinic are regulated in Article 36 of Minister of Health Regulation Number 9 of 2014 concerning Clinics. Meanwhile, in general, the obligations of business actors are regulated in Article 7 of the Consumer Protection Law (Nugroho, 2011). The author summarizes that the obligations of business actors are as follows: (1) good faith; (2) provide information; (3) serve in the same way; (4) provide guarantees; (5) provide opportunities to try; and (6) provide compensation.

Regarding the obligations of the clinic, it is regulated in Article 35 of Permenkes No. 9/2014 concerning clinics. Clinic organizers are obliged to:

- 1) post the name and classification of the clinic;
- 2) make and report to the Health Office a list of medical personnel and other Health personnel working at the Clinic by including:
 - a. Registration Certificate (STR) and Practice License (SIP) numbers for medical personnel;
 - b. license number as a registration mark or Registration Mark Letter (STR), and Practice License (SIP) or Work Permit (SIK) for other Health workers;
- 3) carry out recording for certain diseases and report to the district/city Health Office in the context of implementing government programs in accordance with statutory provisions.

Therefore, it can be understood that business actors are obliged to provide correct, clear and honest information about the condition of the goods and provide explanations for use, repair and maintenance, because this information is the right of consumers and it will be very detrimental to consumers if this information is not available. Likewise, this is also the obligation of the clinic as stipulated in Article 35 letter I of Permenkes Number 9 of 2014 concerning Clinics where it is required to provide

correct, clear, and honest information regarding the rights and obligations of patients.

If it is related to the protection of cosmetic consumers, the information contained in a cosmetic package must be information that provides true and clear information. The description can contain the composition of ingredients, usage recommendations, side effects, expiration date and other information that consumers must know.

Based on an interview with the Pharmaceutical and Food Supervisor (PFM) of BBPOM Semarang, it was found that product license application can be done online with several steps, namely (1) through the online notification website; (2) registering a business entity by filling out the form; (3) completing administrative documents; (4) document verification. BBPOM has also made several efforts to protect including: (1) conducting socialization; (2) conducting investigations (checking evidence); (3) destroying products that are proven to be illegal.

This is then reinforced by the results of an interview with the Head of LP2K who explained that efforts to deal with the circulation of illegal cosmetics are carried out by providing guidance and protection for consumers. Guidance efforts are carried out by conducting socialization within the scope of Central Java, and protection efforts are carried out by following up complaints from consumers by providing assistance until the case is resolved.

There are 3 things that can cause information not to be delivered correctly, clearly and honestly (Kristiyanti, 2014):

- 1) Misrepresentation of the cause of damage to consumers, because consumers are trapped by advertisements or brochures of certain products that highlight the advantages of the product promoted while weaknesses are covered.
- 2) Delivery of warnings is clearly made by the manufacturer on the product label, but the fact that consumers do not read the warning that has been delivered and / or such warning is delivered but in place consumers can't read and unclear.
- 3) Instructions delivered to the consumer most related to the products of drugs, because the product of drugs more harmful if consumers make mistakes in consuming Therefore, any consumer who feels injured can

sue the perpetrator through the agency responsible for settling disputes.

Therefore, any consumer who feels injured can sue the entrepreneur through a dispute resolution agency. This is in accordance with Article 45 paragraph (1) of the Consumer Protection Act. Disputes arising between the entrepreneur and the consumer arising from consumer transactions are called consumer disputes (Sidabalok, 2006). In accordance with the provisions of Article 45 (1) of Article 47 of the Consumer Protection Act, the settlement of consumer disputes may be through a court of law, with an immediate claim, and through the court, with a temporary claim and through a Badan Penyelesaian Sengketa Konsumen (BPSK) (Izza & Zafira, 2020).

Settlement of the dispute through a temporary claim is obligatory first to obtain the agreement of the parties, while other means are options that can be obtained after settlement by a failed agreement. According to the results of the interview by the lawyer of LBH Rupadi Semarang explained that the process of consumer protection can be carried out in stages, i.e. (1) consumers report losses to BPOM, Building and Consumer Protection Agency (LP2K), or Consumer Dispute Resolution Agency Semarang; (2) pursue through the court with criminal legal process under Article 378 KUHP (Fraud) if it can't be resolved arbitrarily. In consumer dispute complaints, advocacy can be carried out through litigation or non-litigation through BPSK, but the tendency to handle with stronger legal certainty accompanying advocacy ahead of criminal law complaint in the police.

If you look at the substantive provisions of article 19, paragraph (1) of the Consumer Protection Act, that the liability of the claimant of the business comprises: (1) liability to claim damages for damage; (2) responsibility to claim damage for pollution; (3) liabilities to claim losses for consumer losses. The entrepreneur can be exempt from liability if the factor of theft, defects that arise later in the day is the fault of the consumer.

In order to maximum consumer protection, it needs to undertake strict surveillance to prevent consumers from interacting with illegal cosmetics. According to Marigan Masry Simbolon's theory of surveillance, there are two kinds of surveillance techniques (Simbolon, 2004):

1) Direct monitoring

A direct monitoring is carried out by a manager or leader of the ongoing activities, this monitoring can be in the form of direct inspection and report from the place.

2) Non-direct monitoring

The monitoring carries out from a distance (indirect) through reports that can be seen from written reports and oral reports.

Based on the theory, the author can say that the supervision carried out by BPOM, LP2K related to illegal cosmetics has been implemented in accordance with the provisions of the Consumer Protection Act. Following is the author's report on the actions taken:

- 1) Disclosure through social media, implementation of KIE, education to consumers regarding CLICK checks (Packaging, Label, Contents and Expiry).
- 2) Accompanying if there are consumers who want to report.
- 3) Monitoring by conducting procurement with the police.
- 4) Becoming expert witnesses if they have reached the stage of litigation.

Although it has been done in accordance with the procedures and conditions, the reality is that there are still some consumers who feel harmed by illegal cosmetics. The author argues that the minimum can be said because there are a number of obstacles among them:

- 1) the entrepreneur does not want to be distorted in the care of licences.
- 2) the entrepreneur does not apply the precautionary principle.
- 3) the entrepreneur only wants to get as much profit as possible so as to exclude the safety of the products produced.
- 4) the lack of consciousness and conscious attitude of the consumer so that it is easy to catch up with the cheap price.
- 5) consumer if faced with losses on illegal cosmetics does not report.
- 6) the enterprise is wider the scope of its distribution makes it more difficult to monitor because the production of products increasingly confuses society.
- 7) The regulatory aspects of law enforcement are still inadequate so that legal gaps are still found.
- 8) Lack of law enforcement personnel to conduct routine searches.

2. Efforts to Protect Consumer Users of Illegal Cosmetic Products Beauty Salon in Semarang City

According to Satjipto Raharjo in his book explains that the protection of the law is an attempt to give guarantee to a person's rights so that his rights are not harmed by others and that person can enjoy the rights granted by the law (Raahrdjo, 2000). Another definition according to Philipus M. Hadjon explains that legal protection is the protection of human dignity and dignity under the provisions of the law in force in the country to prevent authoritarianism, such preventive efforts can be preventive legal protection and repressive legal protection (Pijoh, 2019).

The legislative regulations in Indonesia already regulate the legal protection of consumers regulated by the Consumer Protection Act. (UUPK). Consumer protection is an attempt to guarantee legal certainty in order to provide protection to consumers (Artha, 2019). Consumers play an essential role in the economy as well as being a major factor in the smoothness of a business by buying and consuming goods and/or services produced by the entrepreneur, which will provide a benefit to the entrepreneur.

It is explained in article 1 para 3 UUPK concerning the definition of Entrepreneur, which explains that the entrepreneur is any individual person or enterprise entity, whether in the form of a legal entity or a non-legal entity established and located or carrying out activities in the legal territory of the State of the Republic of Indonesia, either alone or jointly through an agreement on the maintenance of business activities in various economic fields. Whereas the definition of the Consumer, according to Article 1 para 2 UUPC, it is stated that the consumer is a consumer means any person who uses goods and / or services available in the community, either for the benefit of himself, family, other people, or other living creatures and not to be traded.

As an entrepreneur it is necessary to pay attention to the regulations that have been established as standards and requirements in producing to distribute products in particular cosmetic products in order to guarantee consumer rights. These regulations include (1) the Consumer Protection Act (UUPK); (2) the Health Minister's Regulation No.

1175/Menkes/Per/VIII/2010 on Cosmetic Notification, which in Article 2 states that the cosmetics in circulation must meet the requirements of quality, safety, and usability; (3) the Law No. 17 of 2023 on Health contained in Articles 138 and 143; and (4) Article 2 of the Regulation of the Drug and Food Supervisory Authority No. 23 of 2019 on the Technical Requirements of Cosmetics Materials which says that the Entrepreneur is obliged to guarantee that cosmetic products produced for domestic distribution and/or imported for distribution in the territory of Indonesia meet the technical requirements of cosmetical materials.

Consumer protection that can be granted by the government against consumers who suffer losses as a result of the use of cosmetic products containing harmful substances with administrative sanctions in the form of damages up to Rs. 200,000.00 (two hundred million rupees) to the perpetrator of the violation, in accordance with Article 60 paragraph (2) of the Consumer Protection Act.

Based on the results of interviews with BPOM, LP2K, and LBH, the authors draw the conclusion that the three institutions have implemented the theory of legal protection as follows:

- 1) Preventive Law Protection
 - a. BBPOM Institutions: perform product quality checks, provide consensus or socialization to consumers directly and through social media.
 - b. LP2K: training by educating the public, support if consumers have problems, with BBPOM perform product surveillance, disseminate information to the public related to advocacy information.
- 2) Protection of Repressive Law
 - a. BBPOM: sanction and seizure of products to business perpetrators who have committed violations.
 - b. LP2K: advocacy escort for consumers, to be expert witnesses in trials related to product disputes.
 - c. LBH Rupadi: to be the consumer legal authority if you want to bring the dispute to the litigation path, to provide legal advice to consumers.

The author takes the result from his conducted interviews that he has carried out his efforts to protect consumers against illegal cosmetics well

in line with the theory of Legal Protection, but has not been maximized well. The author summarizes several obstacles and obstacles faced so as to minimize illegal cosmetics surveillance for consumers:

- 1) Consumers who lack awareness and lack of literacy about the dangers of illicit cosmetic because they can still be easily caught up with cheap prices with instant results.
- 2) Consumer if suffered losses from illegal Cosmetics do not report.
- 3) Many consumers make purchases through online shops, this makes it difficult to monitor because its wide range makes the entrepreneur can sell directly to the consumer, and sometimes the factory is made in the houses.
- 4) From the government and law enforcement agencies who lack the staff to carry out surveys because of the very wide reach of entrepreneurs.
- 5) The area of regulatory aspects are not maximum and many legal gaps are still found.

Conclusion

Based on the results of the research description and discussion, the following conclusions can be drawn that the supervisory actions taken by BBPOM and LP2K against consumers of illegal cosmetics are an implementation of Law Number 8 Year 1999 on Consumer Protection. This can be seen from the efforts that these institutions have made to protect consumers from the circulation of illegal cosmetics, namely conducting counseling through social media, implementing IEC, and providing education to consumers; providing assistance to consumers who report; conducting product inspections with the police; and becoming expert witnesses at the litigation stage.

In addition, consumer protection efforts by BBPOM, LP2K, and LPH Rupadi institutions are implemented based on the theory of legal protection, namely preventive legal protection and repressive legal protection. In preventive legal protection, BBPOM institutions conduct checks on product quality before marketing, and provide socialization to the public as consumers both directly and through social media. Meanwhile, LP2K institutions provide guidance and assistance to consumers, provide advocacy information, and conduct product

supervision together with BBPOM. In repressive legal assistance, BBPOM, LP2K, and LBH Rupadi also carry out consumer protection efforts which include giving sanctions and confiscating products to business actors who commit violations by BBPOM, escorting advocacy and becoming expert witnesses by LP2K, and becoming consumer lawyers in litigation by LBH Rupadi.

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*Cujus est commodum,
ejus debet esse inc
ommodum*

Whoever receives the benefit should
also bear the burden

This principle is often invoked in legal contexts to indicate that if someone enjoys a certain advantage or benefit from a situation, they should also accept any associated disadvantages or burdens.

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