



Analysis of Consumer Protection Regulations Against Unlicensed Cosmetics by BPOM. Case Study: Etude House Cosmetic

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Abstract

The purpose of this research is to analyze the regulation of consumer protection for cosmetics that are not licensed by BPOM. The research method used by the author is secondary research based on library research, laws and regulations, and related journals. The results of the study are the authors can find out that the legal protection process that has been implemented in Indonesia has been carried out properly and in accordance with existing procedures, legal remedies taken by consumers as a form of protest are more contextual because of the rapid development of technology and the role of BPOM in overcoming cosmetic products that have been circulating in the community are complex.

Keywords: Cosmetics, BPOM, Etude House Cosmetics

A. Introduction

Cosmetics are one of the needs of a person from infancy to old age and for all genders, both male and female. Especially for women. Generally, cosmetic products that are used instantly aim to beautify themselves, take care of the body and so on. But everything that is instant has its own effects or risks. The existence of risks such as the use of hazardous materials in cosmetics itself can cause problems for the skin in the short or long term (Tim Warta Pontianak, 2020). Therefore, it is hoped that there will be harmony between producers and consumers which is bridged by the role of the Food and Drug Supervisory Agency (BPOM).

Etude House Cosmetic is a brand originating from South Korea which has not yet been validated for its distribution permit in Indonesia. Etude House Cosmetics has a variety of products ranging from skin care, body care, perfume, shampoo and so on. Etude House itself was first established in South Korea in 1966 and circulated in Indonesia in 2008.

Reporting from the electronic newspaper stated that Etude House Cosmetic is a dangerous cosmetic product and does not have a permit from the Food and Drug Supervisory Agency (BPOM). After doing research and testing the hypothesis, it was found that one of the skin care products from Etude House Cosmetics contains hazardous materials, namely heavy metals. Heavy metals themselves have high antimony content, which has a short-term risk of causing symptoms such as dizziness and depression. And when consumed prolonged by the skin can cause irritation to the skin, lungs and severe eye irritation. And a more western risk is that it can cause serious problems, namely cancer (DRUGS AND FOOD SUPERVISORY AGENCY OF THE REPUBLIC OF INDONESIA, 2008). Public awareness regarding insight into cosmetic

products, the content and content in cosmetics is still very limited. This lack of insight causes many consumers to be disadvantaged because they are tempted by cheap cosmetic prices and are easily available anywhere. In the absence of considerations of thought where the role of the Food and Drug Supervisory Agency is needed in identifying the substance content in the product, the expiration date and the effects on the skin due to the cosmetics themselves.

Based on Article 19 of Law Number 8 of 1999 concerning consumer protection, business actors are required to provide compensation (ACT REPUBLIC OF INDONESIA, 1999). But the government also does not remain silent, because the role of the Food and Drug Supervisory Agency here is to foster, supervise, and facilitate consumers of circulating cosmetic products and as consumer protection to obtain their rights such as changing goods or services or health care in accordance with the provisions of the legislation. - applicable law (ACT OF THE REPUBLIC OF INDONESIA, 1999).

Based on the Regulation of the Head of the POM RI No. 2 of 2014 concerning the second amendment to the Regulation of the Head of the POM No. HK.03.1.23.08.11.07517 of 2011 concerning Technical Requirements for Cosmetic Ingredients, there are materials that are not permitted to be used in the manufacture of cosmetics because they are identified as being able to cause problems or damage human organs. Therefore, on March 19, 2018, Etude House Cosmetics withdrew all of its products circulating in the market, apologized to consumers and returned all the consumers' money that was harmed (HEAD OF THE DRUG AND FOOD SUPERVISORY AGENCY OF THE REPUBLIC OF INDONESIA, 2011).

Legal Protection Theory, according to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law (Rahardjo, 2009). Meanwhile, consumer legal protection itself is the entire regulation and law that regulates the rights and obligations of consumers and producers arising from their efforts to meet their needs and regulate efforts to ensure the realization of legal protection for the interests of consumers (Janus, 2014). Legal protection for the community includes 2 things, namely preventive protection, which is the granting of rights to the people or the community to express opinions, complaints before government decisions, repressive protection,

Legal Certainty Theory, according to Sudikno Mertokusumo, legal certainty is a legal instrument that guarantees that the law is indeed implemented. And those who are entitled according to law can get their rights and that the decision can be implemented. Legal certainty is closely related to justice. But the law itself is not synonymous with justice.

Normatively, legal certainty can be interpreted as a statutory regulation that is made and obtains a definite law. Because the law can regulate in detail, clearly and logically about everything so that there is no doubt because it can be validated for truth. And will not clash or conflict with the norms prevailing in society.

Sudikno explained that although legal certainty is very closely related to justice, law and justice are two different things. Law has properties that are relatively general, binding on every citizen, while justice has a subjective and individualistic predicate. From these things it can be stated that law and justice are two different

things from different perspectives (Mertokusumo, 2005). So, legal certainty itself is the implementation of the law in accordance with the applicable rules based on the 1945 Constitution, laws and regulations, etc. So that the community can ensure that the written and listed laws can be implemented. In understanding legal certainty,

B. Method

The type of research used by the researcher in this thesis is normative legal research which is based on scientific research procedures by determining legal certainty based on the logic of legal scholarship from the side of normative law. The normative meaning here can be emphasized in the review of a legal case that is viewed from the doctrine or literature. The data sources used by the researchers are secondary data sources obtained from library research which are related to the type of research regarding the regulation of a case.

The data obtained is the result of literature study and analysis using qualitative descriptive methods, by collecting data from literature studies, newspapers, laws and related journals and then compiled and analyzed to be used as a basis for problem solving and drawing conclusions.

C. Results and Discussion

A. Protection of Consumers Consuming Cosmetics Without a BPOM Permit

1. Definition of Consumer Legal Protection

Consumer legal protection is the overall rules and laws that regulate the rights and obligations of consumers and producers arising from their efforts to meet their needs and regulate efforts to ensure the realization of legal protection for the interests of consumers (Janus, 2014).

2. Consumer Rights

The rights of consumers are (ACT REPUBLIC OF INDONESIA, 1999): The right to choose goods, the right to receive compensation and compensation, the right to receive appropriate goods or services, the right to receive the truth of all definite information, the right to service without discrimination.

3. Consumer Protection Principles

- a. Benefit Principle. Consumers have the right to obtain benefits either for themselves or for many people.
- b. Principles of Justice. Consumers have the right not to be different from other consumers which is usually done by producers or distributors.
- c. Balance Principle. The balance that applies here is the actions of consumers and producers that do not harm one party to another.
- d. Principles of Security and Safety. With legal guarantees on the principle of consumer rights in getting their rights fully, therefore consumers will not be harmed which losses to be obtained have been guaranteed by the state and government in the applicable laws.
- e. Principle of Legal Certainty. The principle of legal certainty that applies to producers and consumers is expected to be a reference material for producers and consumers to comply with and carry out legal regulations that have been made and regulated in laws that apply to both parties.

4. Consumer Protection Purpose

The purpose of making consumer protection is described in Article 3 UUPK 8 of 1999, which can be explained as follows (ACT OF THE REPUBLIC OF INDONESIA, 1999):

- a. Increase consumer awareness, ability, and independence to protect themselves. This goal is enforced so that the public or consumers can understand carefully and thoroughly what things consumers should not do in terms of breach of obligations. With the principle that guarantees the safety and security of consumers, consumers must still be introspective and analyze hazardous materials or compositions that are not recommended by the government before buying or consuming these goods.
- b. Raise the dignity of consumers by preventing them from negative access to the use of goods and or services. One of the principles given to consumers is to get as many benefits as has been stated in the law. The benefits described are benefits for consumers, producers and other related parties. And maybe it will also be useful for the country.
- c. Increasing consumer empowerment in choosing, determining, and demanding their rights as consumers. Consumer empowerment can be realized by the government or producers. In this way, consumers are free to express their aspirations, provide criticism and suggestions to producers on the goods that have been published. Consumers are given the best right to consume goods and services as regulated in the law that discusses consumer protection.
- d. Creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information. The openness in question is concerning the rights of consumers, namely getting benefits and obligations of producers, namely having to provide true information to consumers without adding or subtracting information about the products being marketed.

5. Legal Protection Regulatory Procedures for Consumers

Satjipto R, is of the opinion that legal protection is an effort to protect the human rights of someone who has been harmed by another party and so that the community can enjoy all the rights granted by law. In this case, it can be explained that with the existence of law enforcement that is immediately carried out, it must be in line with the applicable legal instruments (laws). So based on Article 1 paragraph 1 of the Law on Consumer Protection, it can be concluded that consumer protection is enforced with the aim of preventing arbitrary treatment carried out by producers or business actors in carrying out their business activities that can cause harm to consumers or related parties. in the production to consumption of these manufactured goods (ACT OF THE REPUBLIC OF INDONESIA, 1999).

The Food and Drug Supervisory Agency (BPOM) is responsible for problems related to losses or complaints from the public with a role as supervisor and controller because BPOM is a non-ministerial government agency that carries out government affairs in the field of supervision. And the government or the state is the one who follows up to provide security and justice for every citizen involved from the production process to consumption. Including dealing with things that deviate from the procedures of legal instruments that have been set.

Even though cosmetics are not consumed, such as drugs and food, they must receive strict supervision, they must also receive supervision because the ingredients contained must comply with applicable standard instruments, for example, they must not use materials that can harm consumers and consumers of goods. the. Because if there are ingredients that endanger the safety of consumers, it is feared that they can have an adverse effect on the health of consumers themselves, such as having a fatal effect on certain body parts in the near or long term.

B. Consumers' Legal Efforts Against Cosmetics That Don't Have a BPOM Permit

1. Consumers' Legal Effort

Consumers who realize that there are rights for consumers as detailed above, critical thinking is born where these consumers can protest against cases of types of cosmetics such as the example that is the current case study, namely from Etude House Cosmetics. Starting from consumer losses, there are reports regarding Etude House cosmetic products on various platforms.

Digital platforms are closely related to the production process where there is a lack of supervision carried out by relevant government institutions, namely BPOM in terms of supervision and cooperation with these platforms as a means of distributing production carried out by producers. In avoiding losses from producers, consumer protection is used to describe the form of legal protection provided to consumers (Pratiwi & Nurmawati, 2019). In the journal, it is connected with cooperation between consumers and producers. With honesty and fair fulfillment of producers' obligations, it will minimize the occurrence of things concerning the safety and security of consumers.

Consumers, in this case, are required to provide accurate and detailed reporting regarding the losses they experience to the government as a bridging party between consumer and producer problems. With the reporting done by consumers, the government will take action and provide legal decisions in accordance with applicable laws. Reporting from the data and facts listed on the official website of Etude House Cosmetics related to some of these cosmetic products in circulation, it can be concluded in the following table:

Table 1. Consumer complaint data related to several cosmetic products from Etude House Cosmetics

Year	Consumer	Product name	Specific Offense
2018	A	Sunrise Natural Corrector	The product contains harmful ingredients that cause skin problems
2018	B	Sunrise Natural Corrector	The product contains niacinamide which cannot be consumed by sensitive skin
2018	C	Beauty Shot Face Blur	The product causes excess oil and causes acne
2017	D	Sunrise Natural Corrector	The product causes the face to be cracked

Table 2. Data on consumer complaints at BPOM

No	Product name	Manufacturer/Distributor Name	Reason for Withdrawal	Country of Information	Information
1.	Etude House - AC-Clean-Up Mild Concealer, Sunrise Natural Corrector	Etude House	Contains Antimony	Korea	Not Notified
2.	Etude House - Drawing Eyebrow Duo #03 Gray Brown, Beauty Shot Face Blur	Etude House	Contains Antimony	Korea	Not Notified

Consumers in buying beauty products must receive health, safety and security guarantees. In daily practice, it turns out that not a few consumers are harmed by buying cosmetic products that do not meet applicable regulations. Against this loss, consumers can take actions to obtain legal protection. The results show that from consumer reviews we can draw conclusions about skin problems caused by consuming these products. With this, it is very necessary for the government's efforts to help educate or overcome the circulation of cosmetics that do not have a permit and stop their circulation

2. Legal Efforts Taken by the Government to Help Consumers

Safety and security are aspects of rights that must be accepted by consumers. Therefore, the producer is obliged to provide true information and there should be no addition or subtraction of information on the product that he disseminates. This is closely related to keeping citizens healthy and consuming whatever benefits their lives.

Legal protection provided by the government other than preventive is repressive legal protection, which means law enforcement for anyone found guilty. When it is felt that the consumer has received a fraud or one of his rights is not fulfilled, the consumer is obliged to report it to the relevant party. For example, in cases of cosmetics that are illegal and circulated without permission from BPOM, cosmetic consumers are required to report to BPOM as a government agency that handles food, drug and other problems to immediately follow up on matters related to the case. Where this body is a dispute resolution agency outside the court.

The government in charge of supervising the distribution process has an obligation to guarantee consumers and provide sufficient insight. The importance of collaborating with related institutions is to speed up reporting regulations until the actions that must be taken by the government to provide appropriate sanctions in accordance with applicable laws.

In this case, BPOM can work together with these platforms to provide trading standards on its platform that can be passed by exchanging information between BPOM and the platform relating to the supervision of cosmetics, medicines and food that are in accordance with the standards set. valid and of course experiencing permission from BPOM

3. Responsibilities as Business Actors

In this case, business actors are also expected to play a role in providing true information to consumers on the goods and services being marketed. For example, for cosmetic traders who feel that they are detrimental to consumers for the products they distribute, producers must be ready to accept all applicable legal decisions, especially if the products being marketed have a negative effect or big losses for consumers. Therefore, cosmetic manufacturers are also required to report every detail of the goods to be marketed to BPOM as the authorized Food and Drug Supervisory Agency in Indonesia.

With the rule of law, it is hoped that it will harmonize between consumers, producers and the government. In this case, producers are prohibited from threatening consumers or providing information that is considered false. Producers must also understand what are their responsibilities in running their business. As has

been stated in Articles 19 to 28 of the UUPK regarding the responsibilities of business actors. As follows :

"Business actors are responsible for providing compensation for damage, pollution and/or consumer losses due to consuming goods and/or services produced or traded"

Therefore, manufacturers must also take smart steps in marketing their products. Before carrying out business activities, they should use materials that are not dangerous and are beneficial to consumers who consume cosmetics from products that have been marketed. In order to guarantee consumer rights, producers are required to conduct research, analysis and consultation with related parties regarding the goods or services to be marketed. This is very much needed because openness with related parties will also facilitate the running of the business by the producers themselves.

C. The role of BPOM in dealing with the distribution of unlicensed cosmetics

1. Definition of Role

Role is a dynamic aspect of position (status). If a person uses his rights and obligations in accordance with his obligations, he is carrying out his role. Everyone has a variety of roles that come from the patterns of social life. At the same time, it means that roles determine what they do for the community and what opportunities are given to them by the community (Soekanto, 2009).

Soerjono Soekanto (Soekanto, 2015), stated that the elements of the role are:

- a. Dynamic aspect of position
- b. Set of rights and obligations
- c. Social behavior of position holders
- d. Part of the activity that someone plays

Sociologically, the role is a dynamic aspect in the form of actions or behavior carried out by someone who occupies or holds a position and performs the rights and obligations in accordance with his position. If a person carries out this role well, he will naturally expect what he does according to himself will expect what is carried out in accordance with the wishes of his environment. The role in general is the presence in determining a sustainability process (Soekanto, 2002).

Aspects of the role are divided into 3 parts where one another is mutually sustainable, as follows:

- a. The role cannot be separated from the norms that apply in an organization or social group that connects a person's position or place in a social group that can guide an individual in a good social life.
- b. The role provides the concept of understanding to individuals to know what things will be done in a social group.
- c. Roles can be related to matters relating to individual behavior towards a social group or organization that is important to a social structure in a society.

2. Food and Drug Supervisory Agency (BPOM)

The Food and Drug Supervisory Agency (BPOM) is an Indonesian government agency engaged in the supervision of food and drugs. Medicines as a whole also mean the consumption of cosmetics in the community (PRESIDENTIAL REGULATION OF THE REPUBLIC OF INDONESIA, 2017). BPOM plays an important role in the

regulatory process, standardization and certification of food and drug products, which plays a role from the beginning of manufacture, then the sales process and finally until the product is consumed by the public.

BPOM was founded on the background of rapid technological developments so that materials for the manufacture of food and medicines can be more easily obtained. So that BPOM must play a role to balance the very rapid developments that significantly occur in the pharmaceutical, food and cosmetic industries in Indonesia.

Everything about BPOM is regulated in Article 1 of Presidential Regulation of the Republic of Indonesia Number 80 of 2017 which explains that BPOM is an institution formed by the government, where BPOM is a non-ministerial institution in charge of organizing and supervising the running of government affairs in the field of food and drug supervision. Supported by an effective and efficient Drug and Food Control System (SisPOM) capable of analyzing, preventing and supervising products aimed at protecting security, health and safety for the Indonesian people in accordance with the applicable system with national and international networks. with high credibility and appropriate.

Based on Article 4 of BPOM Regulation Number 12 of 2018 (Drug and FOOD SUPERVISORY AGENCY OF THE REPUBLIC OF INDONESIA, 2018b), the technical implementing unit of BPOM carries out the following functions:

- a. Preparation of plans and programs in the field of Drug and Food supervision
- b. Carrying out inspection of Drug and Food production facilities or facilities
- c. Carrying out inspection of Drug and Food distribution facilities or facilities in pharmaceutical services
- d. Implementation of product certification and food production and/or distribution facilities or facilities
- e. Implementation of drug and food sampling
- f. Drug and Food testing
- g. Implementation of intelligence and investigation of violations of the provisions of laws and regulations in the field of drug and food supervision
- h. Management of communication, information, education, and public complaints in the field of Drug and Food supervision
- i. Implementation of coordination and cooperation in the field of Drug and Food supervision
- j. Implementation of monitoring, evaluation, and reporting in the field of Drug and Food supervision
- k. Implementation of administrative affairs and household affairs
- l. Implementation of other functions given by the Head of the Agency

3. Regulatory Analysis Conducted by BPOM

As a community institution that is responsible to the government, BPOM is expected to make decisions that are aligned between consumers and producers. Judging from the things that have been explained, BPOM has things that must be fulfilled in carrying out its duties. The steps that will be taken by BPOM to overcome the rampant sales of cosmetics that are not licensed by BPOM are as follows:

- a. Supervision Stage

The supervision stage here means that BPOM plays a role in overseeing the production of an item by producers as a first step and making decisions to test

the ingredients or compositions contained therein. Then after conducting research and analysis, BPOM has the right to issue a decision letter to circulate the product.

b. Stage of Planning and Programming

In this stage, BPOM will carry out the preparation of plans or programs to educate or add insight to the wider community about the importance of knowing the ingredients or composition of the Food, Drugs or Cosmetics they consume.

c. Distribution Facility Inspection Implementation Stage

The inspection phase of the distribution facility referred to here is a periodic inspection of the distribution sites for Food, Drugs and Cosmetics. Judging from the analysis of the ingredients or compositions contained in each substance of these products, it is necessary to have a healthy environment and a clean distribution area and adjust to the temperature or humidity level of these products.

If it is not in accordance with the provisions or standards applied by the BPOM, then BPOM has the right to warn or even close the distribution place because it is considered as negligence in production in order to realize consumer rights.

The existence of an online distribution process also spurred new problems. In which, in its supervisory process, BPOM must cooperate with related platforms. With this collaboration, BPOM can review and standardize what are the licensing regulations from BPOM for producers who trade their products online.

D. Conclusion

The legal protection process that has been implemented in Indonesia has been carried out properly and in accordance with existing procedures by producers, consumers and also authorized government agencies. Legal efforts made by consumers as a form of protest are more contextual because of the rapid development of technology. Consumers can report and have good insight in analyzing a product. The role of BPOM in dealing with cosmetic products that have been circulating in the community is complex because BPOM also cooperates with relevant organizations in terms of supervising the production and distribution of products.

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