Judicial Review of the Circulation of Illegal Cosmetics

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Abstract
This research is descriptive analytical which describes the data. The instruments of this study were obtained through observations, interviews, documents, and field notes. This study uses a normative-based legal methodology. Where in this study using literature studies (secondary sources) or legal literature studies which are generally intended to examine legal concepts and legal systematics. Data. Primary obtained through field work. Secondary data comes from laws and regulations, regulations, textbooks, and data from other institutions or institutions related to the title of this research. This type of research is normative juridical. The object of this research is BPOM (Food and Drug Supervisory Agency) and cosmetic users. The results of this study are (1) the formulation of the right rules to eradicate illegal cosmetic producers, making legislation in full and not separated so as to facilitate the understanding of business actors and consumers (2) Measures to prevent the circulation of illegal cosmetics. This can be prevented by continuous socialization to the public and education of applicable regulations and legal sanctions if violated.

Keywords: expired, unlicensed for marketing, and illegal cosmetics

INTRODUCTION

Under Article 1(3) of the Constitution of the Republic of Indonesia, which was enacted in 1945, Indonesia is stated to be a constitutional state. Moreover, the Indonesian state is also a democratic constitutional state based on Pancasila and her 1945 Constitution, which upholds human rights and ensures that all citizens have equal status in law and government. Until now, there are many illegal cosmetics on the market.

Sub-optimal consumer. Many consumers are unaware of the dangers of illegal products. Many consumers want immediate or immediate beauty and good-looking results. This could facilitate the sale of illegal cosmetics. Globalization is progressing in all fields, including economy, society, culture, and information technology, and along with economic development, the needs of people's lives and local communities are accelerating. The development of IT (Information Technology) in the trade sector is developing very rapidly and trade flows tend to increase continuously.

Continuously in line with the rapidly expanding economy of the country. Because women want to look beautiful and attractive, they are often exploited by irresponsible economic operators to make or sell illegal cosmetics for profit. Illegal products do not meet the requirements of the Food and Drug Administration (BPOM). Furthermore, economic operators must follow rules regarding both raw materials, production processes, labeling procedures, and advertising where the advertising rate is deemed unattractive to the advertising effectiveness or purchasers when reporting to BPOM. Hmm. This is not in line with BPOM regulations, but is used by multiple business players to produce on consumer demand.

Globalization in all spheres is impacting people's lives, with social, economic and cultural influences increasingly driving the pace of economic development in local communities. Currently, the development of information technology (IT) and transportation facilities is increasing, resulting in a very rapid development of activities in the commercial sector of both goods and services. The increase in trade in goods and services will increase with economic development, community and consumer needs; and increased economic growth in the country. Indeed, such trends are understandable when better regulation is called for in the context of creating strong legal certainty and legal protection.

Increased product sales, including online sales, have increased the prevalence of counterfeit goods in both traditional and online markets. The counterfeit goods on the market consist of a wide variety of products, including leather goods, software, clothing, spare parts, lamps, electronics, tobacco, beverages, pesticides, oils, pharmaceuticals and cosmetics.
Illegal goods trade in Indonesia is an age-old problem, and this phenomenon is often a problem in Indonesia and has yet to be fully resolved. Illegal commodities, especially cosmetics, are traded in the market, resulting in consumers being tricked into purchasing these commodities. Illegal cosmetics are not compliant with BPOM regulations and are not under the supervision of Balai POM or BPOM and may pose a hazard to human health.

The lack of reported proliferation of illegal products or the absence of marketing authorizations, counterfeit or expired products will help economic stakeholders, communities and relevant governments to cooperate in investigating and eradicating offenders or criminal activity. It's a challenge to do crime. Researchers are interested in this topic because there are still many illegal products in circulation today, especially cosmetics. Illegal products are products that do not comply with regulations. In this case, cosmetics must comply with Ministry of Health and Food and Drug Administration (BPOM) regulations.

METHOD

This study is analytically descriptive; it describes the data. Acquired through observations, interviews, documents, and field notes. The analysis is then poured into a thesis statement to explain the findings. The issue with the chosen title is a legal examination of the sale of illicit cosmetics, namely in the form of infracti ons without a distribution permit or notification to BPOM, expired products, and the absence of a production permit, as viewed from a legal perspective. This study employs a normatively-based legal methodology. Where in this study was library research conducted? (secondary sources) or law library study that, in general, intended for study on legal concepts and systematics law.

This research was conducted using secondary data. Contains primary legal documents, secondary legal documents, and tertiary legal documents. The gathered data serves as a theoretical foundation for examining the data. Primers obtained through fieldwork. Secondary data derived from legislation, regulations, textbooks, and agency or institution data. Others who are related to this study’s title.

According to the description above, this study employs the method Analytical descriptive, i.e., through examining data in light of theory. The application of general law to explain a group of Problem-related information describing the legal framework governing BPOM Cosmetics, followed by an analysis of the repercussions The law prohibiting the sale of illicit cosmetics, including offenses involving the lack of a distribution permit or failure to notify the BPOM, expired products, and the absence of a production license to make claims. Regarding insurance losses, assistance is also provided through field studies to collect pertinent information for appraising the issue study.

RESULTS AND DISCUSSION

Develop Appropriate Rules to Weed Out Illegal Cosmetic Manufacturers

The case the author discusses in this study is case number Case 3 / Pid. Sus / 2021 / PN Kpg committed by defendant Rahel Dule "intentionally distributing pharmaceutical preparations without authorization to distribute".

The State of Indonesia is a nation of laws, as stated in Article 1, paragraph (3) The 1945 Constitution of the Republic of Indonesia provides that “the State of Indonesia is the Rule of Law” (UUD 1945, 1945) therefore any action has legal consequences.

In addition, the state of Indonesia is also a state of law, so everything goes according to the rules. However, there are still many violations, so in order for this to happen, you must meet the purpose of the law. The Republic of Indonesia is a democracy under the rule of law based on Pancasila and the 1945 Constitution, which upholds human rights and ensures that all citizens have equal status in the law and government (UUD
1945, 1945), accomplished. should not do. All acts and actions of citizens must be based on the law. Laws are binding and penalties are imposed on those who violate them.

If a violation of the law is committed, it can be considered a crime. Law is a set of rules or rules in common life that can be enforced. Law is a set of rules or rules in common life that can be enforced by a form of sanction.

This case example shows that if a citizen commits a crime then he has to bear the consequences, when the proceedings end with a final decision (sentence) which includes sanctions. criminal (punishment) against a defendant, guilty, who was reviewed and what was the verdict. This stage precedes the previous stage, namely the proving phase to impose a sentence on the defendant. In the sentencing process, the judge decides on the basis of two valid pieces of evidence, then those two pieces of evidence, that the judge convicts that the crime has actually occurred and that the defendant has committed it. This is governed by Article 184 of the Criminal Procedure Code.

Utrecht Law, defined by Utrecht, states that a law is a set of rules (orders and prohibitions) that govern the order of a society so that it must be followed by the community. society. Elements of the law can be mentioned as rules of community conduct, set by authorities, orders and prohibitions, coercive in nature severe punishments (Christiawan, 2021).

According to Mochtar Kusumaatmadja, explaining that the law of proportionality is the law that considers the law to be a set of rules and principles that govern the life of people in society and includes the institutions or institutions and processes necessary to enforce the law in practice (Wibasana, 2017). According to Huijbers, the principle of law is the legal basis or principles that are considered fundamental. Legal principles are the starting point for the formulation of laws and their interpretation (Christiawan, 2021). Bellefroid is a jurist who explains that defining legal principles is the fundamental norm of positive law and that legal science does not prescribe general rules. Van Eikema Hommes also emphasized that legal principles are general basics or guidelines for applicable law, the formation of practical law is oriented to these legal principles/Legal principles should not be considered as legal norms. Sudikno Mertokusumo stated that the law is not concrete but a general and abstract basic idea or is the background of the concrete regulations which are embodied in the laws and regulations and judges’ decisions. (Christiawan, 2021)

From the explanation above and the experts, it can be seen that the State of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution. So that all actions have consequences. upholding human rights and guaranteeing that all citizens have equal status before the law and government. If it violates it can be said to have committed a crime. Law is a collection of rules or rules whose implementation is enforced. According to Utrecht, law is a collection of rules in the form of orders and prohibitions that regulate the order of a society to which it must follow. Violations will be subject to severe penalties. Law governs the rules, principles that govern people's life in society and institutions or institutes, this is what Mochtar Kusumaatmadja asserts, Understanding legal principles according to Huijbers are principles jurisprudence are the principles considered as the basis or foundation of law. Legal principles can be called understanding and values are the starting point of law, legal principles are also the starting point of training (Christiawan, 2021). According to Bellefroid, legal principles are the basic norm of positive law. Van Eikema Hommes also emphasized that legal principles should not be considered as concrete legal norms but should be viewed as general principles or guidelines for applicable law. Law according to Sudikno Mertokusumo that law is not a concrete law but a general and abstract basic idea or is the background for the concrete regulations which are embodied in the legislation and judge’s decisions. (Christiawan, 2021)

Based on Law Number 36 of 2009 concerning Health Article 1 Paragraph (4) it is stated that the availability of pharmaceuticals is drugs, medicinal ingredients, traditional medicines, and cosmetics (Republic of Indonesia Law No. 36 of 2009, 2009). With this article, cosmetics are part of pharmaceutical preparations which are also
regulated by the Ministry of Health. Apart from that, it is related to cosmetics, if it is not in accordance with applicable regulations, it can cause skin and other health problems.

Consumers of cosmetics must be protected based on the Law of the Republic of Indonesia Number 8 of 1999 concerning consumer protection, in Article 1 it is stated that all efforts to ensure legal certainty to provide protection to consumers constitute consumer protection (Republic of Indonesia Law No. 8 of 1999, 1999). In this law it is stated that business actors (producers/distributors) must have good faith in carrying out their business activities; guarantee the quality of the products and/or services produced and/or sold/traded based on the provisions of the applicable quality standards of goods and/or services. (Republic of Indonesia Law No. 8 of 1999, 1999). Business actors may not produce and/or trade goods (products) and/or services that do not meet or do not fit. (Republic of Indonesia Law No. 8 of 1999, 1999).

Cosmetics must be manufactured by persons/employees who are professionals and in possession of them, this includes the statement that anyone without the expertise or authority is prohibited from sourcing, storing, processing, promote and distribute the drugs and ingredients with listed medicinal properties. (Republic of Indonesia Law No. 36 of 2009, 2009). Cosmetics can be distributed/sold with a distribution license (Republic of Indonesia Law No. 36 of 2009, 2009). The legality of cosmetics is regulated by several regulations, including the Act, the Regulation of the Minister of Health and the Food and Drug Supervisory Agency. What is meant by cosmetics are ingredients/preparations intended for use on the external parts of the human body (epidermis, hair, nails, lips and external genital organs) or on the teeth and mucous membranes of the mouth, especially for cleaning, perfuming, changing appearance and/or improving odors, body or protect or maintain the body in good condition (Minister of Health Regulation Republic of Indonesia Number 1175/MENKES/PER/VIII/2010, 2010). Thus, the cosmetics on the market include shampoo, hair styling, hair treatment, nail polish (nail color), Lipstick, Liptint, lip color, feminine soap, toothpaste, mouth freshener, soap, Eau de Perfume, Eau de Cologne (EDC), Eau de Toilet (EDT), perfume, make up, blush, Mascara, eye liner, Eye Shadow, cold powder, body scrub and so on. Cosmetics are part of pharmaceutical preparations whose production and distribution are supervised by BPOM because they can have an effect on human health.

Cosmetics production must be carried out by business actors who have production permits in accordance with PERMENKES Number 1175/MenKes/PER/VIII/2010 concerning Cosmetics Production Permits paragraph (2) Article 1 states that a production permit is a permit that must be owned by a cosmetics factory business actor to perform cosmetic manufacturing activities. Paragraph (3) Article 1 explains that the cosmetics industry is an industry that produces cosmetics that already has an industrial business license or industrial registration mark in accordance with the provisions of laws and regulations. (Regulation of the Food and Drug Supervisory Agency Number 2 of 2020, 2020)

Article 1 paragraph (4) states that in order to ensure that the resulting product always meets the quality requirements determined in accordance with the intended use, production must be carried out in accordance with Good Cosmetics Manufacturing Practices (CPKB), and Food Number 2 of 2020 concerning Supervision of the Production and Distribution of Cosmetics Article 1 paragraph (2).

Based on Appendix I of BPOM Regulation No. 30/2020 on technical requirements, the guidelines on technical requirements for cosmetic trademarks are names, benefits or uses; Using; Ingredients or Ingredients; Country of manufacture; Name of notification number owner and full address of notification number owner; Lot number; Net (size, content or net weight); Expiration date (expiry date); Notice number; 2D barcodes; Warning and/or Caution. (Regulation of the Food and Drug Supervisory Agency Number 30 of 2020, 2020).

According to KA BPOM No. 15/2020 on the amendment of BPOM Regulation No. 30/2017 regarding the supervision of the import of drugs and food into the territory of Indonesia, Article 1, Paragraph (17) provides that a Marketing Authorization is a form of
approval for the registration of drugs and foods issued by the head of the Agency to be released on the territory of Indonesia. (Regulation of the Food and Drug Supervisory Agency Number 15 of 2020, 2020), where the expiration date (use by date) is a description of the shelf life of a drug and food suitable for consumption in the form of days, months and years or one month and one year (Regulation of the Food and Drug Supervisory Agency Number 15 of 2020, 2020). shelf life at least (one third) shelf life. (Regulation of the Food and Drug Supervisory Agency Number 30 of 2017, 2017)

In order to obtain a license to distribute cosmetic products in Indonesia, the notification can be done online at BPOM, the cosmetic product distribution license is used in terms of notification. The full announcement can be viewed on the BPOM website at https://notifkos.pom.go.id/. With a large number of goods without a distribution authorization, we have found that some merchants who fail to notify their products before distribution is a violation that can result in fines, even possible penalties. subject to criminal penalties, because the impact of cosmetics that do not comply with the current regulations at BPOM and the Ministry of Health can affect human health.

KUHAP sl 1365 states that any unlawful act causing harm to others, requires person at fault in the issuance of damages (Book of the Civil Code (Burgerlijk Wetboek voor Indonesië), 1847). According to BPOM regulations, the requirement to circulate cosmetics in Indonesia is to have BPOM’s distribution license (notice number) and expiration date or if used. before a certain deadline. day. Products without notice may be considered illegal because they do not comply with BPOM regulations.

Based on RI PENMENKES No. 1175 / MENKES / PER / VIII / 2020 for cosmetic manufacturing license in Article 12, clearly stating the change of production license, class, supplement of product form and form, change of address, place of residence, change of manager's name. / leader, technical person, address in the same position or industry name must be taken. change of production license (Regulation of the Minister of Health of the Republic of Indonesia Number 1175/MENKES/PER/VIII/2010, 2010). Therefore, if there is a change, it must be reported, so if the change is not reported, it may be classified as illegal or unregulated.

Changes to manufacturing permits are also covered by Section 12, namely: Any change of class, addition of form, type of preparation, change of address, change of location, change of name of director/head of department, head of department, address of the same place or name of industry/manufacturer production license must be changed (Regulation of the Minister of Health of the Republic of Indonesia Number 1175/MENKES/PER/VIII/2010, 2010). Article 16 stipulates the implementation of cosmetic production and stipulates that the cosmetic industry must not produce cosmetics using ingredients prohibited by law. of the head of the department and the general director (Regulation of the Minister of Health of the Republic of Indonesia Number 1175/MENKES/PER/VIII/2010, 2010). Article 19 paragraphs (1) Supervision of CPKB products and implementation by the head of the Agency. (Regulation of the Minister of Health of the Republic of Indonesia Number 1175/MENKES/PER/VIII/2010, 2010).

With the above-mentioned Act, Minister of Health Regulation, Food and Drug Supervisory Agency, and Consumer Protection rules, it is clear that to create cosmetics, an industrial permit, a production permit, and a change of location are required (good way of producing cosmetics). These requirements must be adhered to by the technically competent person in charge of production, advertising, distribution, online sales, and expiration (Exp Date). Article 15 of BPOM 30/2020 specifies that Business Actors who engage in online distribution of Traditional Medicines, Quasi Medicines, Health Supplements, and/or Cosmetics are in compliance with the law (Regulation of the Food and Drug Supervisory Agency Number 32 of 2020, 2020). This means that online or online sales are permissible under these regulations.

Based on BPOM rule No. 30 of 2020 about cosmetic marking technical criteria. Information on cosmetic marking consists of a minimum description of the name of the Cosmetics, its uses or benefits, how to use it, ingredients/composition, country of manufacture or producer, full name and address of the owner of the Notification Number,
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Our focus:
Social and Culture

Our Scope:

Distribution/distribution-related cosmetics industry regulations
2. Regarding Cosmetic Permits, per Minister of Health RI No. 1175/MENKES/PER/VIII/2010.
3. Per ka BPOM RI No. 19 of 2015 pertaining to the technical specifications for cosmetics.
5. According to Head of BPOM No. 30 of 2017 Regarding the Control of the Importation of Drugs and Food into Indonesian Territory.
6. Regarding contamination in cosmetics, per Head of BPOM No. 12 of 2019.
7. According to Head of BPOM No. 23 of 2019 regarding the technical criteria for cosmetic additives.
8. Per Head of BPOM No. 2 of 2020 pertaining to the regulation of the manufacture and distribution of Cosmetics.
10. In accordance with Head of BPOM No. 30 of 2020 about Cosmetic Marking Technical Requirements.
11. PerKa BPOM No. 15 of 2020 Regarding Modifications to BPOM Regulations
12. No. 0 of 2017 pertaining to the Supervision of the Importation of Drugs and Food into the Territory of Indonesia.
13. Changes to BPOM regulations pursuant to Head of BPOM No. 32 of 2020
15. In accordance with Ka BPOM No. 32 of 2021 pertaining to Supervision of Cosmetic Advertising

Some business actors use short-cuts due to the fact that they are required to comply with several standards that are financially costly. Consequently, it is vital to consider the simplification of norms or groupings. The results of this research are consistent with those of Ariwibowo and Endaryono's (2021) data analysis, namely that the condition of people's purchasing power simultaneously affects performance. Government subsidies and the production of MSMEs have little effect on the revenue performance of MSMEs during the Covid-19 epidemic. Brand image and price impact purchasing decisions simultaneously.

Preventing The Distribution of Illegal Cosmetics

Illegal cosmetics continue to circulate on the market because many people are interested in purchasing them because they promise instant beauty and attractiveness. The BPOM has conducted a great deal of socialization and counseling online and offline, as well as through the media, the internet, and other channels. However, this has not significantly decreased the selling of unlawful products. The lack of consumer
understanding of legislation, particularly in rural regions will increase the growth of unlawful goods circulation, while the legal aspect of business does not have a significant influence in improving the performance of higher education institutions in DKI Jakarta, both from the point of view of profitability, market share, and business productivity (Ariwibowo, Haryanto, & Taufik, 2022).

Illegal cosmetics are goods that are sold, disseminated, or circulated without a BPOM (Food and Drug Supervisory Agency) license.

Numerous consumers are oblivious to the problems that may arise in the future as a result of their usage of these unlawful cosmetics. Many illicit cosmetic items remain on the market as a result of the desire of many consumers to achieve beauty and attractiveness rapidly. Illegal cosmetics sometimes contain forbidden raw components, both in form and quantity. In addition, advertisements and product labelling are not compliant with BPOM rules.

CONCLUSION

This study's innovation is that women who want to seem attractive become victims of crime (Victim), and women who want to look beautiful but have limited financial resources will become victims of these victims.

1. Formulation of the proper rules for eradicating unlawful cosmetic manufacturers: enactment of comprehensive and interdependent laws and regulations to facilitate business actor and customer comprehension. Because socialization does not reach all circles, BPOM socialization, even through WhatsApp, must target new business players.

2. Measures to prevent the distribution of illegal cosmetics, involving more intensive and continual socialization and education for customers, business players who already comprehend who are novices. Facilitated regulations and permits. As a result of criminal behaviors as well as health concerns, socialization incorporates regulations. Due to the fact that they do not necessarily comply with current standards, illegal cosmetics pose a risk to human health. This is because there are still many illegal cosmetics on the market. People who are still unaware of the health risks posed by illicit cosmetics.

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