

# The Legal Sanctions Application for Business Actors Against Illegal Cosmetics Circulation

*By Karim Karim*



## The Legal Sanctions Application for Business Actors Against Illegal Cosmetics Circulation

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### ABSTRACT

<sup>2</sup> Along with the development of science and technology from time to time, human needs are also growing. Not only the need for housing, clothing, food, health and education. The need to beautify itself is now a top priority in supporting daily appearance. Nowadays, it is found that many consumers buy cosmetic products that do not have quality, and there are no cosmetic products registered or not in BPOM. The low price offered comes from materials purchased with quality which is not good or even dangerous and does not use marketing authorization. The purpose of this research is to find out and understand how business actors are responsible for consumers who use illegal cosmetic products and are made from dangerous ingredients. The type of research used in this research is normative, by examining the application of the rules or norms. <sup>3</sup> positive law which is then related to the problems in this research. Consumers have the right to get comfort, security, and safety in using the cosmetic products offered to them. Based on Article 19 of Law No. 8/1999 concerning Consumer Protection. This research analyses a problem which the problems include, first, how is the legal protection for consumers against the circulation of illegal cosmetics and the second is how the form of accountability for business actors who market and issue cosmetic products illegally.

**Keywords:** Consumer Protection, Illegal Cosmetics, Legal Protection

## INTRODUCTION

Beauty is the most beautiful gift given by God, especially to women. As time goes by, in today's society, especially for women who want to look beautiful, charming and perfect, it is a natural thing. Not only that, in today's modern era, people not only demand rapid technological developments, but also the values of beauty and beauty in their appearance. To achieve this desire, many women are willing to spend their money to beautify themselves by buying a series of cosmetic products at economical prices and doing treatments such as going to salons, beauty clinics, spa places and various other beauty places.

Cosmetics obtained at economical prices are suspect because there is no distribution permit number from BPOM, there is no expiration date, and there is no label for cosmetic ingredients. This is because the cost is relatively economical, and it is also easy to buy and the availability of goods in the market is so wide that cosmetics without a distribution permit can be easily consumed or used by the public. The distribution permit is a form of approval for the registration of food or cosmetics issued by BPOM so that the product can legally be circulated in the territory of Indonesia (Suriana, 2013).

This happens because of the lack of understanding or knowledge by consumers regarding the composition (ingredients) contained in cosmetics and by reading the explanation or product description listed on the cosmetic product packaging, where in the description of the cosmetic product whether it already has a distribution permit from the BPOM or no, and includes the results of dermatological tests.

Many business actors take advantage of creating cosmetic products by mixing ingredients that are more economical in price, so that the cosmetics they market can have a more affordable price than the market price of similar cosmetics (the same type), and business actors get abundant profits. So that many business actors use unfriendly chemicals to be used in the manufacture of cosmetic products and rule out the effects or side effects of using these products.

As a result of the use of cosmetics that use ingredients that are harmful to consumers, it will cause redness or skin irritation. Cosmetics that do not have a distribution permit number from BPOM or contain hazardous materials, indicate that the use of these cosmetics is not safe to use because they have not gone through the laboratory test stage as one of the steps to obtain a registration number or distribution permit. According to the Regulation of the Minister of Health of the Republic of Indonesia Number 1176/Menkes/Per/VIII/2010 concerning Cosmetic Notifications. The purpose of this research is to find out and understand how business actors are responsible for consumers who use illegal cosmetic products and are made from dangerous ingredients. It is explained in Chapter VI Article 18 paragraphs (1 and 3) as follows: every cosmetic industry, cosmetic importer, or individual business/business entity that enters into a production contract is obligated to withdraw cosmetics that do not meet the standards and/or requirements.

## LITERATURE REVIEW

Legal protection is to protect the public from arbitrary actions by authorities that are not in accordance with the rule of law, and to create order and peace. According to Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and the protection of the community so that they can enjoy all the rights granted by law (Masnun, 2018). Furthermore, Satjipto Rahardjo stated that legal protection is aimed at integrating and harmonizing various interests in society, protecting certain interests as a way to limit various interests.

Victims are those who suffer physically and spiritually as a result of actions that seek satisfaction for themselves or others that are contrary to the interests and human rights of the victim. The definition of victim is also stated in Law no. 13 of 2006 concerning the Protection of Witnesses and Victims (UUPSK), also stipulates the definition of a victim as "a person who suffers physical, mental, and/or economic loss caused by a criminal act".

The legislative Regulations which explain the meaning of consumer protection in Article 1 paragraph (1) Regulation No. 8 of 1999 concerning Consumer Protection which states "Consumer protection is all steps to ensure legal fraud to provide consumer safety."

Consumer protection provides a form of safety for consumers who suffer losses when using things or service. The definition of consumers has also been issued in Article 1 paragraph (2) Law No. 8 of 1999 which states that consumers are those who use things or service available in society for their own benefit, family, other people, and other creatures. The term consumer comes from the translation of the customer's word, which means (opponent from the producer) every person who uses the stuffs (Kristiyanti, 2014).

The manufacturer is a juridical term from the producer. The producer commonly known as entrepreneur who are able to produce stuffs and service. The definition includes professional manufacturers such as wholesalers, suppliers and retailers. The definition of a business actor in European community (particularly in the Netherlands), is a business actor who fulfills the requirements are:

- Finished product manufacturer.
- Manufacturer of raw materials.

The definition of business actor according to Article 1 article (3) Law No. 8 of 1999 concerning Consumer Protection, including personal or business entity, whether in the form of a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either personal or jointly through agreements to implement the business activities in various economic fields. According to the explanation of Article 1 paragraph (3) of the Consumer Protection Act, business actors in this definition are include companies, corporations, BUMN, cooperatives, importers, traders, distributors and others.

The definition of cosmetics according to the Federal Food Cosmetic Act is an ingredient or mixture of ingredients to be rubbed, placed, poured, sprinkled, or sprayed on, inserted into, used on the human body's with the intent to clean, maintain, increase attractiveness, change the appearance and not including into rugs. These substances should not interfere with the skin or the body health.

Cosmetics in BPOM Number **14**.00.05.4.1745 of 2003 concerning Cosmetics Article 1 number (1) states: "Cosmetics are materials or preparations intended for use outside the human body (epidermis, hair, nails, lips and external genital organs) or teeth and oral mucosa especially for cleaning, perfuming, changing appearance or protecting body odor, and keeping the body in good condition"(Howard I. Maibach et. al, 2014). Based on the Big Indonesian Dictionary (KBBI) the definition of illegal is illegitimate. This means that the stuffs have violated the law, illegal or there is no circulation permit from the party concerned. It can be said that illegal cosmetics are products that do not have a circulation permit from the Food and Drug Supervisory Agency (BPOM).

According to Ondri Dwi Salmpurno, Deputy for Supervision of Traditional Medicines, Cosmetics and Complementary Products of BPOM, there are two types of illegal cosmetics, cosmetics without marketing authorization (TIE) and fake cosmetics. What is meant by illegal cosmetics are cosmetics that are circulating in society, but have not or not been notified to BPOM, including fake cosmetics. The cosmetics that are classified as TIE cosmetics are those that do not have a notification number from BPOM. Meanwhile, counterfeit cosmetics are cosmetics that are made without complying with the principles of good cosmetic manufacturing (CPKB) by using non-hazardous materials and dangerous materials.

Based on these applicable provisions, it can be interpreted that cosmetic products can be said as illegal cosmetic products when the cosmetic products that have been circulated and produced/traded do not meet the quality and safety standards or requirements for which can cause product users to be unprotected, harmed, and can even endanger the cosmetic users when they contain hazardous materials. It also has an effect to the country's economy caused by not having a license or distribution permit in accordance with the provisions of the applicable laws and regulations.

## **RESEARCH METHODOLOGY**

This research is normative legal research, which in normative research it examines the application of the rules or norms in positive law which linked to the problems statement in this research. There are several normative approaches, such as statutory approach, conceptual approach, comparative approach, historical approach, and case approach. According to Theresia statement, normative legal research is reviewing library materials, reconstructing the research result and thoughts of experts based on secondary data (Christiani, 2015).

## RESULTS AND DISCUSSION

### Criminal Justice System in Indonesia

Criminal justice system which starts from arrest, detention, prosecution, and examination before a court and ends with the crime implementation in correctional institution. The criminal justice system was introduced by criminal law experts in the criminal justice system in United States in line with work mechanism dissatisfaction of law enforcement apparatus and law enforcement institutions. This dissatisfaction has occurred in Indonesia that caused the crime rate in 1980 was high.

According to Mardjono Reksodiputro, criminal justice system is a crime control system consisting of the police, prosecutors, courts and convicts. The Criminal Justice System is a system designed in dealing with crime problems that can disrupt publicity and threaten the community's security. The Criminal Justice System is also one of the society efforts to control the occurrence of crime within acceptable tolerance limits.

The Criminal Justice System is a criminal law enforcement process that closely related to the criminal legislation itself, both substantive criminal law and criminal procedural law (Efendi, 2018). Criminal law is basically the enforcement of criminal law in *abstracto* which will be realized in the enforcement of criminal law in *concreto* (Udayana, 2016).

### Stages of Indonesian Criminal Justice System

#### The Definition of Investigator

The investigator is one of the state deputies who has the authority regulated in Article 1 paragraph (4) of the Criminal Code which states that the investigator is the Police of Republic Indonesia who is authorized by law to conduct an investigation. Apart from police officers, they do not have the authority to conduct investigations, including prosecutors or other law enforcement deputies.

#### Investigation

Based on Article 1 point (5) of Criminal Procedure Code, it is stated that an investigation is a series of actions or examination to seek and find an event that is suspected of being a criminal act in order to determine whether an investigation can be conducted or not according to the method regulated by law.

From the description above, it can be said that the investigation is the first procedure implemented by law enforcement apparatus before fingerprinting or investigation is conducted. The reports, complaints or incidents that are directly arrested by the apparatus for legal action. Since the apparatus cannot arrest, detain, search, confiscate, examine the letters, summon and submit files to the public prosecutor when the evidence is not concrete enough (real). In this case, some mistakes can occur in arrest the perpetrators when the authorities do not investigate the information carefully, as not to degrade the human dignity.

The functions of investigation are include the protection and guarantee of human rights, the existence of strict requirements and restrictions on the use of coercive measures, and the strict supervision. Not every incident that occurs is called a criminal act, when the occasion is clearly a criminal act because of preliminary evidence has been obtained, an investigation can be conducted immediately.

Therefore, before further investigation is conducted to identify the consequences of carrying out an act of coercion, it is necessary to determine based on the information or data obtained from the investigation, that the incident that occurred is suspected to be a criminal act, then the investigation can proceed with further examination. It can be said that an investigation is a preparatory act for an inspection, and it need to implement an interrogation. An investigation by investigative apparatus aims to collect sufficient evidence in order to be able to follow up in the form of an examination. With the investigation stage, it is hoped that there will be an attitude of prudence and a sense of responsibility towards the applicable law.

Based on Article 1 paragraph (2) of Criminal Procedure Code, an investigation is a series of actions by an investigating officer in accordance with the method regulated in this law to seek and collect the evidence for criminal act occurred, and at the same time finds the suspect or the perpetrator. R. Soesilo also stated that the meaning of investigation is "Investigation comes from the word *sidik* which means light". An investigation is a search for traces that refers to a criminal act file, when the file is found and collected, the criminal act is evident. In Dutch, an investigation is known as "*Opsporing*" and in English it is called "Investigation". According to de Pinto, to investigate (*opsparing*) means an initial examination by officials chosen by law as soon as they hear there has been a violation or crime.

Investigative is emphasis on the act of seeking and finding an event that is considered or suspected to be a criminal act. In an investigation, the significance is placed on the act of searching and gathering evidence for the criminal acts found can become evident to find and determine the suspect. Based on Article 109 paragraph (1) of the Criminal Procedure Code, an investigator who has begun to conduct an investigation based on a criminal act, the investigator must immediately notify that a protracted investigation has begun without any settlement, an investigator is required to notify the investigation progress to the public prosecutor, while the public prosecutor is authorized to request an explanation from the investigator regarding the investigation progress by the investigator.

When the investigation is terminated due to insufficient evidence or the incident is not a criminal act or for legal reasons, the investigator is obliged to issue an SP3 (Warrant for Termination of Investigation) with a copy of the letter submitted to the public prosecutor, the suspect and his family (Article 109

paragraph (2) Criminal Procedure Code). in accordance with the instructions of the public prosecutor (Article 110 of Criminal Procedure Code).

### Investigator

Based on Article 1 paragraph (1) of the Criminal Procedure Code, an investigator is an official Police of the Republic Indonesia or a certain civil servant official who is given special authority by law to conduct an investigation. Investigators are further regulated in Article 6 of the Criminal Procedure Code, which limits the investigators in their criminal proceedings. The official boundaries in the investigation stage are POLRI and civil investigators. The assistant investigators are also regulated in Article 1 paragraph (1), Article 6 and Article 10 of the Criminal Procedure Code which regulates the existence of assistant investigators.<sup>21</sup>

According to Article 1 point (1) of the Criminal Procedure Code in conjunction with Article 1 number 10 of Law of Republic Indonesia Number 2 of 2002 concerning the Indonesian National Police, the investigators are "the National Police of Republic Indonesia, including certain civil servants who are given special powers by law to conduct the investigations." Those authorized to do the investigations according to Article 6 of the Criminal Procedure Code, are State Police of Republic Indonesia (Assistant Second Lieutenant) and Civil Servants (II/b Bachelor Degree Minimum Rank), who are given special powers by law.

### Investigation Process

During the investigation process, the investigator receives a report or complaint of a criminal act, an examination is carried out at the crime scene (TKP). According to Article 75 of the Criminal Procedure Code, the results of TKP investigation are made into police investigation report that contain everything seen, experienced or heard, and it is a valid evidence. After the TKP investigation report are completed, the investigator makes the investigation report of witnesses. Then, the investigator or assistant investigator able to prepare an "investigation plan" including "schedule" and "activity" (Sumaryanto, 2021).

In investigation process, anyone can be a witness and it is an obligation to come for more investigations, this is based on Article 112 of Criminal Procedure Code. Based on the provisions of Article 1 number 27 of Criminal Procedure Code, it is stated that witness statements are one of the evidences in criminal cases in the form of statements regarding an incident they heard, seen, and experienced themselves. The witness testimony does not necessarily explain the whole case, and it is given without pressure from anyone and in any form. In examining witnesses, investigators need to pay attention to the speed, simplicity and low-cost principles.



## Prosecution

The definition of prosecution as according to Article 1 point 7 of the Criminal Procedure Code, that "Prosecution is an act that is authorized by the public prosecutor. The criminal cases are referred to the competent district court in accordance with the method regulated by the law to be examined and decided by a judge in a court session.

The prosecution is implement by public prosecutor as explained in Article 1 point 3 of Law Number 16 of 2004 concerning the Prosecutor's Office, which states "Prosecution is the action of public prosecutor to delegate the case to competent district court according to the method regulated in the Criminal Procedure Code for it be examined and decided by a judge in a court."

Whereas in Article 1 point 2 of Law Number 16 of 2004 concerning the Prosecutor's Office it is explained "A public prosecutor is a prosecutor who is authorized by the law to implement the prosecutions and carry out judges' decisions". The Public Prosecutor is also formulated in Article 1 paragraph (6) of the Criminal Procedure Code, namely:

1. Prosecutors are apparatus who are authorized by the Law to act as Public Prosecutors and implement the Court decisions which have permanent legal force.
2. Public Prosecutor is a Prosecutor who is authorized by the law to implement the prosecutions and carry out the judge's determination.

Before delegating case file to a court, the public prosecutor and the prosecution and examine the case file submitted by the investigator regarding the evidence submitted that the defendant has committed a criminal act, and in within seven days, it is obligatory to notify the investigator whether the results of the investigation are complete or not. When the investigation results are incomplete, the public prosecutor returns the case file to the investigator accompanied by instructions to complete it.

## Court

Meanwhile, the court or *rechtbank* in Dutch and the court in English are institution that implement the justice by examining, adjudicating, and deciding cases. The court is a special meaning, namely an institution to resolve legal disputes through the judicial power which has absolute and relative power in accordance with statutory regulations.

The existence of court institutions as a criminal justice subsystem has been regulated in Law No. 48/2009 concerning Judicial Power. In the Article 1 of the Law provides a definition of judicial power as: "Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, and the implementation of the rule of law of the Republic Indonesia." In accordance with Law No. 48/2009 and the Criminal Procedure Code, the duty of the Court is to receive, examine and decide the submitted cases. In examining a defendant, the judge begin with the indictment made by the Public Prosecutor,

and bases on the evidence as stipulated in Article 184 of the Criminal Procedure Code. The judge renders his decision with at least 2 (two) pieces of evidence.

### The Definition of Sanctions

According to KBBI (Indonesian Dictionary), sanctions have the meaning of dependents, actions, penalties for violating an agreement or regulation. Sanction is a punishment or coercive action given because the person concerned fails to comply with the law, changes, or orders, as defined by Black's Law Dictionary Seventh Edition as follows: "A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)". According to Soetoso, sanctions are regulations made by the authorities with the aim of regulating people's lives, which have the characteristics of mandatory orders and prohibitions, as well as applying the law to someone who violates the law.

Sanctions in Indonesian are taken from the Dutch language, *Sanctie*, as in the famous *poenale sanctie* in Indonesian history during the Dutch colonial period. Sanctions in the legal context mean punishments imposed by the courts, and in the sociological context sanctions can mean as social control.

Sanctions are a punishment imposed by a certain state or group due to a violation committed by a person or group within the community. Legal sanctions can be imposed by state institutions against someone who violates legal provisions to ensure the creation of order, tranquility and peace. The function of legal sanctions is for someone become obedient and in conduct the legal provisions.

### Types of Sanctions

#### Criminal sanctions

Criminal sanctions are sanctions that are heavier than civil and administrative sanction. This sanction is as an effort to prevent or overcome crime through criminal law with violations subject to criminal sanctions.

#### Civil Sanctions

The form of civil sanctions can be in the form of an obligation to fulfill responsibility or the loss of a legal situation, followed by new legal situation. Also, violations in civil law will get sanctions in the form of compensation and penalizes to parties who feel aggrieved. The party who feels aggrieved can file a lawsuit against the party who has violated the sanction. After the complaint from an aggrieved party, then the complaining party becomes the plaintiff. The implementing of law enforcement against someone who harms others' interests is very necessary to provide a deterrent effect through lawsuits in court.

#### Administrative Sanctions

Administrative sanctions can be interpreted as sanctions imposed on administrative violations or legal provisions of an administrative nature. Administrative sanctions can be in the form of compensation, written warnings, revocation of certain permits, and others. Sanctions in administrative law are

"tools of power that can be used by the government as a reaction to non-compliance with obligations contained in normal state administrative law".

## **The Sanctions Against Illegal Cosmetic Dealers**

### **Criminal Sanctions**

Business actors who intentionally commit violations in producing, selling, or distributing illegal cosmetic products may be subject to criminal sanctions as stipulated in Law Number 36 of 2009 concerning Health, as follows:

#### **Article 196**

"Everyone who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or benefit, and quality as referred to in Article 98 paragraph (2) and paragraph (3) shall be subject to imprisonment for a maximum of 10 (ten) years and a maximum penalizes of IDR.1,000,000,000.00 (one billion rupiah)".

#### **Article 197**

"Everyone who intentionally produces or distributes pharmaceutical preparations and/or medical devices that does not have a distribution permit as referred to in Article 106 paragraph (1) shall be subject to a maximum imprisonment of 15 (fifteen) years and a maximum penalizes of IDR. 1,500,000,000.00 (one billion five hundred million rupiah)".

#### **Article 62**

1. Business actors who violate the provisions as referred to in Article 8, 9, 10, 13 paragraph (2), Article 15, 17 paragraph (1) letter a, b, c, e, paragraph (2), and Article 18 is sentenced to a maximum imprisonment of 5 (five) years or a maximum penalizes of IDR. 2,000,000,000.00 (two billion rupiah).
2. Business actors who violate the provision as referred to in Article 11, 12, 13 paragraphs (1), Article 14, 16 and 17 paragraph (1) letter d and f shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum penalizes of IDR. 500,000,000.00 (five hundred million rupiah).
3. Any violation that results in serious injury, illness, permanent disability or death shall apply the applicable criminal provisions.

### **Civil Sanctions**

The application of civil sanctions against illegal cosmetic business actors, which is regulated in Article 1365 of the Civil Code which states "every act that violates the law that causes harm to someone else, obliges the person who caused the loss to be wrong, to compensate for the loss". Article 1366 reads "everyone is responsible not only for losses caused by his actions, but also for losses caused by

negligence or carelessness".<sup>3</sup> Based on Article 19 of the Consumer Protection Law, it has been regulated the responsibilities of business actors, such as:

1. Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
2. The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or the provision of compensation in accordance with the provisions of the applicable laws and regulations.
3. Compensation is given within 7 (seven) days after the transaction date.
4. The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the element of error (Sattler, 2020).

### **Administrative Sanctions**

<sup>20</sup> application of administrative sanctions against illegal cosmetic business actors according to Article 60 of Law Number 8 of 1999 concerning Consumer Protection as follows:

1. The Consumer Dispute Settlement Agency has the authority to impose administrative sanctions on business actors who violate Article 19 paragraphs (2) and (3), Article 20, 25, and 26.
2. The administrative sanction in the form of determining the maximum compensation of IDR. 200,000,000 (two hundred million rupiah).
3. The procedure for determining administrative sanctions as referred to in paragraph (1) shall be further regulated in laws and regulations.

Administrative sanctions such as prohibited from being circulated, discontinued from circulation, revoked distribution permit and providing a warning letter to business actors issued by BPOM officials. When it is still not implemented, a stern warning letter will be issued. The revocation of the permit can also be conducted by BPOM that issued the permit. When the permit is issued outside of BPOM, then BPOM has the right to provide a letter of recommendation for the revocation or suspension of the business license intended for the relevant agency. With this sanction, it is hoped that community will do not commit the same action.

## CONCLUSION

The legal consequences of distributing cosmetics without a distribution permit from BPOM, based on Article 19 of Law no. 8 of 1999 concerning Consumer Protection, which regulates the responsibility of business actors <sup>20</sup> provide compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded. The consequences are in the form of refund, goods and/or services replacement with a similar or equivalent value, health care and/or the compensation in accordance with the provisions of the applicable laws and regulations. The compensation must also be given within 7 (seven) days from the transaction date.

The <sup>11</sup> application of civil sanctions against illegal cosmetic business actors which is regulated in Article 1365 of the Civil Code which states "every act that violates the law that causes harm to someone else, obliges the person who because <sup>7</sup> his mistake in publishing the loss, compensates for the loss". Article 1366 reads "everyone is responsible not only for losses <sup>3</sup> caused by his actions, but also for losses caused by negligence or carelessness". Based on Article 19 of the Consumer Protection Act has been regulated the responsibilities of business actors, such as the compensation as referred to in paragraph (1) can be in the form of refund, goods and/or services replacement with a similar or equivalent value, health care and/or compensation in accordance with the provisions of the applicable laws and regulations.

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