

LEGAL PROTECTION FOR CONSUMERS AGAINST SKINCARE PRODUCTS WITHOUT MARKETING PERMITS THAT ARE SOLD FREELY

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Abstract

This research aims to find out how legal protection is for consumers regarding skincare products without distribution permits that are sold freely. This research focuses on examining the application of the rules/norms in positive law, which is then connected to the problems discussed in this research. Using a statutory approach method (state approach). The data collection method used in the research is document study as the first step in legal research. The results of this research show that this research concluded that consumers who experience losses as a result of consumer rights being violated by business actors can take legal action. Implementation of Law no. 8 of 1999 concerning Consumer Protection has not been optimal in providing compensation to consumers who are harmed by products from business actors. Consumers who experience losses due to legal violations committed by business actors can take legal action against them through litigation or non-litigation. Consumers have the right to obtain safety from goods/services that must not be dangerous if consumed so that consumers are not harmed both physically and spiritually.

Keywords: *Legal Protection, Consumer Protection and Skincare Products*

1. INTRODUCTION

In the current era of free trade, there are many skincare products on the market with various types of brands. A woman's desire to always look beautiful is often exploited by irresponsible business actors by producing or trading skincare that does not meet the requirements to be distributed to the public. Most women are very interested in buying skincare products at low prices and quickly visible results. Therefore, many women use shortcuts to buy a product even though the skincare product they buy does not meet the requirements and is not registered with the Food and Drug Supervisory Agency (BPOM). In Indonesia, in the last few years, there has been a lot of news on social media about online sales of products that do not have distribution permits in the health sector, such as the sale of skincare where the consumers are housewives and young women who are interested because the skincare offered is cheap, is viral or advertised by influencers on social media. The desire of housewives and teenagers to always look beautiful, perfect in every way is exploited by a group of irresponsible business actors by producing or trading skincare that does not meet the requirements of the public. They will easily be interested in buying skincare products at low prices and with quick visible results. This is what makes them look for alternative ways by buying the product even though it does not meet the requirements and the cosmetics are sold freely but do not have a BPOM number.

In this era of free trade, various types of skincare are circulating and advertised on social media online, business actors are competing to produce various kinds of skincare products to attract as many consumers as possible. Health is important for every human being to carry out various daily activities. According to Law No. 23 of 1992, "Health is a state of physical, mental and social well-being that enables a socially and economically productive life." According to this understanding, health must be seen as a unified whole consisting of physical, mental and social elements that contribute to forming a possibility for someone to be productive in their social and economic life. Consumers who use skincare are part of society who have the right to be protected (Putri, Bachelor, & Priyanto, 2017:3). Healthy business or business activities must have a balance of legal protection between consumers and business actors. How consumer protection is regulated

in Law Number 8 of 1999 (hereinafter referred to as UUPK) article 4 letter h regulates that "Consumers have the right to receive compensation, compensation and/or replacement, if the goods and/or services received do not comply with the agreement. or not as it should be." Compensation according to article 19 paragraph 3 stipulates that "Provision of compensation is carried out within a grace period of seven days after the date of the transaction". Meanwhile, the obligations of business actors are regulated in article 7 letter f which stipulates that "Provide compensation, compensation and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services".

This UUPK is a legal umbrella for consumers to meet the needs of things that can harm consumers themselves (Sidabalok, 2016: 9). In accordance with the statutory regulations Article 1 UUPK, "Consumer protection is an effort to provide legal certainty to provide protection to consumers". The occurrence of losses to consumers caused by unlawful acts committed by business actors." It is explained in Article 7 letter d of the UUPK which reads "Business actors are obliged to guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards for goods or services." According to UUPK article 4 which regulates consumer rights, namely: a) The right to comfort, security and safety in consuming goods and/or services; b) The right to choose goods and/or services, and obtain said goods and/or services in accordance with the exchange rate, conditions and guarantees promised; c) The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services; d) The right to have opinions and complaints heard regarding the goods and/or services used; e) The right to obtain appropriate advocacy, protection and dispute resolution efforts regarding consumer protection; f) The right to receive consumer guidance and education; and g) The right to be treated or served correctly and honestly, and not in a discriminatory manner.

According to Nasution (Kristiyanti, 2018:13) that consumer legal protection contains rules that are regulatory and contain characteristics that protect consumers, namely:

Table 1.1
Consumer Legal Protection Rules

No	Consumer Legal Protection Rules
1	Principle of Benefits. All efforts to implement consumer protection must be able to provide maximum benefits for the interests of consumers and business actors as a whole.
2	Principles of Justice. Participation of all people can be realized optimally and provide opportunities for consumers and business actors to carry out their obligations and obtain their rights fairly.
3	Principle of Balance. Providing a balance between the interests of business actors, consumers and the government in material and spiritual terms.
4	Principles of Consumer Safety and Security. Providing guarantees for the security & safety of consumers in the use, use and utilization of goods and/or services consumed.
5	Principle of Legal Certainty. It is hoped that consumers and business actors will obey the law and obtain justice in implementing consumer protection. Besides that, the state guarantees legal certainty

Business actors must be responsible for the products they produce/trade (Sadar & Mawadi, 2018:22-33). There is legal liability related to losses experienced as a result of the use, use and use by consumers of goods/services produced by business actors. The responsibility of the business actor is due to losses experienced by consumers, due to lack of accuracy in producing, not complying with what was promised, or other mistakes by the business actor. Consumers as the injured party can sue/ask for compensation from the business actor as the party causing the loss. Business actors who trade products must be responsible towards consumers.

Legal protection for cosmetic users needs further attention, considering that more and more fake cosmetic products are circulating widely on the market and consumers can easily get them at cheap prices. Legal guarantees in the form of UUPK and other laws are intended to provide protection for consumers and sanctions against irresponsible business actors in both the Civil Law and Criminal Law fields. Consumers' lack of care in purchasing products is one of the reasons why skincare products without distribution permits are still circulating on the market (Dai, Kasim, & Martam, 2019:317). Skincare is widely available in small shops or traditional markets, as well as online shops (Akbar, 2020:2). Public consumption of skincare products continues to increase over time and the increasing demand for skincare has resulted in the proliferation of skincare sellers online. How the UUPK as a legal umbrella to protect consumers has been implemented in accordance with its objectives, so the researchers took research on how consumers are protected against skincare products that are sold freely.

2. LITERATURE REVIEW

Consumer protection

The formulation of consumer protection is contained in Article 1 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection (UUPK), namely "all efforts to guarantee legal certainty to provide protection to consumers", (Zulham, 2017). The sentence which states "all efforts to ensure legal certainty" is expected to act as a bulwark to eliminate arbitrary actions that are detrimental to business actors only for the sake of consumer protection. Consumer protection is the totality of regulations and laws that regulate the rights and obligations of consumers and producers that arise in their efforts to meet their needs and regulate efforts to ensure the realization of legal protection for consumer interests (Sidobalok 2016:39).

Legal protection

According to Satjipto Rahardjo, (2018) Legal protection is providing protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. According to Phillipus M. Hadjon (2017) that legal protection for the people is a preventive and responsive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government action to be careful in making decisions based on discretion and responsive protection aims to prevent disputes from occurring, including handling them in judicial institutions.

3. IMPLEMENTATION METHOD

This research includes normative juridical research. This research focuses on examining the application of rules/norms in positive law, which is then connected to the problems discussed in this research (Marzuki, 2016: 176). Normative legal research (normative juridical) uses data collection from primary legal materials and secondary legal materials to find legal rules that regulate these problems, so that theories can be found as a way out of problems. Using a statutory approach (state approach) which is carried out by examining the responsibilities of legal authorities regarding the protection of consumers and irresponsible business actors, the legislation used to examine this problem is the Law on legal protection. The data collection method used in the research is document study as the first step in legal research. This research uses descriptive analysis methods.

4. RESULTS AND DISCUSSION

Legal Protection for Consumers for Skincare Products Without Marketing Permits That Are Sold Freely

Currently, skincare products are not only sold through offline stores, but also sold through online shops or shopping applications. Consumers when buying skincare products online must be more careful. Consumers must ensure that the skincare products they purchase have a distribution

permit. The circulation of skincare products that do not have distribution permits in online stores has violated consumer rights in accordance with UUPK. To protect consumers from the negative impacts of using products, consumers have received a legal umbrella for consumer protection regulated in the UUPK. However, in reality it is often overlooked due to a lack of good faith on the part of business actors, as well as the desire to gain large profits (Dera, 2019:16).

One of the consumer rights contained in the UUPK is to obtain compensation. The right to compensation aims to restore conditions that have been damaged as a result of the use of goods/services that do not meet consumer expectations. This right relates to consumer losses, in the form of material or personal losses (disability, illness, even death). Consumers who are harmed can hold business actors accountable if they do not fulfill their obligations. In accordance with Article 19 point 1 UUPK, "As a matter of responsibility, business actors can provide compensation for pollution, damage or loss resulting from consuming traded goods/services". This right also applies to consumers of online skincare products. Claims for compensation based on unlawful acts do not have to be preceded by an agreement between the consumer and the business actor. So that claims for compensation can be made by all parties who have been harmed, even though there has never been an contractual relationship between consumers and business actors. In demanding compensation, the loss must result from an unlawful act. Consumers can apply for compensation for something they suffer because business actors violate the provisions set out in statutory regulations.

Consumer protection rights for the products they purchase are guaranteed in regulations or legislation. However, there are still many people who do not understand or do not take advantage of this protection right. So it needs to be frequently disseminated to the public as consumers. One of the causes of consumer harm is the lack of knowledge as a consumer regarding their rights which have been regulated by law. Consumers who experience problems due to using skincare without a distribution permit, only try to cure or restore their skin condition, or switch to other products (Kumalasari, Said, & Suarning, 2022:41) So that the protection provided by the government through UUPK has not been utilized by the public maximally. For this reason, in order for this legislation to be implemented in accordance with its aim of protecting consumers, an active role is needed from the public to report the sale of fake skincare or without a distribution permit.

Article 19 point 1 UUPK regulates that business actors must provide compensation to consumers as a result of consuming traded goods and/or services. Based on the provisions of this regulation, business actors are responsible for providing compensation in the form of refunds or replacement of goods related to skincare products without distribution permits, or health care and/or providing compensation. Compensation is provided within seven days after the transaction is completed. Business actors who do not want to be responsible for the losses they cause, consumers can file a lawsuit against the business actor through a consumer dispute resolution agency or can submit a lawsuit to a judicial body in the consumer's place of residence. This provision has been explained in the provisions of Article 23 UUPK. Business actors can be given administrative sanctions in the form of determining compensation, which is a maximum of IDR 200,000,000 (two hundred million rupiah). This explanation has been regulated in Article 60 paragraph (2) UUPK.

Legal protection for consumers for cosmetic products that are not registered with BPOM

Legal protection is an effort made by authorities or law enforcers with a series of existing regulations to protect human rights that are harmed by other people and legal protection is provided to the community so that all their rights can be enjoyed. Legal protection is really needed in society because if there is no legal protection in force, life can be chaotic and without law society has no guidelines for correct behavior that does not harm other people. Consumer protection is legal protection for consumers so that their needs are met and they are protected from things that cause harm. Legal protection for consumers has been regulated in the Law on Consumer Protection. Matters that are regulated include the rights and obligations of consumers, the rights and

obligations of business actors, actions that are prohibited by business actors, the responsibilities of business actors as well as government guidance and supervision. The legal protection regulated in the Consumer Protection Law aims to provide protection for consumer rights, including consumers who buy imported cosmetic products sold online. Regarding consumer rights, it is regulated in Article 4 UUPK, in letter c which states that consumers have the right to comfort, security and safety in consuming goods/services and consumers have the right to clear, honest and correct information regarding the conditions of guarantees for goods/services. Consumers have the right to obtain security from goods/services that must not be dangerous if consumed so that consumers are not harmed both physically and spiritually, apart from that, this right to security is important to prioritize. If a business actor trades cosmetics that are not registered with BPOM, which is an act that is prohibited for business actors as regulated in Article 8 UUPK, then the goods must be withdrawn from circulation.

Legal Actions for Consumers Who Have Losses Due to Using Skin Care that Doesn't Have Official Permission on Social Media

Any consumer who feels disadvantaged due to the use of skincare that does not have official permission on social media and whose rights have been violated by business producers can file a consumer dispute lawsuit, both civil and criminal, as well as within the scope of state administration. Dispute resolution issues in the Consumer Protection Law are specifically regulated in CHAPTER X, starting from Article 45 to Article 48.

Based on the provisions of Articles 47 and 48 of the Consumer Protection Law, it is explained that consumer disputes can be submitted in two ways, namely:

1) Dispute resolution in court

In Article 45 paragraph (4) of the Consumer Protection Law Number 8 of 1999, "If an effort to resolve a consumer dispute outside of court has been chosen, a claim through court can only be taken if the effort is declared unsuccessful by one of the parties or by the parties to the dispute. This means that resolving consumer disputes through court is only possible if the parties have not resolved the dispute outside of court or efforts to resolve the dispute outside of court are declared unsuccessful by one of the parties to the dispute.

2) Out-of-court dispute resolution

Settlement of consumer disputes as intended in Article 45 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection does not rule out the possibility of peaceful resolution by the parties to the dispute, namely business actors and consumers, without going to court or a consumer dispute resolution body, and as long as it does not conflict with consumer protection laws. From the explanation of Article 45 Paragraph (2) of the Consumer Protection Law, it can be seen that the Consumer Protection Law requires that a peaceful resolution is a legal effort that is first attempted by the parties to the dispute, before the parties choose to resolve their dispute through BPSK Consumer Dispute Resolution Agency or judicial body¹⁵ as for alternative dispute resolution according to Article 1 paragraph (10) of Law Number 30 of 1999 "alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by methods of consultation, negotiation, mediation, conciliation and expert assessment.

Business Actor Sanctions

A legal consequence can arise from the existence of a legal relationship. A legal relationship provides rights and obligations that have been determined by law, so that if it is violated, it will result in the person who violates it being able to be sued in court. These sanctions are regulated in consumer protection laws

Regulations regarding sanctions that can be imposed on business actors who commit consumer violations can take the form of 2 things, namely:

1. Administrative sanctions imposed by the consumer dispute resolution agency according to Article 60 paragraphs (1) and (2) UUPK state that the administrative sanctions are in the form of determining compensation of a maximum of IDR 200,000,000.00 (two hundred million rupiah).
2. Criminal Sanctions: Criminal sanctions can be given to business actors and/or their management. Sanctions can be in the form of basic penalties and additional penalties. Principal criminal sanctions are sanctions that can be imposed or imposed by the court based on prosecutors' demands for violations committed by business actors. This sanction is regulated in Article 62 and can take the form of imprisonment or a fine. Meanwhile, additional criminal sanctions are regulated in Article 63 and the forms of additional criminal sanctions that can be imposed include confiscation of certain goods, announcement of a judge's decision, payment of compensation, orders to stop certain activities that cause consumer losses, and revocation of business permits.

5. CONCLUSION

Based on the results of the research and discussion in the previous chapter, it can be concluded as follows:

- a. Based on the results of the discussion above, a conclusion can be drawn, namely: legal protection as an effort to protect consumer rights has been regulated through statutory regulations. Consumers who experience losses as a result of violations of consumer rights by business actors can take legal action. Business actors who distribute skincare products without a distribution permit and do not comply with applicable regulations must be held responsible by providing compensation to consumers. Providing compensation within seven days after the transaction is considered less effective. If this provision is maintained, then consumers who consume goods more than seven days after the transaction will not receive compensation for losses from the business actor, even though the consumer concerned has actually suffered a loss.
- b. Implementation of Law no. 8 of 1999 concerning Consumer Protection has not been optimal in providing compensation to consumers who are harmed by products from business actors. Consumers who experience losses due to legal violations committed by business actors can take legal action against them through litigation or non-litigation. There is no maximum supervision of business actors in accordance with Law no. 8 of 1999 concerning Consumer Protection so that there are still dangerous cosmetic products circulating on the market. Even though the legal regulations are clear, BPOM is obliged to supervise and provide guidance to business actors to ensure safety and guarantee consumer protection before business actors distribute cosmetic products to the market.
- c. Consumers have the right to obtain safety from goods/services that must not be dangerous if consumed so that consumers are not harmed both physically and spiritually. Regarding the responsibility of business actors in running their business, business actors must have the courage to bear the risk of all forms of responsibility because of actions they carry out which result in losses, so that consumers have the right to ask business actors to take responsibility for providing compensation to consumers. Claims for compensation that are based on unlawful acts do not need to be preceded by an agreement between the business actor and the consumer, so that claims for compensation can be made by any injured party, even though there has never been an agreement between the producer and the consumer. Compensation must be made on the basis of a violation of the law in the form of an unlawful act (PMH).

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