

# **Legal Protection Costumer About Manipulation Fake Import Beauty Cream**

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## **ABSTRACT**

Cosmetics are one of the necessities of human life, especially women in fulfilling the demands of their beauty. There have been many cases of counterfeit and / or illegal cosmetics circulating in the cosmetics distribution. Rahajeng Ratnasari alias Sari is a business actor who sells fake cosmetics with his own concoctions in the city of Mojokerto. The objectives of this study are: 1) to identify and analyze the actions of the business actor as an act against the law. 2) to find out and analyze the form of legal protection for consumers due to illegal acts committed by the business actor. This type of research is Normative using the Statute Approach method. This study also uses the Conceptual Approach method. The result of this research is that the actions of business actors in marketing their products can be categorized as acts against the law and Law Number 8 of 1999 concerning Consumer Protection. The form of legal protection for consumers due to illegal acts committed by business actors is the formation of a consumer protection agency as a consumer that builds protection and provides space in consumer dispute disputes through the Consumer Dispute Resolution Agency as a small lawsuit court body.

**Keywords:** Cosmetics, Fake Cosmetics, Legal Protection

## **1. INTRODUCTION**

The life of modern society today does not only require development progress. But it is also related to the appearance of values and beauty in humans. Especially for women who have been dissolved in various beauty competitions that are presented in the world of women, they will do various ways to obtain them, one of which is by using various kinds of beauty products, ranging from beautiful postures, bright faces and charming appearance. Women have competence in a wide selection of products to be used. In fact, it is not uncommon for many women to spend large amounts of money to get that beauty.

Cosmetics are a form of secondary needs in people's lives. Based on Article 1 number 1 Regulation of the Minister of Health of the Republic of Indonesia Number 1176 / MenKes / PER / VIII / 2010 concerning Cosmetics Notification, what is meant by "cosmetics are ingredients or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips). and external genital organs) or teeth and oral mucosa especially for cleaning, deodorizing, changing appearance and / or improving body odor or protecting or maintaining the body in good condition ". Nowadays, not only safe cosmetics are circulating, but also cosmetics that are dangerous.

This kind of condition is also experienced in several big cities in Indonesia. Dangerous cosmetics are cosmetics that contain dangerous chemicals that can cause side effects or health problems for the user.



Lack of public understanding of the ingredients contained in cosmetics and a lack of public understanding in terms of distinguishing which cosmetics are dangerous and which are not.

The circulation of fake cosmetics occurs in Mojokerjo City in the Panggreman neighborhood, Kelurahan / Kecamatan Kranggan. The officers secured a business actor named Rahajeng Ratnasari alias Sari, 29 years old along with hundreds of cosmetics and cosmetic brands that are suspected of being illegal. All these beauty products are the result of this housewife's hand concoction. With such a mode, BPOM again reminds consumers to make observati

## **2. METHOD RESEARCH**

### **Covenant Theory**

According to Subekti, an agreement is an event where a person promises to another person or where two people promise to do something. According to Suharnoko, the legal problem that occurred before the agreement was declared valid and binding on the parties, namely in the preliminary negotiation process, one of the parties had committed a legal action such as buying a cosmetic product even though a final agreement had not been reached between them. But if the agreement has been declared valid, it means that two people promise each other, then a legal consequence will be born in carrying out the agreement if the agreement is broken.

### **Legal Certainty Theory**

According to Jan Michiele Otto, legal certainty in certain situations requires the following: 1) the availability of clear and clear, consistent and accessible legal rules issued by the state power. 2) that the ruling (government) agencies implement the said legal rules consistently and obey them. The majority of citizens in principle agree with the content and therefore resolve their behavior towards the rules. 3) that independent and impartial judges (judiciary) apply these legal rules consistently when they resolve disputes. 4) Judicial decisions are implemented in a concrete manner.

According to Jan Michiele Otto, the better a legal state functions, the higher the level of legal certainty in fact. On the other hand, if a country does not have a legal system that functions autonomously, there is little level of legal certainty. In a legal event, the sale and purchase will give birth to an agreement, and if an agreement is considered valid, the agreement will be born. Then if the agreement arises as a result of the unlawful act of the seller, namely fake beauty products, there will be sanctions.

According to the theory of Schuld and Hafting, which are the special elements that exist from an engagement. Schuld is the debtor's obligation to carry out his performance, regardless of whether or not

there is a sanction / property at stake as a consequence of this obligation. Meanwhile, hafting means a liability or juridical responsibility / property of a debtor, regardless of who has to carry out the achievement.

Legal certainty as one of the objectives of the law cannot be separated from the law itself. The most important function of law is to achieve order in human life in society. Order will cause people to live with certainty, meaning that people can carry out the activities required in social life because that person can make calculations or predictions about what will possibly happen or what might be expected.

According to Utrecht, law has a duty, namely to ensure legal certainty in human relations. The certainty guaranteed by the law is the certainty of one party to another.

### **The Concept of Legal Protection**

According to Salim HS and Erlies Septiana Nurbani, theoretically, the form of legal protection is divided into two, namely: 1) protection that is preventive in nature 2) protection that is repressive in nature. Preventive legal protection is a preventive legal protection. This protection provides an opportunity for the people to object (*inspraak*) their opinion before a government decision takes a definitive form. So that it aims to prevent disputes and has a very large meaning for a government based on freedom of action. With this preventive legal protection, it will encourage the government to be careful in taking actions or decisions related to the *ermessen freies* principle, and the people can raise objections or be asked for their opinions regarding the plan of the decision.

Repressive legal protection serves to resolve if a dispute occurs. Currently, in Indonesia there are various bodies that partially handle legal protection of the people which are grouped into two bodies, namely: 1) Courts within the scope of general courts. 2) Government agencies which are administrative appeals agencies

In statutory regulations, the forms of legal protection provided by the community for the arbitrariness of other parties, be they the authorities, or entrepreneurs, or people who have an economic level higher than the victims.

## **3. RESULTS AND DISCUSSION**

### **The Actions Doing By Businesses Are Unlawful**

Acts against the law (PMH) are contained in article 1365 of the Civil Code, which reads: "every act that violates the law and brings harm to others, obliges the person who incurs the loss because of his fault to compensate for the loss." In general, what is meant by "action" in terms of an act against the law is: 1) Noneasance, namely not doing something that is required by law. 2) Misfeasance, is an act that is

done wrong, which action is an obligation or an act for which he has the right to do it. 3) Malfeasance, namely an act committed even though the perpetrator is not entitled to do.

In accordance with the provisions contained in Article 1365 of the Civil Code, an act against the law must contain the following elements: 1) The existence of an act; 2) The act is against the law; 3) There was an error on the part of the perpetrator; 4) There is a loss for the victim; 5) There is a causal relationship between actions and losses.

## **Forms Of Legal Protection For Consumers Due To Activities Obtained By Business Personnel**

### **Legal Protection for Consumers**

Article 1 point 1 of Law Number 8 Year 1999 concerning Consumer Protection (UUPK) explains the definition of Consumer Protection which reads "Consumer Protection is all efforts that ensure legal certainty to provide protection to consumers." Explanation of the sentence " all efforts to ensure legal certainty " Protection against the imposition of unfair conditions to consumers. This includes the relation to promotions and prices made by the business, for example, business actors promote very cheap and guaranteed authentic cosmetics. However, when consumers want to buy cosmetics, the business actor requires that to get the promotion they must buy at least 1 (one) dozen cosmetics. Therefore, this consumer protection regulation is carried out by: 1) Creating a consumer protection system that contains elements of openness to information access and ensuring legal certainty. 2) Protecting the interests in particular and the interests of all business actors. 3) Improve the quality of the traded goods and / or services. 4) Providing protection for consumers due to deceptive and misleading business practices. 5) Promote the implementation, development and regulation of consumer protection with other protection fields.

## **Legal Relationships That Occur between Business Actors and Consumers as well as Regulation of the Circulation of Goods and / or Services**

### **Legal Relationship Between Business Actors and Consumers**

A legal relationship (*rechtbetrekkingen*) is a relationship between two legal subjects or two parties and more about the rights and obligations of one party with the rights and obligations of the other. Legal relations that occur between business actors and consumers occur when business actors provide promises and information related to goods and / or services being traded, because since then the rights and obligations of the parties, both business actors and consumers, arise. The legal relationship is based on Article 1320 BW and Article 1338 BW where the business actor has agreed on what has been promised when giving promises in an advertisement, or leaflet or brochure, so that the promises will act as law against the parties who made it.

**Prohibition of Business Actors Related to the Trade or Distribution of Goods and / or Services**

In essence, according to Nurmadjito, the intended prohibitions are intended to ensure that goods and / or services circulating in society are products that are fit for circulation, including origin, quality that is in accordance with the information of entrepreneurs either through labels, etiquette, advertisements, , and so forth. With such protection, business actors should not provide products of lower quality than the price they paid, or which are not in accordance with the information they obtain.

**Supervision in the circulation of goods and / or services**

The implementation of supervisory duties is not only borne by the government, but also delegated to the community, whether in the form of groups, individuals, or non-governmental organizations. Supervision by the community and non-governmental organizations can be carried out through research, testing and / or surveying of goods circulating in the market. This supervision carried out by the community includes the aspects of loading information about the risks of using goods if required, labeling, advertising, etc. that are required based on the provisions of laws and regulations and customs in business practices. The task of supervision carried out by the community and non-governmental organizations (NGOs) for consumer protection can only be carried out on goods and / or services circulating in the market, while the production and distribution facilities and infrastructure can only be carried out by the government.

**National Consumer Protection Agency and Dispute Resolution as Certainty Forms of Legal Protection in Consumer Protection****National Consumer Protection Agency**

The National Consumer Protection Agency, hereinafter written as BPKN, was formed in order to develop consumer protection efforts, this is stated in Article 31 of Law Number 8 of 1999 concerning Consumer Protection which reads "In order to develop consumer protection efforts a National Consumer Protection Agency was established." The government strives as much as possible to strive to develop consumer protection because this consumer protection is the guarantee that consumers should get for every product that has been purchased by business actors.

This regulation that regulates the National Consumer Protection Agency shows the seriousness of the government in providing consumer protection. With the existence of this UUPK, illegal and dangerous products for users or consumers have been prohibited from being offered, promoted, advertised and / or traded.

**Consumer Dispute Resolution Bodies**

Dispute resolution through the Consumer Dispute Resolution Agency, which is then written by BPSK, contains elements of peace. But it must be remembered that consumer disputes cannot be resolved with peace alone because legal provisions must still be adhered to. Thus, BPSK resolves consumer disputes by examining and resolving permanent disputes based on applicable law. That is, BPSK when carrying out its role and upholding the applicable laws (laws). In Article 1 point 11 UUPK states that the Consumer Dispute Resolution Agency (BPSK) is an agency in charge of handling and resolving disputes that occur between business actors and consumers.

The duties and powers of this consumer dispute body are carried out by an assembly that has been formed by the Chairperson of the Consumer Dispute Resolution Agency and assisted by the clerk. The composition of the BPSK assembly must be odd, and provided that at least 3 (three) persons represent all elements as referred to in Article 54 paragraph (2) of the UUPK, namely elements of the government, consumers and business actors.

#### **Dispute Resolution and Sanctions That Occur as a Result of Purchasing Fake Cosmetics**

The procedure for resolving consumer disputes carried out by BPSK is regulated in Law Number 8 of 1999 in conjunction with Kepmenperindag Number 350 / MPP / 12/2001 concerning the Implementation of Duties and Authorities of Consumer Dispute Resolution Bodies. The process is arranged in such a way and is very simple or as far as possible a formal atmosphere is avoided. In paragraph (4) the UUPK determines that if an out-of-court dispute settlement effort has been selected, then a lawsuit through the court can only be pursued if the effort is declared unsuccessful.

If an objection is submitted to the BPSK panel's decision, the district court must immediately examine and give a decision on the objection no later than 21 working days after the objection is received. If the parties are still not satisfied with the decision of the district court, then an appeal can be submitted to the Supreme Court no later than 14 working days after the decision is received. Administrative sanctions given for the actions of business actors in marketing imported cosmetics can be categorized as Unlawful Actions as regulated in Article 1365 BW which reads: "Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his / her mistake to compensate for these losses. "

#### **4. CONCLUSION**

The business actor's actions in making cosmetic counterfeiting can be categorized as an illegal act because he has fulfilled the elements of an unlawful act in chapter 2 (two), namely: 1) There is an act; 2) The act is against the law; 3) There was an error on the part of the perpetrator; 4) There is a loss for the

victim; 5) There is a causal relationship between actions and losses. Therefore, the business actor's act of cosmetic counterfeiting is categorized as an act against the law because it was done on purpose and not due to negligence. This act really caused harm to the victim.

The form of legal protection for consumers due to illegal acts committed by business actors is the establishment of a national consumer protection agency as a government effort in developing consumer protection and providing space for resolving consumer disputes through the Consumer Dispute Resolution Agency as a small claim court agency.

### **Suggestion**

As a business actor, it is better not to counterfeit cosmetics because a successful business actor, apart from being seen from his services, can also be seen from the quality of his merchandise which does not cause harm to the victim. The government should also, in this case, including BPOM, supervise the circulation of cosmetics in Indonesia so that there is no trade in fake cosmetics. The form of huum protection for consumers, in this case compensation, is not only compensation contained in the Consumer Protection Law but also compensation in Article 1365 of the Civil Code. However, in article 1365 of the Civil Code there is no total amount of compensation that must be paid, therefore it is better if there is a need for revision to Article 1365 of the Civil Code so that the amount of compensation is not obscured but is clearly stated in the article so that legal certainty can be realized.

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