



## LEGAL PROTECTION OF COSMETIC CONSUMERS IN INDONESIA

**Anastasia Tri Yuli Susanti**

Central Java Province Public Sense Health Center

E-mail: [dr.atriyulisusanti@yahoo.com](mailto:dr.atriyulisusanti@yahoo.com)

**Abstract:** This article is a conceptual article that will discuss how to implement legal protections for consumers in using cosmetic products based on positive law in Indonesia. This needs to be studied in a paper because it is motivated by several things. Recently the Food and Drug Supervisory Agency (from now on referred to as Badan POM [Indonesian Food and Drug Authority]) announced 27 cosmetic brands which were found to be positive for hazardous ingredients, namely Mercury (Hg), Hydroquinone, Retinoic Acid (Retinoic Acid), Rhodamine (Red K.10) and Red K.3 Mercury (Hg) dyes are both hazardous materials that can harm skin health and can cause poisoning when used for a long time. The juridical problem with law enforcement to ensure the protection of the rights of consumers of cosmetic users is that the legal construction of the protection of cosmetic users is not regulated in an existing legal provision, so that this paper will state the importance of codification, in addition, legal protection also needs to be socialized to the public to realize preventive legal protection.

**Keywords:** Codification; Cosmetics; Legal protection

**Abstrak:** Artikel ini merupakan artikel konseptual yang akan membahas mengenai bagaimana implementasi perlindungan hukum bagi konsumen dalam pemakaian produk kosmetik berdasarkan hukum positif di Indonesia. Hal demikian perlu dikaji di dalam suatu tulisan karena hal demikian dilatarbelakangi oleh beberapa hal. Baru-baru ini Badan Pengawas Obat dan Makanan (selanjutnya disebut Badan POM) mengumumkan 27 merek kosmetik yang ternyata positif mengandung bahan berbahaya yaitu Merkuri (Hg), Hidrokinon, Asam Retinoat (Retinoic Acid), zat warna Rhodamin (Merah K.10) dan Merah K.3. Merkuri (Hg) kedua bahan tersebut merupakan bahan berbahaya yang dapat berdampak buruk pada kesehatan kulit dan bisa menimbulkan keracunan bila digunakan dalam waktu yang lama. Problematik yuridis atas penegakan hukum guna menjamin adanya perlindungan atas hak konsumen pengguna kosmetik adalah tidak diaturnya konstruksi hukum perlindungan pengguna kosmetik didalam suatu ketentuan hukum yang ada, sehingga tulisan ini akan mengemukakan pentingnya kodifikasi, selain itu perlindungan hukum juga perlu disosialisasikan kepada masyarakat guna mewujudkan perlindungan hukum yang preventif.

**Kata Kunci:** Kodifikasi; Kosmetik; Perlindungan Hukum.

## A. Introduction

The rapid development of the economy and technological progress today has led to rapid changes in various products (Djelantik et al., 2016), one of which is cosmetic products. This statement can be proven that many industries produce various kinds of cosmetic products. In their current production process, these rapidly growing industries have transformed using modern technology so that the cosmetic industries are currently able to produce cosmetics that are offered on a vast scale. In addition to the use of increasingly sophisticated technology, currently, the distribution process for the products made has also used modern transportation facilities, which has direct implications for increasing the distribution network, which is very broad and reaches all strata of Indonesian society. (Kementerian Perindustrian Republik Indonesia, 2020)

A portrait of the development of the global economy and technological progress that is increasing rapidly, making the trade sector (one of which is trading in cosmetic ingredients) one of the economic field activities that have a strategic role in the framework of broad-minded development. The trade sector plays a role in encouraging the smooth distribution of the flow of goods and services to meet human needs. Progress in the field of an industry increasingly rapidly affects the emergence of the free-market era, which makes competition between producers increasingly fierce, especially to attract consumers to the various products offered by producers.

Under these conditions, business is an integral activity of modern society. Market conditions marked by intense competition and the variety of products offered ultimately place consumers as subjects with many choices. Facing this reality, consumers are encouraged to be more aware of their rights. This awareness grows with the global consumer movement trying to protest against business actors who harm consumer rights. Likewise with producers and consumers of cosmetic products.

Cosmetics are daily necessities that are regularly used for the purpose of care and beauty. The higher the level of prosperity in a country, the higher the need for cosmetic preparations. (Waryanto & Pratiwi, 2019) Cosmetics comes from the English "Cosmetic", which means "women's beauty tools". In modern Arabic, it is termed "*Alatuj tajmil*", or a means of beautifying oneself. (Mahdiyyah & Putriana, 2019)

Cosmetics in the perspective of the Republic of Indonesia is defined in more detail by the BPOM (Food and Drug Authority) Ministry of Health of the Republic of Indonesia, which states that "Cosmetics are guide materials that are ready to be used on the external body (epidermis, hair, nails, lips and external genital organs), teeth, and oral cavity to clean, increase attractiveness, change appearance to keep it in good condition." (Sari et al., 2020)

The circulation of cosmetic products is extensive and fast in Indonesia, especially in big cities. The people of big cities, mainly from the upper classes, think cosmetics have become necessary. The existence of changes in lifestyle in big city communities causes cosmetics to be a product that is very close to the community. Being beautiful is a woman's natural desire, everything they will do to realize this dream, and it is no wonder that manufacturers offer various cosmetics to consumers, especially women.

In many big cities in Indonesia, various cosmetic products have sprung up. They are offset by many who consume cosmetic products. However, on the other hand, people's knowledge in urban areas is still insufficient to choose and use cosmetic products correctly, correctly and safely. Lack of safety causes many consumers to be harmed by the use of cosmetic products. (Khasanah & Suliantoro, 2020)

Based on this, the writing of this article will try to provide a description and analyze the impacts of using cosmetics that use hazardous materials such as mercury and so on are. In addition, this research will also try to explain how the enforcement of legal protection for consumers in Indonesia is applied and how the responsibility of producers for harmful cosmetics that cause harm to consumers.

## **B. Discussion**

The issue of consumer protection that has been explicitly addressed has only been known and grown in Indonesia in recent years, so it has not yet taken root in all existing layers and groups of society. Before the concept of consumer protection was recognized and developed, the notion of consumers was more likely to be identical with the understanding of the community in the development of matters relating to industrial, trade, health, and security issues, the laws that were drawn up at that time, each preamble mentions the interests of the community or the health of the people/citizens in a broad sense, including the notion of consumers, such as: (Nasution, 2017)

- a. Law no. 9 of 1960 on health issues;
- b. Law no. 11 of 1962 concerning Hygiene for public business;
- c. Ministerial Decree No. 950/PH 165/b of 1965 concerning provisions for inspection and supervision of production and distribution;
- d. Decree of the Minister of Health No. 125 of 1971 concerning mandatory drug registration;
- e. Decree of the Minister of Health No. 220 of 1976 concerning the production and distribution of cosmetics and medical devices;
- f. Law no. 23 of 1992 on health;
- g. Law no. 8 of 1999 on consumer protection;
- h. PERMENKES No. 445/MENKES/PER/V/1998 concerning ingredients, dyestuffs, substratum, preservatives and sunscreens in cosmetics, as well as various other laws and regulations that contain consumer interests and cosmetic safety.

Recently, the Indonesian Food and Drug Authority (from now on referred to as Badan POM) announced 27 cosmetic brands that were found to contain hazardous ingredients, namely Mercury (Hg), Hydroquinone, Retinoic Acid (Retinoic Acid), Rhodamine dye (Red K.10) and Red K.3 Mercury (Hg) both of these ingredients are hazardous materials that can harm skin health and can cause poisoning when used for a long time even though their use is limited to being applied to the skin surface; however, Mercury (Hg) as mentioned will be easily absorbed into the blood, then enter the body's nerves. Therefore, Mercury (Hg) should not be used in cosmetics, while Hydroquinone should not be used more than 2 percent and even then must be under the supervision of a doctor. So it can't be used carelessly. (Setyawan et al., 2020)

One of the cosmetic products that were announced to contain dangerous ingredients was Doctor Kayama, whose products were in the form of whitening day cream and whitening night cream. (Saqib et al., 2019) Even though Doctor Kayama is a cosmetic product that is quite famous and the price is expensive. The results of the research by the Badan POM said that these cosmetic products contain Mercury (Hg) which can be harmful to health. Because of the use of these products, there are consumers from Doctor Kayama who experience itching on the skin, and quite a lot of acne-like spots appear on the face. Consumers have been harmed by using cosmetic

products of whitening cream; the skin becomes smooth and bright, but the skin becomes damaged.

The use of mercury metal has almost covered all aspects of human life and the environment. Over the course of several years, mercury has been widely used in medicine, agriculture, and industry. The medical field has used mercury since the 15th century where mercury (Hg) was used to treat venereal disease (syphilis). Columel (HgCl) was used as a wound cleanser until it was discovered that the material was toxic, so it was not used anymore. (Sumantri et al., 2014) Organic mercury components are used as diuretic drugs for many years and are also used as cosmetic ingredients.

Mercury ions cause toxic effects because the protein precipitation process inhibits enzyme activity and acts as a corrosive material. Mercury is also bound to sulfhydryl, phosphoryl, carboxyl, amide, and amine groups, in which mercury can inhibit enzyme function. (Thaib & Sianipar, 2020)

Mercury toxicity in humans is distinguished according to the form of Hg compounds, namely inorganic and organic. Inorganic Hg poisoning has been known since the 18th and 19th centuries with symptoms of tremor in adults. The symptoms of tremors have been known since the 18th century as “hatter’s shakes” because, at that time, many workers in hat and wool factories were suffering from these symptoms. Symptoms continue with tremors in the facial muscles, which then spread to the fingers and hands. If poisoning continues, tremors occur in the tongue, stuttering speech, stiff walking looks, and loss of balance. Changes in memory loss can also occur in Hg toxicity, and chronic poisoning will cause death. (Yanuar, 2000)

According to the Regulation of the Minister of Health, the maximum mercury level in the water is 0.001 mg/l. The use of cosmetics containing Mercury can result in: (Sonata MS et al., 2021)

- a. It can slow down fetal growth;
- b. Resulting in miscarriage (fetal death and infertility);
- c. Black spots on the skin will turn pale (as if faded), and when the use is stopped, the spots can / will reappear & get worse (widen);
- d. The rebound effect is to give the opposite response (the skin will become dark/dull when the use of cosmetics is stopped);
- e. For a face that was clean, gradually very severe (wide) spots will appear;
- f. It can cause skin cancer.

The mercury element in cosmetics will be absorbed through the skin (the skin becomes red, irritated, and abnormally shiny). It will be circulated through the blood throughout the body, and the mercury will settle in the kidneys, which results in very severe kidney failure. It could potentially cause death. Mercury in whitening creams (which may not be listed on the label) can be toxic when used for a long time. (Khatami et al., 2019)

The lack of information about cosmetic substances or compositions provided by business actors has violated consumer rights. The lack of supervision from the Badan POM has caused cosmetic products containing hazardous ingredients to still circulate in the market so that consumers easily find them.

The number of circulating cosmetic brands that are sold in the market with attractive packaging and promises to get results in a short time need to be watched out for by the public. Consumers should be more vigilant and observant before buying cosmetic products. Cosmetic products that contain harmful ingredients have side effects

that impact skin damage as a result of using these products, for which there was no previous explanation or doctor's instructions.

Based on the Presidential Decree, Badan POM was formed, which is in charge of the supervision of drugs and food following the provisions of the applicable legislation. The establishment of the Badan POM aims to detect, prevent, and supervise products, including protecting consumers' security, safety, and health. Badan POM has national and international networks as well as law enforcement authorities and has high professional credibility.

Lack of public attention to safe products and lack of law enforcement. The implementation of Law Number 8 of 1999 concerning Consumer Protection (from now on referred to as UUPK) is also not going well, this can be seen from the repeated raids on cosmetic products that are not registered and contain hazardous ingredients but in the market, many of these products are still sold freely.

So far, the handling of consumer protection has not been carried out in an integrated manner. The interests of consumers in their rights and obligations are still not as expected. Monopolistic practices and the absence of consumer protection have put consumers at the lowest level in dealing with business actors. (Purba, 2020)

In fact, cosmetic products as beauty tools generally instantly show results in the form of smoothness, beauty, and brightness. But without realizing the effect on the health of the body causes severe and permanent problems. The interests between the two camps, producers and consumers, are not appropriately bridged by Badan POM through strict supervision. As a result, dangerous products remain in circulation due to weak supervision and are only temporary.

Standardization of product quality is crucial for cosmetic products, considering that it is very closely related to health. Using cosmetics that contain harmful ingredients can negatively impact body health, especially on the skin.

Access to information about the quality of a product is essential for consumers. First, consumers have broader insight to determine the choice of a product based on reliable information. Second, if in the field it is found that a product that does not comply with the standards issued by the government and results in a loss on the part of the consumer, the consumer can file a claim for compensation to the producer or business actor.

Article 8 paragraph (1) point A of the Law on Consumer Protection (UUPK), which reads: "Business actors are prohibited from producing and or trading goods and or services that do not meet or do not comply with the required standards and provisions of laws and regulations. Article 8 paragraph (2) UUPK (Law on Consumer Protection) reads: "Business actors are prohibited from trading damaged, defective or used, and polluted goods without providing complete and correct information on the goods in question."

Consumers, as users of goods and or services, of course, have specific interests. The interests of consumers need to be protected. Therefore the UUPK regulates consumer rights, namely Article 4 of the UUPK. There is a relationship between consumers and business actors. Business actors must recognize that consumers are an inseparable part of their business continuity from the business side.

On the other hand, consumers in meeting their needs always depend on the existence of goods and or services on the market as an output from the activities of business actors. Therefore, producers as business actors whose actions are trading cosmetic products must pay attention to the product's safety, which must meet the

requirements and supervision of cosmetics that have been issued by the government of the Republic of Indonesia. The factor of safety and not harming health is a fundamental consumer right. (Salamiah, 2014)

With the enactment of the UUPK, it can limit producers in marketing their goods because they only comply with some prohibitions specified in the UUPK, but that does not mean that the interests of business actors are not taken into account, primarily because business actors largely determine the existence of the national economy.

In civil law, the relationship between consumers and business actors in a broad sense, namely as producers and sellers of goods, is an engagement. Book III of the Civil Code on engagement, article 1233 of the Civil Code states that “every engagement is born well because of agreement, whether because of the law.” While article 1234 of the Civil Code says that “every engagement is to give something, to do something, or not to do something”. According to Subekti, an engagement is a legal relationship between two people or two parties. One party has the right to demand something from the other party, and the other party is obliged to fulfill that claim.

Business actors and consumers in sellers and buyers enter into sales and purchase agreements to meet needs. Article 1457 of the Civil Code, buying and selling is an agreement, with the name of one party binding himself to deliver an object and the other party to pay the price that has been promised. If the seller in the sale and purchase transaction does not carry out his achievements, it can be said that the seller is in default.

Consumers who experience losses can file a claim for compensation to the seller or producer. The consumer demands compensation from the seller or producer based on default due to an engagement arising from an agreement. Compensation claims can be submitted to business actors because an arrangement stems from the law based on an unlawful act.

### **C. Closing**

The enforcement of legal protection for consumers needs to be a priority that needs to be considered and then applied consistently by law enforcers in Indonesia. The making of law supports this on consumer protection which is the embodiment of the 1945 Constitution of the Republic of Indonesia, namely to protect the entire Indonesian nation, promoting public welfare in every public interest, uncertainty about legal protection for consumers is an obstacle to consumer protection efforts.

An institution has been formed that aims to bring consumers to defend their rights as consumers, namely the Indonesian Consumers Foundation, but consumers are still reluctant to go through the judiciary for themselves. They are more resigned to what they are experiencing. Defective products when the product is unsafe in its use do not meet certain safety requirements as expected with various safety considerations, especially regarding product appearance and proper use expected of the product when the product is released.

Further law enforcement is not only seen from the criminal side but also needs to be seen from the civil side, where article 1367 of the Civil Code is very appropriate because it is the absolute responsibility of producers to provide compensation to consumers as a result of losses suffered by consumers caused by harmful cosmetics.

Based on these facts, this study will provide suggestions, among others, to ensure legal certainty in the effort to protect consumers. It requires legal codification of the Law on consumer protection, the Civil Code and the Criminal Code, which regulates

consumer rights against cosmetic users in Indonesia. In addition, the codification of the provisions of consumer legal protection is also required to update the procedure for filing a lawsuit by consumers against producers. This renewal, especially after the issuance of Law no. 8 of 1999, it is hoped that the public will not feel reluctant to defend their rights as consumers.

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