

Responsibilities of Business Conductors to Consumer Cosmetic Sales (Face Bleaches) Containing Hazardous Materials by Law Number 8 of 1999

Sri Arlina, ^auniversitas Islam Riau St. Kaharudin Nasution No. 113, Pekanbaru, Indonesia, email: sriarlina@law.uir.ac.id

In their daily life, women cannot be separated from cosmetics, which are mandatory for the beautification of their appearance. Women will go to any lengths to make their appearance more perfect, including using cosmetics (facial bleach). These types of cosmetics, especially those that whiten or lighten the face and which are widely sold in cosmetics stores and drug stores, each offer a variety of advantages, from expensive prices to the highest possible prices and from domestic products to foreign products. All of these products are safe for the face and contain harmful ingredients. The high interest of female consumers in cosmetics (facial bleach) is not wasted on businesses, who will reap profits by selling cosmetic products (harmful facial bleach) despite not having a list of cosmetic notifications available at BPOM (The Board of Drug and Food Control) and not having permits for halal products from the Indonesian Ulema Council (MUI). Business actors or traders who sell and display their products must be responsible and have good intentions behind their sale of cosmetic products (in terms of facial bleach). This responsibility is exercised by using packaging that details the contents and materials used and by ensuring that those materials are safe, in accordance with the provisions of article 8, paragraph 1, letter a of Law Number 8 of 1999 about Consumer Protection. The problem that will be discussed in this paper is: “What are the responsibilities of business actors regarding cosmetics consumables (facial bleachers) that contain hazardous ingredients, according to Law Number 8 of 1999?” The analytical method used in this study was that of a juridical normative study: using primary, secondary, and tertiary legal sources as tools to conduct the analysis.

Key words: *Responsibilities of Business Actors towards Cosmetics Consumers (Whitening).*

Chapter I

Introduction

Background

In their daily life, women cannot be separated from cosmetics, which are mandatory for the beautification of their appearance. Women will go to any lengths to make their appearance more perfect, including using cosmetics (facial bleach). These types of cosmetics, especially those that whiten or lighten the face and which are widely sold in cosmetics stores and drug stores, each offer a variety of advantages, from expensive prices to the highest possible prices and from domestic products to foreign products. All of these products are safe for the face and contain harmful ingredients.

Cosmetic products (facial bleach) that are sold freely by businesses and traders use ingredients that are harmful to the body and health. These ingredients can have immediate side-effects and effects that will be felt several years later. Hazardous ingredients include mercury, the use of hydroquinone > 2%, and other hazardous substances that are not allowed to be used in cosmetics, especially in facial bleach.

The high interest of female consumers in cosmetics (facial bleach) is not wasted on businesses, who will reap profits by selling cosmetic products (harmful facial bleach) despite not having a list of cosmetic notifications available at BPOM (The Board of Drug and Food Control) and not having permits for halal products from the Indonesian Ulema Council (MUI). Women who use cosmetics (facial bleach) do not care about product safety due to the lures, promises, and persuasions of business actors that these cosmetics (facial bleach) can brighten and whiten the face in only a short period of time.

In practice, violations of consumer rights are carried out both intentionally and unintentionally. This is due to the high demand in the cosmetics market (whitening) caused by female consumers. Businesses are competing to sell their whitening products by offering low prices, guaranteeing white and bright skin in a short time, and lying to consumers that their products are safe and have been registered at BPOM.

Given its development of consumer protections, consumer behavior in Indonesia is strongly influenced by the level of knowledge and awareness of legal rights and culture. Consumer behavior (customer behavior) is the processes and activities carried out by someone who is

related to the search, selection, purchase, use, and evaluation of a product or service, in order to meet the needs and desires of the consumers themselves (Arief, 2012).

While business operators, both distributors and traders, have a responsibility to provide cosmetic products (facial bleach) that are safe for health and have packaging that details their contents and ingredients. Article 8, paragraph 1, letters a and c of Law Number 8 of 1999 concerning Consumer Protection states (Law Number 8 of 1999):

"Business actors are prohibited from producing and/or trading goods and/or services which:

Letter a: do not meet the required standards and statutory provisions.

Letter c: do not comply with the conditions, guarantees, privileges or efficacy, as stated in the label or description of the said goods and/or services."

Provision of information, such as the ingredients used, to consumers who use facial whitening cosmetics is a form of good faith from the entrepreneur and the seller himself. This good faith begins at the process of making facial whitening cosmetic products and continues to the process of selling facial whitening cosmetics. Instead, businesses make facial whitening cosmetics with whitening ingredients that are harmful to health in the sole pursuit of profit and without consideration of the effects of the products.

If this good faith is not shown by the entrepreneur and especially the buyer, then consumers are always the most disadvantaged. Also, by withholding information or including mistaken information, the merchant automatically covers information on ingredients and the impact of whitening cosmetics faces from abroad.

Business operators take full responsibility for cosmetic products (facial bleach) and provide security guarantees for their products. The principle of responsibility, also known as liability, is important for providing protection for consumers.

The principle of responsibility is a very important subject in consumer protection law. In cases of violation of consumer rights, caution is needed in identifying the responsible party and deciding how far their responsibility can be borne (Celina, 2014).

Identification of the problem

The problem that will be discussed in this paper is: "What are the responsibilities of business actors regarding cosmetics consumables (facial bleachers) that contain hazardous ingredients, according to Law Number 8 of 1999?"

Purpose and Benefits of Writing

The purpose of writing this research is to determine the responsibilities of business operators regarding cosmetic consumables (facial bleachers) that contain hazardous substances, according to Law Number 8 of 1999.

This writing is expected to add insight and information to researchers, academics, law enforcement and practitioners, and the general public regarding the responsibilities of business operators regarding cosmetic consumables (facial bleachers) that contain hazardous substances, according to Law Number 8 of 1999.

Chapter II

Research Methodology

Types and Nature of Research

This research is a type of normative legal research. By reviewing the responsibilities of business actors regarding cosmetic consumables (facial bleachers) that contain hazardous substances, according to Law Number 8 of 1999.

While the research is descriptive in nature, it is a normative study that can provide a clear, as well as systemically detailed, picture. This type of research is used to make it easier to connect theory and regulation so that later, this writing can answer the problem more carefully, precisely, and systematically.

Research Data or Legal Materials

The data used in normative research are primary and secondary data, which can be distinguished as follows:

- a. Primary legal material: Legal material that has authority. In the author's research, the primary legal material is the legislation related to, among others, Law No. 8 of 1999 concerning Consumer Protection.
- b. Secondary legal material: All legal publications which are unofficial documents and are indications or explanations regarding primary legal materials. Secondary legal materials are textbooks and scientific journals that discuss an issue within the scope of consumer protection law.
- c. Tertiary legal material: Tertiary legal material in this study is in the form of dictionaries and information from the internet.

Data Collection Methods

The research data was collected by means of a literature study, namely on primary, secondary, and non-legal legal materials. Furthermore, the data collected will be reviewed by legislation or theory so that conclusions can be drawn from it.

Data Analysis

With the data that has been obtained and compiled, the first step in the analysis was to group the data according to the main problem. Next, data processing was presented in the form of a description of the sentences in accordance with the main problem. The researcher then analyzed and compared this with the theory or other provisions and opinions of legal experts. Finally, the researcher drew conclusions using the inductive method, that is, drawing conclusions from things that are specific to the responsibility of business actors regarding cosmetic consumables (face whitening) that contain hazardous materials, according to Law No. 8 of 1999

Chapter III

Discussion

The Concept of Consumer Protection

Initially the concept of consumer protection in Indonesia was only based on the Civil Code. If Indonesian consumers felt disadvantaged, consumers could only seek compensation from businesses on the basis of acts against the law, as stipulated in article 1365 of the Civil Code, which states, "Each act is unlawful, which brings harm to others, obliging people who due to their wrongdoing issue the loss, compensate the loss."

This also occurs because of the industrialisation process, the process of workmanship, and the results of products or services produced by business actors. Legal problems can arise that are detrimental to consumers, both in terms of financial and non-financial losses. Companies in the business of selling cosmetics (whitening faces) have sold products that contain harmful ingredients and cause facial health problems, so the government has demanded that businesses be consistent with consumers.

However, the existence of Law Number 8 of 1999 Concerning Consumer Protection at least provides hope for consumers about the legal protection of their rights. It also affects the alignments to consumers, which is actually a tangible manifestation of a people's economy (Simarmata, 1998).



In accordance with the objectives of Law No. 8 of 1999 contained in article 3, letters d and e, the consumer protection aims (Law Number 8 of 1999):

"Letter d: Creating a consumer protection system that contains elements of legal certainty, information disclosure, and access to information;

Letter e: Raising awareness of business actors regarding the importance of consumer protection so as to grow an honest attitude in being responsible in doing business."

The purpose of Law Number 8 of 1999 is in accordance with the statement that the law functions as a protection of human interests. For humans' sake, protections by law must be implemented. Implementation of a law can take place normally and peacefully, but may also be because of violations of the law.

In Consumer Protection Law, according to Article 1, number 2 of Law No. 8 of 1999, Consumers are "all users of goods and/or services available in the community, whether for the benefit of themselves, their families, others, or beings other and not for trading".

Whereas according to Article 1, Number 3 of the Consumer Protection Act, Business Actors are "every individual or business entity, whether in the form of a legal entity or not a legal entity, established and domiciled or carrying out activities in the jurisdiction of Indonesia, both individually and jointly through agreements to carry out business activities in various economic fields".

In the Consumer Protection Act, Article 4, paragraphs 1 and 3 state that consumer rights are:

"The right to comfort, safety in consuming goods or services, the right to true, clear and honest information about the conditions and guarantees of goods or services".

Obligations of business actors are clearly regulated in article 7 of Law Number 8 of 1999 concerning Consumer Protection:

"a) In good faith in doing business;

b) Provide true, clear, and honest information about the condition of the goods or services, as well as providing explanations, uses, repairs, and maintenance; "

Responsibilities of Business Actors Regarding Consumables (Face Bleach) that Contain Hazardous Materials Under Law Number 8 of 1999

In general, the principle of responsibility is divided into several sections, as follows (Shidarta, 2000):

- 1) The principle of presumption to always be responsible. This principle demands to always be held responsible, until the guilty party can prove his innocence.
- 2) The principle is not always responsible. This principle is the opposite of the second principle; this principle is only known in the very limited scope of consumer transactions.
- 3) The principle of absolute responsibility. Containing an error is not a determining factor, in general consumer protection law, this principle is used to ensnare business actors, especially producers of goods, that market their products to harm consumers.
- 4) The principle of responsibility with limitations. The principle of responsibility with limitations is favored by business actors to be included as an exoneration clause in the standard agreements they make.

Product liability, which is the legal responsibility of a person/entity that produces a product (producer/manufacturer), a person/entity engaged in a process to produce a product (processor/assembler), or a person/entity that distributes a product (seller/distributor) (<https://docplayer.info/66585345-Bab-ii-tvIEWS-pustaka-mengen-tanggung-Responsibility-delper-usaha-per-protect-konsumen-produk-halal-dan-badan-pend-Settlement-konsumen-bpsk.html>).

The responsibility of business actors has been regulated in articles 19 through 28 of Law No. 8 of 1999 concerning Consumer Protection. Article 19 of Law No. 8/1999 regulates the liability of business actors for products that are produced and traded. It states that business operators are responsible for providing compensation for:

- “1. Damage
2. Pollution
3. Consumer damage and loss
4. Pollution and losses
5. Consumer losses”

Most cosmetic products (facial bleach) circulating in the market come from illegal products imported from foreign countries. Most of these products come from China, Thailand, Malaysia, and Korea. In cosmetics (facial bleach) using foreign languages, the ingredients contained therein are also not listed, side-effects are not listed, and, more importantly, they do not have cosmetic notifications as required by the BPOM RI (Drug Control Agency) and Food) Republic of Indonesia.

BPOM, in article 1, paragraph 1 of Regulation of the Food and Drug Supervisory Agency Number 12 of 2019 concerning Contamination in Cosmetics, has a standard that: ¹

“What can be said cosmetic products are ingredients or preparations intended to be used on the outside of the human body, such as the epidermis, hair, nails, lips and external genital organs, or teeth and oral mucous membranes, especially to cleanse, scent, change appearance, and/or improve body odor or protect or maintain the body in good condition.”

If cosmetic products (facial bleach) sold by business actors do not have a cosmetic permit notification and do not meet the quality standards of cosmetics that may be sold in Indonesia, then cosmetics consumers, mostly women, will suffer. This is because there is no guarantee of legal certainty and safety for cosmetic products (facial bleach) sold in the market.

The criteria violation rights of consumers, as described by Yusuf Shofie, details 5 (five) principles, which are set out in article 2 of Law Number 8 of 1999 concerning Consumer Protection (Yusuf, 2008). They are as follows:

1. Consumer protection is based on benefits.
2. Protection of consumers based on justice.
3. Protection of consumers on balance.
4. Protection of consumers based on security and consumer's safety.
5. Protection of consumers based on legal certainty.

A defective products is a product that cannot fulfill the purpose of its manufacture. This may be due to deliberate tampering or negligence in the production process; other things that occur in the product's circulation; or the fact that the product does not meet the security requirements for use on humans or their property, as is reasonably expected (AzNasution, 1999).

Business actors are responsible for the cosmetic products (facial bleach) they produce, and businesses originating from other countries are no exception. The regulation of this obligation is clearly stated in Article 2 of the Regulation of the Agency for Drug and Food Control No. 12 of 2019 concerning Cosmetics Contamination, namely: “Business Actors must ensure Cosmetics produced for domestic distribution and/or imported for distribution in the territory

¹BPOM in article 1 paragraph 1 Regulation of the Food and Drug Supervisory Agency Number 12 of 2019 concerning Contamination in Cosmetics

of Indonesia meet security requirements, benefits, quality, designation and Cosmetics claims.”²

Based on the negligence theory, producer negligence that results in consumer losses is a determining factor for the consumer's right to file a claim for compensation from the producer. Negligence can be used as a basis for a lawsuit, if it meets the following requirements (Ahmad and Sutarman, 2011):

- a) A behavior which results in a loss, not in accordance with normal caution.
- b) It must be proven that the defendant was negligent in their duty to the plaintiff.
- c) The behavior is a real cause (proximate cause) of the losses incurred.
- d) The principle of responsibility is based on breach of warranty.

It is the obligation and responsibility of business actors for cosmetic products (facial bleach) to implement the rules set down by the laws and regulations, namely Law No. 8 of 1999 concerning Consumer Protection. Product responsibility in consumer protection is known as product liability.

Product responsibility under consumer protection law basically refers to the responsibility of the producer. Product liability is the responsibility of the manufacturer for the product it carries into circulation if it causes loss due to defects inherent in the product. The basis for a claim for product liability can be made in the presence of: (Agnes, 1989)

- a. Breach of warranty
- b. Negligence
- c. Absolute responsibility (strict liability)

In the Consumer Protection Act No. 8 of 1999, the responsibilities of business actors are regulated in Article 19, paragraph 1, Article 28. The core of the responsibilities required by article 19 of the Consumer Protection Act for cosmetic consumables (face whitening) containing hazardous ingredients are:

- a. Liability for compensation for damages.
- b. Liability for compensation for pollution.
- c. Liability for compensation for consumer losses.

The Consumer Protection Act No. 8 of 1999 itself basically provides protection for consumers. Cosmetics consumers (face whitening) have a strong right to sue businesses that

²Article 2 of the Regulation of the Agency for Drug and Food Control No. 12 of 2019 concerning Cosmetics Contamination

are proven to use hazardous ingredients and that do not have the cosmetic notifications required by BPOM (Agency Food and Drug Supervisor). There are two consumer rights associated with Product Liability, as Adrian Sutedi states: (Adrian, 2008)

1. The right to get goods that have good quantity and quality and are safe. This right means that consumers must be protected to get goods with quantity and quality. Consumer ignorance of a product that is bought is often deceived by businesses.
2. Right to compensation. If the goods purchased are defective, damaged, or have endangered the consumer, he is entitled to receive appropriate compensation; however, the type of compensation claimed for defective or damaged goods must be in accordance with applicable regulations or according to the agreement of each party. That is, consumers cannot overdemand of the goods bought at the price they pay unless the consumed goods cause disruption to the body or cause defects in the consumer's body, then the demands of consumers can exceed the price of the goods bought.

In reality, the implementation of product responsibility or product liability cannot run as it should because it is influenced by several things:

- a) The level of consumer awareness is still very low due to an unwillingness to follow a long procedure.
- b) Because of their profit-oriented goals, business actors are still lacking in the good faith needed to provide safe product guarantees for consumers.

Chapter IV

Closing

Conclusion

Based on the description above regarding the Responsibilities of Business Actors Against Consumers for the Sale of Cosmetics (Facial Bleach) Containing Hazardous Materials According to Law No. 8 of 1999, it can be concluded that business actors, especially cosmetic businesses (face whitening) must be of good quality. They are responsible for the products that they make and sell and for the safety of consumers. Product liability is mandatory for business actors, as it is based on article 19 of Law Number 8 of 1999 concerning consumer protection, which states that business operators are responsible for providing compensation for pollution, damage, and consumer losses.

Suggestions

A suggestion that can be given in this paper is to expect that business actors carry out their responsibilities for cosmetic products (facial bleach) that are marketed to consumers. Product



responsibility begins with producing products using harmless ingredients and, more importantly, ensuring that products have a list or notification from BPOM (Drug and Food Control Agency).



REFERENCES

- Adrian, S. (2008). Product Responsibility in Consumer Protection Law, Ghalia Indonesia, Bogor.
- Agnes, M. T. (1989). Product Responsibility and the History of Its Development in Several Countries, Ujung Pandang.
- Ahmad, M. and Sutarman, Y. (2011). Consumer Protection Law, PT. RajawaliPers, Jakarta.
- Arief, Y. (2012). Paradox Marketing, Unusual Way To Win, GramediaPustakaUtama, Jakarta.
- AzNasution, (1999). Consumer Protection Law, An Introduction, DayaWidya, Jakarta.
- Celina, T. S.K. (2014). Consumer Protection Law, SinarGrafika, Jakarta.
- Daryanto, (2014). Consumers and Excellent Services, Gava Media, Yogyakarta.
- GunawanWidjaja, A. Y. (2003). Law on Consumer Protection, PT GramediaPustakaUtama, Jakarta.
- <https://docplayer.info/66585345-Bab-ii-tviews-pustaka-mengen-tanggung-Responsibility-delper-usaha-per-protect-konsumen-produk-halal-dan-badan-pend-Settlement-konsumen-bpsk.html> regarding quote on September 19, 2019
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.
- Izumi, Y., Widodo, J., Kausarian, H., Demirci, S., Takahashi, A., Sumantyo, J. T. S., & Sato, M. (2018, July). Soil Moisture Retrieval by Means of Adaptive Polarimetric Two-Scale Two-Component Model with Fully Polarimetric ALOS-2 Data. In *IGARSS 2018-2018 IEEE International Geoscience and Remote Sensing Symposium* (pp. 4619-4622). IEEE.
- Law Number 8 of 1999 Concerning Consumer Protection



Regulation of the Drug and Food Supervisory Agency Number 12 of 2019 concerning
Cosmetics Contamination

Shidarta, (2000). Consumer Protection Law in Indonesia, Grasindo, Jakarta.

Simarmata, D. A. (1998). Economic Reform According to the 1945 Constitution, Brief Study
and Theoretical Interpretation, Institute of Economics Faculty Publishers.

Yusuf, S. (2008). Capita Selektta Consumer Protection Law In Indonesia, PT. Citra
AdityaBakti, Bandung, Page 156.