
Criminal Enforcement against Illegal Cosmetic Business Actors

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ABSTRACT

This study aimed to find out the Criminal Enforcement Against Illegal Cosmetic Business Actors in Gorontalo City. This type of research was empirical legal research, namely research by taking and using existing data in the field (primary) as the main data source, such as the results of interviews and observations. The Food and Drug Supervisory Agency (BPOM) should be even more assertive in providing a deterrent effect to mischievous business actors and must always carry out routine operations (surprise inspection) on business actors, not only through reports from the public and then officers going down to the field to carry out operations but must indeed be scheduled in a week how many times to do operations. If BPOM only waits for reports from the public, there will be no deterrent effect on mischievous business actors who have never been caught in raids/operations by the Food and Drug Supervisory Agency (BPOM).

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1. Introduction

Lately, there have been many violations of the law. If we follow the news in newspapers and electronic media, it can be said that not a day goes by where there is no news about the occurrence of violations of the law, either in the form of criminal violations or in the form of acts against the law, breaking promises or abuse of rights, the sad thing is that not a few of the people who know the law do it, whether they are law enforcers or not.¹

Accountability is the essence of the error referred to in criminal law, namely accountability according to criminal law. Although actually according to ethics, everyone is obliged to be responsible for all the actions he/she commits, in criminal law, the main issue is the only behavior that can result in judges imposing criminal penalties.² According to Muladi, concerning crime prevention efforts through preventive measures or crime prevention in general, in its development, the criminal policy is developing towards proactive actions which are cheaper and promise better results in fighting crime.³ Efforts or policies to cope with criminal acts are included in the field of "criminal policy". This criminal policy is inseparable from a broader policy, namely "social policy" which consists of policies/efforts for social welfare and policies/efforts for community protection.⁴

Protection of Human Rights (HAM) in Indonesia is more clearly and in detail regulated in Law Number 39 of 1999 concerning Human Rights. The law in detail regulates the right to life, the right not to be forcibly removed and or not to be killed, the right to have a family and continue offspring, the right to develop oneself, the right to obtain justice, the right to personal freedom, the right to a sense of security, the right to welfare, the

¹ Sudikno Mertokusumo, 2010, *Bunga Rampai Ilmu Hukum*, Liberty, Yogyakarta, hlm. 152

² Teguh Prasetyo, 2010, *Hukum Pidana*, Rajawali Pers, Jakarta, hlm.85

³ Abintoro Prakoso, 2016, *Kriminologi Dan Hukum Pidana Pengertian, Aliran, Teori Dan Perkembangannya*, Laksbang Pressindo, Yogyakarta, hlm.180

⁴ Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan*, Kencana, Jakarta, hlm.77

right to participate in government, women's rights, children's rights, and the right to freedom of religion.⁵ One form of law violation, especially criminal law, is business actors who distribute cosmetics that contain hazardous materials.

In this era of free trade, there are two things related to consumers. First, consumers benefit because with this free trade, the flow of goods in and out becomes smoother and not hampered by regional boundaries or a country. Therefore, consumers have more choices in determining various needs, either in the form of goods or services, in terms of types of goods, quality, brand, and price. Second, the position of consumers in developing countries is at a disadvantage, this is due to weak supervision in the field of standardization of the quality of goods, weak legislation on products,⁶ which results in many cosmetic products being circulated in the market that do not meet quality standards as well as are not registered and have a distribution license from BPOM. Cosmetics are materials that can be used to beautify or treat oneself. In the regulation of the head of the Food and Drug Supervisory Agency Number 19 of 2015 concerning Cosmetic Technical Requirements, it is stated that what is meant by cosmetics are materials or preparations intended to be used on the outside of the human body (epidermis, hair, nails, lips, and external genital organs). or teeth and mucous membranes of the mouth, especially for cleaning, perfuming, changing appearance, and/or correcting body odor or protecting or keeping the body in good condition.⁷

The situation above is increasing in the era of globalization, especially after the ratification of the Approval for the Establishment of the World Trade Organization by the government of the Republic of Indonesia based on Law Number 7 of 1994.⁸ This ratification made Indonesia one of the actors in the era of free trade.

⁵ Lisnawaty Badu, 2013, Pengaturan Dan Perlindungan HAM Dalam UUD 1945 Serta Aspek Pidana Nasional Dan Internasional, Jurnal Legalitas, Vol. 3 No. 2

⁶ Celina Tri Siwi Kristiyanti, 2011, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, hal.8

⁷ Syamsudin, DKK, 2020, Tinjauan Kriminologis Pola Penjualan Kosmetik Illegal Di Kota Bima, Jurnal Publikasi Hukum (FUNDAMENTAL), Vol. 9 No. 1

⁸ Ahmad Miru, 2011, *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*, Rajawali Pers, Jakarta, hal.3

In this regard, the relationship between consumers and business actors that continues to develop requires a regulation that provides certainty of the responsibilities, rights, and obligations of each party.⁹ Currently, cosmetic products are of various types and brands, not only limited to domestic cosmetic products, but also foreign cosmetic products such as Taiwan, China, Thailand, and Korea. However, are all cosmetic products imported from abroad safely for consumption by consumers, especially in Indonesia? This is related to the interests of the safety and health of cosmetic consumers in Indonesia.

Indeed, by selling illegal cosmetics or without a distribution license, business actors can reap as much profit as possible without having to go through a long procedure and consumers can look beautiful at a low cost. Business actors should still pay attention to the quality standards of cosmetics being traded. If a business actor is proven to provide and/or distribute dangerous cosmetics and does not have a distribution license which is processed in court, he/she will be subject to the criminal provisions of the Health Law, which regulates the criminal provisions contained in Article 197 Jo. Article 106 Paragraph (1) reads:

"pharmaceutical preparations and medical devices can only be circulated after obtaining a distribution license"

Law Number 36 of 2009 concerning Health, in article 196 reads:

"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 punished with imprisonment a maximum of 10 (ten years) and a maximum fine of IDR 1,000,000,000.00 (one billion rupiahs)

Article 197 reads:

"everyone who intentionally produces or distributes pharmaceutical preparations and/or medical devices that do not have a distribution license as referred to Article 106 paragraph (1) shall be punished with imprisonment for a maximum of

⁹ Liwe, Eklesia, 2013, *Perlindungan Hukum Bagi Konsumen Terhadap Kosmetika Tanpa Label*, Jurnal Edisi Khusus, Vol 1 No.1

15 (fifteen) years and a fine of IDR 1,500,000,000.00 (one billion five hundred million rupiahs)”

In Gorontalo City, there were illegal cosmetics, illegal cosmetics were usually found in traditional markets as well as online traders. Therefore, consumers need what is called legal protection so that irresponsible business actors will get the consequences they The cosmetic data that falsified or did not include a distribution license from the Food and Drug Supervisory Agency are as follows:

No.	Year	Registered	Information	The Final Result
1.	2017	1	Cosmetics without distribution license	a Sp3 (investigation termination warrant)
2.	2018	3	Cosmetics without distribution license	a. imprisonment of 10 months and a fine of IDR 250,000,000 b. imprisonment of 10 months and a fine of IDR 250,000,000 c. Sp3 (investigation termination warrant)

3.	2019	1	Cosmetics without distribution license	a 3 months imprisonment and a fine of IDR 1,000,000
4.	2020	-	-	-
5.	2021	1	Cosmetics without distribution license	a P21 (The results of the investigation are complete)

Table 1.1 Total Data on Illegal Cosmetics

Data Source: The Food and Drug Supervisory Agency (BPOM) Gorontalo City

After seeing the various statements that have been described in the background above, the researcher wanted to focus on the study of Criminal Enforcement Against Illegal Cosmetics Business Actors in Gorontalo City.

2. Research Method

This type of research was empirical legal research, namely research by taking and using existing data in the field (primary) as the main data source, such as the results of interviews and observations. Empirical research was used to analyze the law which is seen as the behavior of people who always interact and relate to social aspects. This empirical legal research is an approach taken by researchers in the field by observing and seeing what is happening in the field. This research was conducted at the Office of the Food and Drug Supervisory Agency of Gorontalo City.

3. Analysis or Discussion

3.1 Criminal Enforcement Process Against Illegal Cosmetic Business Actors in Gorontalo City

In the implementation of their rights and obligations, legal entities are represented by humans who sit on the organs of the legal entity itself to carry out a legal act. Humans who sit in the organs of this legal entity act not for themselves, but as organs that

represent and on behalf of the legal entity.¹⁰

In the context of enforcing criminal law against dangerous cosmetic business actors who violate the POM Hall Law Gorontalo City, as a technical implementing unit for Food and Drug Supervisory located in the Region, in carrying out its duties, has the authority to withdraw products from circulation, temporary cessation of production activities, provide warnings, either within a certain period or incidentally. Based on the instructions of the Minister of Health Number 75/Menkes/Inst.B/II/1984 and the instructions of the Head of the Indonesian Police Number Pol.Ins/03/III/1984 regarding the improvement of Cooperative Relations in the context of supervision and inquiry of crimes in the field of Drugs, Food, Beverages, Cosmetics, Medical Devices, Traditional Medicines, Narcotics, and Drug Materials are harmful to health, the cooperation between the two agencies has been enhanced and the Ministry of Health's Civil Servant Investigators (PPNS) themselves can conduct an inquiry under applicable regulations.

a. Interview Results at BPOM

Based on the results of interviews conducted by researchers at BPOM Gorontalo City, Mr. Ferdian as an investigator said that the implementation of criminal enforcement was carried out under the existing laws and regulations and the Criminal Procedure Code. However, in the process, we usually monitor the resellers (business actors) who sell cosmetics that do not meet the distribution license standards. After we find that there is a distribution of cosmetics that do not meet the standards, we will follow up with a way namely we will conduct an inquiry to find out who the distributor is, who the reseller is, and how the cosmetics are distributed, whether through online buying and selling and/or so on.

As for the criminal enforcement process against these business actors, we did

¹⁰ Adriano, 2016, Karakteristik Pertanggungjawaban Pidana Korporasi, Jurnal Hukum Dan Peradilan, Vo. 5 No.1

not conduct it carelessly, we have to collect much evidence so that these business actors could be punished according to the applicable rules. After conducting an inquiry and investigation as well as finding a criminal element, we will confiscate evidence and also make arrests.¹¹

As for the information provided by Mr. Firman as Intelligence at the POM Hall Gorontalo City, he said that carrying out the surprise inspection (Operation) was based on reports from the public. After receiving a warrant from the investigator, the operation (surprise inspection) was carried out. As for the obstacles or constraints, experienced by officers in carrying out surprise inspection (operations), namely, if they carry out operations on people who are said to be stubborn or thugs, usually they bring their subordinates or teams to prevent officers from searching for goods, and some business actors did not want to admit where this item was obtained and where this item was circulated.

The sanctions that will be given to business actors who have been proven to have committed criminal acts are by providing sanctions under applicable laws and regulations.¹²

Regarding law enforcement against business actors who sell counterfeit/illegal cosmetic products that can be detrimental, the following will be carried out:

a) Be warned

Business actors who sell cosmetics or who own shops, stalls, and stores are warned with a statement letter that it is true that they have sold cosmetics without a distribution license that contain hazardous materials and can be detrimental to the health of consumers and promise not to repeat such acts. If after making the statement, they still sell dangerous cosmetics, the business actor or seller will be prosecuted and the shop will not be closed because it is not

¹¹ Wawancara bersama bapak Ferdian pada tanggal 24 februari 2022

¹² Wawancara bersama Bapak Firman pada tanggal 24 Feb 2022

under the authority of BPOM.

b) Guidance

The guidance of business actors in question is counseling for business actors. Business actors here are considered legally competent because to obtain a license there are quite complicated stages. The POM Agency intends to provide a deterrent aspect to business actors who commit crimes. Stores that sell dangerous and illegal products are not merely sealed with the intention that business actors are still given the freedom to sell legal products because the guidance carried out is expected to be able to deter business actors and will not repeat their actions. If during this process business actors are caught still selling dangerous and illegal products. Then the punishment will be heavier, namely by weighting.

c) Destruction, Withdrawal, and Confiscation of Products

Destruction, withdrawal, and confiscation were carried out at cosmetic factories and shops which after inspection from laboratory results were proven to produce, sell, and distribute dangerous and illegal cosmetics that were not under the provisions in the manufacture of cosmetics. Destruction, withdrawal, and confiscation of cosmetics must be carried out under existing regulations and cannot be carried out arbitrarily as stipulated in the regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number 11 of 2017 concerning Criteria and Procedures for Withdrawal of Destruction of Cosmetics.

b. Legal Consequences for Business Actors who sell counterfeit/illegal cosmetics freely.

Cosmetics in circulation are obligated to meet the standards or requirements for safety, benefit, quality, marking, claim, and notification as stated in Article 2 of the Decree of the BPOM RI Number HK.03.1.23.12.11.10052 of 2011 concerning the Supervision of Production and Circulation of Cosmetics.

Business actors selling dangerous and illegal cosmetics can be subject to criminal

acts, but previously the POM Agency will carry out direct examinations and examinations through the laboratory and if the results of laboratory tests are found to be not under the provisions regarding cosmetic content as regulated in the Decree of the Head of the Food and Drug Supervisory Agency, it will be delegated to the inquiry section to follow up through legal channels. Based on article 39 of the Decree of the Head of the Drug and Food Supervisory Republic of Indonesia, the sanctions that can be given to business actors are in the form of:

- 1) Administrative sanctions in the form of:
 - a. Written warning
 - b. Withdrawal of cosmetic products and withdrawal of the cosmetic advertisement.
 - c. Cosmetic extermination.
 - d. Temporary cessation of production, import distribution, storage, transportation, and delivery activities of cosmetics.
 - e. Revocation of certificates and distribution license.
- 2) Criminal sanctions under the provision of the applicable laws and regulations.

4. Conclusion

The process of criminal enforcement against illegal cosmetic business actors in Gorontalo City, namely a). be warned: that business actors who are proven to have committed a criminal act of circulating illegal cosmetics and without a distribution license from BPOM will be warned by letter. b). guidance: if you have been warned but the business actor still does not listen to it, the BPOM will guide you by providing counseling to business actors, the BPOM intends to provide a deterrent aspect to business actors who commit crimes. c). Destruction, withdrawal, and confiscation of products: Destruction, withdrawal, and confiscation are carried out at cosmetic factories

and shops which after inspection from laboratory results are proven to produce, sell, and distribute dangerous and illegal cosmetics that are not under the provisions in the manufacture of cosmetics.

5. Suggestions

The Food and Drug Supervisory Agency (BPOM) should be even more assertive in providing a deterrent effect to mischievous business actors and must always carry out routine operations (surprise inspection) on business actors, not only through reports from the public and then officers going down to the field to carry out operations but must indeed be scheduled in a week how many times to do operations. If BPOM only waits for reports from the public, there will be no deterrent effect on mischievous business actors who have never been caught in raids/operations by the Food and Drug Supervisory Agency (BPOM).

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