

## *The Role of BPOM in the Circulation of Cosmetics With Fake Distribution Permission*

Siti Khodijah<sup>1</sup>, Nirwan Junus<sup>2</sup>, Mohamad Taufiq Zulfikar Sarson<sup>3</sup>

<sup>1</sup> Faculty of Law, Universitas Negeri Gorontalo [sitikhadija947@gmail.com](mailto:sitikhadija947@gmail.com)

<sup>2</sup> Faculty of Law, Universitas Negeri Gorontalo, Indonesia. [nirwan.junus@ung.ac.id](mailto:nirwan.junus@ung.ac.id)

<sup>3</sup> Faculty of Law, Universitas Negeri Gorontalo, Indonesia [mtaufiqzulfikars@gmail.com](mailto:mtaufiqzulfikars@gmail.com)

Korespondensi: [indahapriliasidiki99@gmail.com](mailto:indahapriliasidiki99@gmail.com)

### ARTICLE INFO

#### **Keywords :**

*Circulation; Cosmetics; Fake Distribution Permission*

#### **How To Cite :**

Khodijah, S., Junus, N., Sarson .M.T (2021). *The Role of BPOM in the Circulation of Cosmetics With Fake Distribution Permission*. *Estudiante Law Journal*. Vol. 2 (2): 114-128

#### **DOI :**

### ABSTRACT

This study aims to determine the role of Food and Drug Supervisory Agency (will be referred as BPOM) in the distribution of cosmetics that include a fictitious distribution permit. The method used in this study is an empirical research methodology. This study uses a qualitative approach and sampling using purposive sampling and using descriptive analysis techniques. The results of this study show that the role of BPOM in the distribution of cosmetics that includes a fictitious distribution permit basically continues to carry out Supervision, Guidance, and Prosecution of every producer who violates government regulations related to the circulation of counterfeit cosmetics that include a fictitious distribution permit number and there are several programs that are run to deceive consumers. get the right. In addition, it continues to provide protection to consumers who experience losses by providing administrative sanctions to the perpetrators to be able to pay for the losses suffered by the consumers themselves. Protecting Consumers from the Circulation of Dangerous Cosmetics BPOM has several programs, namely the National Movement to Beware of Illegal Drugs and Food (GNWOMI), GENPOPA, BPOM Checks, Public Warnings, Educational Videos, Community Awareness Index Surveys, Implementing Teams for Quality Improvement of Community Empowerment and Consumer Protection.

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## 1. Introduction

In our daily life, even in society, to meet the needs of life there are often crimes and violations committed by certain people and people who threaten some members of the community, which in the science of law are known as criminal acts.<sup>1</sup> Along with the development of science and technology, human life is growing as well. Not only the need for clothing, food, shelter, education, and health, the need to beautify oneself is currently a top priority in supporting daily appearance. One way to change your appearance or beautify yourself is to use cosmetics. Cosmetics are a combination of materials that are ready to be used on external parts of the body such as the epidermis, hair, nails, and lips, to clean, increase attractiveness, change appearance, protect the skin to keep it in good condition, improve body odor but are not intended to treat or cure a disease.<sup>2</sup> So the rapidly growing development of internet technology has had a very big impact on the world community.<sup>3</sup>

According to the BPOM, counterfeit cosmetics usually contain harmful ingredients found during the routine supervision of the BPOM. Counterfeit beauty products usually contain harmful ingredients such as hydroquinone, mercury, retinoic acid and rhodamine. The BPOM Agency itself has banned the use of these materials. Hydroquinone is a compound which when used in cosmetic products acts as a skin whitening or lightening agent. These compounds have common side effects on health, namely the skin will experience irritation or redness and have a burning effect after exposure to hydroquinone.<sup>4</sup> Years of use will cause dark blue skin and trigger cancer. Lack of knowledge and information that can be obtained by users of whitening cosmetics can cause someone to make mistakes. At first it was the desire to make the skin white and beautiful, but the result was quite the opposite.<sup>5</sup>

Many business actors take advantage of producing fake cosmetics with cheaper compositions, so that the cosmetics they market can have an affordable price than the market price of the same type of cosmetics. composition written on the original cosmetics, so that the quality, grade, composition, processing process, style, fashion, the things listed on the original cosmetic label will not be much different from fake cosmetics, this is done to avoid suspicion from consumers, then sold with the price is relatively cheaper than the

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<sup>1</sup> Dian Ekawaty Ismail, Mohamad Taufiq Zulfikar Sarson. (2021). Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes. *Jurnal Law Review*. 3 (3), 58

<sup>2</sup> Retno Iswari Tranggono, Fatma Latifah. *Buku Pegangan Ilmu Pengetahuan Kosmetik*. (Jakarta:PT Gramedia Pustaka Utama, 2007), 6

<sup>3</sup> Mohamad Rivaldi Moha. (2020). *Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce*. *Jurnal Law Review*. 2 (2), 115

<sup>4</sup> Cut Desi Wanda Sari. (2020). *Peran BPOM Terhadap Pengawasan Peredaran Kosmetik Ilegal Dalam Perlindungan Hukum di Banda Aceh*. Bachelor's Thesis. Universitas Islam Negeri Ar-Raniry Banda Aceh, 3

<sup>5</sup> *Ibid*, 24

original for promo reasons or warehouse cleaning.

Such is the case experienced by consumers who do not want to be named with the initials S.KN whose address is at Jl. Mangosteen, Limba U Village, South City has been a victim of dangerous cosmetic users, consumers on behalf of S.K have become victims of the use of HN facial cream in 2019 which he bought on the Gorontalo facebook Marketplace which he said was safe, original and has been BPOM. Within 1 week of use, the victim's face immediately changed, namely becoming whiter and glowing, but after 3 months of use, the victim's face thinned and turned red when exposed to the sun and then he stopped using it, after 1 week of stopping use, the victim's face became dull and cystic acne appeared and festered. Then he felt pain and itching and the victim consulted a doctor and it turned out that he had cosmetic poisoning which forced him to undergo treatment. The data on the perpetrators of the cosmetic circulation case with a fictitious distribution permit number in Gorontalo are as follows:<sup>6</sup>

**TABLE : 1**

**Data on Perpetrators of Cosmetic Circulation Cases with Fake Distribution Permit Numbers**

NO	YEAR	NUMBER OF PERPETRATORS	NUMBER OF COSMETIC PRODUCTS
1	2019	1	7
2	2020	1	14
3	2021	3	30
<b>Year 2019-2021</b>		<b>5</b>	<b>51</b>

*Source : Office BPOM, 2021*

This data was obtained at the office of the Food and Drug Supervisory Agency (BPOM) in Gorontalo. Where it can be concluded that during 2019-2021 there were 5 business actors who were found to be circulating dangerous cosmetic products with fictitious marketing license numbers with the total number of products throughout 2019-2021 totaling 51 products.

The prohibition on producing and trading dangerous cosmetic products is also regulated

<sup>6</sup> Data Obtained from the BPOM Office for Examination and Enforcement, May 28, 2022

in the UUPK as contained in Article 8, namely cosmetic products that do not meet the standards in accordance with laws and regulations, do not comply with quality standards, product compositions that can be harmful, produce illegally, cosmetic products not in accordance with the conditions or not in accordance with the label listed. Dangerous cosmetic products are widely circulated in the market due to the lack of supervision from related parties regarding cosmetic production, cosmetic imports, as well as the desire of business actors to obtain large profits regardless of whether the cosmetics are legal or illegal, safe or dangerous. Many cosmetic products that do not meet the standards and do not have a distribution permit and cosmetics that have similarities to the original and are almost difficult to distinguish are of course sold cheaper than the original product. Thus, it can attract consumers to buy because it has packaging and contents that almost resemble the original and with the aim of beautifying themselves but instead poses a danger to their health which can even threaten life safety.

The circulation of illegal cosmetics containing hazardous materials has of course violated the rights of consumers contained in Article 4 of Law Number 8 of 1999 concerning Consumer Protection, namely the right to comfort, security, and safety in consuming goods/services. And the right to clear and honest information.<sup>7</sup> Article 1 point 1 of Law no. 8 of 1999 provides the understanding of consumer protection as all efforts to ensure legal certainty to provide protection to consumers. Legal certainty to provide protection to these consumers, among others, is to increase the dignity of consumers as well as open access to information about goods and/or services for them, and foster the attitude of honest and responsible business actors.<sup>8</sup>

The circulation of cosmetics itself is quite fast in Indonesia, one of which is in Gorontalo Province, there are still many circulations of cosmetic products with fictitious distribution license numbers. There are still 51 dangerous cosmetics that are circulated with fictitious marketing authorization numbers based on data obtained from BOPM, namely those contained in cosmetics, including the Widya Temulawak brand cream, Collagen plus Vit E. This facial cream has a distribution permit from the POM Agency, namely the BPOM number, composition, expiration year, method of use and includes a halal label. There are also HN face creams, and ZAM-ZAM facial creams that do not have a BPOM number on the packaging but are advertised or promoted on the Gorontalo facebook marketplace that the cream is safe to use and has a distribution permit from the POM Agency. and until now there are still many circulating in Gorontalo City.<sup>9</sup>

The term liability in legal terminology is often replaced by liability. Responsibility can be

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<sup>7</sup> Article 4 Paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection

<sup>8</sup> AZ, Nasution. *Hukum Perlindungan Konsumen Suatu Pengantar*. (Jakarta: Diadit Media, 2011), 37

<sup>9</sup> Interview with Mr. Ferdiyansyah. Enforcement Section of the Food and Drug Supervisory Agency in Gorontalo, interview on Tuesday, December 21, 2021. At 10.30

interpreted as a basic willingness to carry out what is an obligation.<sup>10</sup> Local government is a subsystem of the government of the Unitary State of the Republic of Indonesia. Therefore, all the goals and ideals mandated by the opening of the 1945 Constitution of the Republic of Indonesia are also the ideals and goals of the regional government that must be achieved.<sup>11</sup> Child welfare is a child's life system that can ensure normal growth and development. Children have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state. The Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of human rights. The reason is that government policies as outlined in laws and regulations are always followed by criminal sanctions<sup>12</sup> and the involvement of the State which is also one of the characters of the conflict phenomenon.<sup>13</sup> Furthermore, the form of the legal system also requires people to have a sense of love and affection, mutual respect, mutual respect, mutual help, loyalty, honesty, and adequate physical and spiritual support, so that the implementation of the legal system can run in accordance with people's lives in general.<sup>14</sup> Furthermore, the important point in the preparation of every policy issued by the Government comes solely from the wishes of the people.<sup>15</sup> So when this does not cause problems and if the policy is not in accordance with the behavior patterns of the community, then the government must resolve a problem with the community itself.<sup>16</sup>

## 2. Method

In this study, the author basically uses the empirical method, referring to the opinion of Mukti Fajar expert where it is said that empirical research is a form of research that provides complete knowledge related to the application of legal norms in the social environment in general.<sup>17</sup> The author's study is related to the role of BPOM in the distribution of cosmetics that includes a fictitious distribution permit obtained through

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<sup>10</sup> Tijow, Lusiana. (2010). *Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah*. *Jurnal Legalitas*. 3 (2), 88

<sup>11</sup> Novendri M. Nggilu. (2020). *Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo*. *Lambung Mangkurat Law Journal*. 5 (2), 112

<sup>12</sup> Hwian Christianto, Michelle Kristina. (2022). *Fulfilling the Right of Education during Covid- 19 Pandemic Period: A Comparative Study*. *Jurnal Law Review*. 4 (1), 1

<sup>13</sup> Yudha Chandra Arwana. (2019). *Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia*. *Jurnal Law Review*. 1 (2), 216

<sup>14</sup> Dedi Sumanto, Titin Samsudin, Fikri Asnawi Amiruddin. (2021). *The Existence of the Religious Court in Handling Divorce Cases on the Reason of Domestic Violence*. *Jurnal Law Review*. 3(2), 228

<sup>15</sup> Nurdin, Putri Handayani. (2019). *Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik*. *Jurnal Law Review*. 1 (2), 146

<sup>16</sup> Fitriyadi, Ahmad Adi. (2020). *Diferensiasi Pengungsi dan Pencari Suaka dalam Hukum Pengungsi Internasional dan Hubungannya dengan Prinsip Non-Refoulement*. *Jurnal Law Review*. 2 (2), 127

<sup>17</sup> Mukti Fajar, Yulianto Achmad. *Dualisme Penelitian Hukum (Normatif dan Empiris)*, (Yogyakarta: Pustaka Pelajar, 2010), 153.

interviews and real actions obtained through direct observation. While the sampling using purposive sampling and using a qualitative approach and data analysis techniques using descriptive research.

### **3. Analyst and Discussion**

At this time there have been many circulating cosmetics that do not have a distribution permit and are dangerous to the health of users which contain hazardous ingredients that can threaten the health and safety of life. In connection with this, it is very necessary to supervise and protect the law for consumers from business actors who are trying to produce, sell, or distribute illegal cosmetic products. Consumers referred to here are users of illegal cosmetic products that contain hazardous materials and can endanger health. The business actor in question is a person or business entity in the form of a legal entity or not a legal entity, both producers, agents, sales, retailers related to cosmetic products. Thus the Consumer Protection Act Number 8 of 1999 (UUPK) is very necessary to protect consumers. Article 11 point 1 UUPK states that consumer protection is all efforts that guarantee legal certainty to provide protection to consumers.

The purpose of consumer protection is an effort to encourage business actors to do business with full honesty, responsibility, and pay attention to other important factors. The goal of consumer protection can only be achieved if the consumer protection law can be applied consequentially not only to one or two parties, but all related parties participate in achieving consumer protection. With regard to cosmetic products containing these hazardous materials, further and indiscriminate supervision is required. Supervision is not only carried out at shops selling dangerous cosmetic products, but also needs to be investigated to manufacturers of dangerous cosmetic products. If supervision and control is only carried out on sellers and producers still carry out their production, they will never break the chain of distribution of these dangerous cosmetics. Manufacturers have many ways and strategies to distribute their products even though some sellers are disciplined. Cosmetic manufacturers or factories are also included as business actors as stipulated in the UUPK, so that cosmetic manufacturers or factories must also fulfill their obligations as business actors in accordance with Article 7 letter d of Law number 8 of 1999 concerning Consumer Protection, namely business actors are required to guarantee quality. goods produced and or traded and must meet the applicable quality standards of goods. The existence of Article 7 letter d of the UUPK is so that business actors do not produce or trade dangerous cosmetic products solely to earn big profits.

Supervision of production and sales is one of the protection processes for consumers who use cosmetics. Cosmetics in circulation are obligated to meet the standards and or

requirements for safety, benefit, quality, marking, claim, and notification as referred to in Article 2 of the Decree of the POM RI Number HK.03.1.23.12.11.10052 of 2011 concerning Supervision of Production and Circulation of Cosmetics. The definition of cosmetics according to Article 1 point 1 of the Decree of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.00.05.4.1745 of 2003 concerning Cosmetics, namely materials or preparations intended to be used on the external parts of the human body (epidermis, hair, nails, lips, and external genital organs) or teeth and oral mucosa especially for cleaning, perfuming, changing appearance and/or correcting body odor or protecting or keeping the body in good condition.<sup>18</sup>

Based on the results of research conducted by the author, the distribution of cosmetics that do not meet the requirements and are dangerous are still widely circulated in the area of Gorontalo City. Cosmetic products circulating in the market today are increasingly worrying. At the time of routine supervision carried out by the Food and Drug Supervisory Agency of Gorontalo City (BPOM), there were still many cosmetics containing hazardous materials found circulating so that BPOM appealed to the public or consumers to be careful in buying a cosmetic product and for sellers to be honest in selling a product, said Mr. Ferdiansah as the head of the BPOM action section in Gorontalo. According to him, the chemicals that are not allowed in cosmetic products are mercury, hydroquinone, K3 red dye or K10 red dye (Rhoddamin B) and retinoic acid. can be used continuously.<sup>19</sup>

The widespread circulation of cosmetics with fictitious distribution license numbers that can harm consumers, therefore BPOM provides protection to consumers through several things, such as the results of the author's interview with Mr. Fazrul as a BPOM employee. Every week BPOM will come down to oversee the circulation of products that are not in accordance with the laws and regulations. If it is found that BPOM will reprimand, provide guidance, and if subsequently the business actors who have been given warnings and guidance still commit violations, then the BPOM will enforce the law by continuing the case in the realm of law. BPOM also provides guidance not only to business actors but also to consumers to be careful in buying cosmetic products, how to know which cosmetics are harmful and what are the effects of cosmetics that are harmful to health. BPOM has programs related to consumer protection, including; National Movement to Beware of Illegal Drugs and Food (GNWOMI), Generation Care for Safe Food and Drugs (GENPOPA), Check BPOM, Public Warning, Educational Video, Mobile Car Service as IEC media and prohibited Food Additives Testing facility (BTP), index survey Public

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<sup>18</sup> Sekar Ayu Amiluhur Priaji. *Perlindungan Hukum Terhadap Peredaran Kosmetik Yang Merugikan Konsumen*. Bachelor's Thesis. (Fakultas Hukum: Universitas Islam Indonesia Yogyakarta, 2018), 87

<sup>19</sup> Results of an interview with Mr. ferdiyansah, as the head of the Enforcement Section at the Gorontalo Food and Drug Administration, 11 April 2022. At 10.30

awareness, Implementing Team for Quality Improvement of Community Empowerment and Consumer Protection, Consumer Complaints.<sup>20</sup> In general, law enforcement is an attempt to tackle crime rationally, fulfill a sense of justice and be efficient in tackling crime against various means as a reaction that can be given to criminals in the form of criminal and non-criminal means, which can be integrated with one another.<sup>21</sup>

Cosmetic products that are detrimental to their users can still be circulated in the market due to the lack of supervision. There is a lot of consumer demand and a lack of supervision, this is used by business actors who want to reap more profits. As a form of government in eradicating illegal products containing hazardous materials, and in order to provide a sense of justice in doing business for business actors, the POM Agency consistently controls the circulation of cosmetics that can be detrimental to consumers. This control is carried out both by the POM Agency independently and together with related sectors through routine supervision, intensification, or with special targets in the context of law enforcement. If you refer to what Prof. Fenty Puluhulawa in his writings that the government through the law has provided a starting point for the judiciary, which is carried out for the sake of justice based on the One Godhead.<sup>22</sup> To quote as said by Fence M. Wantu in his Journal that the essence of justice is an assessment from one person to another, which is generally seen from the party receiving the treatment only.<sup>23</sup> Quoting as said by Suwitno Yutye Imran that Justice serves as a guide to distinguish between fair and unfair actions, elements of the aspect of justice can be contained in the substance.<sup>24</sup>

So far, the POM is only a government agency that has the authority to oversee the circulation of food and drug products. The POM Agency is also responsible for the distribution of cosmetics, beauty and skin care products. The development of the times and technology allows humans to create new discoveries including cosmetics, foodstuffs, medicines and all pharmaceutical products. The development of the times and technology has provided many positive sides that can be taken, but with that comes the negative side related to these discoveries that can harm society. To overcome this, a State-Owned Enterprise (BUMN) was formed, namely the Food and Drug Supervisory Agency (BPOM) to supervise and research the products of these inventions before being

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<sup>20</sup> Results of an interview with Mr. Fajrul, as an Enforcement Officer at the Gorontalo Food and Drug Administration, 11 April 2022. At 11.30

<sup>21</sup> Satjipto Rahardjo. *Penegakan Hukum : Suatu Tinjauan Sosiologis*. (Yogyakarta: Genta Publishing, 2009), 79

<sup>22</sup> Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (2020). *Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim*. *Jurnal Gorontalo Law Riview*. 3, (2), 174

<sup>23</sup> Fence M. Wantu. (2013). *Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata*. *Jurnal Mimbar Hukum*. 25 (2), 206

<sup>24</sup> Suwitno Y. Imran. (2021). *The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments*. *Jurnal Law Review*. 3 (2), 398



circulated to the wider community. Everyone else, including the government must heed it, by making laws on the basis of natural rights themselves.<sup>25</sup> Because of this, one of the goals of the recognition and establishment of the rule of law is to protect human rights, meaning that individual rights and freedoms are recognized, respected and upheld.<sup>26</sup> Considering that Indonesia is also one of the countries that puts forward the constitution in every aspect of the life of the nation and state.<sup>27</sup>

Based on Article 69 of Presidential Decree Number 103 of 2001, BPOM has the authority to:

1. Preparation of macro national plans in their respective field;
2. Formulation of policies in their respective fields to support macro development;
3. Establishment of the information system in the field;
4. Establishment of requirements for the use of certain additives (additives) for food and stipulation of guidelines for drug and food distribution;
5. Licensing and supervision of drug distribution and supervision of the pharmaceutical industry;
6. Establishment of guidelines for the use of conservation, development and supervision of medicinal plants.

Based on the results of the research, it is still found that the distribution of cosmetics does not have a distribution permit and can be detrimental to consumers in Gorontalo. From the results of observations and supervision by the Gorontalo POM, there were some cosmetics that were found but not products from Gorontalo itself, even products from abroad which were distributed to Gorontalo. Most of the dangerous products that can harm are illegal cosmetics without a distribution permit and notification even to counterfeit products, such as morning cream, day cream, night cream, body lotion, and lipstick.<sup>28</sup>

Harmful cosmetics usually contain chemicals that can damage health and cause reactive

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<sup>25</sup>Bakung, Dolot Alhasni. (2020). *Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right*. *Jurnal Law Review*. 2 (1), 67

<sup>26</sup> Badu, Lisnawaty. (2012). *Euthanasia Dan Hak Asasi Manusia*. *Jurnal Legalitas*. 5 (1), 1-11

<sup>27</sup> Fakhris Lutfianto Hapsoro. (2020). *Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution*. *Jurnal Law Review*. 2 (2), 145

<sup>28</sup> Results of an interview with Mr. Ferdiyansah, as the head of the enforcement section of the Gorontalo Food and Drug Administration, April 11, 2022. At 11.00 AM

effects on the body, the most recent being cosmetic products containing clindamycin, theophylline, and retinoic acid, while lipsticks usually contain textile dyes that can cause irritation. Clindamycin itself is an antibiotic that works by stopping the growth of bacteria, usually used to treat acne and help get rid of acne scars and must be used with a prescription and doctor's recommendation which cannot be used freely and continuously in the long term. Theophylline is a drug with the function of treating and preventing shortness of breath and difficulty breathing caused by lung diseases, such as asthma, emphysema, chronic bronchitis, as well as clindamycin. This drug must be prescribed by a doctor and should not be used over the counter.<sup>29</sup>

The BPOM routinely supervises the distribution of cosmetics on the market. If the BPOM receives a report regarding the circulation of dangerous cosmetics, then the BPOM enforcement section immediately coordinates to carry out checks. At the time of checking the cosmetics which are suspected to contain hazardous materials are not immediately confiscated or destroyed, but one or two cosmetic products are purchased with state money and tested in the laboratory. And if there is a circulation of cosmetics containing hazardous materials in a cosmetic shop, the BPOM will carry out according to the SOP (Standard Operational Procedure), the cosmetics will be confiscated and if they have obtained approval from the Court then the investigator will destroy them and then burn them in the final disposal site. The supervision carried out by the BPOM is only limited to securing the product and confiscation of the product or goods.<sup>30</sup>

Regarding law enforcement against business actors who sell dangerous cosmetic products that can be detrimental, it will be carried out:<sup>31</sup>

### 1. Giving Warning

Business actors who sell cosmetics or who own shops, kiosks, stalls are warned with a statement that it is true that they have sold cosmetics without a distribution permit 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 the authority of the BPOM.

### 2. Development of Entrepreneurs

The fostering of business actors in question is counseling for business actors. Business

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<sup>29</sup><https://helohehat.com/obat/theophylline-2/> Accessed at May 14, 2022. At 11.15 Indonesia Central Time

<sup>30</sup> Sekar Ayu Amiluhur Priaji. *Op. Cit*, 80

<sup>31</sup> *Ibid*, 80-81

actors here are considered legally competent because to obtain a permit there are quite complicated stages. The POM Agency intends to provide a deterrent aspect to business actors who commit crimes. Shops selling dangerous and illegal products are not merely sealed with the intention that business actors are still given the freedom to sell legal products, so because the guidance carried out is expected to be able to make perpetrators deterrent and will not repeat his actions. If during this process business actors are caught still selling dangerous and illegal products, then the punishment will be heavier, namely by weighting.

### 3. Destruction, withdrawal and confiscation of goods or products

Destruction of recalls, and confiscations 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 in accordance with the provisions in the manufacture of cosmetics. and cannot be arbitrarily carried out 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 the criteria and procedures for withdrawing the destruction of cosmetics.

Entrepreneur 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 inconsistent with the provisions regarding cosmetic content as stipulated in the Decree of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia. Number HK.00.05.4.1745 of 2003 concerning Cosmetics will be delegated to the investigation section to be followed up through legal channels. Based on Article 39 of the Decree of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia number HK.00.05.4.1745 of 2003 concerning Cosmetics, sanctions that can be given to business actors, namely:

1. Administratif sancion, such as:
  - a. Written Warning.
  - b. Withdrawal of cosmetic products and withdrawal of the cosmetic advertisement.
  - c. Cosmetic Extermination.
  - d. Temporary suspension of production, import, distribution, storage, transportation and delivery of cosmetics.

e. Revocation of certificates and distribution permits.

2. Criminal sanctions in accordance with applicable laws and regulations.

Entrepreneur who are proven to have falsified the ingredients used in cosmetic products (which are not in accordance with the composition listed or affixed to the label) will be followed up by the Gorontalo BPOM Agency. All cosmetics that will be circulated must be notified in advance as a form of supervision, if there are business actors who commit fraud, they can be subject to criminal penalties. The Gorontalo BPOM cannot impose criminal penalties on business actors who commit fraud, but the Gorontalo BPOM will coordinate with related parties. Business actors who commit violations in producing, selling, and or distributing cosmetic products may be subject to criminal sanctions as stipulated in the legislation, the legal basis of which is Law Number 36 of 2009 concerning health, namely:<sup>32</sup>

1. For entrepreneur who commit fraud and do not meet the requirements regarding cosmetic products (containing hazardous materials) that have been properly regulated, Article 196 can be imposed with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1.000.000.000,00 (one billion rupiah).
2. For entrepreneur who do not have a distribution permit for a cosmetic product that is produced, sold, or circulated, it may be subject to Article 197 with a maximum penalty of 15 (fifteen) years and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah).

The parameters of dangerous counterfeit cosmetics are not having a distribution permit, not being notified, containing harmful ingredients, having a pungent odor and bright color, unclear or incomplete label descriptions, not including the name of the manufacturer, past the expiration date. Most cosmetic products that are faked or dangerous are facial whitening creams, body lotions, and lipsticks so that creams and body lotions are tested whether they contain harmful ingredients such as theophylline, clindamycin, mercury, hydroquinone and so on. Meanwhile, the lipstick that was tested did not contain pork or pork oil as well as K3 and K10 dyes. Chemicals such as those that cannot be used in cosmetic products that come into contact with or applied to the skin should not be added, except theophylline, clindamycin, and retinoic acid, which may be used in small doses and must be prescribed and supervised by a dermatologist.<sup>33</sup>

Consumers who feel that they have experienced a loss due to counterfeiting of cosmetic

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<sup>32</sup> Pasal 190 dan Pasal 197 Undang-Undang Nomor 36 Tahun 2009 tentang kesehatan

<sup>33</sup> <http://bbpom-yogya.pom.go.id/berita330/public-warning-tentang-kosmetik-mengandung-bahanberbahaya>. Di akses 14 Juni 2022, Pukul 11:51

products and are dangerous if used, can make a complaint through the Consumer Complaints Service Unit (ULPK), the complaint will be followed up by the Head of the POM as stipulated in the Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia. Indonesia number HK 03.1.23.12.11.10050 of 2011 concerning Procedures for Management and Follow-up on Reporting Violations (whistleblowing) within the Food and Drug Supervisory Agency.

The BPOM Agency in conducting investigations on the basis of complaints from the public, will be followed up quickly because it is a social control and public service as in accordance with the BPOM Agency's vision and mission to protect the community. Based on this, the BPOM only acts as a supervisor for business actors who produce, sell and distribute cosmetic products that have legality. Entrepreneur who have legality have been registered with the Health Service and Licensing Service so that there is a database which is the basis for the BPOM Agency to carry out supervision. There are 2 (two) types of supervision by the BPOM on the circulation of cosmetic products that contain hazardous materials that can harm users in the community, namely:

#### 1. *Pre Market*

Supervision carried out as well as assessment and testing of safety quality before cosmetic products are distributed.

#### 2. *Post Market*

Supervision carried out after cosmetic products are circulated in the community, including inspection of production and distribution facilities, monitoring of cosmetic side effects, sampling and laboratory tests for cosmetics being circulated, assessment and supervision of cosmetic product advertisements or promotions, as well as information dissemination through public education and public warnings.

Therefore, law enforcers, especially police officers, must act decisively and seriously in dealing with crime to ensure social welfare for the community.<sup>34</sup> The improvement of public welfare facilitated by this law is of course synergistic with Subekti who has the thought that "the law is devoted to the direction of the state which in essence is to produce glory and joy for the people."<sup>35</sup>

According to the author, by looking at the various statements above, the concern and awareness of business actors towards safety is still low in distributing cosmetics without

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<sup>34</sup>Ariefulloh, Abd Asis, Maskun. (2019). Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak. *Jurnal Law Review*. 1 (2), 198

<sup>35</sup>Jufryanto Puluhulawa, Mellisa Towadi, dan Vifi Swarianata. (2020). Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck. *Jurnal Reformasi Hukum*, 24 (2), 201

a marketing permit, business actors should have this awareness and concern so that there is no manufacture of cosmetics containing hazardous substances but in fact the care and awareness of business actors has not have awareness and concern for this matter, resulting in material and health impacts on the community, especially consumers who buy and use cosmetics without a distribution permit. In this case, the government, especially BPOM, must maximize supervision of cosmetics without a distribution permit circulating in the community.

#### 4. Conclusion

The role of BPOM in the distribution of cosmetics that include a fictitious distribution permit is basically to continue to supervise, foster, and take action against every producer who violates government regulations related to the circulation of counterfeit cosmetics that include a fictitious distribution permit number and there are several programs that are carried out to trick consumers into obtaining their rights. In addition, it continues to provide protection to consumers who experience losses by providing administrative sanctions to the perpetrators to be able to pay for the losses suffered by the consumers themselves. Protecting Consumers from the Circulation of Dangerous Cosmetics BPOM has several programs, namely the National Movement to Beware of Illegal Drugs and Food (GNWOMI), GENPOPA, BPOM Checks, Public Warnings, Educational Videos, Community Awareness Index Surveys, Implementing Teams for Quality Improvement of Community Empowerment and Consumer Protection.

The Food and Drug Supervisory Agency (BPOM) needs to improve its performance in supervising cosmetic products in Gorontalo City so as to minimize the losses suffered by the public due to fictitious distribution permits. Like always running educational programs for business actors and consumers.

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