

Legal Protection of Consumers Who Experience Skin Damage Due to the Use of Illegal Skin Whitening Products Based on Law No. 8 of 1999 concerning Consumer Protection

Cintya Theresia A. M. Sitorus
Universitas Indonesia, Depok, Indonesia
Email: cintya.theresia01@ui.ac.id

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Abstract

The existence of a beauty standard stigma that regards beauty as a condition where women have fair skin has developed into a serious issue. This stigma has emerged as a result of mass media construction and the rapid spread of foreign cultures in Indonesia. For decades, women from various parts of the world have been influenced by this stigma, leading to the emergence of an unhealthy obsession among women to possess or alter their skin color to be fair. This phenomenon is not exclusive to Indonesian women. These conditions have been exploited by entrepreneurs in the beauty and health product industry to create various types of illegal skin-whitening products. These products are manufactured and introduced to the public through advertisements with bold and misleading claims. Some of these products even claim to achieve skin whitening in a very short and safe period, despite lacking official registration numbers from the Food and Drug Monitoring Agency (BPOM), and some of them even involve falsified BPOM registration numbers. The use of these illegal skin-whitening products has caused various consumers to experience skin damage, with some cases even resulting in permanent harm. This research aims to examine the legal protection for consumers who experience skin damage due to the use of misleadingly advertised illegal skin-whitening products. Additionally, the study explores the responsibilities that should be upheld by businesses that manufacture and market these products that have detrimental effects on consumers. This research adopts an empirical legal research approach, which investigates the direct application of the law on society, legal institutions, and other relevant entities. The study is characterized as analytical-descriptive and presents a systematic analysis of facts related to legal protection for consumers facing skin damage due to the use of misleadingly advertised illegal skin-whitening products.

Keywords: *Consumer Protection, Illegal Skin Whitening, Misleading Advertisement.*

INTRODUCTION

The existence of a beauty standard stigma that considers that beauty is a condition in which women have white skin, has developed into a serious issue. This stigma arises as a result of mass media construction and foreign cultural influx. For decades, women around the world

have been influenced by this stigma and it has led to an unhealthy obsession for women to have and/or change their skin color to white. This is no different for women in Indonesia.

The Kamus Besar Bahasa Indonesia (KBBI) defines the word obsession as an idea or feeling that strongly possesses the mind and/or mental disorder in the form of thoughts that always tempt a person and are very difficult to eliminate. The obsessed condition of Indonesian women to have fair skin can be seen from the fact that most women in Indonesia have done and/or are willing to do things that enable them to have fair skin. These things include using various skin whitening products (whether in the form of lotions, skin whitening soaps, and so on) and as a further effort to take various medical measures to have white skin, such as whitening injections. There have been many Indonesian women who have admitted that at some point in their lives, they experienced unpleasant acts of bullying due to their skin color that tends to be not white, such as tan and yellow langsat. These acts of bullying vary, ranging from small levels such as teasing, to bullying that involves physical activities, such as pushing, pinching, hitting, and other physical activities. This causes Indonesian women who experience such bullying to become embarrassed, sad, and at a more severe stage, to develop a dislike for their own skin color. They then take various actions aimed at having white skin. Such conditions have been exploited by various manufacturers of beauty and health products to produce various types of skin whitening products.

These products are produced and introduced to the public accompanied by quite fantastic claims. Some products claim to be able to whiten the skin in a fairly short period of time such as 14 (fourteen) days, or even in just 7 (seven) days.

Advertisements and promotions of these skin whitening products also usually always feature models with white skin, to emphasize that the claims made by the product are true and can be seen in the condition of the model who has white skin. These advertisements and promotions appear in various media, such as banners that we can easily find in various locations such as on the side of the highway, on television, on various social media that are widely used by Indonesian women (Facebook, Instagram, and so on), to various online marketplaces.

Advertising is a means for consumers to find out the goods and / or services offered by business actors, in this case advertisers, because consumers have rights, especially for the right to be informed and the right to choose (Dickinson-Delaporte et al., 2020). For business companies, advertising is part of their product marketing activities and advertising is considered successful if there is an increase in the number of buyers of the products they offer. Advertising is an information structure and arrangement of nonpersonal communication that is usually financed and persuasive, about products (goods, services, and ideas) by identified sponsors, through various kinds of media (Noviani, 2002). Statutory rules in Indonesian positive law related to advertising are still not clearly regulated. However, the issue of advertising is contained in several articles in Law No. 8 Year 1999 on Consumer Protection. Articles governing advertising in Law No. 8 of 1999 concerning Consumer Protection can be associated with as a means of promoting a product of goods or services such as Article 1 paragraph (6), Article 10, Article 11, Article 16, and Article 17. Basically, we can also see related rules that have a close relationship in the world of advertising, namely:

- a. Law Number 21 of 1982 concerning Basic Provisions of the Press as amended by Law Number 40 of 1999 concerning the Press;
- b. Law No. 23 of 1992 on Health as amended by Law No. 36 of 2009 on Health; and

- c. Government Regulation No. 69/1999 on Food Labels and Advertisements (Simatupang, 2004)

Law No. 8/1999 on Consumer Protection, in the general provisions of Article 1 point (6) states that "Promotion is the activity of introducing or disseminating information on goods and/or services to attract consumers' buying interest in goods and/or services that will be and are being traded". When referring to the Big Indonesian Dictionary (KBBI), the word "misleading" comes from the word "misguided", meaning "not going the right way", "wrong way", "wrong (mistaken) right", "doing something indecent", "deviating from the truth (about religion and so on)".

Some forms of advertising that contain elements of misdirection and deception include:

1. Bait and switch advertising, which can be categorized as bait and switch advertising is advertising that does not actually intend to sell the products offered, but is more aimed at attracting consumer visits to the place of business. This type of advertisement offers certain goods at special prices such as discounts or promises of gifts, even though the business does not intend to do so or if it does so in an unreasonable amount, where consumers then find the reality that does not match what was promised regarding the advertised thing.
2. Misleading advertising (mock-up advertising). This classification of advertising is slightly different from inducement advertising. This type of advertisement usually only wants to show the efficacy of a product through exaggerated depictions. Usually, such advertisements, using television media, will produce impressive impressions. From the above phenomenon, it is clear that information has been manipulated in such a way as to obscure the true meaning of the information.

Business actors or businessmen, especially the drug and food industry, see the market potential for their products with a large number of consumers competing with each other to dominate the market with the aim of getting the highest possible profit. This competition cannot be separated from the existence of fraud from bad business actors or businessmen. Business actors who do not have the ability to compete with strong business actors, are often short-minded by creating policies that are not true even at the expense of consumers (Ferdian, 2018). The widespread distribution of skin whitening products through various media and means of sale has created a very promising business opportunity for business actors, including business actors who do not have official licenses for the products they produce and/or promote, to market a variety of illegal skin whitening products with fantastic claims of benefits to attract consumers.

However, in this context, the weakness of consumers' position is evident due to the imbalance in the protection of their rights. Under these conditions, consumer protection appears inadequate to fully accommodate their rights and interests. In fact, this weak consumer position has been exploited by a number of ethically irresponsible businesses, which manufacture and market their products without regard to the serious health and safety impacts on consumers. This lack of consumer protection often results in cases where illegal skin whitening products are purchased with the hope of enhancing beauty by bleaching the skin of the consumer as the user, only to have a detrimental impact on the consumer's appearance and health. Many consumers have also suffered permanent skin damage due to the use of illegal skin whitening promoted through misleading advertisements.

Based on the description above, the problem raised in this research is the legal protection of consumers who experience permanent skin damage due to the use of illegal skin whitening products based on Law No. 8 of 1999 concerning Consumer Protection.

RESEARCH METHOD

This research is empirical legal research. Empirical legal research, in English, is called empirical legal research, in Dutch it is called empirisch juridisch onderzoek, is one type of legal research that analyzes and examines the operation of law in society. Empirical legal research is "a legal research method that serves to see the law in real terms and examine how the law works in society". Because this research examines people in living relationships in society, the empirical legal research method can be said to be sociological legal research. It can be said that legal research is taken from facts that exist in a society, legal entity or government agency (Muhaimin, 2020).

This research is an analytical-descriptive research. An analytical-descriptive research is intended to provide data that is as detailed as possible about a condition, situation or other symptoms. This analytical - descriptive research contains analysis and facts presented systematically related to legal protection of consumers who experience skin damage due to the use of misleadingly advertised illegal skin whitening products. The data used in this research is secondary data in the form of primary and secondary legal materials related to consumer protection law, especially related to consumer rights.

The types of legal materials used consist of primary legal materials in the form of laws and regulations, especially Law No. 8 of 1999 concerning Consumer Protection, secondary legal materials that provide explanations of primary legal materials, such as books, scientific journals, and research results from legal circles, as well as tertiary legal materials, namely materials that provide guidance and explanations of primary and secondary legal materials, such as general dictionaries and legal dictionaries.

DISCUSS AND ANALYSIS

Advertising is a means of communication and marketing that plays an important role in the wheels of the economy and people's lives. In order to successfully sell goods and/or services, producers or sellers and other business actors will carry out various methods that are considered effective in increasing sales of the products they trade. Along with economic and technological developments, advertising has emerged as a form of promotion that is most widely used and in demand in marketing a product. This is because through advertising, producers or sellers and other business actors can convey information related to the goods and/or services they sell to consumers. The information takes various forms, ranging from the usefulness of goods and/or services, composition, price, to advantages when compared to similar products and/or services. Which information will be displayed in an advertisement is entirely the authority of the producer or seller and the business actors.

Promotion, especially that carried out through advertising, has a fairly important function for consumers. Without advertising, consumers may never get to know a good or service so that advertising really functions as a source of information and education, of course, provided that the advertisement is honest, healthy and does not lie. The advertising agency as an advertising designer only concentrates on how to make satisfying advertisements according

to the requests of its clients without trying to prove whether what is conveyed by the advertisement is in accordance with reality or not (Syawali & Imaniyati, 2000). There are several forms of misleading advertisements, namely lure advertisements and misleading advertisements.

Lure advertisements are advertisements that offer certain goods at a special price (a kind of discount) even though the business actor does not intend to do so or does so in an unreasonable amount. The goal is to get consumers to substitute buying the advertised item with another sale item that is usually more expensive or more profitable for the advertiser (Harianto, 2010). Misleading advertisements usually only want to show the efficacy of a product through exaggerated depictions. Usually, such advertisements, using television media, will produce impressive effects. From the above phenomenon, it is clear that information has been manipulated in such a way as to obscure the true meaning of the information (Simatupang, 2004).

The definition of misleading advertising is not explicitly mentioned in Law No. 8 of 1999 on Consumer Protection, but it mentions criteria or types of misleading or deceptive advertising. Law No. 8 of 1999 on Consumer Protection, in the general provisions of Article 1 point (6) states that, "Promotion is the activity of introducing or disseminating information on goods and/or services to attract consumer buying interest in goods and/or services that will and are being traded". Article 10 stipulates that Business Actors in offering goods and/or services intended for trade are prohibited from offering, promoting, advertising or making untrue or misleading statements regarding:

- a. the price or tariff of a good and/or service;
- b. the usefulness of a good and/or service;
- c. conditions, warranties, guarantees, rights or compensation for a good and/or service;
- d. offers of discounts or attractive prizes offered;
- e. the dangers of using goods and/or services.

Article 11 stipulates that Business Actors in the event of sales conducted through sales or auctions, are prohibited from deceiving/misleading consumers by:

- a. stating the goods and/or services as if they have met certain quality standards;
- b. stating the goods and/or services as if they do not contain hidden defects;
- c. not intending to sell the goods offered but with the intention of selling other goods;
- d. not providing goods in a certain quantity and/or sufficient quantity with the intention of selling other goods;
- e. not providing services in a certain capacity or in sufficient quantity with the intention of selling other services;
- f. increasing the price or tariff of goods and/or services before conducting a sale.

Article 16 stipulates that Business Actors in offering goods and/or services through orders are prohibited to:

- a. not fulfilling the order and/or agreement on the completion time as promised;
- b. not keeping the promise of a service and/or achievement.

Article 17 stipulates that:

(1) Advertising business actors are prohibited from producing advertisements that:

- a. deceive consumers regarding the quality, quantity, material use and price of goods and/or service rates as well as the timeliness of receiving goods and/or services;

- b. deceive the guarantee/warranty of goods and/or services;
 - c. contains false, incorrect, or inaccurate information about goods and/or services;
 - d. not containing information regarding the risks of using goods and/or services;
 - e. exploiting an event and/or a person without the permission of the authorized person or the consent of the person concerned;
 - f. violates ethics and/or the provisions of laws and regulations regarding advertising.
- (2) Advertising business actors are prohibited from continuing the circulation of advertisements that have violated the provisions in paragraph (1).

Thus, it can be clearly seen that although Law No. 8 of 1999 on Consumer Protection does not explicitly regulate the definition of misleading advertisements, the provisions regarding misleading advertisements have been regulated in 8 of 1999 on Consumer Protection. The rise of cases of drug distribution violations in Indonesia requires drug supervision to prevent and supervise products to protect the security, safety and health of consumers. The number of problems that harm consumers, then efforts to provide legal protection for consumers is very important considering free trade has been rife in Indonesia.

The Head of BPOM Regulation Number: HK.03.1.23.04.11.03724 Year 2011 concerning Supervision of Cosmetics Importation regulates that cosmetics to be sold must comply with the provisions of laws and regulations and obtain approval from the Head of BPOM. Business actors who market cosmetics without a distribution permit violate these provisions, and such actions may be subject to administrative sanctions in accordance with Article 13 of the Head of BPOM Regulation. Administrative sanctions include written warnings, prohibition of distribution of cosmetics, withdrawal of cosmetics from circulation, destruction of cosmetics, or temporary suspension of production, entry, and/or circulation of cosmetics.

Further violations, such as producing, selling, and/or marketing cosmetics with hazardous ingredients, are subject to criminal sanctions in accordance with Law Number 36 Year 2009 on Health. The penalties include imprisonment of up to 10 years and a fine of up to IDR 1,000,000,000,000 for violations of the requirements for cosmetic products containing hazardous ingredients. In addition, the absence of a distribution permit can result in criminal penalties with a maximum imprisonment of 15 years and a fine of up to IDR 1,500,000,000.

Counterfeit cosmetics can have characteristics such as not having a distribution permit, not being notified, containing harmful ingredients, pungent odor, suspicious color, unclear or incomplete label, and does not include the name of the manufacturer and exceeds the expiration date. Products tested include cream, body lotion, and lipstick for detection of hazardous ingredients such as theophylline, clindamycin, mercury, hydroquinone, etc (Winata, 2022).

The Food and Drug Administration (BPOM) responds to public complaints by conducting investigations as a form of social control and public service. However, it should be noted that BPOM acts as a supervisor of business actors who produce, sell, and distribute cosmetic products that have obtained legality according to regulations.

There are still many business actors operating in the illegal skincare trade, and every year related cases continue to emerge, harming consumers who are tempted by the sweet promises or lure of these products. However, YLKI notes that the number of consumers who make complaints is still very minimal. In one year, there were only 5-10 people who filed

complaints. This reflects the lack of public awareness of the importance of reporting violations and dissatisfaction with illegal products (Sembiring Milala et al., 2022).

The weakness in reporting and the lack of public awareness are serious obstacles in tackling the trade in illegal products, so that existing regulations are still not well implemented. To improve the effectiveness of law enforcement and consumer protection, further efforts are needed to raise public awareness of their rights, the risks of using illegal products, and an easily accessible complaint process.

In addition, counseling, education and advocacy campaigns on the dangers of illegal products need to be strengthened to increase public understanding. Strengthening cooperation between the government, regulatory agencies such as BPOM, and consumer organizations such as YLKI is also needed to intensify enforcement against illegal businesses and provide better protection to consumers.

In order to avoid negative impacts due to the use of goods and services, the Consumer Protection Law sets out a number of prohibitions for businesses. The main objective of the Consumer Protection Law is to improve the position of consumers, so that all aspects that can produce negative impacts from the use of goods and/or services need to be avoided in the trade activities of business actors. These prohibitions are outlined in Article 8 to Article 17 of Law Number 8 Year 1999 on Consumer Protection. In the context of default that can harm one of the parties, there are various forms of protection or legal steps that can be taken by the party who suffered the loss, namely:

1. Non Litigation (Legal Efforts Outside the Court)
 - a. Peace (Mediation), the parties involved in a dispute may try to reach an amicable agreement with the help of a neutral third party, usually a mediator. The mediator helps facilitate discussions and find solutions that are acceptable to all parties.
 - b. Negotiation, the parties directly negotiate to reach an agreement without involving a third party. Negotiation is a more informal method but can be effective if the parties are willing to communicate and find solutions together.
 - c. Conciliation, similar to mediation, conciliation involves a third party who helps facilitate communication and find solutions. However, conciliation usually involves a third party who is more active in providing advice or recommendations.
2. Litigation (Legal Remedies in Court)
 - a. Lawsuit, the aggrieved party may choose to file a lawsuit in court as a last resort if non-litigation efforts do not result in a satisfactory resolution.
 - b. Examination of Evidence and Court Hearing, the litigation process involves the examination of evidence and arguments in court. The aggrieved party and the complained party will present their cases before a judge.
 - c. Court Decision, the judge will issue a decision based on the applicable law. The court's decision is legally binding and must be carried out by the losing party in the trial.

In line with the results of research conducted by Lestari (2021), the existence of legal protection for consumers can prevent unfair practices or actions that have the potential to harm consumers in consuming illegal body whitening products. Legal settlement can be carried out through two channels, namely the court (litigation) and out of court (nonlitigation). Body whitening business actors, as product manufacturers, have an obligation to ensure that the products produced are safe for consumption and have high quality standards. If there are

complaints related to product damage that results in material or health losses for consumers, business actors must be fully responsible in accordance with Article 19 to Article 28 of Law Number 8 of 1999 concerning Consumer Protection (Lestari, 2021).

In the context of criminal law, the circulation of body whitening drugs containing harmful ingredients can be considered as the circulation of counterfeit drugs. This is regulated in Article 204 of the Criminal Code (KUHP), which states that a person who sells a product that he knows contains ingredients harmful to health and does not disclose this can be punished with a maximum imprisonment of fifteen years. In addition, if the product causes the death of a person, the perpetrator can be punished with life imprisonment or imprisonment for a certain period, with a maximum of twenty years. This reflects the seriousness of the act of circulating body whitening drugs that can harm the health and even threaten the lives of consumers. (Sena & Rudy, 2023)

The role of BPOM is indispensable in providing protection to customers/consumers of food and other products circulating in the market. customers/consumers of food and other products circulating in the market, the BPOM functions based on rules and regulations, standardization, evaluation of products before circulation, laboratory testing, inspection of product facilities, investigation and law enforcement. laboratory testing, inspection of product facilities distributor of investigation and law enforcement as well as conducting supervision, communication, information and education through related agencies. considering that there are still cases of confusion and laboratory results show food containing dangerous substances as an indication of the weak containing hazardous substances as an indication of the weak implementation of the functions and roles of BPOM in consumer protection. BPOM in consumer protection. And the position of consumers is very weak compared to producers. Legal efforts that can be made by consumers, namely litigation (court) and out of court (Panjaitan et al., 2020).

CLOSURE

Conclusion

The research underscores the pivotal role of advertising in the economy and consumers' lives, emphasizing its significance in conveying product information. While the law, notably Law No. 8 of 1999 on Consumer Protection, provides a framework for ethical advertising, there remains a challenge in addressing misleading practices. In the realm of cosmetics and drug distribution violations, regulatory bodies like BPOM play a critical role in upholding safety standards. The legal repercussions for violations, both administrative and criminal, highlight the severity of offenses, particularly concerning counterfeit cosmetics with hazardous ingredients. However, the prevalence of illegal skincare trade poses a persistent challenge, compounded by low consumer complaint rates. To address this, concerted efforts are needed to enhance public awareness, education, and reporting mechanisms. Collaboration among government agencies, regulatory bodies, and consumer organizations is essential for robust enforcement. The Consumer Protection Law serves as a key tool in ensuring fair trade practices, offering various legal remedies for consumers. The research emphasizes the importance of these legal protections, especially in cases involving the consumption of illegal body whitening products. Manufacturers are held accountable for safety, facing legal consequences for any harm caused. Criminal law, as reflected in the Indonesian Criminal Code, underscores the

severity of circulating harmful products. The penalties serve as a deterrent, emphasizing the need for stringent measures to safeguard consumer health and well-being. In conclusion, the research advocates for a comprehensive approach encompassing legal regulations, public awareness, and effective enforcement. By addressing misleading advertising and illicit trade practices, society can foster a fair and secure marketplace for consumers.

Suggestion

To bolster consumer protection, authorities should intensify regulatory oversight, conduct comprehensive public awareness campaigns, simplify reporting mechanisms, and facilitate collaboration among regulatory bodies. Continuous educational programs for businesses, research on consumer reporting behavior, and periodic evaluations of legal penalties are crucial. Encouraging industry self-regulation through codes of conduct complements these efforts. These measures collectively aim to create a more transparent and secure marketplace, benefiting consumers and businesses alike.

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