

# Legal Protection for Consumers of Imported Cosmetics Not Registered in the National Agency for Drug and Food Control (NADFC)

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**Abstract:** This study aims to find out and analyze legal protection for consumers of imported cosmetics not registered in the National Agency for Drug and Food Control (NADFC) Republic of Indonesia. This research uses a normative juridical approach using primary legal material and secondary legal material. Legal protection is one of the most important things of the elements of a legal state because in the formation of a country will also be formed laws governing each citizen. On the other hand, it can also be felt that legal protection is an obligation for the state to achieve justice and certainty for all parties. Legal Protection for Imported Cosmetics Consumers Not Registered in the register of The National Agency for Drug and Food Control (NADFC) Republic of Indonesia can be seen through Law No. 8 of 1999 on consumer protection on consumer rights and obligations and responsibilities for businesses, as well as guidance and supervision by the State-regulated in Articles 29 and 30.

**Keywords:** Legal Protection, Consumers, Imported Cosmetics.

## 1. Introduction

The issue of consumer protection in the era of globalization is increasingly discussed. This problem will never run out and will always be the subject of discussion in the community. As long as there are still many consumers who feel harmed, this conversation will never be completed. Usually, the problems faced by Indonesian consumers are the same as consumer problems in other developing countries. However, the problems experienced not only include consumers, but more complex, namely about the awareness of all parties ranging from entrepreneurs, governments, and consumer themselves about the importance of consumer protection. It has been known together that basically everyone, at one time, either individually or in groups, under any circumstances will certainly be a consumer for a particular product of goods and/or services produced, offered, and sold by the manufacturer as a business. The legal relationship between producers and consumers has a high level of dependency, namely during the production, distribution, marketing, and bidding processes. The legal relationship between consumers and producers has now changed legal construction, namely, a relationship that is built on the principle of caveats turned into caveat venditor. Because partiality to consumers is a genuine manifestation of the populist economy. Abdul Atsar and Rani Apriani in this case

divide several consumers, namely: consumers who use goods/services for commercial purposes and consumers who use goods/services for themselves/family/non-commercial [1].

While the product itself can be qualified on several types, depending on which angle the product is qualified from. Kotler and Armstrong as quoted by Zulham classify products into two types, namely products for consumption (consumer product) that are products purchased by the end consumer for consumption, and products for industrial products (industrial products) that are products purchased for further processing or reused for business purposes. Lately, cosmetics are a widely traded item among the people in Indonesia [2].

Ease of access to technology changes the pattern of buying and selling between businesses and consumers. Sales of cosmetic products today are not only sold in stores, but also through online using e-commerce such as Lazada, Shopee, Tokopedia, Blibli.com, and many more. In general, e-commerce can be defined as any form of trade transactions/commerce of goods and services using electronic media. Online transactions are a new way of conducting buying and selling activities by utilizing the advancement of information technology. Online transaction is growing in the community as a result of technological developments and the increasing number of internet users in Indonesia. It can be said that the most popular cosmetics today are cosmetics from ginseng countries, namely South Korea. Not only K-Pop is growing, but cosmetics and skincare are also in great demand by the people of Indonesia. The existence of e-commerce today, consumers can easily compare products with low prices. About this, Lalita Dhingra explained: "According to this right every consumer has the right to choose the goods or services of his/her liking. This means an assurance of availability, ability, and access to a variety of products and services at competitive prices, and by competitive price we mean just and fair price" [3].

Meanwhile, according to Rosmawati, no single business or producer can dominate the market, as long as consumers have the right to which products offer the best value, both in terms of price and quality. But the reality, online sales through e-commerce are storing negative things. This negative thing can

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be seen from the presence of cosmetics sold online both local and foreign brands on average do not have permission from the National Agency for Drug and Food Control (NADFC) Republic of Indonesia. Whereas it is known together that cosmetics circulating in the Indonesian society must meet the standards set by the Government of Indonesia, one of these standards is to be registered and obtain permission from the National Agency for Drug and Food Control (NADFC) Republic of Indonesia. The registration of imported cosmetics is regulated in several regulations, namely: Article 8 paragraph 1 letter an of Law No. 8 of 1999 which states that: "businesses are prohibited from producing and/or trading goods and/or services that do not meet the required standards and statutory provisions". Article 4 of the Regulation of the Head of the National Agency for Drug and Food Control of the Republic of Indonesia No. HK.03.1.23.12.10.11983 of 2010 concerning Criteria and Procedures for Submission of Cosmetic Notification which reads: "(1) Cosmetics to be circulated in The Territory of Indonesia must be notified to the Head of Agency. (2) The notification as intended in paragraph (1) shall be valid for 3 (three) years. (3) If during the period as referred to in paragraph (2) a change is made to: a. the name of the industry/importer/business entity that notified without change of right to circulate or ownership status; b. industrial address/importer/business entity that notified with no change in factory location; c. the name of the industry leader/importer/business entity that notified; or d. size and type of packaging; changes notification should be made. (4) In addition to the changes as referred to in paragraph (3), industry/importers/business entities shall update the notification" [4].

Consumer protection law is one of the important aspects that must be met in the implementation of business. However, economic development in this era of globalization must be able to support the growth of the business world to produce a variety of goods and/or services that have technology content that can improve the welfare of many people without resulting in consumer losses. Protection of consumers both materially and formally is very important, considering the advancement of science and technology that is the driving force for productivity and efficiency of manufacturers for the goods or services they produce to achieve business goals. Some relevant principles between consumer protection and national development include The principle of benefits (consumer protection must provide benefits for the benefit of consumers and businesses as a whole); The principle of fairness (providing opportunities for consumers and businesses to obtain their rights and obligations fairly); The principle of balance (providing a balance between the interests of consumers, businesses, and the government); Consumer safety and security principles (assuring safety and security to consumers in the use, use, and utilization of goods and/or services consumed and used); and the principle of legal certainty (both businesses and consumers obey the law and obtain justice in the implementation of consumer protection and the state guarantees legal certainty) [5].

Legal protection for consumers is made not to shut down businesses, but legal protection for consumers is expected to

encourage a healthy business climate that encourages the birth of resilient companies to face competition through the provision of quality goods and/or services.

## 2. Research Methodology

This research uses a normative juridical approach, where the law is conceptualized as what is written in the law in books (law in books) or the law is conceptualized as a rule or norm that is the benchmark of human behavior that is considered appropriate [6]. Normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in the legislation. The primary legal material, in this case, is Law No. 8 of 1999 on Consumer Protection, while secondary legal material comes from books, journals, and research related to the focus of this research [7].

## 3. Results and Discussion

Law is an important system in the implementation of a series of authority and institutional power of the State and Government in a narrow aspect. Therefore, Indonesia as a welfare law state always has noble ideals as stated in the preamble to the 1945 Constitution of The Republic of Indonesia. One form of concrete step in implementing the noble ideals that become the mandate of the State is to protect all or all of its citizens from bad deeds that could harm its people. Besides, according to Extrix Mangkeprijanto, the development in every aspect resulted in a group of people called society then created legal protection. Each individual in society has different interests and all seek to fulfill their interests. Here the law has a big role, namely as a rule to regulate human behavior in fulfilling its interests, with the law is expected there will be no conflict of interest between individuals with each other [8].

Legal protection is the protection of human dignity and dignity, as well as recognition of human rights owned by the subject of law based on the provisions of the law from arbitrariness or as a set of rules or rules that will be able to protect one thing from other things. Meanwhile, according to Sudikno Mertokusumo quoted by Ribka Amanda Dera, stated that: "Legal protection is all efforts made to ensure the existence of legal certainty based on the whole rules or rules that exist in a common life. This whole regulation can be seen both in the Act and in the ratification of international conventions" [9], [10].

More than that, Bambang Waluyo as quoted by Tami Rusli distinguishes legal protection into two, namely: Preventive protection: efforts to prevent threats and consumer safety through legislation and regulations implemented as for a person, a group of people, a community, a group of people from a situation that has occurred undesirable. Repressive protection: final protection efforts in the form of sanctions such as fines, imprisonment, and additional penalties given in the event of a dispute or an offense has been committed [11].

Legal protection is one of the most important things of the element of a legal state because in the formation of a country will be formed also the law that governs each citizen. On the other hand, it can also be felt that legal protection is an

obligation for the state to achieve justice and certainty for all parties.

Today, the cosmetics market is highly competitive and global, where quality, efficiency, and safety are essential. Because cosmetics are objects that cannot be separated by women, many people abuse this, namely one by importing cosmetics without registering to NADFC of the Republic of Indonesia first. Consumers as a weak party in this case need to be protected for justice to be realized. Several regulations on cosmetics in Indonesia include Regulation of the Minister of Health of the Republic of Indonesia No. 1175/Men.Kes/Per/VIII/2010 concerning Cosmetic Production License; Regulation of the Head of National Agency for Drug and Food Control No. HK.03.1.23.12.11.10689 of 2011 concerning The Form and Type of Certain Cosmetic Preparations that can be Produced by cosmetic industry that has a Type B Production License; Decree of the Head of the National Agency for Drug and Food Control No. HK.00.05.4.3870 of 2003 concerning Guidelines for The Manufacture of Good Cosmetics; Regulation of the Head of the National Agency for Drug and Food Control No. HK.03.42.06.10.4556 of 2010 concerning Operational Guidelines for How to Make Good Cosmetics; Regulation of the Minister of Health of the Republic of Indonesia No. 1176/Men.Kes/Per/VIII/2010 concerning Cosmetic Notification; Regulation of the Head of the National Agency for Drug and Food Control No. HK.03.1.23.12.10.11983 of 2010 concerning Criteria and Procedures for Submission of Cosmetic Notification as amended by Regulation of the Head of the National Agency for Drug and Food Control No. 34 of 2013, and Regulation of the Head of the National Agency for Drug and Food Control of the Republic of Indonesia No. 12 of 2015 concerning Supervision of Drug and Food Importation Into Indonesian Territory.

As stipulated in Article 1 No. 11 of the Regulation of the Head of the National Agency for Drug and Food Control of the Republic of Indonesia No. 12 of 2015 concerning Supervision of The Entry of Drugs and Food Into The Territory of Indonesia, "Cosmetics are ingredients or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips and outer genital organs) or teeth and mucous membranes of the mouth especially to clean, scent, change the appearance and or improve body odor or protect or maintain the body in good condition". Cosmetics that can be entered into the territory of Indonesia to be circulated are cosmetics that have a circulation permit and a production license. In addition to having a circulation permit, cosmetics must also meet the provisions of legislation in the field of imports.

Consumer protection is trying to support and protect the interests of consumers. The existence of consumer protection aims to promote the industry's response to consumer needs, consumer confidence in service quality, wide availability of services and service affordability, realized through the development and enforcement of consumer codes and standards, dispute consumer resolution, effective tariff regulation, and universal service provision system. Husni Syawali and Neni Sri Imaniyati as quoted by Abd. Haris Hamid

explained that consumer protection arrangements can be done in several ways, such as: Creating a consumer protection system that contains elements of open access to information, as well as ensuring legal certainty by enforcing regulations; Guarantee the rights of legal subjects; Improving the quality of goods and services; Provide protection to consumers from deceptive and misleading business practices; and Integrating the implementation, development, and regulation of consumer protection with areas of protection in other fields [12].

Although done buying and selling online, protection for consumers related to imported cosmetics that are not registered in the register of the National Agency for Drug and Food Control (NADFC) Republic of Indonesia based on Law No. 8 of 1999 on Consumer Protection remains equated with consumers who transact directly or conventionally. Legal protection for consumers of imported cosmetic consumers not registered in the National Agency for Drug and Food Control (NADFC) Republic of Indonesia can be done in two ways, namely: When before the transaction (no conflict/pre-purchase). Legislation, which is the legal protection of consumers that is done at the time before the occurrence of transactions by protecting consumers through the legislation is expected consumers get protection before the occurrence of transactions because there have been statutory restrictions before the occurrence of transactions. After all, there have been restrictions and provisions governing transactions between consumers and businesses. Voluntary self-regulation, which is legal protection for consumers who are said at the time before the transaction, which in this way is expected to voluntarily make regulations for themselves to be more careful and vigilant in conducting business.

After the transaction (conflict/post-purchase). Can be done through litigation and non-litigation based on the choice of the parties in dispute if choosing non-litigation can be through the Consumer Dispute Settlement Agency or BPSK. Based on Law No. 8 of 1999 on Consumer Protection, Consumer Protection can be seen from consumer rights and obligations and responsibilities for businesses. Besides, the State also protects by conducting guidance and supervision as articles 29 and 30. The government is responsible for fostering the implementation of consumer protection that guarantees the obtaining of consumer and business rights as well as the implementation of consumer and business obligations and the implementation of consumer and business obligations. Fostering the implementation of consumer protection includes efforts to the creation of a business climate and the growth of healthy relationships between businesses and consumers; the development of non-governmental consumer protection agencies; improving the quality of human resources as well as increasing research and development activities in the field of consumer protection. Supervision of the implementation of consumer protection and the application of laws and regulations are held by the government and non-governmental consumer protection agencies. All efforts that ensure the existence of legal certainty to protect consumers is the purpose of Law No. 8 of 1999 on Consumer Protection itself. Another goal to be achieved is the business world is encouraged to improve the

quality of goods and services products so that the products have a competitive advantage.

Legal law for Consumers of Imported Cosmetics Not Registered in the National Agency for Drug and Food Control (NADFC) Republic of Indonesia can also be seen in Article 31 paragraph (1) regulation of the Head of the National Agency for Drug and Food Control of the Republic of Indonesia No. 12 of 2015 concerning Supervision of Import of Drugs and Food Into Indonesian Territory, which violates the provisions in the Regulation of the Head of the National Agency for Drug and Food Control of the Republic of Indonesia No. 12 of 2015 concerning Supervision of The Import of Drugs and Food into The Territory of Indonesia, may be subject to administrative sanctions in the form of written warnings. temporary suspension of income and/or circulation activities; extermination or re-export; freezing of circulation permits; and/or; revocation of circulation permits.

The purpose of consumer protection itself can be divided into two, namely: A. Philosophically, consumer protection is carried out to create a balance of rights and obligations between businesses and consumers so that the paradigm of aged let be consumer beware (consumers who must be careful in consuming goods and services) becomes the paradigm of let producer beware (businesses must be careful before producing and trading goods and services to the market). B. Sociologically, consumer protection arrangements are intended for the community as consumers and the community as businesses. Society as a consumer means that consumers must be smart and careful in choosing and using a product to be following the needs and expectations of consumers themselves. As for the community as a business, consumer satisfaction is an important thing that must be maintained by businesses.

Manufacturers as business actors must have good faith in consumers of imported cosmetics by being obliged to register their products following the prevailing laws and regulations in Indonesia. The obligation of business actors to have good faith is stipulated in article 7 letter a of Law No. 8 of 1999 on Consumer Protection states that: the obligation of business actors is "in good faith in conducting their business activities." The responsibility of business actors, in this case, is very large in providing comfort and safety for products marketed to cosmetic consumers in Indonesia. Thus, if the perpetrator does good faith, there will be no harm to the consumers. Harming others in the context of legal science is the same as having committed an act against the law as stated in Article 1365 of the Civil Code if a person commits an act against the law is obliged to pay compensation for his/her actions. Article 1371 of the Civil Code paragraph (2) implied guidelines in which "Also the institution of this damage is judged according to the position and ability of both parties and according to the circumstances".

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#### 4. Conclusion

Legal protection is one of the most important things of the elements of a legal state because in the formation of a country will also be formed laws governing each citizen. On the other hand, it can also be felt that legal protection is an obligation for the state to achieve justice and certainty for all parties. In this case, legal protection can be divided into two, namely preventive legal protection (as a preventive measure) and repressive legal protection of final protection in the form of sanctions. Legal Protection for Imported Cosmetic Consumers Not Registered in the National Agency for Drug and Food Control (NADFC) Republic of Indonesia can be seen through: A. Law No. 8 of 1999 on consumer protection concerning consumer rights and obligations and responsibilities for businesses, as well as coaching and supervision by the State stipulated in Articles 29 and 30. B. Administrative sanctions contained in Article 31 paragraph (1) of the Regulation of the Head of the National Agency for Drug and Food Control of the Republic of Indonesia No. 12 of 2015 concerning Supervision of The Entry of Drugs and Food into The Territory of Indonesia.

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