

Catching the Perpetrators of Dangerous Cosmetics: Between Intention and Absolute Responsibility

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Abstrak: Peredaran kosmetik ilegal yang mengandung bahan berbahaya merupakan persoalan serius yang tidak hanya berdampak pada kesehatan masyarakat, tetapi juga mencerminkan lemahnya efektivitas pertanggungjawaban pidana pelaku usaha. Penelitian ini bertujuan untuk menganalisis konstruksi pengaturan pidana terhadap pelaku usaha kosmetik ilegal serta mengkaji unsur-unsur pertanggungjawaban pidana dalam praktik peradilan. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Kebaruan penelitian ini terletak pada analisis integratif antara konsep pertanggungjawaban pidana klasik dengan pendekatan strict liability dalam konteks perlindungan konsumen modern. Hasil penelitian menunjukkan bahwa pengaturan pidana telah tersedia secara komprehensif dan berlapis, namun implementasinya masih menghadapi tantangan dalam pembuktian unsur kesalahan dan efektivitas penegakan hukum. Selain itu, praktik peradilan menunjukkan kecenderungan penerapan prinsip *lex specialis* serta pengakuan implisit terhadap konsep tanggung jawab mutlak dalam melindungi konsumen. Penelitian ini menyimpulkan bahwa diperlukan penguatan paradigma pertanggungjawaban pidana berbasis perlindungan konsumen serta sinergi antar lembaga pengawas untuk menekan peredaran kosmetik ilegal berbahaya.

Kata Kunci: Pertanggungjawaban Pidana; Kosmetik Ilegal; Bahan Berbahaya; Pelaku Usaha; Perlindungan Konsumen.

Abstract: The circulation of illegal cosmetics containing hazardous substances represents a serious issue that not only threatens public health but also reflects the inadequacy of criminal liability enforcement against business actors. This study aims to analyze the regulatory framework governing criminal liability for illegal cosmetic business actors and to examine the elements of criminal responsibility in judicial practice. This research employs a normative juridical method with statutory, conceptual, and case approaches. The novelty of this study lies in integrating classical criminal liability concepts with strict liability principles within the modern consumer protection framework. The findings reveal that although the criminal regulatory framework is comprehensive and layered, its implementation still faces challenges, particularly in proving fault elements and ensuring effective law enforcement. Judicial practices also demonstrate a tendency to apply the *lex specialis* principle and implicitly recognize strict liability to enhance consumer protection. This study concludes that strengthening a consumer-oriented criminal liability paradigm and improving institutional coordination are essential to suppress the proliferation of hazardous illegal cosmetics.

Keywords: Criminal Liability; Illegal Cosmetics; Hazardous Substances; Business Operators; Consumer Protection.



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A. INTRODUCTION

The cosmetics industry has seen significant growth over the past few decades, driven by increasing public awareness of appearance and skin health. Cosmetics are no longer seen as a secondary need but have become an integral part of a modern lifestyle, integral to an individual's social identity. This increase in beauty product consumption is inextricably linked to the growth of the global cosmetics industry and the penetration of digital markets, enabling broader and faster product distribution.[1] The growth of the cosmetics industry creates great economic opportunities for business actors, both on a large industrial scale and micro, small and medium enterprises. However, this market expansion is also accompanied by an increasing risk of distribution of illegal cosmetic products that do not meet safety and quality standards. These products often contain dangerous ingredients such as mercury, hydroquinone, and other chemicals which can have serious impacts on consumers' health, both in the short and long term. [2] In a legal context, the state has established a relatively comprehensive regulatory framework to regulate the distribution of cosmetics and provide consumer protection. This regulation places business actors in charge of ensuring the safety, quality, and clarity of information on the products being traded. However, the effective implementation of these regulations still faces various obstacles, particularly in the areas of oversight, law enforcement, and proving criminal liability for business actors.[3]

From an Islamic legal perspective, the widespread circulation of illegal cosmetics containing hazardous substances is not only seen as a violation of positive legal norms, but also as a violation of the moral and ethical values outlined in the Qur'an and Hadith. Islam places the principle of protecting the soul (*ḥifz al-nafs*) and prohibiting the infliction of harm as the primary foundations of every transactional activity, including the production and distribution of goods. Allah SWT expressly forbids humans from engaging in actions that could harm themselves or others, as stated in the Qur'an: "And do not throw yourselves into destruction." (Q.S. Al-Baqarah: 195).[4] This verse implies that any action that has the potential to harm health, including the use and distribution of cosmetics containing hazardous substances, is prohibited. This applies not only to consumers but also to producers and distributors who knowingly sell these hazardous products. Furthermore, the principles of honesty and transparency in trade are also strongly emphasized in Islam. Allah SWT says: "And perfect the measures and scales fairly" (Q.S. Al-An'am: 152).[5] This paragraph is not only related to physical measurements and scales, but also reflects the obligation of business actors to provide correct, clear and not misleading information regarding the products being sold. In the context of cosmetics, this includes clarity of ingredient composition, marketing permits, and product safety for consumers.

Furthermore, in the hadith of Rasulullah SAW, it is emphasized the prohibition against committing acts that harm other people: "You must not endanger yourself and you must not endanger others" (HR. Ibnu Majah).[6]

This hadith is a fundamental rule in Islamic law (*lā ḍarar wa lā ḍirār*), which emphasizes that all forms of economic activity that cause harm must be avoided. Thus, the distribution of illegal cosmetics that have the potential to damage health is clearly contrary to this principle. Rasulullah SAW also emphasized the importance of honesty in trading activities: "Whoever cheats, he is not from my group." (HR. Muslim). This hadith demonstrates that fraudulent practices, including concealing information regarding product dangers or falsifying distribution permits, are reprehensible acts that have not only legal implications, but also moral and spiritual ones. Therefore, based on the perspective of the Qur'an and Hadith, the practice of distributing illegal cosmetics not only violates positive law but also contradicts fundamental Islamic principles, namely honesty (*ṣidq*), justice (*‘adl*), and protection of the public interest. This underscores the importance of integrating state law enforcement with religious ethical values in creating a comprehensive and equitable consumer protection system.

The phenomenon of illegal cosmetics circulation demonstrates a gap between the ideal conditions envisioned by law (*das sollen*) and the empirical reality (*das sein*) that exists in society. Although regulations clearly outline the obligations of business actors, practice in the field shows that illegal cosmetics are still widely circulated, both through conventional distribution channels and digital platforms. This indicates that the monitoring and law enforcement system has not fully kept pace with technological developments and the complexity of product distribution. [7] From a consumer protection law perspective, this situation reflects the weak position of consumers in dealing with business actors. Consumers often face information asymmetry, where they lack adequate knowledge regarding the composition, benefits, and risks of the products they use. As a result, consumers become vulnerable to dishonest and misleading business practices, which can ultimately lead to physical, economic, and psychological harm. [8] Theoretically, business actors' liability for consumer losses can be analyzed through various legal approaches, one of which is the concept of strict liability. This concept places responsibility on the business actor without requiring proof of fault, particularly in cases involving dangerous products. In the context of illegal cosmetics, the application of this principle becomes relevant given that the business actor has full control over the product production and distribution process and should therefore bear responsibility for the risks incurred. [9]

However, in the practice of criminal law enforcement, the application of accountability to illegal cosmetics businesses still faces various challenges. One of the main obstacles is proving the element of fault (*mens rea*), especially in cases involving product distribution through complex marketing chains and involving multiple parties. Furthermore, there are challenges in determining the appropriate legal basis, given the overlapping regulations between general criminal law, health law, and consumer protection law. [10]

Previous research shows that law enforcement against business actors in the field of consumer protection still tends to focus on administrative sanctions rather than criminal sanctions, so that it has not provided an optimal deterrent effect. [11] In addition, the rapid development of digital technology has not been fully balanced by adaptive legal instruments, thus opening up opportunities for illegal business actors to continue their activities without effective supervision. [12] However, most previous studies, such as the research by Reisha and Sylvina (2025), still focus on general consumer protection aspects and have not specifically examined the construction of criminal liability for business actors in the distribution of illegal cosmetics containing hazardous materials. [13]

Based on the above description, there is a research gap indicating that studies on the criminal liability of illegal cosmetics businesses have not yet been comprehensively analyzed by integrating normative, theoretical, and judicial practice aspects. Furthermore, there are not many studies that have in-depth examined the relevance of applying the principle of strict liability in criminal law as an instrument of consumer protection in cases of dangerous illegal cosmetics. The state of the art of this research lies in its integrative approach, which combines analysis of legislation, legal theory, and case studies of court decisions as the objects of study. With this approach, this research not only examines legal norms in the abstract but also evaluates their implementation in practice, resulting in a more comprehensive and contextual analysis. The novelty of this research lies in its attempt to reconstruct the concept of criminal liability for business actors in the distribution of illegal cosmetics by emphasizing the paradigm shift from fault-based liability to strict liability within the framework of modern consumer protection law. Furthermore, this research also provides a critical analysis of the application of the principle of *lex specialis derogat legi generali* in determining the legal basis for criminalizing business actors in the distribution of dangerous illegal cosmetics. Based on this background, this study aims to analyze criminal regulations against perpetrators of illegal and dangerous cosmetic businesses and examine the elements of criminal acts and criminal liability of business actors in judicial practices in Indonesia.

B. METHOD

This research is a normative legal study that aims to analyze the construction of criminal liability for business actors in the distribution of illegal cosmetics containing hazardous materials. Normative legal research was chosen because the study focuses on the analysis of legal norms, legal principles, and doctrines that develop within the positive legal system, particularly those related to consumer protection and criminal law. [14]. The approaches used in this research include a statutory approach, a conceptual approach, and a case approach. The statutory approach is used to examine various regulations governing the obligations of business actors and criminal sanctions in the distribution of illegal cosmetics. The conceptual approach is used to analyze the concept of criminal liability, including the development of the principle of strict liability in consumer protection law. Meanwhile, the case approach is used to examine the application of legal norms in judicial practice through an analysis of relevant court decisions, particularly those related to criminal acts in the distribution of dangerous illegal

cosmetics. [15] The research specification used in this study is analytical descriptive research. Analytical descriptive research aims to provide a systematic overview of the application of a legal provision and analyze various problems that arise in its implementation practice. [16] The types of legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and court decisions that have permanent legal force and are relevant to the object of study. Secondary legal materials consist of books, scientific journal articles, and expert opinions related to criminal law, consumer protection, and health law. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that provide additional explanations of the terms or concepts used in this study. [17] The legal material collection technique is carried out through library research, namely by identifying, inventorying, and reviewing various legal sources relevant to the research problem. Legal material collection is carried out systematically by searching scientific literature, journal databases, and legal documents that can be academically validated. [18] The legal material analysis method in this study uses a qualitative approach with descriptive-analytical analysis techniques. The analysis is conducted by interpreting legal provisions, examining the relationships between norms, and evaluating their application in judicial practice. Furthermore, legal interpretation methods, including grammatical, systematic, and teleological interpretation, are used to gain a comprehensive understanding of the meaning and purpose of the legal norms being analyzed. The results of this analysis are then systematically compiled to answer the research questions argumentatively and logically. [19]

C. DISCUSSION

1. Construction of Criminal Regulations for the Circulation of Dangerous Cosmetics

The criminal regulations for the circulation of illegal cosmetics containing hazardous substances in the Indonesian legal system demonstrate the character of a multi-layered legal regime (multi-layered regulatory framework), in which various legal instruments work simultaneously to provide consumer protection. This characteristic reflects that the circulation of cosmetics is not merely viewed as an ordinary economic activity, but as an activity that has direct implications for public health, thus requiring stricter and more comprehensive regulations. [1]. Within the general criminal law framework, the distribution of products that do not conform to actual conditions or contain elements of misleading consumers can be classified as fraudulent trade. This approach is rooted in the concept of protecting honesty in transactions, where business actors are prohibited from providing misleading information or concealing facts that could influence consumer decisions. However, this general criminal law approach has limitations because it does not specifically regulate product safety standards, particularly cosmetics, which have a high health risk dimension. [20] These limitations are then complemented by a special legal regime, particularly consumer protection law, which places business actors under a legal obligation to ensure product safety, quality, and clarity of information. In this context, violations of these obligations not only result in civil liability but can also lead to criminal liability. This demonstrates that consumer protection law functions not only as a corrective instrument but also as a repressive instrument to prosecute business actors who commit serious violations of consumer rights. [21]

Furthermore, within the health law regime, known as *lex specialis*, the regulation of cosmetics is placed within the framework of public health protection. This approach emphasizes that any product related to the human body must meet safety, quality, and efficacy standards before it can be distributed. Therefore, violations of these provisions are viewed as a crime with a higher level of danger than violations in the context of ordinary commerce. Consequently, criminal sanctions imposed within the health law regime tend to be more severe as a form of protection of the public interest. [22] In addition, administrative regulations issued by supervisory authorities serve as a preventive instrument in the cosmetics distribution monitoring system. The requirement to obtain a distribution permit before marketing a product is a form of initial control aimed at ensuring that the product has undergone a safety evaluation process. However, in practice, violations of these administrative provisions still frequently occur, particularly in distribution through digital platforms that are difficult to directly monitor. This situation indicates a gap between legal norms and the effectiveness of their implementation in the field. [23] Conceptually, the construction of criminal regulations regarding the circulation of dangerous cosmetics demonstrates an integration between criminal law, administrative law, and consumer protection law. This integration reflects a modern legal approach that no longer strictly separates legal regimes but rather prioritizes synergy between legal instruments to optimally achieve the goal of public protection. Therefore, the effectiveness of law enforcement in illegal cosmetics cases depends heavily on the ability of law enforcement officials to select and apply the most appropriate legal instruments according to the characteristics of the acts committed. [3]

Thus, it can be concluded that the criminal regulations for the circulation of dangerous cosmetics in Indonesia have a fairly strong normative basis, but still face challenges in their implementation. These challenges relate not only to the aspect of supervision, but also to coordination between institutions and consistency in the application of criminal law as an instrument of consumer protection. This condition indicates the need to strengthen an integrative approach in law enforcement so that the goals of consumer protection and public health can be optimally achieved. The effectiveness of the analysis of the elements of criminal acts in the circulation of illegal cosmetics is a fundamental aspect in determining whether an act can be qualified as a crime and whether the perpetrator can be held legally accountable. In this context, the construction of the crime is not only understood formally based on the formulation of norms, but also must be analyzed substantively by considering the characteristics of cosmetic products as goods that pose a risk to public health. [1]. The first element that must be fulfilled is the element of legal subject, which is commonly formulated as "every person." In the development of modern criminal law, this phrase not only includes individuals but can also include legal entities or corporations as perpetrators of criminal acts. In the context of the circulation of illegal cosmetics, legal subjects are not limited to producers, but encompass the entire distribution chain, including distributors, importers, sellers, and parties who promote products through digital media. This shows that criminal acts in the circulation of illegal cosmetics have the characteristics of chain liability, where legal responsibility can be attached to more than one perpetrator in a single series of acts. [12]

The second element is the element of fault (*mens rea*), which in classical criminal law is the primary requirement for imposing a criminal penalty. Fault can be either intentional (*dolus*) or negligent (*culpa*). In the practice of illegal cosmetics distribution, intent often does not appear in a direct form (*dolus directus*), but rather in the form of indirect intent (*dolus eventualis*), namely when the perpetrator knows there is a possibility that the product being distributed does not meet standards or contains hazardous materials, but continues their actions. This condition indicates that the business actor consciously accepts the risks posed to consumers, so the element of fault can still be considered fulfilled. [9] However, proving fault in practice is often challenging, particularly in cases involving widespread product distribution through digital platforms. Businesses often attempt to avoid liability by claiming ignorance of product contents or by shifting responsibility to other parties in the distribution chain. This demonstrates that the individual fault-based approach to proof has limitations in addressing the complexities of modern trade crimes. [24] The third element is the element of the act (*actus reus*), namely the act of producing, distributing, or trading cosmetics that do not meet safety, quality, and benefit standards. This element is the core of the crime in the distribution of illegal cosmetics, as it is directly related to activities prohibited by law. Proof of this element is generally based on the fact that the product does not have a distribution permit, does not meet established standards, or contains prohibited hazardous substances. In this case, the evidence is not only legal but also technical, so it requires support from laboratory test results and expert testimony. [25]

Thus, the analysis of the elements of a criminal act in the circulation of illegal cosmetics cannot be conducted narrowly based on the formulation of norms alone, but must consider the social, economic, and technological contexts underlying the act. This comprehensive approach is necessary for criminal law to function effectively in combating the circulation of illegal cosmetics and providing optimal protection to consumers. Criminal liability is at the heart of criminal law enforcement, as it determines whether a person who commits an unlawful act can be subject to criminal sanctions. In classical criminal law doctrine, criminal liability requires the fulfillment of three main elements: the existence of an unlawful act, the existence of fault (*schuld*), and the ability of the perpetrator to take responsibility. These three elements are the foundation of the principle of *geen straf zonder schuld*, which emphasizes that there is no crime without fault. [26] In the context of the distribution of illegal cosmetics containing hazardous substances, the application of the classic concept of criminal liability faces quite complex challenges. This is due to the nature of the crime, which involves products that pose a high risk to public health and whose distribution occurs through a long, often inter-regional, chain. In such circumstances, proving individual fault is often difficult, especially when business actors attempt to avoid responsibility by claiming ignorance of the product's contents or by shifting responsibility to other parties in the distribution chain. [27]

The limitations of this fault-based approach have led to the development of the concept of strict liability in consumer protection law. This concept places responsibility on business actors without requiring proof of fault, but rather simply requires proof that the product being distributed causes harm or fails to meet established standards. In the context of illegal cosmetics, this approach is relevant because business actors have full control over the production, distribution, and marketing of the product, and therefore logically must bear the risk of any resulting impact. [28]

The application of strict liability also aligns with the objectives of consumer protection law, which places consumers as the party that must be protected from the risks of dangerous products. In this case, consumers are not burdened with the obligation to prove the fault of the business actor, which in many cases is difficult due to limited information and access to evidence. Thus, the concept of strict liability serves as a legal instrument that strikes a balance between the interests of business actors and consumer protection. [29] Furthermore, in judicial practice, the application of criminal liability to illegal cosmetics businesses also shows a tendency to adopt a more progressive approach. This is evident in the way judges assess the element of fault not only based on the perpetrator's subjective intent, but also on the level of negligence and awareness of the risks involved. In many cases, businesses are deemed at fault if they should have known that the products they distribute substandard, even if there is no direct evidence of intent. [30] However, the application of the concept of strict liability in criminal law is not without theoretical debate. One of the main criticisms of this concept is its potential to conflict with basic principles of criminal law, particularly the principle of *nulla poena sine culpa*. The application of liability without fault is feared to blur the line between criminal and civil law and potentially create injustice for business actors who did not have malicious intent. [31]

Therefore, a balanced approach is needed in applying strict liability in criminal law. This approach can be implemented by limiting the application of this concept to certain cases that pose a high level of risk to the public interest, such as the distribution of products related to consumer health and safety. Furthermore, the application of strict liability must also be accompanied by a defense mechanism for business actors, such as the due diligence defense, which allows business actors to prove that they have taken reasonable steps to prevent violations. [10]. Thus, it can be concluded that the criminal liability of business actors involved in the distribution of illegal cosmetics demonstrates a paradigm shift from a fault-based approach to a risk-based approach. This shift is a response to the complexity of issues in modern society, particularly those related to consumer protection. Therefore, the development of the concept of strict liability in criminal law requires careful consideration to ensure it remains consistent with basic legal principles and provides optimal protection for the public.

2. Analysis of Court Decisions and Implications for Law Enforcement

Analysis of court decisions is a crucial aspect of normative legal research, as they reveal how legal norms are concretely applied in judicial practice. In the context of the circulation of illegal cosmetics containing hazardous substances, court decisions serve not only as a means of dispute resolution but also as an instrument for confirming the direction of law enforcement policies to protect consumers and public health. [1] Based on an analysis of the court decisions studied, it appears that judges tend to use the *lex specialis derogat legi generali* approach in determining the legal basis for criminal penalties. In this case, provisions in health law are positioned as special laws that override provisions in general criminal law and consumer protection law. This approach reflects the consideration that the distribution of illegal cosmetics is not only a violation in the context of trade but also a serious threat to public health, thus requiring handling through more specific and firm legal

instruments. [32] In his legal considerations, the judge also assessed that all elements of the crime had been fulfilled, including the legal subject, the fault, and the unlawful act. The "every person" element was fulfilled through the defendant's identity as a business actor actively involved in product distribution. Meanwhile, the fault element was deemed to have been fulfilled at least in the form of *dolus eventualis*, where the perpetrator knew there was a risk that the product being distributed would not meet standards, but continued his actions anyway. This assessment demonstrates that the judge did not solely rely on direct proof of intent, but also considered the perpetrator's awareness of the risks posed. [33]

Furthermore, the element of unlawful act was proven by the fact that the product being distributed did not have a distribution permit and contained hazardous materials exceeding the permitted threshold. This evidence was supported by laboratory test results and expert testimony indicating that the product did not meet established safety standards. Thus, the court's decision in this case demonstrates the importance of technical evidence in enforcing the law against the distribution of hazardous products. [23] From the aspect of criminal responsibility, the judge stated that the defendant was legally responsible and had no justification or excuse that could eliminate his criminal responsibility. This shows that in cases of illegal cosmetics, business actors cannot escape responsibility by reason of ignorance or negligence, especially if proven to have an active role in the distribution of the product. This approach is in line with the principle of consumer protection, which places business actors as the party responsible for the products they distribute. [7] The ruling also demonstrates a shift in criminal law enforcement toward a more progressive approach, emphasizing not only subjective culpability but also the protection of the public interest. In this case, the judge implicitly adopted an approach that aligns with the concept of strict liability, where the business actor's responsibility is based more on the risks posed by the product than on strict proof of fault. This approach reflects the development of modern law, which is increasingly responsive to the needs of public protection. [3]

However, while the court ruling has shown a progressive direction, its effectiveness in providing a deterrent effect still requires further study. The fact that the circulation of illegal cosmetics continues to occur indicates that law enforcement is not yet fully optimal. This could be due to various factors, such as weak oversight, limited resources of law enforcement officers, and a lack of public awareness of the risks of using illegal cosmetics. [8] Furthermore, the development of digital technology also presents unique challenges for law enforcement. The distribution of illegal cosmetics through online platforms allows businesses to reach a wider market with a lower risk of surveillance. This situation requires adaptations in the law enforcement system, including strengthening technology-based oversight and increasing cooperation between law enforcement agencies and supervisory authorities. [34] Thus, an analysis of court decisions in illegal cosmetics cases shows that the law has moved in a more progressive direction in protecting consumers, but still requires strengthening in terms of implementation. Therefore, a more comprehensive and integrated approach to law enforcement is needed, one that relies not only on criminal sanctions but also includes supervision, education, and cross-sectoral cooperation to effectively suppress the circulation of illegal cosmetics.

D. CONCLUSION

Criminal regulations for the distribution of illegal cosmetics containing hazardous substances in the Indonesian legal system are structured within a multi-layered and complementary normative framework, encompassing general criminal law, consumer protection law, and health law as a special regime that imposes stricter sanctions for violations that endanger the public. The elements of a criminal offense in the distribution of illegal cosmetics can essentially be fulfilled by the presence of a legal subject involved in the distribution chain, the existence of errors, whether intentional or aware of the risks, and the production or distribution of products that do not meet safety standards. Over time, the criminal liability of business actors has shown a shift from a fault-based approach to a risk-based approach through the application of the principle of strict liability, which strengthens consumer protection. Analysis of court decisions also shows that judges tend to apply the principle of *lex specialis derogat legi generali* and use a more progressive approach in assessing the liability of business actors. Therefore, it is necessary to strengthen synergy between law enforcement agencies, optimize technology-based supervision, and be consistent in the application of criminal law to provide a deterrent effect and ensure effective consumer protection amidst increasingly complex product distribution.

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