# Regulation on the Protection of Cosmetic Consumers against Unlawful Acts in Indonesia

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***Abstract***

*The research aims to comprehensively identify consumer protection provisions for cosmetics against unlawful acts and the obstacles encountered in achieving consumer protection for cosmetics. This research is a type of normative legal research. The provisions governing consumer protection for cosmetics against unlawful acts in Indonesia are scattered across several regulations, including the Civil Code. The concept of unlawful acts in the Civil Code (Articles 1365-1366) requires the presence of an act, fault, damage, a causal relationship between the act, fault, and damage, and an element of negligence. Meanwhile, there are several obstacles to realizing cosmetic consumer protection against unlawful acts in Indonesia, including the fact that laws and regulations related to consumer protection are not harmoniously integrated; consumer protection regulations for electronic transactions are not explicitly regulated in any law; and consumer awareness of their rights and obligations is still low.*

***Keywords**: Consumer Protection; Cosmetics; Unlawful Acts;*

## INTRODUCTION

The 1945 Constitution (hereinafter referred to as the 1945 Constitution) has mandated the state to provide everyone with the right to fair legal recognition, guarantee, protection and certainty as well as equal treatment before the law. These provisions have been regulated in Article 28D paragraph 1 In other words, the provisions of this Article are the legal basis that requires the state to guarantee all fundamental rights of every individual, especially in terms of obtaining justice and equality before the law, including in realizing the protection of cosmetic consumers.

In state life, individual justice and collective justice are always related to each other. Because when we want to assess whether or not there is justice in society (collective justice), it is impossible to separate it from the bond between individual justice and another.[1]

According to Gustav Radbruch[2], the presence of law in the life of the state must be able to realize several basic values, namely the value of justice, the value of certainty and the value of utility. Furthermore, the three basic values of the law are not easy to apply as they should, but even so, ideally in shaping every new legal product or the implementation of the law, the basic values of the purpose of the law must be balanced.

Consumer protection is any effort that guarantees legal certainty to provide protection to consumers. This has been regulated in Article 1 number 1 of Law Number 8 of 1999 concerning Consumer

[1] Melisa Nasir et al., "Legal Position in Realizing Justice and Welfare in Indonesia," *Al-Manhaj: Islamic Law and Social Institutions* 5, no. 1 (2023), https://doi.org/https://doi.org/10.37680/almanhaj.v5i1.2084.

[2] Dino Rizka Afdhali and Taufiqurrohman Syahuri, "The Ideality of Law Enforcement Reviewed from the Perspective of Legal Purpose Theory," *Collegium Studiosum Journal* 6, no. 2 (2023), https://doi.org/https://doi.org/10.56301/csj.v6i2.1078.

Protection (hereinafter referred to as the Consumer Protection Law). Then, in business activities, often the position and bargaining power of consumers are weaker than business actors, causing an imbalance of circumstances between the parties in business activities.[3] This, of course, violates consumer rights and will harm related consumers in defending their rights as stipulated in Article 4 of the Consumer Protection Law, there are several consumer rights, namely, first, the right to comfort, security and safety in consuming products; Second, the right to true, clear and honest information about product conditions and guarantees; Third, the right to obtain advocacy, protection, and efforts to resolve consumer protection disputes appropriately; and the Fourth Right to get compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be.

It is known that, as of January 2022, sales of cosmetic products in Indonesia reached Rp.34.3 billion. Furthermore, in March 2022, there were sales of facial care cosmetics with a turnover of Rp.129.1 billion with the highest transactions on *the* marketplace on the Shopee platform (by 75.3%) and the Tokopedia platform (by 24.7%).[4] This proves that many consumers and cosmetic sellers in Indonesia have conducted business transactions via electronics.

Meanwhile, when talking about violations of consumer rights in the use of cosmetics (illegal cosmetics, fake cosmetics, overclaimed cosmetics, cosmetics containing harmful ingredients and cosmetics without a distribution permit) in the period 2022-2025, there are several cases that occur, namely:

1. Some *influencers* receive jobs to advertise a cosmetic product, but the related influencer does not know that the cosmetic product is an illegal cosmetic and has been marketed for 2 years and the owner of the illegal cosmetic product has reaped a turnover of Rp. 300 million/month.[5]
2. The samples used to calculate the level of hydroquinone in facial whitening cream cosmetics are cosmetic products that do not have a distribution permit and are sold through *marketplace* platforms. It is known that the VWXY (has sold more than 10,000 *pieces*) and Z (has sold as many as 4,300 *pieces*) samples.[6]

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[3] Rahil Sasia Putri Harahap and Fiona Chrisanta, "Restriction of Clauses in Standard Agreements in Consumer Protection Efforts through the Consumer Protection Law," *Lex Generalis Law Journal* 4, no. 4 (2023), https://doi.org/https://doi.org/10.56370/jhlg.v4i4.371.

[4] Andiena Putri Maharani and Agustifa Zea Tazliqoh, "Analysis of Consumer Behavior on Cosmetic Purchase Decisions on Somethinc Products through E-Commerce," *Innovative: Journal of Social Science Research* 4, no. 4 (2024), https://doi.org/https://doi.org/10.31004/innovative.v4i4.14488.

[5] Ismi Azizah, Mohammad Zamroni, and Agung Pramono, "Consumer Legal Protection against Illegal Cosmetics Advertised by Influencers on Social Media," *Innovative: Journal of Social Science Research* 4, no. 3 (2024), https://doi.org/https://doi.org/10.31004/innovative.v4i3.11118.

[6] Margareta Nilam Sari, Dewi Perwito Sari, and Prisma Trida Hardani, "Qualitative and Quantitative Tests of Hydroquinone in Cosmetics Without Distribution Permit on the Marketplace," *JIP: Journal of Islamic Pharmacy* 8, no. 2 (2023), https://doi.org/https://doi.org/10.18860/jip.v8i2.24757.

3. Daviena Sleeping Mask Retinol Booster,[7] claimed by the owner of the product contains Actosome Retinol of 2%, but the results of laboratory tests revealed that the product only contains 0.03% Pure Retinol which is equivalent to 1% Actosome Retinol;
4. Fake Cosmetics,[8] from February 2022 – November 2022 the perpetrator has produced IMPLORA brand cosmetics and sold them online at a price of Rp. 20,000 (cheaper than the price of official products);
5. There is still a circulation of Temulawak *New Day & Night Cream Beauty Whitening* cosmetic products that contain mercury, even though BPOM has declared that these products are cosmetic products that contain harmful ingredients.[9]

Furthermore, it is known that related to unlawful acts in the realm of civil law has been regulated in Article 1365 of the Civil Code (hereinafter referred to as the Civil Code) which stipulates that "Every unlawful act, which brings harm to another person, obliges the person who, because of his fault, publishes the loss, to compensate for the loss".

Because the realization of consumer protection enters all areas of law (civil law, consumer protection law, information law and electronic transactions, as well as criminal law), according to the author, it is necessary to conduct a study related to the regulation of cosmetic consumer protection against unlawful acts analyzed from several provisions of applicable national laws and regulations.

Research related to the protection of cosmetic consumers and unlawful acts has been carried out by many previous researchers. To find out the novelty of this research, the author presents several specific research results related to the author's current research object, but also have certain differences:

The first research is a thorough research by Nabila Sari and Winsherly Tan[10], entitled "Legal Analysis of Imported Cosmetic Products for Personal Use by Consumers". The research focuses on consumer protection of cosmetic products originating from abroad and analyzes consumer legal protection of imported cosmetic products for their own / personal use by consumers using the provisions of the Consumer Protection Law. This is certainly different from the author's current research which focuses on the Regulation of Cosmetic Consumer Protection against Unlawful Acts in Indonesia (analyzed

[7] Farah Nabilla, "Controversy of Daviena Skincare Products Called Dr Okky Ruins the Face," suara.com, 2025, https://www.suara.com/lifestyle/2025/03/07/141945/kontroversi-produk-daviena-skincare-yang-disebut-dr-okky-merusak-wajah#goog_rewarded.

[8] Deny Prastyo, "Manufacturers and Distributors of Fake Cosmetics Arrested, Goods Sold Online," detikJatim, 2023, https://www.detik.com/jatim/hukum-dan-kriminal/d-6546595/produsen-dan-distributor-kosmetik-palsu-ditangkap-barang-dijual-via-online.

[9] Ela Oktavia Putri and Yunita Reykasari, "Consumer Protection of the Circulation of Cosmetic Products Containing Harmful Ingredients That Harm Consumers (Analytical Study of Temulawak New Day & Night Cream Beauty Whitening Cosmetic Products)," *Indonesian Journal of Law and Justice* 1, no. 2 (2023), https://doi.org/https://doi.org/10.47134/ijlj.v1i2.2012.

[10] Nabila Sari and Winsherly Tan, "Legal Analysis of Imported Cosmetic Products for Personal Use by Consumers," Journal of Undiksha Civic Education 9, no. 3 (2021), https://doi.org/https://doi.org/10.23887/jpku.v9i3.40173.

based on the provisions of civil law, consumer protection law, information law and electronic transactions and criminal law).

The second research is entitled "Legal Protection of Consumers for the Use of Cosmetic Products with *a Share in Jar* System" by Edi Wahjuni, Firman Floranta Adonara and Etik Kurniawati.[11] The research focuses on the protection of cosmetic consumers in the purchase of products in the form of *share in jars* (the sale of cosmetic products in small packages and usually related original cosmetic products will be moved to a smaller container without knowing the possibility of being contaminated with air and the process of moving the product is not in accordance with the standards of the original company of the related product) and analyzed using the provisions of the Consumer Protection Law and Law Number 39 of 2009 concerning Health. In other words, this second study, although researching related to consumer protection, also has a difference from the author's research which discusses the Regulation of Cosmetic Consumer Protection against Unlawful Acts in Indonesia (analyzed based on the provisions of civil law, consumer protection law, information law and electronic transactions, and criminal law).

The third research is a research conducted by Sri Redjeki Slamet[12] entitled "Claims for Compensation in Unlawful Acts: A Comparison with Default". The research focuses on a theoretical discussion of the legal conception of unlawful acts and defaults in civil law as well as arrangements related to compensation for unlawful acts and defaults. This third research only discusses the conception of unlawful acts in civil law, while the author's current research is to discuss the regulation of cosmetic consumer protection against unlawful acts in Indonesia (analyzed based on the provisions of civil law, consumer protection law, information law and electronic transactions and criminal law).

The purpose of the study is to comprehensively identify the provisions for the protection of cosmetic consumers against unlawful acts and obstacles that occur in realizing the protection of cosmetic consumers.

## PROBLEM FORMULATION

1. What are the provisions for cosmetic consumer protection against unlawful acts in Indonesia?
2. What are the obstacles in realizing the protection of cosmetic consumers against illegal acts in Indonesia?

## RESEARCH METHODS

This research is a type of normative legal research. According to Peter Mahmud Marzuki[13], normative legal research is the process of finding a legal regulation, legal principles or legal doctrine that can provide answers to the legal problems being faced.

[11] Edi Wahjuni, Firman Floranta Adonara, and Etik Kurniawati, "Legal Protection for Consumers for the Use of Cosmetic Products with a Share in Jar System," *Journal of Law* 12, no. 2 (2023), https://doi.org/https://doi.org/10.56013/rechtens.v12i2.1677.

[12] Sri Redjeki Slamet, "Demands for Compensation in Unlawful Acts: A Comparison of Defaults," *Lex Jurnalica* 10, no. 2 (2013), https://doi.org/https://doi.org/10.47007/lj.v10i2.359.

[13] Iman Jalaludin Rifa'i et al., *Legal Research Methodology*, ed. Anik Iftitah (Banten: PT Sada Kurnia Pustaka, 2023).

This research uses a legislative approach (to identify the concept of unlawful acts in Indonesia to realize the protection of cosmetic consumers against unlawful acts) and a case approach (to find out the obstacles that occur in realizing the protection of cosmetic consumers against unlawful acts).

Therefore, this research is a type of normative research, so the data source in this study consists of primary data and secondary data. The primary data of this study are all laws and regulations related to consumer protection against unlawful acts (based on the provisions of the Civil Code, the Criminal Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions jo. Law Number 19 of 2016 Regarding Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions jo. Law Number 11 of 2008 concerning Information and Electronic Transactions – hereinafter referred to as the ITE Law – and Law Number 1 of 2023 concerning the Criminal Code) and secondary data in this study were obtained from all publications on the protection of cosmetic consumers against unlawful acts that are not official documents, textbooks and the results of scientific works of scholars/experts, comments on court decisions and research results related to the topic of this research. Furthermore, this research data is obtained through literature studies, analyzed qualitatively and presented with analytical descriptive information prepared in the form of research reports and described in a complete-systematic manner, then formulated as a conclusion.

## RESULTS OF RESEARCH AND DISCUSSION

### Provisions for Cosmetic Consumer Protection Against Unlawful Acts in Indonesia

Before the author explains the provisions for the regulation of cosmetic consumer protection against illegal acts in Indonesia, it is a good idea for the author to explain related to cosmetics and illegal cosmetics, fake cosmetics, overclaimed cosmetics, cosmetics containing harmful ingredients and cosmetics without a distribution permit.

According to the Food and Drug Supervisory Agency (hereinafter referred to as BPOM), cosmetics are any ingredient or that is intended for the use of the outside part of the human body which includes the epidermis, hair, nails, lips and external genital organs as well as on the teeth and mucosa around the mouth with the aim of cleaning, fragrance, changing the appearance and or improving body odor and or protecting or maintaining the body in good condition.[14] Furthermore, it is literally cosmetics that are not in accordance with the composition, quality requirements, good way of making cosmetics (hereinafter referred to as CPKB) and licensing in producing and storing products are illegal cosmetics.[15] In general,

[14] Food and Drug Control Agency of the Republic of Indonesia, "Regulation of the Head of the Food and Drug Control Agency of the Republic of Indonesia Number: HK.00.05.42.1018 concerning Cosmetic Ingredients," Regulasip.id, 2008, https://www.regulasip.id/book/8215/read.

[15] Ministry of Health of the Republic of Indonesia, "Regulation of the Minister of Health of the

illegal cosmetics are divided into two types, namely cosmetics without a distribution permit and fake cosmetics.[16]

What is meant by a distribution permit is a form of cosmetic registration issued by BPOM, so that related products can be legally distributed to the public in Indonesia. Therefore, ideally, all cosmetic products that will be sold in Indonesia's jurisdiction, both domestic products and those imported from outside Indonesian territory, must go through registration with BPOM to obtain a distribution permit number issued by BPOM.[17] In other words, what is meant by cosmetics without a distribution permit is cosmetics that have been distributed to the public but have not been registered with BPOM, so that related products do not have a distribution permit from BPOM and have not been checked for compliance with quality, safety and utility requirements in accordance with the provisions of the Minister of Health.

Meanwhile, counterfeit cosmetics are cosmetics whose processing is not in accordance with the provisions of the CPKB and does not meet the quality requirements of a cosmetic product based on those that have been regulated by the Minister of Health. Furthermore, the elements of counterfeit products are:[18] first, the dosage and brand ingredients are the same as original cosmetics, but produced by manufacturers who are not legitimate trademark holders; second, the product brands are the same but the content of substandard products and the manufacturers who produce related products are different; and third, the product brands are the same, but the ingredients in the product are not original products and the composition of their manufacture is unclear (usually products are resold by business actors who have less capital than the original business actors but do everything – including illegal means – to get large profits).

Meanwhile, cosmetics that contain harmful ingredients are cosmetics that contain ingredients that are prohibited by BPOM because they risk causing negative effects for consumers who use them.[19] Currently, harmful ingredients that are not allowed to be used in the manufacture of cosmetics have been regulated in the Regulation of the Head of the Food and Drug Supervisory Agency of the Republic

Republic of Indonesia Number 1175/MENKES/PER/VIII/2010 concerning Cosmetic Production Permits," Ministry of Health of the Republic of Indonesia, 2010, https://peraturan.bpk.go.id/Details/129878/permenkes-no-1175menkesperviii2010-tahun-2010.

[16] Damaris Rosa Michelle Florencia Samosir, "Consumer Protection of Illegal Cosmetic Products Advertised through Social Media by Involving Influencer Endorsements (Analysis of Decision Number 1555/Pid.Sus/2019/PN. Sby at the Surabaya District Court)" (Indonesian Christian University, 2023), http://repository.uki.ac.id/10533/1/HalJudulDaftarisiDaftarGambarDaftarTabelDaftarlampiranAbstrak.pdf.

[17] Meliza Edtriani and Isril, "The Implementation of Supervision of the Food and Drug Control Center (BBPOM) on the Circulation of Food and Beverages Without a Distribution Permit (TIE) in the City of Pekanbaru in 2012," *Student Online Journal (JOM) in the Field of Social and Political Sciences* 1, no. 1 (2014), https://jom.unri.ac.id/index.php/JOMFSIP/issue/view/287/showToc.

[18] Audy Nelwan, "Legal Regulation of the Safety and Use of Pharmaceutical Preparations," *Lex Et Societatis* 3, no. 10 (2015), https://doi.org/https://doi.org/10.35796/les.v3i10.10329.

[19] VThis Alvionita, "Legal Protection for Consumers Against Cosmetic Products Containing Harmful Ingredients," *JoL: Journal of Law (Jurnal Ilmu Hukum)* 7, no. 2 (2021), http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/5638.

of Indonesia Number 18 of 2015 concerning Technical Requirements for Cosmetic Ingredients. Furthermore, on a practical level, several cosmetic products that contain harmful ingredients have been identified, including cosmetic products containing mercury, retinoic acid (teratogenic), hydroquinone, diethylene glycol, ressorsinol, K3 red dye and K10 red dye.

Furthermore, overclaim occurs if the owner or manufacturer of a product promises the benefits of a product, but uses language that has been hyperbolized (so that consumers are more interested in related products) and is not scientifically supported.[20] In other words, what is meant by overclaim cosmetics is cosmetic products that are reported and advertised to have a certain content, but in fact this is not the case. The news and advertising of related cosmetic products are also not accompanied by scientific facts, so that the benefits of related products cannot be accounted for in such a way and can harm consumers who are "trapped" and believe in the information that has been exaggerated.

Then in determining that an act is an act that can be qualified as an unlawful act, it must meet the following elements, namely first, contrary to the legal obligations of the perpetrator; second, contrary to the subjective rights of others; third, contrary to morality; and fourth, contrary to propriety, precision and prudence.[21] In other words, if a business actor who produces and distributes illegal cosmetic products, fake cosmetics, overclaimed cosmetics, cosmetics containing harmful ingredients and cosmetics without a distribution permit, it can be said that the relevant business actor has committed an unlawful act.

It is known that before 1919, legal experts and parties who appeared in court interpreted unlawful acts as acts that violate the subjective rights of other parties or acts that are contrary to the provisions of the law. In other words, legal acts are always related to the legal rights and obligations of legal subjects. Furthermore, after 1919, the definition of unlawful acts became broader, namely acts that are not only contrary to laws and regulations, but also include acts of a person that are contrary to the interests of other parties or contrary to legal obligations, decency and propriety in public life.[22] Currently in Indonesia, the provisions of unlawful acts normatively refer to Article 1365 of the Civil Code. The provisions in this Article are more of a norm structure than substance.[23] The words of Article 1365 of the Civil Code are that every unlawful act, which brings harm to another person, obliges the person who, because of his fault, publishes the loss, to compensate for the loss.

According to the author, based on these provisions, several elements of unlawful acts can be identified, namely there are unlawful acts, there are mistakes, there are losses incurred, and there is a reciprocal relationship between unlawful

[20] Sarah Syahirah, "Consumer Perception of Azaurine's Public Relations Strategy in Overcoming Product Overclaim Issues," *Deliberatio: Journal of Communication Students* 5, no. 2 (2025), https://doi.org/https://doi.org/10.59895/deliberatio.v5i2.719.

[21] Rosa Agustina et al., *Hukum Perikatan : Law of Obligation*, Edition 1 (Denpasar: Pustaka, 2012).

[22] Riduan Syahrani, *Intricacies and Principles of Civil Law*, Print to (Bandung: Rineka Cipta, 2006).

[23] Boedi Abdullah, *Civil Law Comparison*, Print Pe (Bandung: CV. Pustaka Setia, 2016).

acts, mistakes and losses caused by these acts.

Compensation in civil law includes material damages and immaterial damages.[24] What is meant by material compensation is a loss that is actually suffered by a person and can be assessed with a certain amount of money, wealth or objects. Meanwhile, immaterial compensation is a loss suffered by a person but the loss cannot be measured (directly) in the amount of money.

Meanwhile, according to Wirjono Prodjodikoro, the acts referred to in Article 1365 of the Civil Code can be in the form of active acts and acts that are passive or silent.[25] In other words, based on Wirjono's argument, according to the author, an act can be categorized as an unlawful act if; first, the perpetrator commits an active act (real action) that results in harm to another party; second, a person commits a passive act (silent) who should be obliged to do something in order to prevent the loss that arises, but the person concerned does not do anything (passive). Because the perpetrator does nothing, the loss arises and that is when the passive act (silent) can be categorized as an unlawful act.

If Wirjono Prodjodikoro's opinion is related to the protection of cosmetic consumers against unlawful acts, then it will be the responsibility of a person (in this case a business actor) to compensate for the losses incurred if the business actor deliberately commits actions that are detrimental to consumers. These actions can be in the form of active actions (dishonesty in providing information related to their products, producing and distributing cosmetic products that are not in accordance with the standards of good products, safety and value of benefits that have been determined by the government (in this case the minister of health and BPOM) or passive actions (not doing anything, refusing to be responsible for the physical and mental losses of consumers and not wanting to provide material or immaterial compensation to consumers directly, after using their products that are not in accordance with the standards of good products, safety and value of benefits that have been determined by the government).

Furthermore, Article 1366 of the Civil Code has also stipulated that everyone is responsible, not only for losses caused by acts, but also for losses caused by negligence or recklessness. In other words, a person is obliged to be responsible not only for losses due to active or passive actions but also for losses caused by their negligence.

If the provisions of Article 1366 of the Civil Code are related to the protection of cosmetic consumers against unlawful acts, then according to the author, business actors will be categorized as parties who commit unlawful acts, if business actors collaborate with third parties (*influencers* who advertise products) and they claim that the related cosmetic products have certain benefits but it turns out that they are not

[24] Syaiful Badri, Pristika Handayani, and Tri Anugrah Rizki, "Compensation for Unlawful Acts and Defaults in the Civil Law System," *USM Law Review Journal* 7, no. 2 (2024), https://doi.org/https://doi.org/10.26623/julr.v7i2.9440.

[25] R. Wirzno Pioneer, *Unlawful Acts: Viewed from the Perspective of Civil Law*, Revi Edition (Bandung: CV. Mandar Maju, 2018).

based on the truth of scientific laboratory test results (*overclaim*) and result in material and immaterial losses for related consumers who have used the overclaimed cosmetic products.

In the realm of consumer protection law, there are actually two kinds of efforts[26], namely, first, preventive protection which is a procedure to prevent problems from occurring in realizing consumer protection; and second, repressive legal protection is a consumer protection action that is given when a violation of consumer rights has occurred.

In general, the concept of unlawful acts in consumer protection law is always related to the responsibility of business actors to consumers who suffer losses due to using defective, expired products, do not have instructions for use, do not clearly state the composition of the material on the packaging, use packaging that is not in accordance with the provisions of the applicable laws and regulations, and so on.[27] In other words, consumers who want to get protection for unlawful acts committed by business actors must be able to prove that indeed the relevant business actors do indeed violate consumer rights, violate the values of propriety in society when running their business in terms of producing or distributing their products, violate their legal obligations as stipulated in the Consumer Protection Law.

As for the responsibility of business actors to consumers, it has been stated in Article 19 of the Consumer Protection Law which stipulates that business actors are responsible for providing compensation for damage, pollution and/or loss to consumers due to consuming goods and/or services produced or traded. Furthermore, such compensation can be in the form of refunds or replacement of goods and/or services of similar or equivalent value or health care and/or the provision of compensation in accordance with the provisions of applicable laws and regulations. Meanwhile, Article 20 of the Consumer Protection Law also stipulates that advertising business actors are responsible for the advertisements produced and all consequences caused by the advertisements.

Meanwhile, the concept of unlawful acts based on the provisions of the ITE Law is not explicitly regulated. However, according to Hetty Hassanah,[28] unlawful acts in electronic transactions can occur if there is an act of one party that is deliberately committed against the other party and the act results in losses for the other party.

Then if the protection of cosmetic consumers against unlawful acts is linked to

[26] Tiara Pratiwi and Mhd. Teguh Syuhada Lubis, "Legal Protection of Consumer Losses for Default of Business Actors to Buy Goods Online," UNES LAW REVIEW 6, no. 3 (2024), https://doi.org/https://doi.org/10.31933/unesrev.v6i3.1722.

[27] Herry Anto Simanjuntak, "Types of Fraudulent Acts That Harm Consumer Rights in the Consumer Protection Law," *Jurnal Justiqa* 2, no. 2 (2020), https://doi.org/http://dx.doi.org/10.36764/justiqa.v2i2.457.

[28] Hetty Hassanah, "Legal Analysis of Unlawful Acts in Online Business Transactions (E-Commerce) Based on Burgerlijke Wetboek and Law Number 11 of 2008 concerning Information and Electronic Transactions," *Journal of Juridical Insight* 32, no. 1 (2015), https://doi.org/https://doi.org/10.25072/jwy.v32i1.88.

the provisions of the ITE Law, it can be identified that the ITE Law does not regulate in detail related to consumer protection. However, in Article 9 of the ITE Law, there is a provision that business actors who offer products through electronic systems must provide complete and correct information related to the terms of the contract, manufacturer and products offered.

In addition to these provisions, the ITE Law also contains a provision that anyone can file a lawsuit against the party that operates the electronic system and/or uses information technology that causes losses. Furthermore, the public can file a civil lawsuit and it is carried out in accordance with the provisions of laws and regulations. In addition to civil lawsuits, disputes in electronic transactions can be resolved through arbitration or other alternative dispute resolution institutions, in accordance with the provisions of laws and regulations. This has been regulated in Articles 38-39 of the ITE Law. In other words, in resolving disputes that occur when conducting electronic transactions (including buying and selling cosmetic products online), the parties involved in the dispute can file a civil lawsuit, so that in realizing the protection of cosmetic consumers against unlawful acts, the ITE Law implicitly refers to the provisions of Article 1356 of the Civil Code which requires parties who commit an act of unlawful acts and cause losses to other parties must pay or compensate for material and immaterial damages in accordance with the provisions in the Civil Code.

Consumer protection against unlawful acts in cosmetic transactions can basically be linked to the provisions of the criminal law that regulate fraud and fraudulent acts. In the old Criminal Code, consumer protection has not been specifically formulated as a form of protection for cosmetic consumers. The acts of business actors who provide false information, sell products that are not in accordance with the actual circumstances, or use deception to gain benefits from consumers are generally constructed through provisions regarding fraud. Article 378 of the old Criminal Code regulates fraud in general, while Article 383 of the old Criminal Code more specifically regulates the acts of sellers who commit fraud against buyers regarding the goods handed over. These provisions can be used to ensnare business actors who deliberately provide incorrect information about the goods sold so that consumers suffer losses.

In addition to Article 378 and Article 383 of the old Criminal Code, the provisions of Article 386 of the old Criminal Code also have a connection with consumer protection, especially the circulation of certain counterfeit goods. However, these provisions have a limited scope because they explicitly regulate counterfeit food, beverages, or drugs. This condition shows that the old Criminal Code has not provided specific and comprehensive regulations for the problem of counterfeit cosmetics or cosmetics that are not in accordance with the information provided to consumers. Therefore, the acts of business actors in cosmetics transactions must be legally constructed using general criminal provisions, while still paying attention to the elements of criminal acts that must be proven.

The changes then occurred after the enactment of Law Number 1 of 2023 concerning the Criminal Code. The new Criminal Code places fraud and various forms of fraudulent acts in a more systematic arrangement through the Chapter on the Crime of Fraudulent Acts. The provisions regarding general fraud are regulated in Article 492, which is substantially related to the provisions of Article 378 of the old Criminal Code. Meanwhile, Article 493 provides regulations regarding the acts of sellers who commit fraud against buyers regarding the goods handed over, including regarding the condition, nature, or quantity of goods. The formulation has strong relevance to cosmetic transactions because information about the type, condition, nature, content, or quantity of a product is information that is directly related to the consumer's decision to make a purchase.

In the context of cosmetics, Article 493 of the new Criminal Code can be the basis for analysis of the actions of business actors who hand over goods that are not in accordance with the agreement or information provided to consumers. For example, a business actor offers a product as a certain original or branded cosmetic, but then submits an imitation product; offers cosmetics with certain ingredients or characteristics but the product submitted has different content or properties; or lists a certain amount or volume that turns out to be not in accordance with the actual circumstances. These acts show that there is a discrepancy between the information provided by the business actor and the condition of the goods received by consumers, so that it can be analyzed based on the provisions regarding fraud by sellers in Article 493 of the new Criminal Code.

In addition, the new Criminal Code also recognizes the form of fraudulent acts as regulated in Article 495 which is related to acts that cause economic losses to others through false confessions or by not disclosing the actual circumstances. This provision becomes relevant if business actors know that there are certain circumstances in cosmetic products that can affect consumer decisions, but deliberately do not disclose these circumstances. Thus, the development of regulations in the new Criminal Code shows that there are efforts to formulate the criminal act of fraudulent acts in a more systematic manner compared to the old Criminal Code.

However, the change from the old Criminal Code to the new Criminal Code cannot be interpreted as Law Number 1 of 2023 specifically regulates the protection of cosmetic consumers. This protection is still the result of the construction of several interrelated legal provisions, namely the provisions in the Criminal Code, the Consumer Protection Law, and sectoral provisions regarding cosmetics. Therefore, the existence of the new Criminal Code can be seen as one of the criminal law instruments that strengthens consumer protection from fraudulent acts, especially when consumers are victims of manipulation or improper information about cosmetic products. The next issue is the extent to which these provisions are able to provide effective protection against various forms of violations in the cosmetics trade, including counterfeit cosmetics, cosmetics that do not match claims, cosmetics without a distribution license, and cosmetics that contain ingredients that endanger consumers.

## Obstacles in Realizing Cosmetic Consumer Protection Against Unlawful Acts in Indonesia

In general, the obstacles in realizing the protection of cosmetic consumers against illegal acts in Indonesia are very complex, but in this study the author has identified several crucial obstacles that occur when realizing the protection of cosmetic consumers against illegal acts in Indonesia, namely the following:

First, all laws and regulations related to consumer protection have not been harmoniously integrated. Because the realization of cosmetic consumer protection against unlawful acts is regulated in many laws and regulations, the determination of an act is also unlawful, so that in the realization of consumer protection practically, it seems to be inconsistent and ineffective and results in the unfulfilled rights of consumers who are violated.

Second, consumer protection regulations in conducting electronic transactions have not been explicitly regulated in a law and regulation, especially in the Consumer Protection Law and the ITE Law, even though the data on the use and use of electronic transactions in obtaining cosmetic products from 2022-2025 that have been presented by the previous author, show the many practices of electronic transactions that do not protect consumer rights as they should. According to the author, the authorities should be able to immediately make changes to consumer protection provisions when utilizing or using electronic transactions in order to realize consumer protection effectively, efficiently, fairly, comprehensively and of course have legal certainty for all parties involved.

Third, from tracing and identifying all laws and regulations related to consumer protection, the sanctions given to perpetrators who commit unlawful acts in business activities to violate consumer rights have not had a deterrent effect. Most of the sanctions given are only in the form of warnings, withdrawal of related cosmetic products, confiscation, temporary suspension of the production of related cosmetic products, revocation of business licenses to fines that are not proportional to the profits obtained by business actors when running a business by committing unlawful acts.

Fourth, because the sanctions given to perpetrators who commit unlawful acts in business activities to violate consumer rights have not had a deterrent effect, there are still many business actors who dare to produce, sell and distribute illegal cosmetic products, fake cosmetics, overclaimed cosmetics, cosmetics containing harmful ingredients and cosmetics without a distribution permit. In addition, business actors also have different interpretations regarding the provisions of their responsibilities that have been regulated in the Consumer Protection Law.

Fifth,consumers' awareness of their rights and obligations is still low. There are still many consumers who do not understand and understand their rights and obligations as consumers. Most cosmetic consumers are more tempted by low prices without looking at important things related to related cosmetic products, such as not reading well how to use the product, not checking the composition of the product carefully, not paying attention to the BPOM number on the packaging of the related cosmetic product, not/lazy to report violations of consumer rights or when experiencing losses after using a cosmetic product to the authorities, being influenced by advertising or trusting very much with *influencers* who advertise related cosmetic products, even though the influencer may not have carefully checked the ingredients contained in the cosmetic product that is being promoted and so on.

## CONCLUSION

The provisions of the Regulation of Cosmetic Consumer Protection Against Unlawful Acts in Indonesia are spread across several laws and regulations, including: first, according to the Civil Code (referring to the provisions of Article 1365 and Article 1366) which stipulates that the concept of unlawful acts must meet the elements of there is an act, there is an error, there is a loss, there is a causal relationship to the act, the error and the loss and there is an element of negligence. Furthermore, the party who commits an unlawful act and causes losses to other parties, is obliged to compensate both material and immaterial; second, according to the Consumer Protection Law, the concept of unlawful acts in consumer protection law is always related to the responsibility of business actors to consumers who suffer losses due to the use of products that are not in accordance with standards and that have been agreed upon by the parties. Business actors who commit unlawful acts must compensate for losses in the form of compensation for damage, pollution, due to using products by providing refunds, providing replacement of similar or similar goods as well as health care costs for consumers; third, according to the ITE Law, it does not regulate in detail related to consumer protection or unlawful acts, but implicitly there is a provision that the settlement of electronic transaction disputes in the event of unlawful acts refers to the provisions of Article 1365 of the Civil Code; fifth, Fifth, according to the Criminal Code, the protection of cosmetic consumers against unlawful acts can be linked to the provisions of Article 378 concerning fraud and Article 383 concerning fraud committed by sellers against buyers regarding the goods handed over. These provisions can be applied to business actors who provide false information or hand over cosmetic products that are not in accordance with the circumstances, type, or amount agreed. However, the old Criminal Code regulations have not specifically regulated cosmetics. Sixth, according to Law Number 1 of 2023 concerning the National Criminal Code, regulations regarding fraudulent acts have developed through Article 492 concerning fraud and Article 493 concerning fraud by sellers against buyers regarding the condition, nature, or quantity of goods. This provision can provide a more relevant basis for criminal protection for cosmetic consumers who are harmed by information or product conditions that are not in accordance with what is offered.

Obstacles in Realizing Cosmetic Consumer Protection Against Unlawful Acts in Indonesia are that laws and regulations related to consumer protection have not been harmoniously integrated; consumer protection arrangements in conducting electronic transactions; have not been explicitly regulated in a law and regulation; sanctions given to perpetrators who commit unlawful acts in business activities to violate consumer rights have not provided a deterrent effect; there are still many business actors who are naughty or non-compliant; and consumer awareness of their rights and obligations is still low.

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