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Consumer Legal Protection Against Overclaims for Skincare Products in Advertisements

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Abstract: This research aims to analyze consumer protection against the practice of **overclaims** in *skincare* product advertisements, which often feature excessive claims regarding product benefits and quality. *Overclaims* can mislead consumers and potentially cause health risks and financial losses. In the legal context, Law No. 8/1999 on Consumer Protection and regulations issued by the Food and Drug Administration (BPOM) have provided a regulatory framework to protect consumers from misleading advertisements. This research uses a normative juridical method with a statutory approach and a case study of skincare product advertisements that are proven to overclaim. The results show that the formation of regulations has explicitly provided consumer protection for the fulfillment of the right to information such as in Law Number 8 of 1999 concerning Consumer Protection, where business actors are required to provide information that is honest, true, and not misleading. Also, BPOM Regulation Number 32 of 2021 concerning Supervision of Cosmetics Advertising. Business actors who are proven to overclaim are fully responsible for the losses suffered by consumers. They can be held accountable through compensation mechanisms and other legal sanctions. Consumer protection against overclaims in skincare product advertisements needs to be improved through a synergy between strong regulations, effective supervision, and increased consumer awareness to prevent wider negative impacts.

Keyword: Legal Protection, *Overclaim*, *Skincare*

INTRODUCTION

The development of the Indonesian economy encourages people to be more imaginative in creating concepts and prospects for companies. As a result, many companies are formed to provide

various goods and services to meet customer demand. According to Inosentius Samsul, customers are the end users of a product, which can be obtained through purchases or by invitation, gifts, and other means.¹ In the process of making, selling, and advertising a product, business actors are not allowed to carry out activities prohibited by the Consumer Protection Law (abbreviated as UUPK). The purpose of this prohibition is to ensure that consumers feel safe in using the product at all times and to ensure that the product used is in very good condition and is suitable for distribution. In addition, the prohibition is also to build awareness of business actors to always be responsible and honest about the products they trade.

UUPK outlines the rights, obligations, and responsibilities of business actors and consumers. Specifically, UUPK states that consumers have a number of rights, one of which is the right to correct information regarding the condition and guarantee of a product or service. In line with this, referring to the provisions of Article 7 letter b of UUPK that, "business actors are also required to fulfill their obligations, namely to provide correct, clear and honest information regarding the condition and guarantee of goods and/or services and to provide an explanation of use, repair, and maintenance." In practice, there are still many business actors who are dishonest and do not comply with regulations. The existence of UUPK does not always guarantee that consumers are well protected. It has been found that a large number of skincare product business actors continue to provide incorrect information to consumers, often to the point where it leads to acts of negligence.

One example of neglect of the obligations of skincare business actors is providing excessive information (overclaim) that does not match the product. To protect consumers in obtaining information related to the contents of a product, Article 8 paragraph (1) letter d of the UUPK prohibits business actors from trading and/or promoting products that do not match the conditions, guarantees, efficacy, and/or benefits as stated in the label, label, or product description. This is done to protect consumers or potential consumers from incorrect knowledge about product content.

The skincare industry is growing rapidly as people become more aware of the importance of skincare. Digital commerce, or e-commerce, provides convenience and ease for consumers. The convenience enjoyed by consumers, such as finding new products and brands through e-commerce platforms.² In digital commerce, advertising is needed to maintain business and make customers aware of the products they sell.

Business actors have a responsibility to provide accurate information and appropriate claims related to advertised products, especially in the context of skincare products. Competition in this industry encourages business actors to compete to make interesting and innovative claims. However, not all of these claims are based on scientific facts or adequate clinical trials. Transparency in conveying information about skincare products is very important, because these products must be tailored to the needs and skin type of the user. Otherwise, the skin may experience problems such as irritation or breakouts. Unfortunately, many business actors ignore consumer rights by using excessive claims in their advertising. This overclaim practice aims to attract consumers' attention so that they are interested in the products offered and encourage the desire to buy them.³ This overclaim phenomenon is increasingly widespread, with products claiming to have

¹ Aulia Muthiah, *Hukum Perlindungan Konsumen Dimensi Hukum Positif dan Ekonomi Syariah* (Yogyakarta: Pustaka Baru Press, 2018), hlm. 49

² Maria Marcia dan Cheryl Amadea, *Perkembangan Industri Kosmetik di Tahun 2023*, <https://east.vc/id/insights-id/perkembangan-industri-kosmetik-di-tahun-2023/>, dikutip pada tanggal 10 Oktober 2024.

³ Dedi Harianto, *Perlindungan Hukum bagi Konsumen terhadap Iklan yang Menesatkan*, Bogor: Ghalia Indonesia, 2010, hlm 102

extraordinary benefits such as "brightening skin in one week" or "eliminating wrinkles instantly" without valid scientific evidence.

Advertisements for skin care products that make over-claimed promises have the potential to harm consumers' health and are also misleading. If consumers fall for these promises, they may buy skincare that is not suitable for their skin type or misuse existing products. In more severe situations, using products that are mislabeled or do not comply with health regulations can cause allergies, rashes, or even long-term skin damage.

Exaggerated statements or overclaims regarding skincare ingredients are often found in advertisements for skincare products. Information about the ingredients contained in skincare products is usually listed on the packaging label in order of concentration from highest to lowest. However, exceptions apply to cosmetic ingredients with a content of less than 1% and/or dyes, which can be listed without following that order.⁴ To find out the composition of skincare products, the phenoxyethanol content is often used as a benchmark, where according to regulations, the phenoxyethanol content cannot exceed 1%.⁵ One example of recent misleading advertising is the Moist Retinol Serum product from dr. Widyaclinik, which claims to have a retinol content of 2%, when in fact it only contains 0.0017% retinol. Likewise with Bibit Extra Whitening, which claims to contain vitamin B3, but its niacinamide content is only 0.00045%. Other products such as Gluta Rice Milk Mask also claim to contain niacinamide, but in fact it is only 1%.⁶

Law Number 8 of 1999 concerning Consumer Protection, which grants consumers the right to obtain correct and honest information regarding the goods or services provided, regulates consumer protection in Indonesia against overclaim practices. In addition, the Food and Drug Supervisory Agency (BPOM) is tasked with overseeing the distribution of skincare and cosmetic products on the market and ensuring that claims made about the products are true and not deceptive. However, excessive advertising violations still often occur despite this law. Therefore, it is very important to consider consumer protection against overclaims in skincare product advertisements because it is a crucial issue that needs serious attention. Consumers must obtain accurate information and adequate education about the skincare products they use, while business actors are required to be responsible for providing honest claims based on valid evidence. Based on the description of the background, the author will conduct an analysis of this study with the legal issue of "Consumer Legal Protection Against Overclaims of Skincare Products in Advertisements".

METHOD

This study uses a normative legal research method, by reviewing and analyzing laws and regulations related to the legal issues being studied. This study uses the Legislation and Conceptual Approaches, as well as cases that occur in society. There are two legal materials in this study, namely primary legal materials and secondary legal materials. Primary legal materials are legal materials obtained directly by researchers, with a statutory approach and literature review. Secondary legal materials refer to legal materials that have been processed or compiled previously by other parties and are ready to be used by researchers, namely: articles, journals, research results, books, and others.

⁴ Peraturan BPOM Nomor 23 Tahun 2020 tentang Persyaratan Teknis Penandaan Bahan Kosmetika, hlm 12.

⁵ Peraturan BPOM Nomor 23 Tahun 2019 tentang Persyaratan Teknis Bahan Kosmtika lampiran III Daftar Bahan Pengawet yang Diizinkan dalm Kosmetika, hlm 12.

⁶ Liputan 6 News, Dokter Estetika Ungkap Daftar Skincare yang Overclaim hingga Ditemukan Bahan Berbahaya Hidrokuinon, <https://www.liputan6.com/lifestyle/read/5740994/dokter-estetika-ungkap-daftar-skincare-yang-overclaim-hingga-ditemukan-bahan-berbahaya-hidrokuinon?page=4>, dikutip tanggal 10 Oktober 2024.

RESULTS AND DISCUSSION

Form of Legal Protection for Consumers Due to Overclaims of Skincare Products in Advertisements.

Excessive business statements or overclaims will clearly harm consumers if they violate their rights. One of the consumer rights is the right to feel safe, comfortable, and protected when using goods or services. This implies that when using goods or services, customers have the right to be free from unwanted disturbances, dangers, or risks. Skincare product advertisements that provide overclaim statements have the potential to endanger and harm consumer safety. Aspects such as comfort, security, and safety in skincare products are very important because they affect the health of users/consumers. The 1945 Constitution of the Republic of Indonesia affirms that health is part of human rights, as stated in Article 28H paragraph (1): "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to obtain health services." In addition, Article 4 of Law Number 36 of 2009 concerning Health also explains that everyone has the right to health. Considering the importance of consumer protection, especially in purchasing skincare products, the government has established regulations in the form of Law Number 8 of 1999 concerning Consumer Protection, known as the Consumer Protection Law (UUPK), to protect consumer rights from detrimental practices.⁷

The delivery of information on skincare products is very important for consumers as a basis for choosing products that suit their skin needs. If the skincare product does not fulfill the promises given, consumers can experience incompatibility, such as skin irritation and other problems.⁸ Accuracy and transparency of information regarding the content and claims of skincare products provided by business actors are important things that must be conveyed honestly. When business actors use overclaim as a marketing strategy, this can harm consumers, both materially and immaterially, such as losing money, wasted time, skin damage, and deep emotional disappointment.⁹

In Chapter III UUPK, especially Article 4, regulates the rights that must be received by consumers, if related to overclaim issues. It is explained in Article 4 that consumers have the right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services. In general, four basic consumer rights are recognized internationally, namely:

1. The right to safety
2. The right to be informed
3. The right to choose
4. The right to be heard

The practice of overclaiming violates various provisions regulated in Articles 8 to 17 of the Consumer Protection Law, which regulate prohibitions against certain actions for business actors. In cases of overclaims on skincare products, business actors have provided inaccurate or dishonest information regarding the condition of the product and used excessive words. The promised claims also do not match the real benefits received by consumers, so this is very misleading for consumers when buying skincare products. This action clearly violates many provisions contained in the Consumer Protection Law.

Overclaiming skincare product advertisements is contrary to applicable regulations, especially regarding the fulfillment of consumer rights to information as regulated in Article 4 letter c and Article 7 letter b of the Consumer Protection Law (UUPK), as well as Article 3 of BPOM Regulation Number 32 of

⁷ Difa Wrdatul Izza dan Salma Zavira, 2020, "Perlindungan Hukum Bagi Konsumen Klinik Kecantikan Atas Penggunaan Kosmetik Racikan Dokter", *Perspektif*, 25 (2), hlm. 110.

⁸ Adinda Ayu Puspito Kuncoro, *Perlindungan Hukum Konsumen Terhadap Penggunaan Kata Overclaim Pada Iklan Produk Skincare*, Skripsi, Universitas Islam Indonesia, 2024, hlm. 93.

⁹ *Ibid.*

2021, and technical provisions for claims in Article 3 paragraph (2) of BPOM Regulation Number 3 of 2022. Overclaim is also included in the form of fraud in advertising or promotion, where business actors provide incorrect or misleading information, promising certain benefits that in reality are not in accordance. As a result, if consumers are harmed, business actors are required to provide compensation as a form of responsibility for consumer losses.

The government needs to provide guidance and supervision so that consumers get their rights to product protection, especially skincare. Articles 29 and 30 of the Consumer Protection Law regulate government guidance and supervision of consumer protection, especially in advertising. Article 8 of PP Number 58 of 2001 explains government supervision of business actors in terms of labeling and advertising. In addition, Articles 7 to 9 of BPOM Regulation Number 32 of 2021 explain the procedures for advertising supervision. However, the weak implementation of this regulation requires the involvement of the community and the Non-Governmental Consumer Protection Agency (LPKSM) to supervise goods and/or services that deviate from regulations and have the potential to harm consumers.¹⁰

Business Actors' Responsibilities Regarding Overclaims in Skincare Product Advertisements

The inequality of positions between the parties can be found in the relationship between business actors and consumers in advertising. This is because consumers rely on the information provided by business actors in their advertisements without knowing whether the information matches the condition of the goods and/or services. The use of overclaim statements is classified as a prohibited business practice, which is a form of misleading consumers by failing to fulfill the promises stated in the advertisement, causing consumer losses.

Article 3, Paragraph (3) of BPOM Regulation No. 3 of 2022 concerning Technical Requirements for Cosmetic Claims states that, in addition to meeting the criteria referred to in Paragraph (2), business actors in making claims on labeling and advertising must also refer to the claim guidelines as listed in the appendix, which is an integral part of this regulation. The notification number holder and business actors who are not the notification number holder are obliged to ensure that the claims listed on labeling and/or published in advertisements comply with the provisions specified in BPOM Regulation No. 3 of 2022 concerning Technical Requirements for Cosmetic Claims.

The Consumer Protection Law (UUPK) explicitly explains the prohibited actions for business actors in distributing and trading the goods and/or services they produce. This is clarified in Article 8, Paragraph (1), Letter f, which states that business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated on the label, etiquette, description, advertisement, or promotion of the sale of goods and/or services.

Responsibility refers to actions taken by individuals with awareness of their obligations to the consequences of those actions. In terms of accountability, business actors in managing their business activities should bear all risks associated with their decisions that may result in losses, so that consumers can hold business actors accountable by requesting compensation.¹¹ Business actors are required to provide compensation to consumers if their actions result in losses suffered by consumers. The principle of absolute liability is a principle that stipulates that error is not a determining factor in such liability. However, there are exceptions that allow someone to be

¹⁰ Ahmadi Miru dan Sutarman Yodo, *Hukum Perlindungan Konsumen*, Jakarta: Raja Grafindo Persada, 2004, hlm 145.

¹¹ Nabilla, Sapto, Asianto, *Tanggung Jawab Pelaku Usaha Atas Overclaim Sun Protection Factor (SPF) Pada Produk Tabir Surya X*, Amandemen: *Jurnal Ilmu pertahanan, Politik dan Hukum Indonesia* Vol.1, No.2, 2024, hlm. 28.

exempted from liability, such as in cases of force majeure.¹² This principle requires that business actors provide direct accountability to consumers for any losses that occur.¹³

In general, responsibilities can be divided into three categories: accountability, responsibility, and liability.¹⁴ Accountability responsibility relates to obligations related to financial and trust aspects. Responsibility responsibility refers to obligations regulated in the context of laws applicable to the public. Meanwhile, liability responsibility relates to legal obligations in accordance with civil law.¹⁵ The principle of responsibility in law can be explained through several approaches, namely: the principle of liability based on fault, which is based on error; the principle of presumption based on fault, which assumes that a person is always responsible; presumption of nonliability, which assumes a person is always not responsible; strict liability, or absolute responsibility; and limitation of liability, which means there is a limitation of responsibility.¹⁶ The Consumer Protection Law (UUPK) has also stipulated administrative and criminal sanctions for business actors who produce and/or distribute products with overclaims that do not meet safety standards, as regulated in Article 8 Paragraph (1) Letter a of the UUPK.

Article 19 of the Consumer Protection Act states that business actors are responsible for providing compensation for losses incurred, including damages incurred, negative impacts, and the obligation to provide compensation to consumers. Thus, business actors are required to be financially or legally responsible for the negative impacts resulting from the products or services they offer. As a result of the actions taken, business actors must provide compensation, and consumers have the right to request compensation or redress if they experience losses or damages due to the products or services provided. Such compensation can be in the form of a refund, replacement of similar goods or services with equivalent value, or even health care in accordance with applicable laws.

If it is proven that the business actor causes losses to consumers due to overclaim and does not provide compensation in accordance with Article 19 Paragraphs (2) and (3), then the business actor is at risk of being subject to administrative sanctions based on Article 60 Paragraphs (1) and (2) of the Consumer Dispute Resolution Agency. This provision confirms that administrative sanctions can be imposed by the Consumer Dispute Resolution Agency (BPSK), with a maximum loss limit set at IDR 200,000,000.00 (two hundred million rupiah). Thus, business actors can be subject to administrative sanctions as a form of accountability for their actions. BPSK has the authority to impose administrative sanctions on business actors who violate regulations related to production and promotion standards.¹⁷

The use of overclaim sentences in skincare product advertising can harm consumers, thus damaging the reputation of business actors and causing consumers to lose benefits. However, because overclaim is normalized by business actors as a tactic in advertising, there is still no accountability from business actors to consumers regarding the use of overclaim sentences in skincare product advertisements

¹² Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, Jakarta: Sinar Grafika, 2008, hlm 26.

¹³ Elia Wurida Dewi, *Hukum Perlindungan Konsumen*, Yogyakarta: Graha Ilmu, 2015, hlm 67.

¹⁴ K. Martono, *Kamus Hukum dan Regulasi Penerbangan*, Edisi Pertama, RajaGrafindo Persada, Jakarta, 2007, hlm 306-307.

¹⁵ Ibid. hal.308

¹⁶ Kelik Wardiono, *Hukum Perlindungan Konsumen*, Penerbit Ombak, Yogyakarta, 2014, hlm.77-83.

¹⁷ Rosmawati, *Pokok -Pokok Hukum Perlindungan Konsumen*, Depok: Prenadamedia Group, 2018.

CONCLUSION

Based on the discussion above, it can be concluded that legal protection against overclaims on skincare products is still ineffective, considering that there are still skincare business actors who include the sentence overclaim. The formation of regulations has expressly provided consumer protection for the fulfillment of the right to information such as in Law Number 8 of 1999 concerning Consumer Protection, where business actors are required to provide honest, correct, and non-misleading information. Also, BPOM Regulation Number 32 of 2021 concerning Supervision of Cosmetic Advertising. Business actors who are proven to have made overclaims are fully responsible for the losses experienced by consumers. They can be held accountable through compensation mechanisms and other legal sanctions. However, the effectiveness of the implementation of these sanctions still depends on how strong the supervision of the authorities is and the awareness of consumers in fighting for their rights.

Based on these conclusions, suggestions for The government through the Food and Drug Supervisory Agency (BPOM) and other institutions must strengthen supervision of skincare product advertisements, especially those related to overclaiming product benefits. Tighter supervision will reduce the potential for overclaims, while ensuring that business actors comply with existing regulations. Business actors must prioritize ethics in advertising by ensuring that every claim made can be accounted for and is based on strong scientific evidence. Transparency in conveying product information not only protects consumers but also helps build long-term trust in their products in the market.

REFERENCES

- Dewi, E.W. (2015). *Hukum Perlindungan Konsumen*. Yogyakarta: Graha Ilmu, 2015.
- Harianto, D. (2010). *Perlindungan Hukum bagi Konsumen terhadap Iklan yang Menesatkan*. Bogor: Ghalia Indonesia.
- K. Martono. (2007). *Kamus Hukum dan Regulasi Penerbangan, Edisi Pertama*. Jakarta: Raja Grafindo Persada.
- Kristiyanti, C.T.S. (2008). *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika, 2008.
- Miru, A., Yodo, S. (2004). *Hukum Perlindungan Konsumen*. Jakarta: Raja Grafindo Persada.
- Muthiah, A. (2018). *Hukum Perlindungan Konsumen Dimensi Hukum Positif dan Ekonomi Syariah*. Yogyakarta: Pustaka Baru Press.
- Rosmawati. (2018). *Pokok -Pokok Hukum Perlindungan Konsumen*. Depok: Prenadamedia Group.
- Wardiono, K. (2014). *Hukum Perlindungan Konsumen*. Yogyakarta: Penerbit Ombak.
- Izza, D.W., Zavira, S, (2020). *Perlindungan Hukum Bagi Konsumen Klinik Kecantikan Atas Penggunaan Kosmetik Racikan Dokter*. Perspektif, 25 (2).
- Kuncoro, A.A.P. (2024). *Perlindungan Hukum Konsumen Terhadap Penggunaan Kata Overclaim Pada Iklan Produk Skincare*. Skripsi. Universitas Islam Indonesia.
- Nabilla, Sapto, Asianto. (2024). *Tanggung Jawab Pelaku Usaha Atas Overclaim Sun Protection Factor (SPF) Pada Produk Tabir Surya X*. Amandemen: Jurnal Ilmu pertahanan, Politik dan Hukum Indonesia Vol.1, No.2.
- Liputan 6 News. (2024, October 7). *Dokter Estetika Ungkap Daftar Skincare yang Overclaim hingga Ditemukan Bahan Berbahaya Hidrokuinon*. <https://www.liputan6.com/lifestyle/read/5740994/dokter-estetika-ungkap-daftar-skincare-yang-overclaim-hingga-ditemukan-bahan-berbahaya-hidrokuinon?page=4>.
- Maria Marcia, Cheryl Amadea. (2023, March 16). *Perkembangan Industri Kosmetik di Tahun 2023*. <https://east.vc/id/insights-id/perkembangan-industri-kosmetik-di-tahun-2023/>.
- Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

Peraturan BPOM Nomor 23 Tahun 2019 tentang Persyaratan Teknis Bahan Kosmetika lampiran
III Daftar Bahan Pengawet yang Diizinkan dalam Kosmetika.
Peraturan BPOM Nomor 23 Tahun 2020 tentang Persyaratan Teknis Penandaan Bahan Kosmetika.