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## Legal Liability of Business Operators For Beauty Products Containing Hazardous Chemicals

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**Abstract:** This study aims to analyse the liability of business operators for beauty products containing hazardous chemicals. This normative legal research employs methods including a statutory approach to examine relevant laws and a case-based approach to analyse real life instances of non-compliance. Findings reveal that despite strict regulations, enforcement challenges persist, leading to potential health risks for consumers. The study emphasizes the legal responsibilities of business operators to compensate for damages caused by non-compliant products, as outlined in Law No. 8 of 1999 on Consumer Protection. The research concludes that the resolution of consumer dispute cases can be settled through the Consumer Dispute Settlement Agency (BPSK) in three stages: mediation, conciliation, and arbitration, where the decisions made are final and binding. Besides resolution through BPSK, consumer dispute cases can also be resolved through litigation, which typically incurs more costs and takes more time compared to resolution through BPSK. Alongside proactive consumer actions to report hazardous products to regulatory bodies. This comprehensive approach ensures consumer safety and upholds legal standards within the beauty industry.

**Keyword:** Liability, Consumer Protection, Beauty Product, Hazardous Chemical.

### INTRODUCTION

Cosmetics are one of the most fundamental needs for everyone, particularly for women. In this technologically advanced era, cosmetics are crucial for enhancing appearance to look attractive. Especially in some jobs which looking attractive is one of the necessary conditions that affect whether one is accepted or not, and whether a job runs smoothly. For example, jobs that prioritize looking attractive range from secretaries to salespeople who interact with the outside world (Priaji, 2018). Given the importance of cosmetics today and in order to realize safety, and ensure the quality or standard of products used by consumers, every cosmetic product must be standardized by strict laws to create safety, quality, and utility for consumers using these products. Government oversight in this regard must be strictly enforced. Safety in the content of cosmetics has been regulated by the Minister of Health Regulation Number 1175/Menkes/Per/VIII/2010 on Cosmetic Production Licensing. The presence of accurate and clear information on a product is one of the rights

of consumers, so that consumers can know the truth about the information on the product and not hesitate in buying and using or consuming it (Herlina, 2017). With this, business operators who provide goods or services in the form of services are obliged to provide as clear information as possible to consumers. With the existence of the Consumer Protection Law, consumer rights are given more careful attention, one of which is the right to correct, clear and honest information regarding the conditions and guarantees of goods and services, as well as the right to consumer advocacy, protection and efforts to protect consumers. Complete consumer protection settlements appropriately.

Indonesian Consumer Protection Act No. 8 of 1999, there are several consumer rights that must be fulfilled by business operators as an obligation, specifically Article 4, which states, "Care for body parts is a duty that should not be neglected or ignored by anyone, whether they are young, teenagers, or adults." Taking care of body parts means that it is a manifestation of self-love and a form of gratitude for the gift of health bestowed by God Almighty, and therefore, it should be maintained. Humans, as one of God's creations, must not underestimate the care of their body parts. The use of beauty products, including skin whiteners, has been freely distributed from small stores to supermarkets around us. Besides being sold in-store, beauty products are also available online on e-commerce platforms such as Shopee, Tokopedia, Lazada, among others (Pande, 2017). The distribution of these beauty products must meet the standards issued by the Food and Drug Monitoring Agency, which then provides a certification of fitness regarding the composition of a beauty product. One of the chemicals under the supervision of the Food and Drug Monitoring Agency concerning beauty products (in this case, skin whiteners) is hydroquinone (Sumintardirja & Muliya, 2023). Hydroquinone is a very effective whitening agent compared to others. It can whiten skin in a relatively short time with a low concentration and has been used for several decades (Aulia et al., 2023). The use of Hazardous chemicals such as hydroquinone in beauty products is a violation of Food and Drug Supervisory Agency Regulation Number 17 of 2022 concerning Amendments to Food and Drug Supervisory Agency Regulation Number 23 of 2018 concerning Technical Requirements for Cosmetic Ingredients.

The mechanism of action of hydroquinone as a whitening agent in skin-lightening cosmetics involves inhibiting the activity of the enzyme tyrosinase in melanogenesis (Anggi et al., 2021). In this process, melanin formation is impeded by destroying melanocyte cells, increasing damage to melanosomes, and damaging organelle membranes, resulting in reduced melanin production. Melanin is the pigment responsible for determining skin color; the more melanin in the skin, the darker the skin tone (Rahmadari et al., 2021). This has led business operators to seek profit through the use of chemicals like hydroquinone, which are reputed to brighten the skin in a relatively short period but may also have dangerous side effects. In distributing a beauty product, business operators undoubtedly employ several strategies to market their products. The use of social media for branding has become quite common today, especially among business operators. This branding can be done directly by the business operators or through third parties like influencers to promote the business operator's products (Chumaida, 2014). These influencers may not be fully aware of the ingredients in the products they advertise, particularly beauty products, which can be hazardous for the safety and security of consumers who will use/consume these beauty products (Suyudi et al., 2022). If such practices continue to be carried out by influencers as third-party marketers, this could lead to legal issues, particularly as stated in Article 7 letter b of Law No. 8 of 1999 on Consumer Protection. Therefore, this situation can be classified as a legal issue. Take the case of Stella Monica Hendrawan, a customer, in matter number 658/Pid.Sus/2021/PN.Sby as an example. Stella, a client of a Surabaya beauty clinic from January to December 2019, claimed that after using a cream that the clinic's doctor had advised, she developed a burning feeling on her skin. Stella, a customer at the same beauty

clinic as the incident, sent a friend a Direct Message (DM) containing her review, which she used to air her frustrations through an Instagram Story post. Stella suffered consequences for her activities when the owner of the beauty salon reported her under Article 27 paragraph (3) and Article 45 paragraph (3) of Law Number. Legal protection for consumers is essentially intended for both consumers and business operators, given that consumer protection law recognizes the existence of standard contracts or boilerplate contracts (Sende et al., 2020). Therefore, this study aims to analyse the liability of business operators for beauty products containing hazardous chemicals.

## **METHOD**

The methodology utilized is the Normative legal research method, which seeks to resolve emerging legal issues and problems, thereby providing normative prescriptions and solutions for these issues. The technique for collecting legal materials employs the snowball method, starting with the accumulation of both primary and secondary legal materials, cataloging, identifying, and selecting cases pertinent to the research topic (Marzuki, 2017). The problem-solving approach used in this research includes the statutory approach, the conceptual approach, and the case-based approach. The statutory approach involves examining, inspecting, and studying laws, regulations, or rules related to the legal issue under study (Irianto, 2011). The conceptual approach starts from established views and doctrines within the field of law and includes discussions on the philosophical background that leads to methodological disputes in legal research, thereby forming an understanding of the issue under investigation, particularly concerning the principles found in Law No. 8 of 1999 on Consumer Protection. The case-based approach looks at real-life incidents relevant to the legal challenges faced, used to support and clarify the juridical stance questioned in the research.

## **RESULTS AND DISCUSSION**

### **The Liability of Business Operators For Beauty Products Containing Hazardous Chemicals**

The liability of business operators for beauty products containing hazardous chemicals is defined as a form of action executed to compensate for damages suffered due to certain acts. Liability in this context refers to actions by business operators when their business activities involve conduct that could trigger liability to consumers. The term 'liability' is often used interchangeably with 'accountable/accountability' and 'responsible/responsibility'. According to the Great Dictionary of the Indonesian Language (KBBI), 'accountable' can be defined as being obliged to bear all consequences (if something happens, one can be sued, blamed, prosecuted, etc.). The enforcement of liability, which often involves consumers and business operators, is based on principles that can be upheld from both the consumer's and business operator's perspectives. These principles include:

1. **Fault Liability or Liability Based on Fault:** This principle, based on the element of fault, is commonly recognized and can be applied in both criminal and civil cases. As articulated in Articles 1365, 1366, 1367, this principle states that a person can be legally held responsible when the element of fault in their actions is proven. Article 1365 explicitly requires that an unlawful act must meet four main elements: the act itself; the element of fault; the damage suffered; and the causality and extent of the damage. Fault implies an action that contravenes the law, where the law here is not only in conflict with statutory law but also with propriety and morality in communal living (Sari et al., 2023). Further examination reveals that this provision aligns with the general legal theory of *audi et alteram partem* or "hear the other side," meaning that disputing parties should be placed on equal footing. In this context, it is obligatory for judges to impose a balanced and fair

burden on the parties, thus providing equal opportunities to seek a favorable outcome in a case.

2. **Presumption of Liability Principle:** This principle means that the defendant is always presumed responsible until they can prove their innocence, thus placing the burden of proof on the defendant. This aligns with the theory of reverse burden of proof (*omkering van bewijslast*), which is even adopted in Law No. 8 of 1999 on Consumer Protection in Articles 19, 22, and 23. The Reversal of Burden of Proof Theory contrasts with the common legal principle of the presumption of innocence but is highly relevant in consumer protection cases. Under this theory, it is the duty of the defendant, in this case, the business operator, to demonstrate their innocence (Putri et al., 2019).
3. **Presumption of Non-Liability Principle:** This principle is the opposite of the Principle of Presumed Responsibility. While the latter requires that a person present evidence of their innocence, the former requires the plaintiff to prove that the defendant is guilty, a principle recognized only in very limited consumer transactions (Sahetapy & Astutik, 2023).
4. **Strict Liability:** The principle of absolute liability is often associated with strict liability. The distinction between absolute liability and strict liability is the recognition of *force majeure*. Under strict liability, fault is not the sole determinant of liability. Exceptions may absolve an individual from liability. However, in absolute liability, a fault remains a fault regardless of exceptions (Nur & Prabowo, 2011).
5. **Limitation of Liability Principle:** This principle is favored by business operators because it can be included as an exoneration clause in a standard agreement between consumers and business operators. If applied unilaterally, this principle could severely disadvantage consumers. However, the Consumer Protection Law has established boundaries regarding this (Afrilia & Sulistyningrum, 2017).

The Law No. 8 of 1999 on Consumer Protection provides protection to consumers by prohibiting business operators from unilaterally and immediately determining clauses that disadvantage consumers, including in terms of limiting the maximum liability that can be imposed on consumers. Business operators are required to be responsible to consumers as stipulated in the Law No. 8 of 1999 on Consumer Protection (UUPK). This responsibility includes both the rights received and the obligations that must be fulfilled. The UUPK outlines several principles that guide the formation of this law, including the principles of benefit, justice, balance, consumer safety and security, and legal certainty (Ariawan & Griadhi, 2012). The UUPK not only includes the rights and obligations of business operators but also the rights and obligations of consumers. According to Article 4 letter a of the UUPK, one of the consumer rights is to experience comfort, safety, and security in consuming goods and/or services provided by business operators. Thus, when this comfort, safety, and security are not met by the business operators, consumers have the right to file a liability claim against the business operators for their faults. Article 19 of the UUPK details the responsibilities of business operators, which include:

1. Company owners are liable for making up for any losses, harm, or pollution that customers may experience from using the products and/or services that are manufactured or exchanged.
2. Refunds, exchanges for products and/or services of comparable or equal value, or the provision of medical care and/or compensation in line with relevant legal provisions are all possible forms of compensation.
3. After the transaction date, compensation shall be done within seven (seven) days.
4. The offer of compensation as stated in paragraphs (1) and (2) does not preclude criminal prosecution in the event that additional evidence of culpability is found.
5. If the business owner can demonstrate that the error was caused by the customer's error, the provisions outlined in paragraphs (1) and (2) do not apply.

Article 19, paragraph (1) of Law No. 8 of 1999 on Consumer Protection specifies the responsibilities of business operators, which include the obligation to compensate for damage, the obligation to compensate for pollution, and the obligation to compensate for losses suffered by consumers. This implies that defects in goods and/or services produced by business operators are not the only basis for their liability. It means that the liability of business operators encompasses all losses suffered by consumers (Miru & Yodo, 2004). The provision in Article 19, paragraph (2) indirectly has weaknesses that disadvantage consumers, especially regarding losses that result in consumers suffering from a disease. Considering this article, it can be interpreted that consumers only receive one form of compensation for the losses incurred, whereas the losses suffered by consumers include not only contracting a disease but also the depreciation in the value of goods. Dispute resolution related to consumer protection for beauty products containing hazardous chemicals involves navigating these legal frameworks to ensure that consumers are adequately compensated for all forms of loss, including health damages and financial losses. This typically requires a detailed examination of the circumstances surrounding the product's use and the extent of the damage or loss incurred. Ensuring that business operators fulfill their obligations under the law is crucial in maintaining consumer trust and adherence to safety standards.

### **Dispute Resolution Through The Consumer Dispute Settlement Agency (BPSK)**

The establishment of the Consumer Dispute Settlement Agency (hereafter referred to as BPSK), only at the Regency Level (Level II regions), as stipulated in Article 49 paragraph (1) of Law No. 8 of 1999 on Consumer Protection, indicates the legislative intent that BPSK decisions as a consumer dispute resolution body are final without the possibility of appeal or cassation. The creation of BPSK at the Regency Level as outlined in Article 49 paragraph (1) is reinforced by the issuance of Presidential Decree Number 90 of 2001 on July 21, 2001. Article 1 of this Decree specifies that BPSK is to be established in the governments of Medan, Palembang, Bandung, Yogyakarta, Surabaya, Malang, Semarang, Makassar, Central Jakarta, and West Jakarta.

A new issue arises with the presence of Presidential Decree Number 90 of 2001 concerning the empowerment and protection of consumers in Level II regions where BPSK has not yet been established, in enforcing their rights against business operators. Article 2 of Presidential Decree Number 90 of 2001, any aggrieved consumer or their heirs may sue business operators through BPSK in the consumer's domicile or at the nearest BPSK. The substance of this article is seen as the maximum effort that the government can undertake to enable consumers to claim their rights through BPSK until such areas are capable of establishing their own BPSK with all the ensuing consequences (Sitepu & Muhammad, 2021). As stated in Article 3 of Presidential Decree Number 90 of 2001, it is understandable if other Level II regions in Indonesia have not yet established BPSK. This is due to the financing of BPSK duties being perceived as a new burden in the current era of regional autonomy. Regarding the provisions in Article 49 paragraph (1) of Law No. 8 of 1999, it concerns the main task of BPSK, which is to settle consumer disputes outside of court. Other duties of BPSK, besides the main task, include providing consumer protection consultation, monitoring the inclusion of standard clauses, and receiving consumer complaints about violations of consumer protection, along with other duties. The duties and powers of BPSK in Article 52 of Law No. 8 of 1999 are as follows:

1. Manage and settle consumer disputes through arbitration, mediation, or conciliation;
2. Offer consumer protection advice;
3. Keep an eye on standard clauses;
4. Report any infractions of this law to the public prosecutor;
5. Receive written and verbal consumer complaints regarding violations of consumer protection;

6. Investigate and review consumer protection disputes;
7. Summon business operators suspected of violating consumer protection;
8. Summon and present witnesses, expert witnesses, and/or anyone deemed to be aware of such infractions;
9. Ask investigators for help in bringing them to justice;
10. Obtain, review, and/or assess letters, documents, or other evidence for investigation and/or examination;
11. Decide whether or not there has been harm to consumers;
12. Inform business operators of the decision regarding violations of consumer protection;
13. Impose administrative sanctions on business operators who break this law.

As mentioned in letter an above, arbitration, conciliation, and mediation are available for the resolution of consumer issues. Based on an arbitration agreement signed by the disputing parties and recognized by the government through the Indonesian National Arbitration Board (BANI), arbitration is a process for resolving civil disputes that cannot be handled by normal courts. BANI is an independent organization that was founded and launched by KADIN (Indonesian Chamber of Commerce and Industry) with the goal of mediating civil disputes pertaining to commerce, industry, and finance on a national and worldwide scale. Arbitration laws must be consistent with ideals that are focused on the global community in order to earn confidence from other countries. The most appropriate approach is to make use of the United Nations Committee on International Trade Law (UNCITRAL), with the goal of having it adopted as a model law in all UN member countries' laws and institutional arbitration settings. A harmonization of arbitration procedures will result from its adoption as a model by all nations, so closing the trade interests gap between industrialized and developing nations (Harahap, 1997). One benefit of arbitration conflict settlement is that the arbitrator's ruling is legally binding, final, and binding on all parties. A decision rendered in arbitration can also be executed, meaning that the winning party can ask the local court to carry out the ruling if the losing party refuses to do so (Dowdy, 1998). Apart from arbitration, another alternative for dispute resolution is conciliation. Conciliation is another alternative for dispute resolution that can also be pursued outside the court, defined as: an independent person (conciliator) brings the parties together and encourages a mutually acceptable resolution of the dispute by facilitating communication between the parties. Conciliation is also a viable alternative for resolving consumer disputes facilitated by Law No. 8 of 1999 on Consumer Protection. Dispute resolution through conciliation has many similarities with the execution of arbitration, where a third party is entirely entrusted to provide an opinion on the dispute presented by the parties (Wijayanti, 2019). However, the opinion from the conciliator is not binding, unlike the decisions in arbitration.

Another alternative for out-of-court dispute resolution is mediation. Recognized within Indonesian legislation, mediation is one of the best options among existing alternative dispute resolution systems and forms. Dispute resolution through mediation can occur before a dispute arises by incorporating a mediation clause into an agreement (mediation clause agreement), or after a dispute has arisen where the parties agree to resolve it through mediation (mediation submission). Consumer dispute resolution through the Consumer Dispute Settlement Agency (BPSK) results in decisions that are final and binding on the disputing parties, yet Law No. 8 of 1999 on Consumer Protection (UUPK) still allows parties who object to the BPSK's decision to file an objection with the District Court. If the decision of the District Court regarding the BPSK's decision is still considered unsatisfactory by the parties, a legal appeal can be made to the Supreme Court of the Republic of Indonesia, not to the High Court. Law No. 8 of 1999 on Consumer Protection does not directly specify the separation of duties among BPSK members acting as arbitrators, conciliators, or mediators, allowing each member to act as an arbitrator, conciliator, or mediator. The lack of membership separation in BPSK suggests that consumer dispute resolution should be

resolved in stages; initially, every consumer dispute should be attempted to be resolved through mediation, if that fails, it escalates to conciliation, and if it still fails, resolution is sought through arbitration. The phased resolution process from mediation, to conciliation, and arbitration does not necessarily take a long time because decisions in arbitration that have legal force are final and binding, thus enabling execution of what is determined in the arbitration. Despite the three stages, the Consumer Protection Law stipulates that these three stages must be completed within 100 (one hundred) days from the first mediation session.

### **Resolving Disputes Through Court Or Litigation**

Court proceedings, also referred to as the litigation route, or the Consumer Dispute Settlement Agency (BPSK) are two options for resolving disputes, especially those involving consumer protection. The word "litigation" itself comes from the word "court" in English. The court's job is to settle cases and issue a ruling that is as equitable as it can be (Lubis & Rahmawati, 2014). Consumers using products that aren't meant for their intended purpose or discrepancies between the product's actual contents and the composition listed on the packaging are common causes of disputes between business owners and customers, particularly when it comes to beauty products. Law No. 8 of 1999 on Consumer Protection, Article 48, states that when resolving consumer disputes in court, the General Judiciary's rules apply, with consideration given to Article 45's requirements. The UUPK's Article 48 pertains to general judiciary regulations for consumer dispute resolution through courts. As such, the applied procedural legislation is derived from the *Herziene Inlands Regeling (HIR)* and *Rechtsreglemen Buitengewesten (RBg)* (Tampinongkol, 2021). Consumer conflicts can sometimes be directed toward civil issues, however parties found to have committed crimes may also be held criminally responsible. As stipulated in Article 45 of the UUPK as follows:

1. A customer who has suffered injury may file a lawsuit against the business owner in court or through an organization that handles consumer-business operator conflicts.
2. Depending on the disputing parties' personal choice, consumer dispute resolution may be conducted in court or outside of it.
3. The paragraph (2) mention of out-of-court conflict resolution does not absolve parties of their legal obligations with regard to criminal culpability.
4. If an out-of-court consumer dispute resolution procedure has been selected, litigation may only be brought about if one or both of the disputing parties deem it to be failed.

Article 45 of Law No. 8 of 1999 on Consumer Protection explicitly states that consumer disputes that arise do not eliminate criminal responsibility. In addition, consumer disputes also open up opportunities for other forms of liability, such as in the field of administrative law. Consumers whose rights have been violated are not only represented by prosecutors in general criminal courts, but they can also sue other parties in administrative courts if there is an administrative dispute involved. This is possible if it relates to government policies that are deemed to harm consumers individually. Furthermore, with the increasing presence of multinational companies operating in Indonesia, it is conceivable that litigation might be initiated in countries other than Indonesia, making these consumer disputes transnational in nature. Consumer disputes are generally civil disputes, in which the consumer is the party suffering loss. In civil procedural law, there is a concept of "judge being passive," which means that the initiative to litigate comes from the parties with an interest (Afriana et al., 2022). Article 46 of the UUPK explains that:

1. Claims against business operator violations can be made by: a. A consumer who has been harmed or their heirs; b. A group of consumers with similar interests; c. Community-based consumer protection agencies that meet the requirements, namely being legally incorporated as associations or foundations, whose charter explicitly states that the organization's establishment is for the protection of consumers and that have conducted activities in accordance with their charter; d. The government and/or relevant agencies if

- the goods and/or services consumed or utilized result in significant material damage and/or affect a number of victims.
2. The general courts hear cases brought by consumer groups, locally based consumer protection organizations, or the government as mentioned in paragraph (1) letters b, c, and d.
  3. Government regulations govern other provisions pertaining to a significant number of victims and/or material loss, as stated in paragraph (1) letter d.

## CONCLUSION

The use of hazardous chemicals such as hydroquinone in beauty products constitutes a violation of the Food and Drug Monitoring Agency Regulation Number 17 of 2022, which amends the Regulation Number 23 of 2018 concerning Technical Requirements for Cosmetic Ingredients. Hydroquinone can only be provided to a consumer on the advice or recommendation of a specialist doctor who understands the specific limitations of its use. Regarding the side effects produced, business operators are required to compensate consumers, either by restoring damaged skin or by replacing the purchased product. Law No. 8 of 1999 on Consumer Protection allows consumers to claim damages caused by business operators as outlined in Article 19 of the UUPK. The resolution of consumer dispute cases can be settled through the Consumer Dispute Settlement Agency (BPSK) in three stages: mediation, conciliation, and arbitration, where the decisions made are final and binding. Besides resolution through BPSK, consumer dispute cases can also be resolved through litigation, which typically incurs more costs and takes more time compared to resolution through BPSK. It is recommended that consumers who experience any form of material loss or skin health issues proactively report the products they use to the Food and Drug Monitoring Agency (BPOM) if they are suspected of containing hazardous chemicals, so that BPOM can take strict action regarding the licensing of beauty product business operators who violate regulations set by BPOM. There is a need for regulations concerning consumer protection that include compensation for health-related consumer damages, allowing for reimbursement of product purchase costs and the recovery of any damage suffered.

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Keputusan Presiden Nomor 90 Tahun 2001 Tentang Pembentukan Badan Penyelesaian Sengketa Konsumen Pada Pemerintah Kota Medan. *Kota Palembang, Kota Jakarta Pusat, Kota Jakarta Barat, Kota Banung, Kota Semarang, Kota Yogyakarta, Kota Surabaya, Kota Malang dan Kota Makassar.*

PUTUSAN NOMOR 658/PID.SUS/2021/PN SBY