



Legal Responsibility of Skincare Companies for Overclaim-Based Marketing Strategies (Misleading Benefits)

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ABSTRACT

Overclaim (misleading benefits) often occurs through excessive claims regarding product benefits that are not supported by adequate scientific evidence, thus misleading consumers and creating unfair business competition. Based on Law Number 8 of 1999 concerning Consumer Protection and BPOM regulations, companies can be held accountable based on the principles of strict liability and product liability, which require business actors to provide compensation. In this study, the author will discuss the legal responsibility of skincare companies for the practice of overclaim (misleading benefits) in marketing their products and the legal efforts that can be taken by consumers who are harmed. By using normative legal methods and qualitative approaches, the results of the study show that companies can be held accountable based on the principles of strict liability and product liability in accordance with the Consumer Protection Law (UUPK) and BPOM regulations. Consumers who experience losses can seek dispute resolution through non-litigation channels (mediation, arbitration, or the Consumer Dispute Resolution Agency) or litigation (court). Overclaim, Skincare, Legal Responsibility, Consumer Protection

INTRODUCTION

Along with the increasing public awareness of the importance of skin appearance and health, the beauty industry in Indonesia has become one of the fastest growing economic sectors in recent years. Skincare products are not only popular with women but men have also participated in doing treatments. This is influenced by the entry of Korean Beauty culture which has had a major impact on beauty trends in Indonesia. The public is inspired by Korean beauty standards that emphasize healthy, bright and radiant skin.

In carrying out skin care, it can be done at a beauty clinic or at a specialist doctor, but carrying out treatment at a beauty clinic or at a specialist doctor can be said to have a relatively expensive cost so that many people do their own treatments using skincare products. This is supported by the many brands of skincare products and the many types of skin care, especially facial skin that can be adjusted to skin type, such as dry skin, oily skin, combination skin, and sensitive skin and can be adjusted based on the problems of each individual's facial skin, such as acne problems, brightening, maintaining skin moisture, and others.

The use of skincare products is intended for daily use with the aim of maintaining healthy skin and providing nutrition to the skin. Skincare can be used in the morning and evening, there are many types of skincare such as facial moisturizer, facial cleanser or micellar water, facial wash, toner, serum, morning cream or day cream, night cream, sunscreen, eye cream, and others. In addition, the type of skincare can be adjusted based on the age of the skincare user, such as skincare that can be used for at least 15 years and over, at least 20 years and over, or there is skincare that can be used by all ages.

The use of skincare in Indonesia can be said to be increasing from year to year, the increase in interest in skincare products is evidenced by the increase in product sales in the beauty industry in 2023 by 4.75%. The increase in product sales in the beauty industry (including skincare products) proves that the use of skincare has become a primary need.

Along with the increase in sales of skincare products, it is also supported by an increase in business in the beauty industry based on information from the Indonesian Cosmetics Association Company Association reaching 21.9%, namely 913 companies in 2022 and in mid-2023 as many as 1,010 companies. Quoting information from the Ministry of Industry of the Republic of Indonesia, it is predicted that the Indonesian Cosmetics Industry market will grow by 5.91% per year, including skincare and personal care products. Marketing of skincare products can be said to be quite broad and widespread, not only sold in conventional businesses (businesses carried out through direct interaction), but has entered the realm of e-commerce or digital business. This condition encourages business actors to compete aggressively in attracting consumer attention, one of which is through marketing strategies. However, this competition often gives rise to marketing practices that have the potential to violate the law, such as overclaims (misleading benefits). Overclaims (misleading benefits) are the act of making excessive or inconsistent claims regarding the benefits or quality of a product, which can mislead consumers. In the context of

marketing skincare products, overclaims (misleading benefits) are often found in the form of statements promising instant results, comprehensive solutions for certain skin problems, or using scientific terms that are difficult for ordinary consumers to verify. For example, claims such as “get rid of acne overnight” or “skin looks 10 years younger in 7 days” are often not supported by sufficient scientific evidence. This not only harms consumers, but also creates a climate of unhealthy business competition.

The practice of overclaiming (misleading benefits) in marketing skincare products not only misleads consumers, but also violates the principles of consumer protection as stipulated in Law Number 8 of 1999 concerning Consumer Protection (UUPK) and regulations issued by BPOM. Although regulations have regulated the prohibition of providing misleading information or advertising, weak supervision and law enforcement have made this practice continue to occur. In addition, consumers' ignorance of their rights and dispute resolution procedures adds to the complexity of the problem. This condition not only harms consumers financially and psychologically, but also creates unhealthy business competition in the skincare industry. Therefore, an in-depth analysis of the forms of overclaiming (misleading benefits) and dispute resolution mechanisms is needed so that legal protection for consumers can be realized effectively. There has been a case that has occurred in the community recently regarding skincare products that overclaim (misleading benefits), namely, the case of the Azarine brand allegedly overclaiming (misleading benefits) related to the content of one of its products, namely Glorious Serum with 10% Niacinamide content, but in reality based on laboratory test results it only contains 0.45% niacinamide. Based on this, this study will examine the legal responsibility of skincare companies for Overclaim (misleading benefits) and legal efforts that can be taken by consumers who are harmed by the actions of Overclaim (misleading benefits) from skincare companies. This study is expected to contribute to increasing legal awareness for both consumers and business actors, as well as supporting the strengthening of regulations and law enforcement in the field of consumer protection.

LITERATURE REVIEW

Overclaim is a marketing practice that makes excessive or unrealistic claims about the benefits or quality of a product. According to the Consumer Protection Act (UUPK), overclaim is included in the category of misleading information because it can influence consumer decisions in purchasing a product. In the skincare industry, overclaim is often found in the form of instant claims such as "eliminates acne overnight" or "brightens skin in one week" without sufficient scientific evidence. This practice not only harms consumers but also creates unhealthy business competition in the beauty industry.

Consumer protection is any effort that ensures legal certainty for consumers in obtaining goods or services that are safe, of quality, and in accordance with the information provided by business actors. Based on the UUPK, consumer protection includes consumer rights to obtain correct information, compensation for losses, and access to dispute resolution in the

event of a violation. Consumer protection aims to create a balance between the rights and obligations of consumers and business actors, so as to increase trust in business transactions.

Legal liability is the obligation of a person or business entity to bear the legal consequences of their actions that cause losses to other parties. In the context of the skincare industry, legal liability for overclaims can be categorized into two main principles, namely strict liability and product liability. Strict liability states that business actors are responsible for losses incurred without having to prove an element of fault, while product liability emphasizes the responsibility of producers for the safety and truth of their product claims. These provisions are regulated in the UUPK, the Civil Code (KUHPer), and regulations from the Food and Drug Supervisory Agency (BPOM).

METHODOLOGY

This study uses a qualitative normative legal data analysis method. The researcher will describe, elaborate, and analyze the data in depth to produce a clear and detailed understanding. Furthermore, the researcher will draw conclusions based on inductive logic, namely drawing general conclusions from various specific problems. This process is expected to produce findings that are not only theoretical, but also applicable in the context of law and legal studies.

Research Object

According to Sugiyono, the object of research is everything chosen by the researcher to be studied, with the aim of obtaining relevant information and making conclusions based on these findings. The object of research in this proposal is the practice of overclaim (misleading benefits) in the marketing strategy of skincare products in Indonesia, seen from a legal perspective, including the legal responsibility of skincare companies for overclaim actions (misleading benefits) and an overview of the dispute resolution mechanism arising from the practice of overclaim (misleading benefits) in marketing skincare products. The focus is on analyzing the legal impact of overclaim (misleading benefits) in the promotion of skincare products and finding solutions to protect consumers and create healthy business competition.

Data and Data Sources

Data is a collection of facts or numbers that have no particular meaning before being processed. Data becomes useful after being processed into information that is relevant to the user's needs. In general, data is a fact or raw material that needs to be processed to produce meaningful information, either for research, decision-making, or other purposes.

The data sources in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials, which are explained as follows:

Primary legal materials are the main legal materials that are binding and have authority. The primary legal materials used in this study include:

- a. Law Number 8 of 1999 concerning Consumer Protection (UUPK).
- b. Regulations from the Food and Drug Supervisory Agency (BPOM).
- c. Civil Code (KUHPer)

d. Criminal Code (KUHP) which regulates fraud.

Secondary legal materials are materials that explain and provide interpretations of primary legal materials. The secondary legal materials used in this study include:

- a. Books written by legal experts.
- b. Law journals.
- c. Expert opinions.
- d. Jurisprudence and legal cases.
- e. Legal theses.
- f. Internet sources related to the research problem.

Tertiary legal materials are legal materials that function as a complement and provide additional explanations to primary and secondary legal materials. Tertiary legal materials used in this study include:

- a. Legal dictionary.
- b. Big Indonesian Dictionary (KBBI).

RESEARCH RESULT

Legal Liability of Skincare Companies for Overclaims (Misleading Benefits)

Responsibility is an action taken by a person with full awareness of their obligations and the impact of their actions. In the context of a business entity, responsibility means readiness to bear the risks and consequences of their business activities, especially if they cause losses. Therefore, consumers have the right to demand accountability from business actors, including asking for compensation.

In terms of selling skincare, business actors must be responsible for the skincare products produced and traded, especially in terms of excessive claims in advertisements. This responsibility is based on the principle of strict liability and product liability.

In the principle of strict liability, consumers are not required to prove the fault of the business actor as a basis for filing a lawsuit or claim for compensation. This is because, in this principle, business actors are directly considered guilty, and the burden of proof to show that they are not guilty lies entirely with the business actor. The use of absolute liability in consumer protection is based on the main purpose of consumer protection itself, namely to make it easier for consumers to defend or obtain their rights.

Product liability refers to direct civil liability (strict liability) imposed on business actors for losses experienced by consumers due to the use of products produced or traded. This is in line with Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection (UUPK), which stipulates that "Business actors are required to provide compensation for damage, pollution, or losses caused by the consumption of goods produced or traded".

Product liability or product responsibility arises due to losses experienced by buyers because the products marketed by business actors have defects that cause losses. However, as it develops, the responsibility of business actors is not only limited to product defects, but also includes discrepancies between

promises in advertisements and the actual conditions of the products traded. This development is based on the idea that the production process must continue to the marketing stage, so that promises in advertisements must be in line with the actual conditions of the products produced.

The truth of the inclusion of skincare product information in advertising provides benefits in providing education to consumers regarding skincare products. In relation to the responsibility of business actors, it has been explained in the regulations in force in Indonesia, Article 19 of the UUPK states that:

- (1) Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
- (2) Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of the same type or equivalent value, or health care and/or provision of benefits in accordance with the provisions of applicable laws and regulations.
- (3) Compensation is carried out within a period of 7 (seven) days after the transaction date.
- (4) The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error.
- (5) The provisions as referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is the consumer's fault.

In the context of skincare companies, this article becomes relevant when the marketed product turns out to contain overclaims, namely excessive promises that are not scientifically proven or do not correspond to reality. If a skincare product claims to provide certain results, such as "eliminating acne in three days" or "brightening skin in one week," but it turns out not to provide the promised effect or actually causes side effects, then the company can be held responsible for the losses experienced by consumers. These losses can be in the form of health impacts such as irritation or allergic reactions, as well as economic losses due to consumers buying ineffective products.

Article 20 of the Consumer Protection Act states that advertising business actors are responsible for the advertisements produced and all consequences caused by the advertisement. In this article, the threat and imposition of administrative sanctions are carried out by the Consumer Dispute Resolution Agency (hereinafter referred to as BPSK), if the advertisement produced violates the Consumer Protection Act or results in causing losses to the community.

Article 1365 of the Civil Code states that every act that violates the law and results in losses to others requires the perpetrator to compensate for the loss if it occurs due to his/her fault. Article 1366 of the Civil Code emphasizes that a person is not only responsible for losses arising from his own actions, but also for losses resulting from his negligence or carelessness. Article 1367 of the Civil Code explains that a person's responsibility is not only limited to the consequences of his own actions, but also includes losses caused by people under his responsibility or by objects under his supervision.

BPOM Regulation Number 3 of 2022 concerning Technical Requirements for Cosmetic Claims regulates administrative sanctions for owners of notification numbers and/or business actors who violate provisions related to cosmetic claims in labeling and advertising. This sanction can be imposed on the owner of the notification number, namely the party who has obtained a distribution permit from BPOM, as well as business actors who are not the owner of the notification number but are involved in marketing cosmetic products. Violations that can be subject to sanctions include violations of Article 2 which regulates the technical requirements for cosmetic claims, Article 3 paragraph (3) which regulates prohibited claims in cosmetics, and Article 4 which regulates the obligation to support claims such as scientific evidence that must be included in labeling and advertising.

Administrative sanctions that can be imposed include several actions, ranging from written warnings as an initial step, to more severe actions such as recalling and destroying products from circulation if proven to violate the provisions. In addition, BPOM can also temporarily suspend business activities related to violating products, revoke notification numbers so that products can no longer be distributed legally, and announce violations to the public to warn consumers.

If the violation is considered more serious, BPOM can also provide recommendations to related agencies, such as the Ministry of Trade or law enforcement officers, to take further action. All of these sanctions are determined by the Head of the Food and Drug Supervisory Agency (BPOM) as the authority responsible for overseeing cosmetic regulations in Indonesia. With these provisions, it is hoped that cosmetic products circulating in the community have correct claims, are not misleading, and are in accordance with the established safety and effectiveness standards.

Article 60 of the Consumer Protection Law (UUPK) states that the consumer dispute resolution body has the authority to impose administrative sanctions on business actors who violate the provisions in Article 19 paragraph (2) and (3), Article 20, Article 25, and Article 26. The sanctions that can be imposed are in the form of an obligation to pay compensation with a maximum amount of IDR 200,000,000.00 (two hundred million rupiah). Article 61 of the UUPK explains that in relation to criminal sanctions, criminal prosecution can be carried out against business actors and/or their managers and Article 62 of the UUPK explains that;

- (1) Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
- (2) Business actors who violate the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letter d and letter f shall be punished with imprisonment for a maximum of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

- (3) Violations that result in serious injury, serious illness, permanent disability or death shall be subject to applicable criminal provisions.

Article 63 of the Consumer Protection Act explains that criminal sanctions as referred to in Article 62 can be used as additional punishments, in the form of:

- a. Confiscation of certain goods;
- b. Announcement of the judge's decision;
- c. Payment of compensation;
- d. Order to stop certain activities that cause consumer losses
- e. Obligation to withdraw goods from circulation; or
- f. Revocation of business license.

Legal Efforts That Can Be Taken by Consumers Who Are Harmed by Overclaim Actions (Misleading Benefits) from Skincare Companies

In accordance with Article 4 of the Consumer Protection Act, consumer rights are:

- a. The right to comfort, security, and safety in consuming goods and/or services;
- b. The right to choose goods and/or services and to obtain goods and/or services in accordance with the exchange rate and conditions and guarantees promised;
- c. The right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services;
- d. The right to be heard for opinions and complaints regarding the goods and/or services used;
- e. The right to receive advocacy, protection, and appropriate consumer protection dispute resolution efforts;
- f. The right to receive consumer guidance and education;
- g. The right to be treated or served properly and honestly and without discrimination;
- h. The right to receive compensation, damages and/or replacement, if the goods and/or services received do not comply with the agreement or are not as they should be;
- i. Rights regulated in other statutory provisions.

Based on the consumer rights above, consumers who experience losses due to overclaims in skincare products (excessive claims that do not correspond to reality) can take several legal steps to regain their rights, either through non-litigation (outside the court) or litigation (through the court).

Article 46 of the Consumer Protection Act regulates the parties who have the right to file a lawsuit for violations committed by business actors against consumers. A lawsuit can be filed by a consumer who has suffered direct losses or by his heirs. In addition, lawsuits can also be filed by consumer groups with the same interests, as well as by Non-Governmental Consumer Protection Institutions (LPKSM) which are legal entities or foundations such as the Indonesian Consumers Foundation (YLKI). The government or related agencies

also have the right to file lawsuits if the goods or services consumed cause major material losses or harm many consumers. Lawsuits filed by consumer groups, LPKSM, or the government must be carried out through general courts. Further provisions regarding the limits of "major material losses" and "not a few victims" will be further regulated in Government Regulations. Article 44 paragraph (3) of the UUPK explains that the duties of Non-Governmental Consumer Protection Institutions (LPKSM) include the following activities:

- a. disseminating information in order to increase awareness of consumer rights and obligations and caution in consuming goods and/or services.
- b. providing advice to consumers who need it;
- c. cooperating with related agencies in efforts to realize consumer protection;
- d. assisting consumers in fighting for their rights, including receiving consumer complaints or complaints;
- e. conducting joint supervision by the government and the community regarding the implementation of consumer protection.

Settlement of consumer disputes can be carried out outside the court with the aim of reaching an agreement between consumers and business actors as stipulated in Article 47 of the Consumer Protection Law. This agreement may include the form and amount of compensation that must be given to consumers, or certain actions that must be taken by business actors to ensure that violations that cause such losses will not be repeated in the future.

Article 48 of the Consumer Protection Law stipulates that the settlement of consumer disputes through the courts must follow the provisions of applicable general judicial law. However, in the process, the courts must still pay attention to the provisions in Article 45 relating to the consumer's right to sue and the available dispute resolution mechanisms. Thus, the legal process that is carried out must still pay attention to the protection of consumer rights.

CONCLUSIONS AND RECOMMENDATIONS

Business actors in the skincare industry have legal responsibility for the products they produce and market, especially in terms of the truth of product claims conveyed to consumers. Based on the principles of strict liability and product liability, business actors can be held accountable without the need for proof of fault if the product sold causes harm to consumers, either due to product defects or misleading claims. Applicable regulations, including the Consumer Protection Law, the Civil Code, and BPOM regulations, emphasize that business actors must ensure the safety and accuracy of their product claims.

Administrative and criminal sanctions can be imposed if proven to have violated applicable provisions. Consumers who experience losses due to excessive claims from skincare products have the right to demand accountability from business actors through non-litigation or litigation channels. Consumer rights regulated in the Consumer Protection Law include the right to correct information, the right to compensation, and the right to legal protection. Legal remedies can be filed by individuals, consumer groups, consumer protection

institutions, or the government. Dispute resolution can be carried out through mediation or the Consumer Dispute Resolution Agency (BPSK) as a non-litigation channel, or through general courts for more complex lawsuits.

ADVANCED RESEARCH

In compiling this paper, the author realizes that there are still various shortcomings, both in the use of language, writing procedures, and in the way of presenting the material. This is inseparable from the limitations of the author's knowledge and ability to process and convey information systematically. Therefore, in order to improve the quality and perfection of this paper, the author greatly expects constructive criticism and suggestions from various parties. This input is expected to be a material for improvement so that this paper can be better and more useful for readers.

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