



Fakultas Hukum Universitas Riau, Jalan Pattimura Nomor 9 Gobah, Kel. Cinta Raja, Kec. Sail, Pekanbaru, Riau,  
Kode Pos 28127. Telp: (+62761)-22539, Fax : (+62761)-21695  
E-mail: melayunesialaw@lecturer.unri.ac.id  
Website: <https://myl.ejournal.unri.ac.id>

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## **Criminal Policy on the Online Sales of Illegal Cosmetic Products by the Supervisory Center Drug and Food in Pekanbaru**

Ully Mandasari<sup>a</sup>

<sup>a</sup> BPPOM Pekanbaru, Indonesia, Email: [ully.mandasarii@gmail.com](mailto:ully.mandasarii@gmail.com)

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### **Abstract**

This study aims to analyze legal policies, inhibiting factors in case resolution and the ideal concept of law enforcement against cases of selling illegal cosmetic products online by the BPOM Civil Servant Investigators (PPNS) in Pekanbaru. The method used in this research is a sociological descriptive. The results of this study indicate that the criminal law policy at BPOM is implemented through coordination between Police investigators and Civil Servant investigators (PPNS), by having to put aside several obstacles such as legal factors, lack of law enforcement resources, supporting facilities, and community culture, then ideal concept, enforcement of the law on the distribution of illegal cosmetics begins with making/revising comprehensive regulations regulating the distribution of cosmetics online.

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## **INTRODUCTION**

The Unitary State of the Republic of Indonesia is a rule of law, based on the 1945 Constitution in Article 1 paragraph 3 clearly explains that State power is exercised based on law (*rechtsstaat*),<sup>1</sup> not based on power (*machtsstaat*). As a rule of law, Indonesia has an obligation to uphold Human Rights (HAM) for every citizen and manifested in written legal regulations.<sup>2</sup>

Mandate of the 1945 Constitution in Article 28 H 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 the right to receive health services. As a form of human rights, every citizen that must be upheld and given special attention from the state is related to public

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<sup>1</sup>Dessy Artina, "Political Law of Gender Equality in Indonesia", *Journal of Law, University of Riau* 1, no. 1 (2010): 65.

<sup>2</sup> One of the characteristics of written law is that the regulation must be promulgated, meaning that the Laws and Regulations must be promulgated by placing them in the State Gazette of the Republic of Indonesia, Supplement to the State Gazette of the Republic of Indonesia, the State Gazette of the Republic of Indonesia, the Additional State Gazette of the Republic of Indonesia, the Regional Gazette, the Additional Regional Gazette or Regional News so that everyone knows besides that a Legislation comes into force and has binding power on the date of promulgation, unless otherwise stipulated in the Regulations concerned (more complete arrangements can be read in Articles 81 and 87 of the Law. Number 12 of 2011 concerning the Establishment of Legislation).

health services. Whether it is in the form of hospital services, issuing drug distribution permits, or supervising drug management, namely controlling the quality of drugs in circulation, monitoring the safety of circulating drugs and supervising the procurement and advertisements in circulation.

Presidential Regulation (Perpres) Number 80 of 2017 concerning the Food and Drug Supervisory Agency (BPOM). As referred to in Article 1, the task of BPOM is to carry out government tasks in the field of drug and food control in accordance with the provisions of laws and regulations. BPOM supervises drugs, medicinal ingredients, narcotics, psychotropic substances, precursors, addictive substances, traditional medicines, health supplements, cosmetics, and processed food.<sup>3</sup>

Cosmetics have been known to mankind for centuries.<sup>4</sup> Cosmetics comes from Greek, namely *kosmos* which means to decorate, organize. The definition of cosmetics is regulated in Article 1 Paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 1175/MENKES/PER/VIII/2010 concerning Cosmetics Production Permit, what is meant by cosmetics are ingredients or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips and external genital organs) or teeth and oral mucous membranes especially for cleaning, fragrance, changing appearance and or improving body odor or protecting or maintaining the body in good condition.<sup>5</sup>

The circulation of illegal cosmetics in Indonesia proves that Indonesia's defense is still weak from invading goods and drugs that endanger society. Allowing illegal cosmetics to circulate is tantamount to exposing the public to bad risks, allowing crime to flourish in society, and undermining the nation's trust, dignity and dignity in the eyes of the international community. Apart from harming consumers, it is also detrimental to the state from tax revenues.<sup>6</sup> This occurs due to factors related to the opportunity for crime, both small and large.<sup>7</sup>

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<sup>3</sup> Presidential Regulation (Perpres) Number 80 of 2017 concerning the Food and Drug Administration, State Gazette of the Republic of Indonesia of 2017 Number 80.

<sup>4</sup> Alison Haynes. *Behind a Beautiful Face: Facts About the Benefits and Risks of Cosmetics*. (Jakarta: Indonesian Consumers Foundation, 1997), 184.

<sup>5</sup> Paragraph 1 Paragraph (1) Regulation of the Minister of Health of the Republic of Indonesia Number 1175/MENKES/PER/VIII/2010 concerning Cosmetics Production Permit, State Gazette of the Republic of Indonesia Year 2010 Number 396.

<sup>6</sup> Haril Sutarjo. "Implementation of Criminal Investigation in the Field of Health in the Form of Cosmetics and Pharmaceutical Supplies Without a Circular Permit". *Journal of Legal Reform* 1, no.1 (2017): 3.

<sup>7</sup> Soerjono Soekanto. *A Sociological Review of Law Against Social Problems*. (Bandung: PT. Citra Aditya Sakti, 1989), 187.

In today's digital technology era, people are more easily exposed to various information about cosmetics through online advertisements as well as beauty bloggers and beauty vloggers. In addition, the trading pattern of products including cosmetic products has changed. Cosmetic products that were initially traded conventionally, then sold directly through multi-level marketing (MLM), are now being marketed online. This allows illegal, substandard and / or hazardous products to be circulated through online trade channels, where information and promotion of cosmetics tends to mislead consumers. As consumers, of course, the community is greatly disadvantaged by the condition of products that are not in accordance with health standards and are circulating without a distribution permit which can have a negative impact on people's lives.<sup>8</sup>

One of the facts as an indicator is the discovery of illegal cosmetics in the POM's enforcement operations throughout 2018 which started with online sales. Of the 96 cases circulating illegal cosmetics, 53 of them were illegal cosmetics distribution through online media. The results of monitoring of indicated websites of violations in 2016 were 214 websites, in 2017 there were 317 websites and in 2018 there were 684 websites. This shows that there is an increasing trend of online criminal transactions. The POM through the Deputy for Enforcement is actively conducting cyber patrols (continuous monitoring of websites that sell drugs and food online).

In 2018, BBPOM in Pekanbaru handled 5 (five) cases of violations of the sale of illegal cosmetics through online media and 6 (six) pro justitia cases related to Cosmetics. In the observation of criminal acts in the field of pharmaceutical supplies in the form of cosmetics, which the authors did at the research location, namely BBPOM in Pekanbaru, against acts against the law in the health sector in the form of pharmaceutical supplies in the form of cosmetics that do not have a distribution license applied to the elements of Article 197 of the Republic Act Indonesia Number 36 of 2009 concerning Health, namely "Every person who deliberately produces or distributes pharmaceutical preparations and / or medical devices that do not have a distribution license as referred to in Article 106 paragraph (1) shall be punished with imprisonment of up to 15 (fifteen) years and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah). "

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<sup>8</sup> Celina Tri Siwi Kristiyanti. *Consumer Protection Law*. (Jakarta: Sinar Grafika, 2009), 170.

The legal issues above, based on research reviews and observations of case handling by BBPOM investigators in Pekanbaru, related to the distribution of cosmetics that do not have a distribution license sold online are as follows:

**Table 1**  
**Number of cosmetic criminal cases without distribution permits sold online handled by BBPOM investigators in Pekanbaru in 2018 to Quarter III 2019**

No.	Year	Cosmetic case without distribution authorization	TIE cosmetic cases are sold online	P19	P21	Phase II	Trial	Decision
1	2018	6	5	2	1	1	-	1
2	2019 (up to Q III)	4	2	1	0	0	1	-
total		10	7	3	1	1	1	1

**Primary Data Sources: Central for Drug and Food Control at Pekanbaru.**

The source of the data collected is specifically related to cases in the health sector, namely pharmaceutical supplies in the form of cosmetics that do not have a distribution license that is sold online from 2018 to the third quarter of 2019. By analyzing the data above, it can be found that law enforcement efforts have not been optimal. conducted by the Food and Drug Supervisory Center in Pekanbaru, considering that there are still many distribution of pharmaceutical preparations in the form of cosmetics without distribution permits in the community, especially in online media such as on Instagram, Tokopedia, Bukalapak, Shopee, Face Book, Iprice, etc.

As described above, this is evident in BBPOM Pekanbaru that there are still many and many finding illegal cosmetic products circulating in the community. To overcome this, of course there is a criminal law policy or criminal law politics (penal police) which in essence is how criminal law can be formulated properly and provide guidance to lawmakers (legislative policy), application policy (judicial policy), and implementation of criminal law (executive policy).

The policy to tackle the crime of selling illegal cosmetics online that occurred at the BBPOM Center in Pekanbaru through the making of a criminal law related to Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of

2008 concerning Information and Electronic Transactions and Law The Republic of Indonesia Number 36 of 2009 concerning Health is an integral part of the public protection policy and is an integral part of social politics, social politics can be interpreted as all rational efforts to achieve public welfare and at the same time includes protection of the community from the dangers of using illegal cosmetics that can harm Public.

### **LEGAL POLICY AGAINST THE SALE OF ILLEGAL COSMETIC PRODUCTS ONLINE BY BBPOM CIVIL SERVANT INVESTIGATORS (PPNS) IN PEKANBARU**

The problem of overcoming crime in society, of course, cannot be separated from the context of the discussion on penal policies. Penal policy (penal policy) can be interpreted as a rational effort to tackle crime by using the means of criminal law.<sup>9</sup>The term penal policy has the same meaning as the terms criminal law policy and criminal law politics (strafrechts politiek). Therefore, the use of these three terms in the field of thought means the same thing.<sup>10</sup>

Criminal law is often seen as an *ultimum remedium* and also a residue from other legal fields, after the legal field is deemed incapable of resolving conflicts that arise in society, that is where criminal law begins to function. It is not an exaggeration if a lot of laws and regulations that are not in the field of criminal law include penalties in one of the sanctions that can be imposed. This is where the meaning of criminal is as the true *ultimum remedium*.<sup>11</sup>

The use of legal remedies, including criminal law, as an effort to overcome social problems, including in the field of law enforcement policies. In addition, because of the aim of achieving public welfare in general, this law enforcement policy is also included in the field of social policy, namely all rational efforts to achieve social welfare. As a problem that is a policy issue, the use of criminal law is not actually a must. There is no absoluteness in the field of policy, because in essence people are faced with the issue of policy assessment and selection of various alternatives.<sup>12</sup>

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<sup>9</sup> Barda Nawawi Arief. *Interest in Criminal Law Policy*. (Bandung: Citra Aditya Bhakti, 1996), 29.

<sup>10</sup> Salman Luthan. *Criminalization Policy in the Financial Sector*. (Yogyakarta: FH UII Press, 2014), 14.

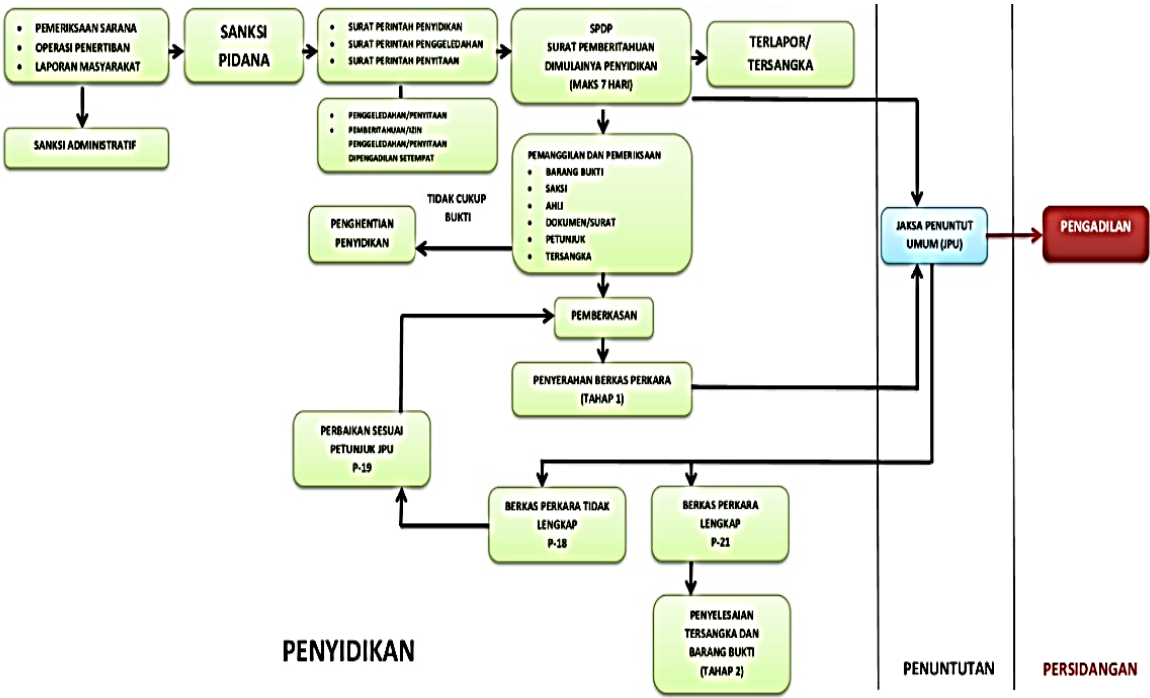
<sup>11</sup> Erdianto Effendi, "Reviewing the Policy on the Criminalization of Corruption Actors". *Riau University Journal of Law* 4, no. 2, (2014): 233.

<sup>12</sup> Barda Nawawi Arief. *Legislative Policy in Handling Crime with Prison Criminal*. (Semarang: Diponegoro University Publishing Agency, 1994), 17-18.

Criminal acts in the field of drugs and food are crimes against humanity, including selling illegal cosmetics online. Therefore, to protect the public interest from all kinds of interference as a result of misuse of information and electronic transactions, it is necessary to confirm the role of the government in preventing the distribution of illegal content by taking action to cut off access to electronic information and/or electronic documents that have illegal contents so that they cannot be accessed from the jurisdiction of Indonesia and the authority is required for investigators to request information contained in electronic system administrators for the benefit of law enforcement on crimes in the field of information technology and electronic transactions.

In tackling the criminal act of selling pharmaceuticals in the form of illegal cosmetics online in Pekanbaru, it is carried out with the coordination between investigators of the State Police of the Republic of Indonesia and investigators of civil servants (PPNS) in Pekanbaru. Whereas the form of legal policy against the sale of illegal cosmetic products online by PPNS BBPOM in Pekanbaru Based on an interview with the Head of BBPOM's Enforcement Division, it can be seen in the following chart:

**Chart 1**  
**The flow of legal policy in the settlement of the BBPOM case in Pekanbaru**



Source: Central for Drug and Food Control in Pekanbaru

From the chart above the first step is taken from the form part of the policy. The law against selling illegal cosmetic products online is preceded by the appointment of a letter of assignment by the Head of BBPOM in Pekanbaru in coordination with the Head of BBPOM's Enforcement Division. Repression activities include intelligence activities, intelligence operations, prosecution operations and filing in the framework of the investigation process. Activities to collect evidence and sufficient information on the existence of crimes in the field of Drugs and Food. If it has been fulfilled, then it will be followed up with a prosecution operation and a case title will be carried out for further follow-up whether it is carried out by Development or Pro Justitia in accordance with the prevailing laws and regulations.

In prosecution operations by the Food and Drug Supervisory Center in Pekanbaru, assistance and coordination with other stakeholders during prosecution operations such as the Republic of Indonesia National Police investigator, the Civil Service Police Unit and the Health Service in accordance with their jurisdiction, with requests for assistance can be made using a Request for Assistance repression operation. After preliminary evidence of the prosecution has been collected, an investigation is carried out by civil servant investigators of the Pekanbaru Food and Drug Control Center. If the elements of a criminal act are fulfilled and sufficient evidence is achieved, the investigation begins with the issuance of a notification letter for the commencement of investigation (SPDP) to the Riau High Prosecutor's Office through the Riau Regional Police Chief.

## **FACTOR OBSTACLES IN THE LEGAL SETTLEMENT OF CASES OF ILLEGAL ONLINE COSMETIC PRODUCT SALES BY BBPOM PPNS IN PEKANBARU**

Legal settlement is an activity to harmonize the relationship of values that are outlined in the rules that are in accordance with the applicable regulations and embody actions and attitudes as a series of final stage value descriptions, to create, maintain, and maintain peace in social life in society. Efforts to ensure that law enforcement must be carried out correctly, fairly, not arbitrarily, without abuse of power.<sup>13</sup>

Various countries around the world want legal certainty in their jurisdictions, including courts in federal states. In suits in federal courts, unless the law gives a different rule, sum claimed by plaintiff controls matter of dismissal for want of jurisdiction if claim is

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<sup>13</sup>John N Gallo, "Effective Law-Enforcement Techniques For Reducing Crime", *Journal Of Criminal Law And Criminology, Northwestern University School Of Law*, 88 J. Crim. L. & Criminology 1475, Summer 1998.

apparently make in good faith, and it must appear to a legal certainty that claim is really for less than jurisdiction to justify dismissal.<sup>14</sup> The realization of legal certainty in the jurisdiction of a country will bring about justice.

Every legal settlement process for a criminal act is certainly inseparable from everything that is inhibiting its implementation, and inhibiting factors in the legal settlement of cases of selling illegal cosmetic products online, As the theory previously described, according to Soerjono Soekanto, these factors is as follows:<sup>15</sup>

1. The legal factor itself, in which it will be limited to the law only. The Indonesian state is based on law (Rechtsaat), not based on mere power (Machtstaat). This is clearly stated in the explanation of the 1945 Constitution. The principle that Indonesia is a country based on law can be put forward two thoughts, namely, first that the highest power in the Indonesian State is the law made by the people through their representatives in the legislative body. So a rule of law as a further incarnation of the understanding of sovereignty. Second, that the state government system or state control methods require power (power / macht), but there is no power in Indonesia that is not based on law.<sup>16</sup>
2. Law enforcement factors, namely the parties forming and implementing laws.
3. Factor means or facilities that support law enforcement
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity, and taste based on human initiative in social life

## **THE IDEAL FORM OF LAW ENFORCEMENT AGAINST CASES OF SELLING ILLEGAL COSMETIC PRODUCTS ONLINE BY PPNS BBPOM IN PEKANBARU**

The ideal form of law enforcement against cases of selling illegal cosmetic products online is when the five factors as described above can be overcome and put in the framework of a law enforcement system. These five factors are closely related because the essence of law

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<sup>14</sup>St. Paul Mercury Indem, "Supreme Court of the United States". Westlaw Journal, US Government Works.(1938) <https://web2.westlaw.com/>, accessed on 05 June 2020 at 08.12 WIB.

<sup>15</sup>Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: Raja Grafindo Persada, 2005), 5.

<sup>16</sup>Emilda Firdaus, "Synchronizing the Contents of Law Number 32 Year 2004 concerning Regional Government with the 1945 Constitution Post Amendments in Regional Head Elections". *Constitutional Journal Faculty of La, Riau University* 3, no. 2 (2010): 79.



enforcement reflects the effectiveness of law enforcement. The ideal form of law enforcement against cases of selling illegal cosmetic products online at the Center for Drug and Food Control in Pekanbaru include:

1. There is a comprehensive regulation that regulates the distribution of cosmetics online so that cosmetic products circulating online meet the criteria of safety, quality, and efficacy and it is hoped that a healthy business climate can be created to encourage economic growth. This regulation contains a rule that business actors who will distribute/sell cosmetics online are required to have a certificate from the POM so that it is hoped that business actors who will sell cosmetics online first get technical guidance through communication, information and education; and/or assistance in order to comply with standards and/or requirements for outstanding cosmetic products/advertisements.
2. POM is improving the capacity of human resources and information technology infrastructure so that it is expected to support the optimization of law enforcement against the online distribution of illegal cosmetics. For example the technology field that has the ability to detect explosive, hazardous and toxic chemicals, and this unit also has personnel with sufficient IT skills and equipment to monitor online media.
3. POM is expected to increase synergy with cross-sectoral, business actors and related stakeholders such as collaboration with the Association of Indonesian Express, Postal and Logistics Service Companies (Asperindo), idEA, as well as marketplaces such as Tokopedia, Bukalapak, Gojek, Grab, halodoc and klikDokter so that it is hoped that they will also take part in supervision and law enforcement by conducting independent monitoring of products that are promoted and distributed on their platforms.
4. POM must work together and equalize perceptions with law enforcement agencies and other stakeholders to strengthen enforcement and law enforcement efforts against cosmetic crimes. One of them is the collaboration between the POM RI with the ministry of communication and information and other stakeholders in making regulations so that the implementation of e-commerce in partnership with cosmetic sellers using the online sales method can only be done with cosmetics sellers who have been certified at the POM RI.

5. Law enforcers have information sharing media which is expected to be able to produce new strategies in law enforcement efforts for crimes in the field of drugs and food, especially cosmetics.
6. There is easy access from PPNS Badan POM RI in accessing products sold online, whether through e-commerce organizers or other online sales such as the use of social media such as Facebook, Instagram, etc. So that investigators are very quick to find out whether the products sold online are registered or not at the POM RI.
7. There is convenience for the follow-up of the PPNS of the POM RI in providing recommendations to the implementation of e-commerce or other online sales media to suspend or close accounts selling illegal or dangerous cosmetic products that are done online.
8. There needs to be a revision of Article 189 of Law 36 of 2009 concerning health in order to increase the authority of the POM PPNS so that they can detain suspects, get financial access for suspects directly to the bank and PPNS POM RI becomes one of the investigators who are excluded in terms of access to customer financial conditions as a bank secret.

## **CONCLUSION**

In tackling the criminal act of selling pharmaceuticals in the form of illegal cosmetics online, in a criminal law policy in the field of prosecution, the Center for Drug and Food Control in Pekanbaru is carried out in coordination between investigators of the State Police of the Republic of Indonesia and civil servant investigators (PPNS) Balai Besar Food and Drug Control in Pekanbaru based on applicable regulations.

Factor Obstacles in legal settlement of cases of selling illegal cosmetic products online by PPNS bbpom in Pekanbaru are starting from legal factors, law enforcement factors, Factors of means or facilities that support law enforcement, community factors to cultural factors.

The ideal form of law enforcement for the distribution of pharmaceutical preparations (cosmetics) without a distribution permit from BPOM RI is to commence comprehensive regulations governing the distribution of cosmetics online, increase human resource capacity, need to increase synergy, equate perceptions with law enforcement

agencies and other stakeholders, law enforcers have information sharing media, It is easy to follow up from the PPNS Badan POM RI, to the need for revisions to laws and regulations.

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