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**Consumer Legal Protection Against The Use Of Overclaims In Skincare Product Advertisements In Indonesia**

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***ABSTRACT***

*This research is based on the legal protection of consumers on overclaiming information about skincare products in advertising that can harm consumers. This research discusses legal protection for consumers over the occurrence of overclaims in skincare marketing and the responsibility for businesses that still use the word overclaim in product claim information. The research method used is normative research with statutory and conceptual approaches. Data collection is done by document study and interviews. The research data was analyzed descriptively and qualitatively. The results of this study indicate that overclaiming information results in dishonest, non-transparent, non-objective, untrue, and misleading information, which results in losses to consumers (material and immaterial losses, namely lost money, wasted time, skin damage, and emotional disappointment) and is a prohibited business practice because it violates several written regulations. Consumers who suffer losses need to be held accountable by business actors as explained in Articles 19-20 of the GCPL, Article 1365 of the KUHPer, and BPOM Regulation No. 3 of 2022, besides business actors who still violate can be subject to administrative sanctions and criminal sanctions.*

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## PRELIMINARY

Some people are not only fond of cosmetics as a factor supporting individual appearance, but people also like to take care of facial and body skin to maintain healthy facial and body skin. Currently, the wider community is aware of how important it is to take care of themselves, especially skin care. Skin care is not only favored by women but even men have also participated in treatment.[1]

In doing skin care can be done at a beauty clinic or at a specialist doctor, but doing treatment at a beauty clinic or at a specialist doctor can be said to have a relatively expensive

[1] Sitti Ramlah, et.al. (2021). Sistem Pakar Penentuan Komposisi Skincare Berdasarkan Karakteristik Jenis Kulit Menggunakan Metode Certainty Factor. Buletin Sistem Informasi dan Teknologi Islam. 2(1), 36-42

cost so many people do treatment independently using skincare products. This is supported by many brands of skincare products and many types of skincare, especially facial skin that can be adjusted to skin types, such as dry skin or dry skin, oily skin or oily skin, combination skin or combination skin, and sensitive skin or sensitive skin and can be adjusted based on each facial skin problem such as acne skin problems, brightening, maintaining skin moisture, and others.[2]

The use of skincare products is intended for daily use to maintain skin health and can provide nutrients to the skin. The use of skincare can be used in the morning and at night, many types of skincare such as facial moisturizer or moisturizer, facial cleansing liquid or micellar water, facial wash soap, toner, serum, morning cream or day cream, night cream or night cream, sunscreen or sunscreen, eye cream or eve 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 at least 15 years and over, at least 20 years and over, or there is skincare that can be used at all ages. The use of skincare in Indonesia can be said to increase from year to year, the increase in interest in skincare products is evidenced by an increase in product sales in the beauty industry in 2023 by 4.75%.[3] The increase in sales of products in the beauty industry (including skincare products) proves that the use of skincare has become a primary need that is, the right to correct, clear and honest information about the conditions and guarantees of goods and/or services.

Providing correct, clear, and honest information is one of the obligations of business actors and the rights that must be fulfilled by business actors to consumers because product information in advertising is a form of promise from business actors to their consumers. The increasing business of skincare products has resulted in increased competition for skincare products, this has resulted in business actors carrying out various strategies in advertising their skincare products.[4]

One of the strategies for advertising skincare products that is often found in e-commerce is overclaiming skincare products. The definition of skincare product overclaim is information related to skincare product claims in advertising made excessively.[5] The implementation of overclaiming skincare products is used as a marketing strategy even though the marketing is done by mis/eading or deceiving consumers. The purpose of this marketing strategy is used to make consumers more interested in the products offered and to captivate consumers so that consumers feel a desire to own the product.

The inclusion of claims in a skincare is required to fulfill the elements of objectivity, truth, and also not misleading. In addition, in the inclusion of claims, the ingredients used must be listed in the formula. Article 4 letter c of the GCPL Law explains that consumers have the right to correct, clear, and honest information regarding the conditions and guarantees of goods and / or services.[6]

In the appendix of the Food and Drug Supervisory Agency Regulation Number 3 Year 2016 on Technical Guidelines for Supervision of Cosmetics Advertisement and Number 3 Year 2022 on Technical Requirements for Cosmetics Claims, there are restrictions on claims that are not permitted or do not meet the provisions, among others; eliminate acne; reduce

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[2] Kathleen Febyane and Baroroh Lestari. (2022). Pengaruh Iklan Media Sosial dan Brand Image Terhadap Minat Beli Produk Kosmetik Make Over. Jurnal Aplikasi Bisnis. 8(2), 151-156

[3] Hanna Syahidah. 2023. Bagaimana Laju Industri Kecantikan Saat Ini?. Cited May 04, 2024, From https://lodi.id/2023/07/06/bagaimana-laju-industri-kecantikan-saat-ini/

[4] Bambang S. Subagyono, et.al. (2020). *Perlindungan Konsumen Muslim Atas Produk Halal*. Surabaya: Jakad Media Publishing, 29

[5] Dedi Harianto. (2010). *Legal Protection for Consumers Against Misleading Advertisements*, Bogor: Ghalia Indonesia, 3.

[6] Fifi T. Romadhiyah, et.al. (2024). Perlindungan Hukum bagi Konsumen Penyalahgunaan Shopee Paylater oleh Pihak Ketiga. Pekalongan: Penerbit NEM. 57

scars; make the skin smoother; tighten the face; free of blackheads; whiten the face; make the skin supple; prevent/reduce/stop/slow down/inhibit aging; etc.[7]

Looking directly at the marketing of skincare sales in e-commerce, business actors make these claims as advertising sentences to provide information on the advantages or benefits of a product so as to make consumers to make purchases in the hope that these consumers get the appropriate results as promised in the product marketing advertisement.[8]

The use of overclaiming skincare content sentences is often found in advertising skincare products. Information on the content of skincare products written on the labeling on the product packaging is written in order from the largest content to the smallest content, except for cosmetic ingredients with levels of less than 1% and/or coloring ingredients can be written out of sequence as explained in the attachment to the Supervisory Agency Regulation Number 30 of 2020 concerning Technical Requirements for Cosmetics Marking. To know the content in skincare products, the phenoxyvethanol ingredient is used as a reference, based on the provisions that have been regulated, the phenoxyethanol content is only allowed a maximum of 1%.

Advertising circulation by The Originote brand in 2022 of its products The Originote Hyalucera Moisturizer provides claim information that the facial skin moisturizer has 2% ceramide content, but when reviewing the complete ingredients on the product label, the ceramide ingredient is written after the phenoxyethanol ingredient, it can be concluded that the ceramide content in the product is less than 1%.[9] In addition, there is the Herbaay brand for its product 2% Salicyl Acid Anti Acne Serum which provides information claiming to contain 2% salicyl Acid in product advertisements. But, reviewing the complete ingredients on the product label, salicyl acid is written after the phenoxyethanol ingredient. It can be said that the salicy/ acid used is less than 1%.

Many business actors still claim information containing overclaimed words or words that are excessive as their marketing strategy and result in consumers suffering losses. This research aims to analyze the legal protection against overclaims in skincare marketing and determine the responsibility of businesses that still use overclaims as their marketing strategy. Based on the background above, the authors are interested in conducting this research under the title "Consumer Legal Protection against the Use of Overclaim Words in Skincare Product Advertisements in Indonesia".

## METHOD

This type of research is normative legal research. This research uses a type of normative legal research because in studying this research by provides arguments or opinions. The approaches used in this research are the statute approach and conceptual approach. The statute approach is interpreted as the researcher examining all laws and regulations used to find answers to research problems.[10]

This research requires qualitative data sourced from primary and secondary data. Secondary data is sourced from primary legal materials and secondary legal materials.[11] Secondary data sources in this research such as legal regulations that apply and are recognized in Indonesia such as the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, BPOM Regulation Number 3 of 2016 concerning Technical Guidelines for Supervision of Cosmetics Advertising, and others as well as articles, journals, thesis research

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[7] Dian S. Fauzela, et.al. (2023). Perlindungan Hukum Bagi Konsumen Terhadap Produk Kosmetik yang Mengandung Bahan Berbahaya dalam Jual Beli Online (E-Commerce). Jurnal Kelitbangan. 11(1), 1-14
[8] Juanita T. Putri. (2024). Advertising Regulations in Consumer Protection Law (Comparison of Consumer Protection Law in Indonesia and Thailand). Jurnal Ilmu Sosial dan Pendidikan (JISIP). 8 (1). 346-445
[9] Pradnya C. Prameswari and Ni P. Purwanti. (2023). Perlindungan Hukum Konsumen Atas Overclaim Kandungan Pada Produk Water Gel Moisturizer the Originote. Jurnal Kertha Desa. 11 (9), 3254-3256
[10] Moh. Syamsudin. (2021). *Proficient in Researching Legal Issues,* Jakarta: Kencana, 87.
[11] Ifit Novita Sari, et.al. (2022). *Metode Penelitian Kualitatif*. Malang: Unisma Press, 21

results, theses, dissertations, books, and others whose research is related to the topic under study.

In analyzing the data of this research, the author performs the stages of inventory, identification, classification, and systematically describes them in a descriptive-qualitative manner. The use of descriptive-qualitative to obtain an overview of implementing the Consumer Protection Law in the overclaim marketing of skin care products in E-Commerce. After that, the analysis and systematic description of events is factual and accurate about the facts under study.

## RESULT AND DISCUSSION

### Legal Protection Against the Occurrence of Overclaims in Skincare Advertisement

In terminology, buying and selling is an agreement or agreement that binds the seller and the buyer. Article 1457 of the KUHPer explains that buying and selling is an agreement by which one party binds himself to deliver an object and the other party to pay the promised price. In a sale and purchase agreement, if there is an agreement, the sale and purchase agreement is binding on both parties. The sale and purchase agreement has a consensual obligator character. The agreement gives birth to obligations and rights for the parties, the seller is obliged to submit the object of sale and purchase in accordance with the agreed price and the buyer is obliged to submit money or objects equivalent in value to the object of sale and purchase.[12]

E-commerce changes the way consumers transact with the help of the internet, e-commerce trade has the ability to penetrate boundaries and provide greater access to consumers to a variety of goods or services at relatively cheaper prices. Article 1 point 24 of the Trade Law explains that trade through electronic systems is trade whose transactions are carried out through a series of electronic devices and procedures. In the application of e-commerce has significant benefits such as speed of deployment.

The inclusion of information is an important aspect before consumers finally make a purchase, the truth and transparency of information regarding the ingredients and claims contained in skincare products provided by business actors for their products is important information that must be conveyed. If business actors include overclaiming skincare claim information as a form of marketing strategy, consumers can experience material and immaterial losses, namely lost money, wasted time, skin damage, and emotional disappointment.[13]

The inclusion of skincare information with the word overclaim can cause consumers to suffer losses, both material and immaterial. Material losses are felt by consumers, such as spending money on skincare products that do not deliver the promised benefits or results. In addition, consumers may incur additional costs for skin care to overcome the negative impacts arising from the use of skin care products that do not match their claims. Immaterial losses are felt by consumers who suffer losses, such as dissatisfaction or disappointment due to unfulfilled promises in advertisements by business actors.[14]

Inclusion of skincare claims information containing the word overclaim in advertising as a form of the business marketing strategy by providing false or false information about goods and/or services so as not to fulfill the promises as stated in the advertisement to obtain personal or group benefits in a way that is contrary to the law or laws and regulations, this will cause harm to consumers.

[12] I Gusti N. Muliarta. (2022). The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary. Community Service Journal of Law. 1 (1), 44-48

[13] Samson A. Ajayi, et.al. (2023). Sustainable Sourcing of Organic Skincare Ingredients: A Critical Analysis of Ethical Concerns and Environmental Implications. Asian Journal of Advanced Research and Reports, 18(1), 65-91

[14] Arpan K. Kar, et.al. (2022). How Does Misinformation and Capricious Opinions Impact the Supply Chain-A Study on the Impacts During the Pandemic?. Ann Oper Res. 7(1), 1-22

The establishment of laws and regulations can explicitly protect the interests and rights of consumers from various kinds of consumer problems or disputes that may arise in interactions with business actors resulting in consumers suffering losses. Article 1 point 1 of the GCPL year 1999 explains that consumer protection is all efforts that ensure legal certainty to protect consumers.

Authorities such as BPOM have regulations related to advertisements and claims used by businesses in advertising their products. NA-DFC Regulation No. 3 Year 2022 on Technical Requirements for Cosmetic Claims is a juridical basis that can be used as a guideline for business actors related to the inclusion of cosmetic claims, such as determining claims (permitted and non-permitted claims) according to the content of ingredients in cosmetics or test data conducted on the formula.[15]

Article 3 paragraph (2) of BPOM Regulation No. 3 Year 2022 on Technical Requirements for Cosmetics Claims explains that claims on the marking and claims in advertisements as referred to in paragraph (1) must meet the following criteria

a. Legal compliance
b. The truth
c. Honesty
d. Justice
e. Demonstrable
f. Clear and easy to understand, and
g. It should not be stated as if it is a cure or aims to prevent a disease.

Business actors are not only limited to producers who produce, produce goods and / or services, and successfully sell their goods and / or services. A business actor must always prioritize honesty and openness, the inclusion of skincare claim information that contains the word overclaim in advertising clearly does not meet the criteria of Article 3 of BPOM Regulation Number 32 of 2021 because it results in misleading consumers by giving them the wrong information is dishonest, inaccurate, and irresponsible. In addition, the inclusion of overclaiming skincare information in advertising skincare products does not provide information by the existing reality.[16]

Based on the description of the facts, business actors have provided information on skincare products with overclaim narratives in advertising, resulting in these advertisements containing false advertising and not meeting consumer information standards in product sales. The inclusion of overclaiming skincare claim information in advertising results in contradiction with applicable regulations, such as the fulfillment of the right to information to consumers which is regulated in Article 4 letter c and Article 7 letter b of the GCPL Law, Article 3 of BPOM Regulation Number 32 of 2021, and related to the technical requirements of claims described in Article 3 paragraph (2) of BPOM Regulation Number 3 of 2022.[17]

The government has a responsibility in fostering the implementation of consumer protection, none other than to empower consumers to obtain their rights. There are concerns that business actors with their economic principles can make consumers suffer. The empowerment of consumers in accordance with the principles of justice and balance must not harm the interests of business actors. This is not intended to kill the business of business actors, but through consumer protection can encourage a healthy business climate

[15] Siti Khodijah, et.al. (2021). The Role of BPOM in the Circulation of Cosmetics with Fake Distribution Permission. Estudiente Law Journal, 3 (1), 113-128
[16] Smitha Poulose. (2020). Misleading Advertisements and Its Impact on Consumer Buying Behaviour with reference to Skin Care Products. Journal of Critical Reviews. 7 (4), 1639-1634
[17] BPOM. 2024. BPOM Persiapkan Pasukan Hadapi Anomali Informasi. Cited May 04, 2024, From https://www.pom.go.id/berita/bpom-persiapkan-pasukan-hadapi-anomali-informasi

and the existance of companies that are resilient in the face of competition through the provision of quality goods and/or services.[18]

Government Regulation No. 58/2001 on the Development and Supervision of the Implementation of Consumer Protection places advertising as one of the activities that must be fostered by the government in order to create a healthy business climate between business actors and consumers. Placement of production activities, along with offering, promotion, and advertising activities into a unity of action. It can be interpreted that the obligations and responsibilities of business actors in carrying out business activities are not only limited to maintaining the quality or quality of goods and / or services produced, but continue to rhe process of delivering information through advertising promotional activities. This has the consequence that the information conveyed through promotional activities and advertisements must be adjusted to the actual condition of the goods and/or services produced.

However, in fact, the inclusion of overclaiming skincare claim information is an unauthorized practice and a violation of the law. There are still many business actors who include information in advertisements that are not adjusted to the actual condition of the goods and / or services produced. As a result of overclaiming skincare claim information, there are indications that consumers do not get legal protection, and regulatory authorities may not have sufficient resources or ability to effectively enforce regulations related to overclaims. This can make businesses that violate the rules feel that they can avoid legal consequences.

The government realizes that the implementation of laws and regulations relating to consumer protection is still weak, so it is necessary to involve the role of the community and the Non-Governmental Consumer Protection Agency or LPKSM to work together with the government to carry out intensive supervision of goods and/or service that deviate from applicable laws and regulations and can endanger consumers.

**The Responsibility of a Businesses Actor with Product Overclaims as a Marketing Strategy**

The GCPL Law explicitly explains the prohibited acts for business actors in circulating and trading the goods and/or services they produce. This is intended so that business actors do not violate the rights that should be obtained by consumers or even tend to harm consumers for the goods and / or services they produce. With the existence of regulations related to actions prohibited by business actors, consumers can breathe a sigh of relief because consumers can feel protected and get certainty from the Law.

Regarding the actions of business actors that are prohibited in the GCPL Law. Responsibility is an action taken by a person as a form of awareness of their obligations in bearing the consequences of their actions. In running their business, business actors must dare to bear the risk of everything that becomes their responsibility because of the actions they take. Business actors are obliged to provide compensation to consumers, when there are consumers who feel harmed as a result of buying, using and consuming goods and / or services that are distributed and traded.[19]

Compensation for losses suffered by consumers essentially serves as a restoration of their rights that have been violated, recovery of material and immaterial losses they have suffered, restoration to the original state. Losses suffered by consumers as a result of the use of consumer goods are classified into:

1. Material loss is in the form of loss of goods purchased.
2. Immaterial losses are losses that endanger the health and/or life of consumers.

[18] Manajemen UMA. 2021. Benefits of Consumer Protection Law for Business Actors. Cited May 04, 2024, From https://manajemen.uma.ac.id/2021/01/benefits-of-consumer-protection-law-for-business-actors/

[19] Cintya T. Sitorus. (2024). Legal Protection of Consumers Who Experience Skin Damage Due to the Use of Illegal Skin Whitening Products Based on Law No. 8 of 1999 concerning Consumer Protection. De Lega Lata: Jurnal Ilmu Hukum. 9 (1), 95-104

The basic thing for liability is the existence of errors or risks that arise in every legal event occurs in the association of community life. Business actors as product producers must ensure that the products produced are safe enough for consumption and of high quality.[20] Therefore, if in the future complaints arise about the product and result in consumer losses, the business actor must be responsible.

Based on the fact that there are a lot of business actors are still not responsible for the use of overclaim sentences in advertising skincare products that cause consumers to suffer losses. The unawareness of business actors to be responsible for what they do is because business actors consider the use of overclaim sentences to be a normal thing to use under the pretext of a form of marketing strategy for their products. The responsibility of the perpetrator for products that harm consumers is very noteworthy and needs attention from the authorized government in order to achieve consumer satisfaction. If there is a loss to consumers caused by business actors, it is appropriate for business actors to compensate consumers.[21]

According to Hans W. Micklitz, consumer protection can broadly be pursued with two policy models, namely complementary policies, namely obligations that require businesses to provide adequate information to consumers (right to information) and compensatory policies, namely policies that contain protection of consumers' economic interests (right to safety and health).

In providing responsibility for overclaims in advertising skincare products that are circulated and traded by the perpetrator business, then the business actor must be responsible for the products that they produced and traded. Liability for this is based on the principles of strict liability and product liability. In absolute liability, the consumer has no obligation to prove the fault of the business actor as a basis for payment of compensation in a lawsuit or claim.[22]

This is because in absolute responsibility, the business actor is immediately deemed guilty and the element of fault is directly imposed on the business actor to prove his innocence. The basis for the use of absolute liability in consumer protection is by reviewing the meaning of consumer protection which means providing convenience for consumers in maintaining and or obtaining what is their right.

Product liability is defined as the direct civil liability or strict liability of the business actor for losses received by consumers as a result of using the products they produce. In this case, it is in line with Article 19 of GCPL that business actors are responsible for providing compensation for damage, pollution and/or consumer losses caused by consuming goods produced or traded. product liability arises due to losses suffered by the buyer because business actors for the products they bring into circulation cause or cause losses due to defects inherent in the product.[23]

However, in the development of product liability on business actors, it is not only limited to the existence of product defects, but also includes responsibility for the incompatibility of promises contained in advertisements with the actual condition of the products traded by business actors. The background of this development is the idea of being a continuation of the production process, so it is appropriate that the promises contained in the advertisement are adjusted to the original condition of the product produced. The

[20] Ernesto J. Tjahjono, et.al. (2021). Product Quality and Brand Image Towards Customers' Satisfaction Through Purchase Decision Of Wardah Cosmetic Products in Surabaya. Journal of Entrepreneurship & Business. 2 (1), 56-70

[21] Sherlita R. Khairina, et.al. (2023). Perlindungan Konsumen Terhadap Kosmetik Berbahaya. *Journal Beauty and Cosmetology (JBC).* 5(1), 1-5

[22] Leona Triyani and Liya S. Mulya. (2023). Perlindungan Hukum bagi Konsumen terhadap Produk Skincare dalam Kemasan Sampel (Share in Jar) di Onlineshop berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen. Law Studies. 3 (1), 232 - 237

[23] Deviana Yuanitasari, et.al. (2023). A comparison study of strict liability principles implementation for the product liability within Indonesian consumer protection law between Indonesia and United States of America law. Cogent Social Sciences, 9(2), 1-18

correctness of the inclusion of skincare product information in advertising provides benefits in providing education to consumers regarding skincare products. The liability of business actors has been explained in the regulations in force in Indonesia.

While article 1365 of the Civil Code states that every unlawful act that causes damage to another person obliges the person who caused the damage through his fault to compensate for the damage. Article 1366 of the Civil Code states that every person is liable, not only for damages caused by his actions but also for damages caused by his negligence or recklessness. Article 1367 of the Civil Code states that a person is liable not only for damages caused by his acts but also for damages caused by the acts of those for whom they are responsible or by goods under his supervision.[24]

The procedure for the imposition of administrative sanctions as referred to in Article 5 shall be carried out by the Regulation of the Food and Drug Supervisory Agency which regulates the follow-up of the results of supervision of traditional medicines, quasi-medicines, health supplements, and cosmetics.[25] Article 60 of GCPL explains that the consumer dispute settlement body has the authority to impose administrative sanctions on business actors who violate Article 19 paragraph (2) and paragraph (3), Article 20, Article 25, and Article 26, sanctions for business actors with administrative sanctions in the form of compensation at a maximum of Rp.200,000,000.00 (two hundred million rupiah).

## CLOSING

Legal protection to consumers related to the problem of skincare product claim information containing the word overclaim in advertising produces information that is dishonest, not transparent, not objective, not true and misleading. Therefore, the act of providing claim information with the word overclaim results in consumers suffering losses. Providing skincare product claim information containing the word overclaim in advertising is certainly contrary to Article 4 letter c of the GCPL, Article 7 letter b of the GCPL, Article 3 of BPOM Regulation Number 32 of 2021 concerning Supervision of Cosmetics Advertising, and the technical requirements of claims described in Article 3 paragraph (2) of BPOM Regulation Number 3 of 2022. In addition, there are weaknesses in guidance and supervision by the government, therefore the involvement of the role of the community and LPKSM is still needed.

Until now, business actors still have not carried out responsibility for consumers who suffer losses. Consumers suffer losses due to business actors who do not care about consumer rights. Efforts to hold businesses responsible for the use of overclaims are based on the principles of strict liability and product liability. The liability of business actors has been explained in Article 19 of GCPL, Article 20 of GCPL, Article 60 of GCPL, Article 61 of GCPL, Article 1365 of KUHPer, and BPOM Regulation Number 3 Year 2022 on Technical Requirements for Cosmetics Claims which explains the sanctions for violating claims on marking and claims on advertisements.

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