



From Regulation to Consumer Safety: Unpacking the Legal Dimensions of 'Share-in-Jar' Cosmetic Sales

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Abstract

Repackaging products in share-in-jar is a process of dividing the contents of a product from its original size into several smaller containers. Such products are popular amongst consumers who are looking for product samples to try on before buying the actual product that tends to be costly. However, several business actors are selling share-in-jar products that do not conform with the applicable law, namely by failing to comply with the sanitary and hygiene requirements during the repackaging process and not providing detailed product information, therefore, resulting in consumer losses. In light of this, a controversy arose concerning legal protection for consumers who suffer losses as a result of the sale of cosmetics in share-in-jar and the legal liability of business actors for the losses incurred by consumers who use share in jar cosmetics. The objective of this research is to look into the consumer protection policies that develop as a result of violations of the Indonesian Law, as well as the legal culpability of business actors for infringing on consumers' rights while buying and selling cosmetics.

Keywords: Repackaging; Cosmetics; Consumer Protection

A. Introduction

In recent years, it is common for people to perform business transactions on the internet. Many major and even minor business players exchange goods and services via digital platforms, social media, and e-commerce. Following Rudiantara's statement, the Chairman of the Board of Trustees of the Indonesian e-Commerce Association (idEA), he assesses that e-commerce will still be a pillar of the Indonesian economy in 2023 and is predicted to reach IDR 700 trillion.¹ Cosmetic products, which are relatively popular amongst consumers, are one

¹ Feni Freycinetia Fitriani, "Transaksi e-Commerce Indonesia Diprediksi Tembus Rp700 Triliun pada 2023," *Bisnis*, January 23, 2023, <https://ekonomi.bisnis.com/read/20230123/9/1620626/transaksi-e-commerce-indonesia-diprediksi-tembus-rp700-triliun-pada-2023>.

of the items that are traded online.² Every day, more beauty products, including skincare and cosmetics, are being manufactured.

The beauty industry in Indonesia is said to be continuously advancing since the Covid-19 pandemic and is projected to continue to develop in the upcoming years.³ The National Agency of Drug and Food Control (BPOM) in 2022 assessed that cosmetics are a product category that has received the most distribution permit (*izin edar*) in Indonesia in the last five years with a total of 411,410 products.⁴ It is also noted that the number of companies operating in the beauty industry have grown by up to 20.6 % from 2021, that is from 819 to 913 in July 2022.⁵

It is important to highlight that the significant growth of 83% in the beauty industry was dominated by small and medium enterprises or also known as Micro, Small, and Medium Enterprises/*Usaha Mikro, Kecil, dan Menengah* (UMKM).⁶ According to the Chairperson of the Indonesian Cosmetics Companies Association (*Perkosmi*) of West Java, Michael Simon, the trend of cosmetics usage in 2023 is said to be increasing.⁷ The Beauty & Personal Care industry is predicted to generate \$8.09 billion in sales in 2023, with an annual growth rate of 4.59% (2023-2028).⁸ Furthermore, the Personal Care category is the market's largest section, with a market volume of US\$3.41 billion in 2023.⁹

Unfortunately, despite such outstanding quantitative data on how the beauty industry in Indonesia is currently thriving and its compatibility, consumers often have doubts about the quality of the cosmetics, as buyers can only see the products through their smartphones and the

² Monier, Erza Bernades, Denizar Vianna Araújo, Ana Emilia F Oliveira, et al., "Student Evaluation of Distance Learning for Healthcare Professionals," *Telemed J E Health* 25, no. 6 (2019): 485-491, <https://doi.org/10.1089/tmj.2018.0065>.

³ Linda Hasibuan, "Industri Kecantikan Tahan Krisis, Laris Manis Meski Pandemi," *CNBC Indonesia*, November 4, 2022, <https://www.cnbcindonesia.com/lifestyle/20221104104902-33-385138/industri-kecantikan-tahan-krisis-laris-manis-meski-pandemi>.

⁴ Atiek Ishlahiyah Al Hamasy, "Industri Kecantikan Tanah Air Punya Prospek Bagus," *Kompas*, October 25, 2022, <https://www.kompas.id/baca/ekonomi/2022/10/25/bpom-menilai-industri-kosmetik-akan-tetap-berkembang>.

⁵ *Ibid.*

⁶ Linda Hasibuan, "Industri Kecantikan Tahan Krisis".

⁷ Agus Yulianto, "Bahas Trend Kosmetik 2023, Perusahaan Kosmetik Jabar Gelar Pertemuan Anggota," *Republika*, March 17, 2023, <https://rejabar.republika.co.id/berita/rrnt3a396/bahas-trend-kosmetik-2023-perusahaan-kosmetik-jabar-gelar-pertemuan-anggota>.

⁸ "Beauty and Personal Care – Indonesia," Statista, accessed September 7, 2023, <https://www.statista.com/outlook/cmo/beauty-personal-care/indonesia>.

⁹ *Ibid.*

ability to touch and feel the product is no longer feasible. Consumers are struggling to assure the compatibility of the products that they buy.¹⁰ For that reason, many business actors utilize this situation to sell cosmetics by repackaging them into smaller containers, generally known as 'share-in jar' or 'share-in-bottle'.¹¹

Based on the description of the introduction above, this study aims to first, analyze and understand the legal regime concerning 'share-in-jar' under the prevailing regulations. Secondly, this paper will also highlight the legal consequences for business actors who violate the prevailing laws even after the regulations have been enforced thus bearing legal liabilities. This research will be conducted with a normative approach which will be carried out through analyzing and examining the positive laws in Indonesia.

B. Discussion

B. 1. Legal Protection for Consumers when Buying Cosmetic Products in Container Packaging (Share-in-Jar) under BPOM Regulations

In the realm of consumer rights and product safety, legal protection for consumers when purchasing cosmetic products in container packaging, particularly share-in-jar containers, plays a crucial role in ensuring their well-being. The use of container packaging, such as share-in-jar, has become prevalent in the cosmetics industry due to its convenience and aesthetic appeal. However, this type of packaging raises concerns regarding product contamination, shelf life, and potential health risks. Therefore, regulatory frameworks and consumer protection laws have been established to safeguard consumers' interests, guarantee product quality, and promote transparency in the cosmetic industry. This introduction delves into the legal measures that aim to protect consumers when buying cosmetic products in container packaging, shedding light on the responsibilities of manufacturers, the role of regulatory authorities, and the rights and recourse available to consumers in case of adverse incidents.

¹⁰ Maria Gomez Albrecht, Mark Green, and Linda Hoffman, *Principles of Marketing* (Houston: OpenStax, 2023), unit 10.5 Stages in the Consumer Adoption Process for New Products, <https://openstax.org/books/principles-marketing/pages/10-5-stages-in-the-consumer-adoption-process-for-new-products>.

¹¹ Saraccil, "Pertimbangkan Hal Ini Sebelum Beli Skincare Share in Jar!," *Femaledaily*, March 9, 2021, <https://editorial.femaledaily.com/blog/2021/03/09/pertimbangkan-hal-ini-sebelum-beli-skincare-share-in-jar>.



Figure 1 : Indonesian Beauty Industry Market Share in USD¹²

Reportedly, local cosmetic brands' competitiveness in marketing sales and strategies has increased, allowing them to go head-to-head with international cosmetics companies. Populix, for instance, has conducted a survey titled "Unveiling Indonesian Beauty & Dietary Lifestyle" with 500 female respondents in August 2022, and the result shows that local brands were favored by 54% over international brands.¹³ The respondents gave reasons on why they prefer local brands over international brands which is due to its affordable prices and the fact that the quality of domestic products seems to be able to compete with foreign or international products.¹⁴

In light of the aforementioned statistics, it is apparent that the Indonesian beauty industry, currently dominated by UMKM, is consistently developing and strengthening the nation's economy. As a concrete illustration, pursuant to Tokopedia's sales report for September 2022 by Kompas Market Insight, beauty care products took first place with total sales of IDR 79 billion.¹⁵

¹² Atiek Ishlahiyah Al Hamasy, "Industri Kecantikan Tanah Air".

¹³ Ari Handoyo, "Perkembangan Industri Kecantikan, Part 1," *Daya*, April 24, 2023, <https://www.daya.id/usaha/artikel-daya/pengembangan-diri/perkembangan-industri-kecantikan-bagian-1>.

¹⁴ *Ibid.*

¹⁵ Renny Ambar Sari, "10 Tren Industri Kecantikan di E-Commerce 2023, Apa Saja?," *Mashmoshem*, January 26, 2023, <https://mashmoshem.co.id/tren-industri-kecantikan-di-e-commerce/>.

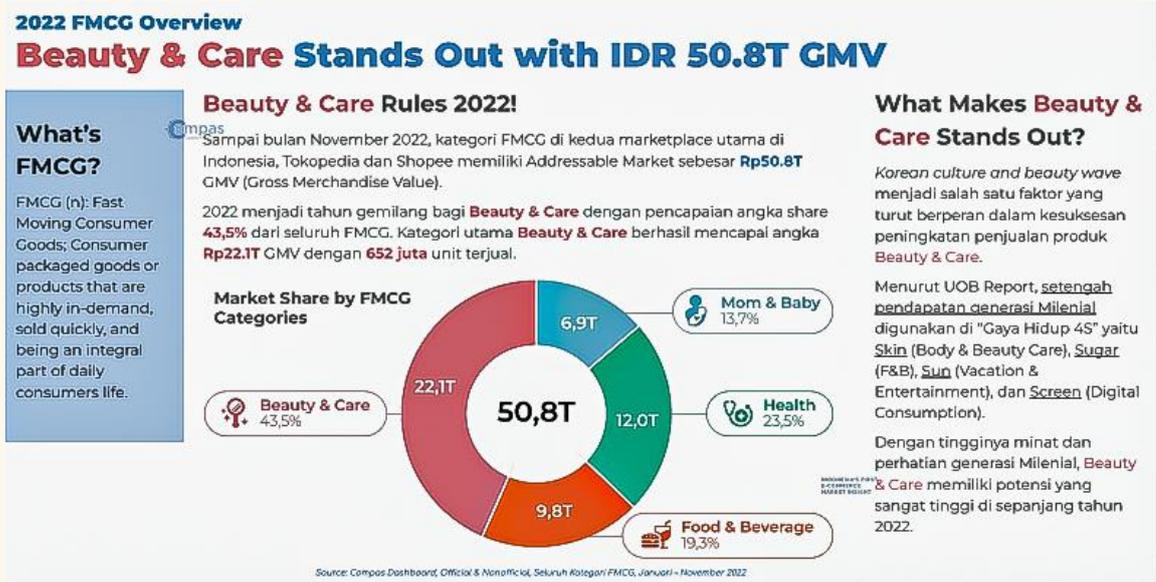


Figure 2 : Market Share of Indonesian Beauty and Care FMCG¹⁶

According to a survey by Kompas Market Insight on the two marketplaces in Indonesia, Tokopedia and Shopee, the Fast Moving Consumer Goods (FMCG) category items had an addressable market of IDR 50.8 trillion from the beginning of the year to November 2022.¹⁷ The Total Addressable Market (TAM) represents the maximum revenue a product or service could generate if it captured the entire market.¹⁸ Moreover, the Beauty & Care category, particularly, has achieved its pinnacle with a market share of 43.5% of all FMCG sectors.¹⁹

In spite of the remarkable expansion and noteworthy achievements within Indonesia's beauty industry, consumers occasionally get cautious, driven by apprehensions about the compatibility and effectiveness of the cosmetic product.²⁰ To harness this opportunity, multiple sellers have undertaken the strategy of repackaging cosmetics into smaller containers, commonly referred to as 'share-in-jar', with the overarching objective of mitigating customer apprehensions and bolstering sales.²¹ The distribution of share-in-jar cosmetics is, however, only confined to the Indonesian market, as evidenced by Google trends data.²² Such a feature

¹⁶ *Ibid.*

¹⁷ *Ibid*

¹⁸ Anna Talerico, "Total Addressable Market (TAM)," Corporate Finance Institute, accessed September 27, 2023, <https://corporatefinanceinstitute.com/resources/management/total-addressable-market-tam/>.

¹⁹ Renny Ambar Sari, "10 Tren Industri Kecantikan".

²⁰ Maria Gomez Albrecht, Mark Green, and Linda Hoffman, *Principles of Marketing*.

²¹ Saracil, "Pertimbangan Hal Ini Sebelum".

²² "Share in Jar," Google Trends, accessed September 26, 2023, <https://trends.google.com/trends/explore?date=today%205-y&geo=ID&q=Share%20in%20jar&hl=en>.

displays statistical graphs to determine the popularity of a keyword on the Google search site at a given moment, as well as the location of the most searched phrase.²³ A search for the term "share-in-jar" was conducted using this feature, with a search range of 3 July 2018 to 18 June 2023. The result conveys that the Special Region of Yogyakarta has the most searches for the keyword "share-in-jar" on Google.²⁴

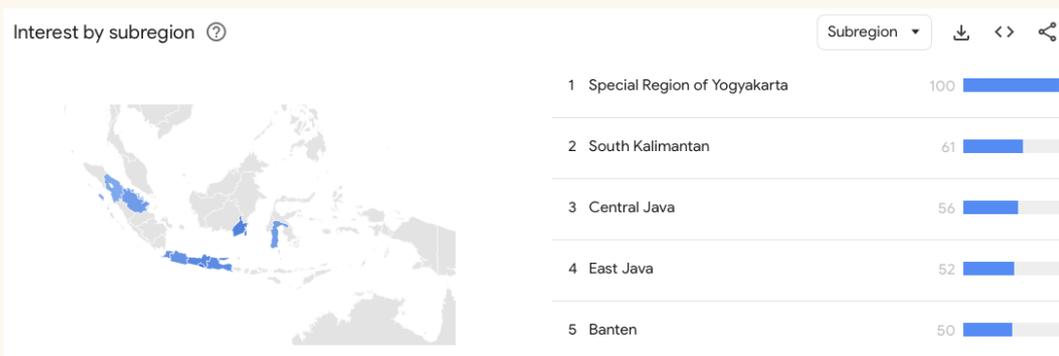


Figure 3 : Google Trends of Indonesian Share-in-jar Consumption²⁵

It is apparent that consumers are most interested in this packaging as it allows them to get the product they desire at a reduced cost, owing to its compact size, while remaining functional and simple. Regardless of its convenience, share-in-jar still results in various issues that necessitate an assertive approach. Cosmetic products are being offered without description such as composition, expiry date, restrictions, and harmful effects. The significant number of business actors that continue to market these unregulated cosmetics lack sufficient understanding of the product's policy, which may result in deliberate harm to its consumers. In light of the foregoing, it is imperative for business actors to pay attention to the relevant provisions established by BPOM, as the specific regulations as well as the Consumer Protection Act (UUPK), as the general law in order to avoid infringement of consumer rights.

The Indonesian Government strives to defend consumer rights in every transaction to prevent consumer losses. As a start, the Government formed BPOM with the purpose of preparing and implementing national policies in the field of drug and food control as echoed in Article 3 of Presidential Regulation No. 80 Year 2017 pertaining to the function and authority

²³ "Google Trends: Learn More about Your Audience," WordStream, accessed September 27, 2023, <https://www.wordstream.com/google-trends>.

²⁴ Google Trends, "Share in Jar".

²⁵ *Ibid.*

of BPOM.²⁶ The drug and food control is an action taken by BPOM to minimize errors or deviations and to ensure that the implementation of the production activities are in line with the predetermined provisions of BPOM.²⁷ On top of that, the Government also enacted the UUPK, to set out minimum standards of protection that should be adhered to by all business actors from all sectors.

Referring to Article 1 paragraph 6 of BPOM Regulations No. 12 of 2023 on Supervision of the Production and Distribution of Cosmetics (BPOM Regulation 12/2023), production is a series of activities starting from the procurement of all initial materials, processing and packaging to the release of finished products for distribution and quality control carried out at each step of these activities.²⁸ Since the production process of cosmetics falls under the scope of the BPOM Regulations 12/2023, thus the practice of producing, preparing and quality control of cosmetic products, for instance, must apply the Good Cosmetics Manufacturing Practices (CPKB).²⁹ The guidelines of CPKB covers *i.e* the quality management systems, buildings and facilities, equipment, sanitation and hygiene, production, quality control, storage, and testing contracts that shall be adhered to by every business actor producing cosmetics.³⁰

As the entire buying and selling procedure becomes more technologically advanced, consumers may now purchase their chosen cosmetics not only from authorized outlets but also from resellers. Resellers constitute those who acquire items from various sources and then resell them for an amount that is profitable.³¹ Online marketplaces and sales platforms provide features and opportunities to become resellers given that becoming one will benefit both the marketplace and the entrepreneur itself.³² For example, resellers do not require a substantial starting capital in order to establish a business, the risks are manageable, and they are appropriate for novice sellers who do not have their own products. Such resellers highly contribute to the sales of share-in-jar in Indonesia which may jeopardize the safety and well-being of its target market.

²⁶ Article 3, Presidential Regulation No. 80 Year 2017 concerning National Agency of Drug and Food Control

²⁷ "Profil BPOM," BPOM, accessed October 10, 2023, <https://www.pom.go.id/profil#v-pills-tugas>.

²⁸ Article 1 paragraph 6, Government Regulation Number 12 Year 2023 concerning Providing Business Licensing, Ease of Business and Investment Facilities for Business Actors in the Archipelago Capital City.

²⁹ BPOM Regulation Number 31 Year 2020 concerning Amendments to Food and Drug Supervisory Agency Regulation Number 25 of 2019 concerning Guidelines for Good Cosmetics Manufacturing.

³⁰ *Ibid.*

³¹ Dwi Latifatul Fajri, "Pengertian, Contoh dan Cara Menjadi Reseller," *Katadata*, March 22, 2022, <https://katadata.co.id/agung/berita/62395dcf28131/pengertian-contoh-dan-cara-menjadi-reseller>.

³² *Ibid.*

Adding to that, nowadays business actors tend to use social media as their means to advertise their products to its target market. In Instagram, for instance, consumers are fed with the prospects of choosing share-in-jar products and neglect the essential details of sanitary, hygiene, or implications that may result from the product usage. In buying and selling skincare share-in-jar, the most detrimental risk for consumers is the possibility of a counterfeited product that does not originate from the actual skincare brand. Besides that, buyers also do not know how the seller repackages the skincare and whether the process is sterile or not. In light of such concern, the government requires all cosmetic sellers to follow the terms and policies contained under the CPKB to protect the inherent rights of consumers when buying skincare or cosmetics. For instance, CPKB notes that the sanitation and hygiene of cosmetics should be carried out to prevent contamination of the product being processed so that it would not cause harm to the consumer or even to the environment.³³

Aside from selling counterfeit products, many sellers overlook the need of giving specific details about the cosmetics they offer, such as expiration dates and ingredients or composition. It is also extremely important for customers to be informed about the packaging process, from the initial package to share-in-jar. The following is done to eliminate consumer concerns on whether the cosmetics have been contaminated and possible exposure to air and germs during the repackaging process. It is anticipated that cosmetics share-in-jar retailers would pay attention to these issues in order to prevent the infringement of consumer rights as well as customer loss. In relation to the present issue, one of the efforts made by the government in protecting consumers to guarantee the quality of share-in-jar cosmetics circulating in the market is by complying with CPKB.³⁴

Following Article 1 of the CPKB, cosmetic is defined as:

“materials or preparations intended for use on the external parts of the human body such as the epidermis, hair, nails, lips and external genital organs, or teeth and oral mucous membranes especially for cleaning, perfuming, changing appearance and/or improving body odor or protecting or keep the body in good condition.”³⁵

With the emergence of cosmetic products being repackaged in share-in-jar, consumers find it easier to acquire and determine whether a product qualifies for usage. Sellers, on the other

³³ Sanitation and Hygiene, Appendix VI, BPOM Regulation Number 31 Year 2020.

³⁴ Article 2, Presidential Decree Number 80 Year 2017.

³⁵ Article 1(1), BPOM Regulation Number 31 Year 2020.

hand, benefit greatly from selling these items due to the substantial demand and increased sales markup for every package.

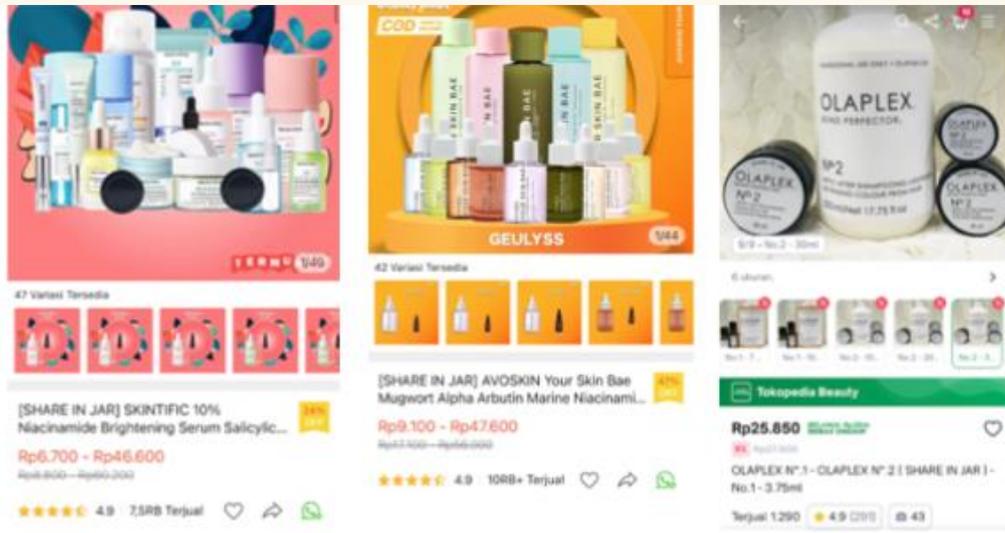


Figure 4: Examples of the Sales Promotion of Share-in-jar Cosmetics in E-commerce (Source: Shopee and Tokopedia)

The attached figures are just a few of numerous share-in-jar cosmetics that are circulating around e-commerce at this time. Such shows the high popularity of share-in-jar cosmetics amongst the consumer, as well as how unaware they are of the danger that share-in-jar products usage entails.



Figure 5: Types of Illegal Cosmetics by BPOM³⁶

³⁶ BPOM (@bpom_ri), “Kosmetik Ilegal,” Instagram, June 24, 2023, <https://www.instagram.com/p/Ct3uSbfBLWw/?igshid=MzRIODBiNWFIZA==>.

With reference to the figure above, BPOM has explained the three types of illegal cosmetics which have been circulating in the market. The emergence of cosmetics without marketing authorization, cosmetics that contain hazardous ingredients, and fake cosmetics have given rise to a serious demand for a government intervention. However, cosmetic products that do not have distribution permits from the BPOM and the Ministry of Health, in the form of share-in-jar, are strictly violating the prevailing laws and are imposing harm to both consumers and business actors or producers of the products. Indolent sellers selling their unlicensed products in e-commerce with easy access through e-commerce shall be given fair warning and sanctioned. In this case, pharmaceutical preparations that have not obtained BPOM permits for distribution permits and are proven not to meet quality requirements that are deemed necessary for consumer convenience, security and safety can be withdrawn or detained and destroyed in accordance with applicable legal regulations. As such, given the relatively high percentage of customers who are unaware of their rights, sellers seek to take advantage of it, making it simpler for them to profit without regard for consumer rights, such as selling counterfeit/fake products.

Under their authority, BPOM is granted the power to conduct several actions. First, BPOM is granted the capacity to enforce several regulations to alleviate issues of manufacture, sale, use and safety of food, pharmaceuticals, cosmetics and other products.³⁷ The production of share-in-jar products, in this case, appears to be within the jurisdiction or area of competence of BPOM, since it fits within the framework of cosmetic lines. Second, BPOM is also vested with the right to conduct a routine inspection following Article 3(3) of the BPOM Regulation 12/2023.³⁸ Routine inspection is carried out to ensure compliance with the standards and/or requirements for manufacturing and distribution facilities in carrying out cosmetic manufacturing and distribution activities in accordance with the provisions of laws and regulations.³⁹ Third, in carrying out its supervision, BPOM are authorized to check whether business actors have complied with CPKB; check whether cosmetic marking and claims are clear and informative; and examine the safety of cosmetic packaging among other things.⁴⁰

³⁷ Article 3 paragraph a, b, and c, Presidential Decree Number 80 Year 2017.

³⁸ Article 3 paragraph 3, BPOM Regulation Number 12 Year 2023.

³⁹ *Ibid.*

⁴⁰ Article 19 paragraph e, f, and h, BPOM Regulation Number 12 Year 2023.

The drug and food control system organized by BPOM is referred to as a comprehensive process which includes pre-market and post-markets supervision.⁴¹ The standardization system is the process establishing guidelines, rules, and policies for drug and food control that is carried out centrally (*terpusat*), with the goal of avoiding standard discrepancies that may arise as a consequence of each province developing its own standard.



Figure 6 : Pre-market and Post-market Integration⁴²

Firstly, pre-market assessment is the evaluation of a product before acquiring a distribution permit, after which the cosmetics can be manufactured and shipped to customers. Likewise the evaluation will be carried out centrally (*terpusat*) so that products with distribution permits are accessible across the country. Cosmetics notification (*notifikasi kosmetika*) is referred to as a distribution permit that is necessary for every cosmetic that is traded according Article 6 of the BPOM Regulation No 12 of 2020 on Procedures for Submitting Cosmetics Notifications (BPOM Regulation 12/2020).⁴³ The local cosmetics

⁴¹ BPOM, *Kinerja Badan Pengawas Obat dan Makanan Dalam Angka Triwulan II Tahun 2015* (Jakarta: BPOM RI, 2015), 8.

⁴² “BPOM Mobile, Inovasi untuk Verifikasi Keaslian Obat dan Makanan,” *Menpan*, May 23, 2022, <https://www.menpan.go.id/site/berita-terkini/bpom-mobile-inovasi-untuk-verifikasi-keaslian-obat-dan-makanan>.

⁴³ Article 6, BPOM Regulation Number 12 Year 2020.

industry, individual businesses/business entities who enter into contracts with the local industry, and cosmetic importers are the three parties that can apply for the *a quo* license.⁴⁴

Secondly, post-market control is conducted to see the consistency of product quality, safety and information which is carried out by sampling products in the market circulation, inspection of the production and distribution facilities, as well as monitoring labeling/marketing supervision and advertisement.⁴⁵ As a result, the market distribution of cosmetics must be reliable, useful, of excellent quality, and manufactured in line with CPKB.⁴⁶ It is impossible to ensure the sanitary and hygienic aspects of repackaging cosmetics or fluids into smaller jars. This is because, first, the concept of share-in-jar requires the product to be transferred from the original packaging to another packaging, and during the transfer process, it is inevitable that cosmetics will come into contact with air, increasing the possibility of dirt exposure.⁴⁷ Secondly, the type of share-in-jar cosmetic packaging that is different from the original packaging is more likely to cause chemical and physical reactions involving the cosmetic ingredients and the container.

According to the CPKB Operational Guidelines, the replacement or addition of cosmetic products that differ from the previously established packaging entails the conduct of obligatory stability tests to demonstrate compatibility between container and cosmetics.⁴⁸ For example, serums and face creams containing Vitamin C, which is heat and light sensitive, are typically stored in glass bottles or non-transparent HDPE bottles/tubes.⁴⁹ The ascorbic acid molecule in Vitamin C is extremely unstable and can easily oxidize. As a result, it may lose its properties when exposed to air, light, or heat. When Vitamin C concentrations are high, the

⁴⁴ Intan Faradiba Ayrin, "Punya Usaha Kosmetik? Ini Ketentuan Izin Edar yang Harus Dipenuhi!," *Smartlegal*, May 23, 2022, <https://smartlegal.id/galeri-hukum/izin-edar/2022/01/07/punya-usaha-kosmetik-ini-ketentuan-izin-edar-yang-harus-dipenuhi/>.

⁴⁵ BPOM, *Kinerja Badan Pengawas Obat dan Makanan Dalam Angka Triwulan III Tahun 2017* (Jakarta: BPOM RI, 2017), 18.

⁴⁶ *Ibid.*

⁴⁷ Irsa Nur Azizah, Sandy Rizki Febriadi, Yayat Rahmat Hidayat, "Tinjauan Fiqh Muamalah terhadap Jual Beli Skincare dengan Sistem Share In Jar," *Prosiding Hukum Ekonomi Syariah* 7, no. 2 (2021): 498, <http://dx.doi.org/10.29313/syariah.v0i0.31007>.

⁴⁸ Sistem Manajemen Mutu, 1.2.3, BPOM Regulation Number 31 Year 2020.

⁴⁹ Emily MacCulloch, "Everything You Need To Know About Vitamin C In Skincare," *Chatelaine*, November 21, 2023, <https://chatelaine.com/style/beauty/how-to-use-vitamin-c-skincare/#:~:text=To%20keep%20your%20products%20as,improve%20stability%20and%20reduce%20oxidation.>

serum appears yellowish; however, when it oxidizes, it turns brown/orange.⁵⁰ Cosmetic which contains Vitamin C that have discolored should be discarded since they have already oxidized and are no longer beneficial to the skin.⁵¹ Thus, to avoid oxidation the seller must assure that the transfer of Vitamin C serum or cream from the original packaging to another is protected from excessive heat and light and that the kind of container used is most suitable for this matter.⁵² However, in reality, many Vitamin C serums and creams that are sold in share-in-jar use transparent plastic bottles/pots, with transfer processes whose conditions are not guaranteed so as to allow chemical reactions to occur which can impair product quality.⁵³

Pertaining to the lawfulness of share-in-jar product's distribution, BPOM has continuously reminded consumers that cosmetics in share-in-jar packaging fall into the category of illegal cosmetics even when the initial product has received BPOM permits.⁵⁴ Additionally, as a subsequent step in obtaining a permit, cosmetic products shall be registered to obtain CPKB certificate, which is a legal document to prove that the cosmetics industry has implemented CPKB in the manufacture of cosmetics.⁵⁵ Further, BPOM explained that the illegality of share-in-jar was due to the fact that cosmetic packaging processes were part of a series of cosmetic production and such could only be carried out in industries that had licenses to produce cosmetics.⁵⁶ In addition, the type and size of packaging produced from share in jar products will differ from the type and size of packaging registered with BPOM.⁵⁷

⁵⁰ Marsetyo and Kartasaputa, *Ilmu Gizi Korelasi Gizi, kesehatan dan produktivitas Kerja* (Jakarta: Rineka Cipta, 2004), 78–80.

⁵¹ Sitti Rahmawati, and Bunbun Bundjali, "Kinetics Of The Oxidation of Vitamin C," *Indonesian Journal of Chemistry* 12, No. 3 (2012): 291-292, <https://jurnal.ugm.ac.id/ijc/article/view/21345/14050>.

⁵² *Ibid.*

⁵³ Iin Febrianti Sende and Edi Priyanto Yuniato, "Tren Baru Kosmetik 'Share in Jar' Ilegal di Media Daring," *Eruditio* 1, no. 1 (2020): 45, <https://doi.org/10.54384/eruditio.v1i1.31>.

⁵⁴ Rindi Salsabilla, "BPOM Larang Penggunaan Kosmetik Share In Jar, Ini Alasannya," *CNBC Indonesia*, March 7, 2023, <https://www.cnbcindonesia.com/lifestyle/20230307155818-33-419620/bpom-larang-penggunaan-kosmetik-share-in-jar-ini-alasannya>.

⁵⁵ Article 1 paragraph 3, BPOM Regulation Number 31 Year 2020.

⁵⁶ *Ibid.*

⁵⁷ Tiara Laninda, "BPOM RI Nyatakan Kosmetik Share in Jar Ilegal dan Berbahaya, Setop Kebiasaan Mengirit Ini," *Liputan 6*, March 5, 2023, <https://www.liputan6.com/health/read/5224631/bpom-ri-nyatakan-kosmetik-share-in-jar-ilegal-dan-berbahaya-setop-kebiasaan-mengirit-ini>.



Figure 7 : Reasons for Cosmetic Illegality⁵⁸

As seen in the figure attached above, BPOM explains that share-in-jar cosmetics are not guaranteed to be safe and therefore consumers should avoid sharing cosmetics or skin care in jars for multiple reasonable reasons.⁵⁹ Firstly, repackaging cosmetics into containers in small sizes cannot guarantee sanitation and hygiene. Second, the type of packaging for share in jar cosmetics that is different from the original packaging may result in physical or chemical reactions between the cosmetic ingredients and the packaging. Third, it cannot be ascertained whether share-in-jar cosmetics circulating in the market have carried out the stability test to determine the compatibility between the new packaging in containers and cosmetic products. Last but certainly not least, cosmetics in share in jars are produced on facilities that do not meet CPKB requirements.

Business actors shall always be mindful that every production activity must apply CPKB which governs quality management systems, personnel, buildings and facilities, equipment, sanitation and hygiene, production, quality control, documentation, internal audits, storage, production and testing contracts, complaint handling and product recalls.⁶⁰ To prevent

⁵⁸ BPOM (@bpom_ri), “Kosmetik Share-in-jar, Amankah?,” Instagram, November 12, 2023, <https://www.instagram.com/p/CpIFrGnvl4c/?igshid=MWZjMTM2ODFkZg==>.

⁵⁹ Celine Kurnia, “Wanti-wanti BPOM soal Skincare-Kosmetik 'Share in Jar', Ilegal dan Berbahaya,” *Detik*, March 5, 2023, <https://health.detik.com/berita-detikhealth/d-6600976/marak-skincare-kosmetik-share-in-jar-bpom-peringatkan-bahayanya>.

⁶⁰ BPOM Regulation Number 31 Year 2020.

contamination, share in jar sellers, for example, must avoid direct contact with the ingredients or products being processed.⁶¹ Personnel must wear appropriate and regularly sanitized work attire, headgear, and protection equipment.⁶²

Moreover, as important as the substance of the cosmetics, the seller is also required to focus on the technicalities of the product such as the labeling and marking that is attached to the product for sales. Cosmetics marking is any information about cosmetics that is found in the cosmetics, attached to or part of the packaging, or printed directly on the product in the form of illustrations, writing, the combination of both, or other forms.⁶³ Cosmetic product marking must be complete in providing all necessary details, impartial by giving information based on existing facts, and must not be inconsistent with the nature of cosmetic safety and efficacy.⁶⁴ In addition to meeting the above mentioned standards, marking must be clear and easy to read and it must also not be readily detached from packaging, faded, or damaged.⁶⁵ Consequently, any violation upon the aforementioned provisions by business actors can be subject to administrative sanctions in the form of written warning; prohibition of distribution of cosmetics; cosmetic withdrawal from circulation; cosmetic destruction; or temporary suspension of production, import, and/or distribution of cosmetics.⁶⁶

Given that share-in-jar is included in the production category under Article 1(6) of BPOM Regulation 12/2023, every share-in-jar product circulating in the market requires a permit from BPOM, and because share-in-jar cosmetics cannot obtain a distribution permit, it is an illegal product.⁶⁷ The lack of clear information about products and guarantees of product authenticity is something that should not be overlooked, especially with beauty products made from chemicals that require cautiousness and diligent use, while also following the instructions provided to reduce the risk of skin irritation.⁶⁸

⁶¹ Sanitation and Hygiene, BPOM Regulation Number 31 Year 2020.

⁶² Point 6.1.2, Sanitation and Hygiene (Personnel), BPOM Regulation Number 31 Year 2020.

⁶³ Article 1 (4) of BPOM Regulation Number 30 Year 2020.

⁶⁴ Article 2 (a & b) of BPOM Regulation Number 30 Year 2020.

⁶⁵ Article 3, BPOM Regulation Number 30 Year 2020.

⁶⁶ Article 9 paragraph 1, *Ibid.*

⁶⁷ Article 1 paragraph 6, Law Number 12 Year 2023.

⁶⁸ Kevin Adrian, "Ketahui Bahaya di Balik Make Up Share in-jar," *Alodokter*, June 15, 2021, <https://www.alodokter.com/ketahui-bahaya-di-balik-make-up-share-in-jar>.

Subsequently, according to Article 20 of BPOM Regulation 12/2023, the owner of the Notification Number is accountable for Cosmetics that are manufactured, imported, and/or distributed.⁶⁹ In any event, the reseller, which in this case is not the one the owner of the notification number, must have an agreement with the notification number owner to maintain the legitimacy of the cosmetic product.⁷⁰ Therefore, regardless of whether the repackaged product is sold by the notification number owner or not, the business actors responsible for carrying out the cosmetics distribution must be held accountable for the cosmetics being distributed. This includes ensuring that produced cosmetics have obtained the BPOM license and that the cosmetics do not exceed their expiration date at the time of distribution.⁷¹

In an attempt to alleviate the aforementioned concerns, BPOM has taken a ground breaking step by introducing an innovative application that empowers consumers to verify the authenticity and legitimacy of cosmetic products.⁷² The BPOM application utilizes cutting-edge technology, including barcode scanning and data integration, to provide consumers with instant access to essential information about cosmetic products which was introduced in 2019.⁷³ This user-friendly interface empowers consumers to make informed decisions and steer clear of potentially harmful counterfeit products.

⁶⁹ Article 20, BPOM Regulation Number 12 Year 2023.

⁷⁰ Article 16 paragraph 3, *Ibid.*

⁷¹ *Ibid.*

⁷² "BPOM Mobile, Inovasi untuk Verifikasi Keaslian Obat dan Makanan," *Menpan.*

⁷³ PR Wire, "BPOM Mobile, upaya BPOM tingkatkan perlindungan kepada masyarakat," *Antaranews*, February 19, 2019, <https://www.antaranews.com/berita/800283/bpom-mobile-upaya-bpom-tingkatkan-perlindungan-kepada-masyarakat>.

| Informasi Produk | |
|----------------------|--|
| Nomor Izin Edar | NA11230100184 |
| Nama Produk | 5X Ceramide Soothing Toner |
| Merk | SKINTIFIC |
| Kemasan | Botol, Dus 80 mL, Sachet, 1 mL, Botol, 10 mL, Botol, 20 mL |
| Bentuk Sediaan | Cair |
| Pendaftar & Importir | MAY SUN YVAN, PT - Kota Adm Jakarta Barat, Dki Jakarta |
| Diproduksi Oleh | 1. Industri Kosmetika: Guangdong Essence Daily Chemical Co., Ltd., - Guangdong Province, China |
| Daftar Produk Kit | - |

| Informasi Produk | |
|----------------------|---|
| Nomor Izin Edar | NA18221701516 |
| Nama Produk | Hydrasoothe Sunscreen Gel SPF 45 PA ++++ |
| Merk | AZARINE |
| Kemasan | Tube, 30 mL, Tube, 40 mL, Tube, 50 mL, Tube, 80 mL, Tube, 90 mL, Tube, 100 mL, Sachet, 5 mL, Sachet, 8 mL, Sachet, 10 mL, Sachet, 12 mL, Sachet, 15 mL, Sachet, 20 mL |
| Bentuk Sediaan | Gel |
| Pendaftar & Importir | WAHANA KOSMETIKA INDONESIA, PT - Kab Sidoarjo, Jawa Timur |
| Diproduksi Oleh | 1. Industri Kosmetika: Wahana Kosmetika Indonesia, PT - Kab Sidoarjo |
| Daftar Produk Kit | - |

Figure 8: Product Information by the BPOM Mobile Application⁷⁴

Following Figure 8, the scanned barcode offers cosmetic information such as the distribution permit number, product name, brand, packaging sizes, forms, registrar or importer data, and the establishing business.⁷⁵ Since each distribution permission specifies the various sizes of each product created, alternate package sizes beyond those specified are not eligible for BPOM clearance and is therefore illegal.

The introduction of the BPOM application has reverberated across the cosmetic industry, prompting manufacturers to adhere to regulatory guidelines and quality standards.⁷⁶ Companies are now incentivized to maintain transparency in their manufacturing processes and ingredient compositions, ultimately raising the overall quality of products available to consumers. It shall also be highlighted that BPOM's application aligns with the agency's commitment to safeguarding consumer rights. By ensuring that products meet regulatory standards, the application bolsters consumer confidence and contributes to a safer marketplace. This not only protects individuals from health risks but also promotes responsible consumption.

⁷⁴ Muhammad Idris, "Cara Cek BPOM Melalui Website Dan Aplikasi BPOM Mobile," *Kompas*, December 30, 2021, <https://money.kompas.com/read/2021/12/30/124317126/cara-cek-bpom-melalui-website-dan-aplikasi-bpom-mobile>.

⁷⁵ Isna Rifka, "Cara Cek BPOM Melalui Website dan Aplikasi BPOM Mobile," *Kompas*, December 30, 2021, <https://money.kompas.com/read/2021/12/30/124317126/cara-cek-bpom-melalui-website-dan-aplikasi-bpom-mobile?page=all>.

⁷⁶ "BPOM Mobile, Inovasi untuk Verifikasi Keaslian Obat dan Makanan," *Menpan*.

In sum, BPOM's pioneering application represents a remarkable advancement in ensuring the legitimacy and safety of cosmetic products. By providing consumers with an accessible and reliable means to verify the authenticity of cosmetics, BPOM has taken a pivotal step towards safeguarding public health and consumer rights. This innovation not only reinforces the agency's commitment to its regulatory responsibilities but also sets a commendable example for other regulatory bodies globally. As the beauty industry continues to evolve, the BPOM application stands as a beacon of consumer protection and quality assurance.

Based on the foregoing, the sales of cosmetic products in share-in-jar, which do not provide product clarity and are not in accordance with laws and regulations, obliged the government to carry out a more restrictive supervision for more and eventually all products sold to be in conformity with the BPOM Regulations and UUPK that is to receive comfort, security, and safety in using cosmetic products offered to them.

B. 2. Cosmetic Packaging Comparison: Share-in-jar v. Refilled cosmetics

Presently, in order to support the environmental care movement, several beauty brands are starting to carry the concept of eco-friendliness. From the raw materials to the packaging, some brands have even issued skin care refill products. Not only do they have a more affordable price, these refill packaging products are also a way to reduce plastic use. For example, L'Occitane, which now provides refills for shampoo, conditioner, shower gel, facial cleanser, and hand washing soap.⁷⁷ Consumers can buy it in a plastic bag and fill it into the initial bottle. According to L'Occitane, this refill product saves up to 80% of plastic use.⁷⁸ Additionally, the Deputy for Supervision of Traditional Medicines, Health Supplements and Cosmetics, Reri Indriani explained that the cosmetic refilling business model has been implemented in several countries, such as Switzerland, England, Japan and Australia.⁷⁹ However, more in-depth studies are still needed regarding regulations in each of these countries. As such, Slamet Riyadi

⁷⁷ Lucia Kus Anna, "Kurangi Limbah Kemasan Kosmetik dengan Produk Isi Ulang," *Kompas*, January 18, 2018, <https://lifestyle.kompas.com/read/2018/01/18/170000820/kurangi-limbah-kemasan-kosmetik-dengan-produk-isi-ulang>.

⁷⁸ *Ibid.*

⁷⁹ "Diskusi Badan POM Untuk Rumuskan Regulasi Kosmetika Isi Ulang," *BPOM*, July 28, 2022, <https://www.pom.go.id/berita/diskusi-badan-pom-untuk-rumuskan-regulasi-kosmetika-isi-ulang>.

from the *Badan Perlindungan Konsumen Nasional* (BPKN) stresses that regulations for cosmetic refills are a form of prevention against violations of consumer rights and can provide standards for business actors in producing cosmetic refill products.⁸⁰

In March 2023, BPOM Regulation 12/2023 was enforced to include a new provision on refilled cosmetic products. Under the said law, BPOM will have the task of supervising, manufacturing, and distributing cosmetics for cosmetic facilities.⁸¹ Cosmetic refill facilities, in particular, are one of the facilities that BPOM oversees and controls. With that in mind, the law defines refilled cosmetics as the process of repackaging cosmetics into containers according to consumer requests which are carried out at cosmetic refill facilities. As such, instead of purchasing a new container each time, consumers can bring back their empty container to be refilled with the same product at certain refill stations or stores. This method aims to reduce packaging waste and promote sustainability.

It is important to emphasize that the legality of the refilled product lies upon whether the refilling process is done at the designated refill facilities as stressed by the BPOM Regulation 12/2023 and that the application of sanitation and hygiene, technical documents and storage are adhered to.⁸² In this instance, cosmetic refill facility is a facility used by notification number owners or business actors in the cosmetics sector who work together with notification number owners to carry out activities and sales of cosmetic refills.⁸³

⁸⁰ *Ibid.*

⁸¹ Article 1 paragraph 2, BPOM Regulation Number 12 Year 2023.

⁸² Article 15, *Ibid.*

⁸³ Article 1 paragraph 3, *Ibid.*



Figure 9: Types of Cosmetics which are Refillable⁸⁴

Moreover, cosmetics supplied as refill cosmetics must be prepared and distributed in accordance with the following categories of cosmetics: a. bath soap (liquid); b. antiseptic bath soap (liquid); c. hand soap (liquid); d. shampoo; e. dandruff shampoos; and f. conditioner.⁸⁵ The scope shows that only selected cosmetic products are allowed to go through this refill process. Such refilled cosmetics must include information on the marking and listed on the cosmetics refill container and the information shall be made clear and easy to read and not easily separated or separated from the packaging, faded and damaged.⁸⁶

In light of the foregoing, it is clear that the practice of refilling cosmetic products to eliminate extensive packaging disposal is supported under the law, however the process shall be done in accordance with the relevant provisions namely BPOM Regulation 12/2023. For instance, the seller must establish a distribution permit or cosmetics notification and must obtain approval from the Head of the BPOM through a designated official who carries out duties in the field of standardization of traditional medicines, health supplements and cosmetics.⁸⁷ Subsequently, in order for such a request to be accepted by the Head of BPOM,

⁸⁴ BPOM (@bpom_ri), "Diet Kantong Plastik Indonesia," Instagram, July 16, 2023, https://www.instagram.com/p/CuwkWGRvG9n/?igshid=MWZjMTM2ODFkZg%3D%3D&img_index=2.

⁸⁵ Article 19 paragraph 1, BPOM Regulation Number 12 Year 2023.

⁸⁶ Article 19 paragraph 3 and 4, *Ibid.*

⁸⁷ Article 16 paragraph 1, *Ibid.*

the Notification Number Owner or the Cosmetic Refill Facility owner must meet the following requirements:⁸⁸

- a. Cosmetics distributed at the Refill Facility are Cosmetics that already have a notification number;
- b. Proper Cosmetic Refill Facility; and
- c. Cosmetic sales cooperation agreement document at the Cosmetic Refill Facility, in the event where the sale of Cosmetics is carried out by Business Actors who are not Notification Number Holders.

However, the issue relates to the distribution of share-in-jar cosmetic products where the aforementioned elements are not fulfilled. Indolent retailers do not have cosmetic notification documents, proper cosmetic facility as well as agreement with the brand owner in regards to the repackaging operation as demanded by BPOM.⁸⁹ Therefore, such non-compliance shall lead to legal consequences such as fines, product recalls, suspension of business operations and other penalties under BPOM authorities.⁹⁰

B. 3. Legal Liability of Business Actors (Resellers) that Cause Damages to Consumers Using Cosmetics Packaged in Share-in-jar'

According to Inosentius Samsul, consumer protection legislation is a collection of laws, regulations, and judicial rulings governing consumer interests.⁹¹ In order to protect exclusive and universal consumer rights, measures must be taken to ensure equitable protection for consumers, which should be appreciated and committed to by corporate actors at the commencement of each transaction. In this instance, UUPK is the most important regulation to ensure the protection of consumer rights. However, it should be noted that other legislations relating to the concern of customer protection remain in effect as long as they do not contradict the UUPK.⁹² The very existence of UUPK will effectively urge business actors to take responsibility for the products they offer in order to meet standardized criteria in compliance

⁸⁸ Article 16 paragraph 3, *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Article 25, *Ibid.*

⁹¹ Inosentius Samsul, *Perlindungan Konsumen : Kemungkinan Penerapan Tanggung jawab Mutlak* (Jakarta: Fakultas Hukum Pascasarjana Universitas Indonesia, 2014), 34.

⁹² Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2011), 47.

with applicable rules.⁹³ The importance of UUPK continues to rise for it is far easier nowadays to mislead consumers and eventually overlook the value of complying with established standards when a seller offers its products at a low price. Preliminarily, Article 1 paragraph 1 of the UUPK stresses that consumer protection is defined as a guarantee that each consumer must acquire for every good purchased from business actors.⁹⁴ Such policy must be properly enforced to prevent consumers from being treated unfairly and inequitably by the business actors.⁹⁵ Moreover, UUPK stresses that:

“A business actor is any individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements to carry out business activities in various economic fields.”⁹⁶

Considering that the scope of business actors under the UUPK is construed in a broad sense, the elucidation provides that business actors referred to are companies, corporations, SOEs, cooperatives, importers, traders, distributors and others.⁹⁷

Prior to determining the legal accountability of business actors where consumer impairment has occurred, it is critical to make certain that cosmetic resellers fall under the definition of business actor under the law. The definition of business actor under the UUPK is defined in a broad sense to cover all corporate participants, whether an individual or a company entity, who conduct economic operations on Indonesian territory. Share-in-jar retailers, on the other hand, are classified as distribution business operators whose primary operations are promoting cosmetics directly to consumers⁹⁸ such as modern stores, cosmetic shops and traditional markets.⁹⁹ For the protection of consumers, business actors are required to display

⁹³ Ahmadi Miru, *Hukum Perlindungan Konsumen* (Jakarta: PT Raja Grafindo, 2011), 63; Aulia Muthiah, *Hukum Perlindungan Konsumen Dimensi Hukum Positif dan Ekonomi Syariah* (Yogyakarta: Pustaka Baru Press, 2018), 73.

⁹⁴ Rosmawati, *Pokok-pokok Perlindungan Konsumen* (Depok: Prenada Media Group, 2018), 2; Article 1 point 1, Law Number 8 Year 1999.

⁹⁵ I Made Kresnayana, “Perlindungan Hukum Terhadap Konsumen Terkait Cairan Rokok Elektrik yang Tidak Mencantumkan Tanggal Kadaluarsa,” *Kerta Semaya* 5, no. 1 (2018): 7, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/42188>.

⁹⁶ Article 1 paragraph 3, Law Number 8 Year 1999.

⁹⁷ Elucidation of Article 1 paragraph 3, *Ibid.*

⁹⁸ Article 13 paragraph 2, BPOM Regulation Number 12 Year 2023.

⁹⁹ Article 13 paragraph 3, *Ibid.*

product labels containing information such as brand names, expiration dates, and the composition of the materials in the packaging for products to be obtained by consumers.¹⁰⁰

In relation to the current issue, resellers purchase products or services from a seller and then sell them to end consumers in a share-in-jar container, often at a higher price. Thus, they fall under the elements of a business actor as they play a role in the distribution and sales process within the business ecosystem. The scope of consumer protection can be divided into two aspects including: (a) Protection against the possibility that the goods handed over to the consumer are not in accordance with what has been agreed with the consumer; and (b) Protection for consumers who are treated with unfair conditions.¹⁰¹

Pursuant to Article 8 of UUPK, it is explained that business actors are prohibited from producing or trading goods or services that do not meet predetermined standards, namely the quality and clarity of a product.¹⁰² As a result, the quality and clarity requisites of an offered product must be carried out by sellers in order for customers to acquire clear and honest information of the share-in-jar product and that the standardization of products is essential for improving quality and increasing customer satisfaction.¹⁰³ Furthermore, quality control is an essential component of CPKB since it ensures the consistency of the quality of the cosmetics produced. Quality control encompasses all inspection and testing activities undertaken before, during, and after the production of cosmetics to guarantee that the finished product consistently fulfills the established quality criteria.¹⁰⁴

To repackage share-in-jar products, resellers lack licenses and permits, as well as arrangements for collaboration with brand owners. Skincare employing such a system breaches the guidelines since it does not fulfill the original manufacturer's safety and eligibility criteria. Furthermore, items manufactured without a permission may endanger customers' health because they have not been professionally evaluated and validated. The selling of skincare share-in-jar systems is a legal violation, this is because every product in circulation that is purchased by customers requires BPOM authorizations. The UUPK specifically states in

¹⁰⁰ Article 8 Paragraph (1) letter g, Law Number 8 Year 1999.

¹⁰¹ Zulham, *Hukum Perlindungan Konsumen* (Jakarta: Kencana Prenada Media Group, 2013), 22.

¹⁰² Article 8(i) of Law Number 8 Year 1999 notes "do not meet or do not comply with the standards required and provisions of laws and regulations".

¹⁰³ Aulia Muthiah, *Hukum Perlindungan Konsumen Dimensi*, 74.

¹⁰⁴ Point 8.1, Quality Control, BPOM Regulation Number 31 of 2020.

Article 8 paragraph (1) letter f that businesses are not permitted to create or sell goods or services that do not meet and do not conform with the information given on labels or marketing linked to the goods or services.¹⁰⁵ As a result, if the skincare share-in-jar does not meet the standards, the business actor has violated the law.

The business of share-in jar cosmetics repackaging has a significant potential of causing detrimental harm to consumers if produced with disregard to the rules and regulations of BPOM, and thus shall bear the legal liability of one's act. The legal consequences, in this case, are the liabilities of legal actions committed by a party as a result of a legal action.¹⁰⁶ The responsibility of business actors for the losses suffered by consumers after using products sold in share-in-jar is assessed with the principle of presumption of liability (*tanggung jawab praduga bersalah*).¹⁰⁷ According to the principle of presumption of liability, the defendant is considered responsible for all losses that arise, but the defendant can waive his responsibility, if he can prove that he is innocent.¹⁰⁸ Simply put, the aforesaid principle is also the principle of responsibility based on an error, but with the shifting of the burden of proof (*omkering van de bewijslast*) on the defendant. With regards to the present concern, business actors are obliged to provide protection to consumers from products that are of low quality and the value of the price paid is not proportional to the quality.¹⁰⁹

Generally, Article 7 of UUPK regulates several business actor's obligations which include but are not limited to the obligation of providing true, clear and honest information regarding the conditions and guarantees of goods and/or services as well as providing an explanation of use, repair and maintenance.¹¹⁰ Business sellers are obligated to give competent product information namely; the product name, size, net weight/content, composition, directions for use, date of production, and expiration date. It is prohibited for business actors to sell or deal in products that do not meet or comply with the relevant standards and regulatory

¹⁰⁵ Article 8 paragraph (1) letter f, Law Number 8 Year 1999.

¹⁰⁶ Petrus Soerjowinoto, *Ilmu Hukum: Suatu Pengantar (Buku Panduan Mahasiswa)* (Semarang: UPT Perpustakaan Unika Soegijapranata, 2018), 39.

¹⁰⁷ Aulia Muthiah, *Hukum Perlindungan Konsumen Dimensi*, 183.

¹⁰⁸ Ridwan Khairandy, "Prinsip Tanggung Jawab Berdasarkan Praduga," UII, accessed August 17, 2023, https://law.uui.ac.id/wp-content/uploads/2013/09/ISI%20K0mplet-2_hal%20%20380.pdf.

¹⁰⁹ Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen* (Jakarta: PT Raja Grafindo Persada, 2015), 65.

¹¹⁰ Article 7 point (b), Law Number 8 Year 1999.

restrictions. In any case, if the consumer suffers any unfavorable consequence, the seller is compelled by law to offer compensation or reimbursement for losses resulting from the usage, use, and utilization of traded products and/or services, as reiterated in point (f) of Article 7 of UUPK.¹¹¹

Additionally, following Article 8 paragraph (2) of UUPK, it states that business actors are prohibited from trading products that are defective or used, polluted, damaged and do not provide clear and complete information.¹¹² The preceding clause elaborates on why such a restriction is required in order to ensure that only products appropriate for distribution and sale are sold in the Indonesian market. That being said, product standardization will become an absolute necessity as it is directly related to a product's security and safety for end users.¹¹³ The UUPK has regulated the quality and clarity of a product being marketed, which is an element that business actors must do in order for consumers to obtain accurate and transparent data about the quality of the cosmetic product of share-in-jar packaging. Business actors are then held liable for defective products received by consumers, which suggests that business actors must pay consumers for damages sustained.

Pursuant to Article 19 of the UUPK, it notes that:

1. *Business actors are responsible for providing compensation for damage, pollution and/or loss to consumers as a result of consuming goods and/or services produced or traded.*
2. ...
3. ...
4. ...
5. *The provisions referred to in paragraphs (1) and (2) do not apply if the business actor can prove that the mistake is the fault of the consumer.*¹¹⁴

With respect to Article 19 of the UUPK, sellers are obligated to provide compensation in the event of damage on the consumer's end, as outlined in paragraph 1.¹¹⁵ As such, business actors can be held accountable for more than just faulty products or services; their responsibility extends to covering all the losses experienced by consumers.¹¹⁶ However, in determining the legal liability of reseller in this case, it's important to keep in mind that a

¹¹¹ Article 7 point (f), Law Number 8 Year 1999.

¹¹² Article 8 paragraph (2), *Ibid.*

¹¹³ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, 7th ed. (Jakarta: Sinar Grafika, 2018), 74.

¹¹⁴ Article 19, Law Number 8 Year 1999.

¹¹⁵ Article 19 paragraph 1, *Ibid.*

¹¹⁶ Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 130.

contract is considered valid if it satisfies the cumulative elements outlined in Article 1320 of the ICC, which are; consent of the parties, capacity to enter into an agreement, a specific object, and a lawful cause.¹¹⁷ Within this article, there are two distinct elements - subjective and objective - that can determine whether the agreement becomes voidable or *void ab initio* if one requirement is not fulfilled.¹¹⁸ An agreement that fails to meet the objective requirements, such as having a specific object and a valid reason, will be deemed void by law or *void ab initio*.¹¹⁹

Further, a contract that is *void ab initio* does not provide any procedural remedies, as the error occurred during the contract formation process. This underscores the importance of ensuring that when forming an enforceable contract, parties must have a specific object and a valid reason that complies with Indonesian law to prevent the contract from being *void ab initio*. Therefore, the legal consequences arising from an agreement that is voidable are that one of the parties can request for the cancellation of the agreement.¹²⁰ Meanwhile, the legal consequences of an agreement that is void by law or *void ab initio*, is that the agreement is deemed to not exist and never occurred in the first place.¹²¹

Subsequently, Article 19 paragraph 5 of the UUPK stresses that an exception to compensation exists if the seller can demonstrate that the consumer's actions contributed to the mistake.¹²² In *casu*, when a buyer purchases a share-in-jar product, they are fully aware that the product being promoted is not legally authorized, and consequently, they should also be aware of the potential inconvenience that comes with it due to its lower price. To substantiate this, an agreement is a conformity between the offer and the acceptance made by both parties. The principle of consensualism is stated in Article 1320 Paragraph 1 of the Civil Code.¹²³ In this article it is determined that one of the conditions for the validity of an agreement is that there is agreement between both parties.¹²⁴ Moreover, the term "momentum of the agreement"

¹¹⁷ Article 1320 of the Indonesian Civil Code.

¹¹⁸ Subekti, *Hukum perjanjian* (Jakarta: PT Intermesa, 2005), 11.

¹¹⁹ J. Satrio, *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian*, 1st Ed. (Bandung: Penerbit Citra Aditya Bhakti, 1995), 167.

¹²⁰ Bernadetha Aurelia Oktavira, "Ini 4 Syarat Sah Perjanjian dan Akibatnya Jika Tak Dipenuhi," *Hukum Online*, July 11, 2022, <https://www.hukumonline.com/klinik/a/4-syarat-sah-perjanjian-dan-akibatnya-jika-tak-dipenuhi-cl4141/>.

¹²¹ *Ibid.*

¹²² Article 19 paragraph 5, Law Number 8 Year 1999.

¹²³ Article 1320, Civil Code.

¹²⁴ Salim H. S., *Hukum Kontrak Elektronik* (Depok: PT Raja Grafindo Persada, 2021), 16.

refers to the point in time when the seller and buyer agree on the goods and their prices.¹²⁵ The agreement or "ok" exchanged between the parties signifies this moment of mutual understanding.¹²⁶

For instance, there was a situation where a buyer knowingly bought a cosmetic product in a share-in-jar container but still expressed dissatisfaction, which drew criticism from the community. According to a tweet by @txtdarionlshop, there's a screenshot showing an upset buyer who received a shared-container product and subsequently left a one-star review.¹²⁷ The buyer argued that the container was large but lacked sufficient content, and she voiced her concerns about the product's quality.¹²⁸ Additionally, she shared a photo of the skincare container in question, revealing that the shared-container product was not filled to capacity.

Iqbal Husen, a private sector worker in Surabaya, had a similar experience. He used to purchase cosmetics in shared containers to test their skincare effectiveness beforehand.¹²⁹ He later regretted his decision as he repeatedly bought skincare products that caused breakouts and acne.¹³⁰ Considering the factors mentioned above, requesting compensation can be quite difficult as consumers often play a role in the mistakes related to the purchase and sale of the share-in-jar cosmetics. Therefore, since the requirement in Article 19 paragraph 5 of the UUPK has been met, there is no valid basis for providing compensation in case of a mistake.¹³¹

Customers purchasing cosmetics in share-in-jar containers may unknowingly expose themselves to risks related to hygiene and product compatibility. To address this concern, sellers fulfil their responsibility by providing explicit information under the UUPK, ensuring that buyers can make informed choices. This proactive approach means that any dissatisfaction or perceived mistake in the purchase does not automatically make the seller liable. The

¹²⁵ *Ibid*, 50.

¹²⁶ *Ibid*.

¹²⁷ Arendya Nariswari and Amertiya Saraswati, "Tak Paham Arti Share In Jar, Pembeli Ini Malah Ngamuk Dapat Skincare Segini," *Suara*, April 1, 2021, <https://www.suara.com/lifestyle/2021/04/01/192458/tak-paham-arti-share-in-jar-pembeli-ini-malah-ngamuk-dapat-skincare-segini>.

¹²⁸ *Ibid*.

¹²⁹ Nafilah Sri Sagita K, "Pro-Kontra Pilih Kosmetik atau Skincare Share in Jar, Kamu Termasuk yang Mana?," *Detik*, March 4, 2023, <https://health.detik.com/berita-detikhealth/d-6600822/pro-kontra-pilih-kosmetik-atau-skincare-share-in-jar-kamu-termasuk-yang-mana>.

¹³⁰ *Ibid*.

¹³¹ Article 19 paragraph 5, Law Number 8 Year 1999.

comprehensive information shared establishes a foundation for fair transactions, with buyers willingly accepting the associated risks.

According to the UUPK, sellers are not obligated to compensate dissatisfied customers, as the emphasis is on disclosure, creating a legal environment that promotes clarity and confidence in transactions. However, it's essential to note that Article 8 of the UUPK stipulates that sellers engaging in prohibited actions, as regulated by the law, will face criminal punishment, as outlined in Article 62 of the UUPK.¹³² Consequently, business actors selling unregulated products that may harm consumers still face legal consequences that cannot be evaded.

C. Conclusion

In summary, this legal analysis has delved into the intricate dimensions of 'Share-in-Jar' cosmetic sales and exploring their regulatory implications on consumer protection. Through a thorough examination of existing regulations, potential gaps have been identified, emphasizing the necessity for a nuanced approach to address the unique challenges posed by this emerging market trend. Firstly, the distribution of share-in-jar cosmetics is unequivocally prohibited, primarily due to the categorization of the products as illegal. The current legal position notably rejects such practices. It is essential to acknowledge that the illegality of the products and the relatively low awareness among stakeholders necessitate a more intensive and comprehensive approach to public awareness and education. This underscores the importance of proactive measures, emphasizing that BPOM should intensify its efforts in socializing and disseminating information regarding the illegal nature of these products. A more robust and widespread awareness campaign is crucial to ensure that consumers are well-informed about the legal implications and risks associated with the distribution of share-in-jar cosmetics. Therefore, this conclusion underscores the dual imperative of legal compliance and public outreach to address the existing challenges surrounding the distribution of shares in the cosmetics industry. Secondly, despite the seller's ability to refuse compensation to the buyer, it is crucial to recognize that legal consequences persist. The seller remains accountable according to the provisions under the UUPK. This legal framework establishes a basis for holding the seller responsible for their actions, even if they opt not to provide compensation to

¹³² Article 62, *ibid.*

the buyer. Such highlights the significance of complying with consumer protection regulations, as delineated in the UUPK, to guarantee equitable and legal business practices and protects the rights of consumers in commercial transactions. In light of the foregoing, distributing shares in jar cosmetics is strictly prohibited due to their illegal categorization, and the law firmly opposes such actions. Increasing public awareness is crucial, given low stakeholder awareness and the illegal nature of the products. BPOM needs to enhance efforts to inform the public. Additionally, sellers can't escape legal consequences despite the option to deny compensation as the UUPK holds them liable for their actions. Adhering to UUPK is key for fair business practices and protecting consumer rights. Thus, a dual commitment to legal compliance and public education is essential to tackle challenges in the cosmetics industry share distribution.

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