

LEGAL ANALYSIS OF ABUSE OF INTELLECTUAL PROPERTY CLAIMS ON SKINCARE PRODUCT COMPOSITION FROM A CONSUMER PROTECTION PERSPECTIVE

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Abstract

This study aims to examine legal protection for consumers against the practice of overclaiming the content of skincare products carried out by manufacturers by utilizing Intellectual Property Rights (IPR) claims as a promotional strategy. The research method used is normative juridical with a regulatory-legislation approach and literature study. The discussion focuses on the extent to which consumer protection law, especially in Law Number 8 of 1999, can overcome misleading practices regarding product content information that is not necessarily registered or legally protected by the IPR regime. The results of the analysis show that many manufacturers use terms such as "patent formulation" or "exclusive ingredients" without adequate legal evidence, which has the potential to harm consumers. This study confirms the need to strengthen regulations on IPR-based product advertising and the active role of supervisory institutions to ensure the accuracy of product content information on the market.

Keywords: Content Overclaim, Consumer Protection, Intellectual Property Rights

A. INTRODUCTION

The development of the skincare industry in Indonesia has shown a very rapid trend in recent years. Beauty products, especially skincare, are not only lifestyle needs, but also part of an individual's social representation. This encourages manufacturers to compete aggressively in marketing their products to consumers. One strategy that is often used is to convey claims regarding the superiority of product content. Manufacturers often insert terms such as "patent formula" or "exclusive composition" to strengthen the appeal of the product. Unfortunately, not all of these claims can be proven legally or scientifically. Claims about product content that are exaggerated or inaccurate are known as overclaims.¹ This practice is a concern because it can cause harm to consumers in terms of health and economy. Many consumers buy products based on trust in the information provided by the manufacturer. If the information does not match reality, then there is a violation of consumer rights. This is where the role of law is important in providing fair protection to the community. This protection should include the accuracy of the advertised content information.

In the context of Indonesian law, Law Number 8 of 1999 concerning Consumer Protection has provided a strong legal basis for consumers who have been harmed. This law affirms the consumer's right to obtain correct, clear, and honest information about the products used. In addition, consumers also have the right to a sense of security and legal certainty. However, in practice, the implementation of this protection still encounters various obstacles. One of them is the weak supervision of advertisements that use promotional language based on Intellectual Property Rights (IPR).² The term IPR is often misused to give the impression that the product has been tested or is legally valid. Manufacturers use IPR elements such as patent claims or exclusive technology to increase the selling

¹ Widjaja, G., & Yani, A. (2000). *Hukum tentang perlindungan konsumen*. Jakarta: RajaGrafindo Persada. hlm. 45.

² Sari, D. A., & Putri, R. N. (2021). Perlindungan hukum terhadap konsumen atas klaim berlebihan produk skincare di Indonesia. *Jurnal Hukum dan Pembangunan*, 51(2). hlm 123.

value of the product. In fact, not all products that claim to have IPR have actually been registered or have legal protection. The use of the term IPR in promotions without legal validation can mislead consumers. In addition, ordinary consumers often do not understand the difference between products that are truly patented and simply using marketing terms. This situation creates an information gap between producers and consumers. This gap places consumers in a legally weak position.

Several academic studies have highlighted the phenomenon of overclaim in beauty products, but not many have highlighted the aspect of its relationship to IPR. Previous studies have mostly discussed ethical violations in product promotion or the effectiveness of drug and food control regulations. Studies linking IPR to the legal responsibility of producers are still relatively minimal. In fact, the misuse of IPR in product marketing is closely related to the validity of the information provided to consumers. Therefore, a legal approach is needed that not only emphasizes the aspect of consumer protection, but also supervision of the use of IPR in promotion.³

The integration of these two aspects is important to prevent misuse of information by business actors. In dealing with this problem, law enforcement cannot only rely on consumer complaints. Supervisory institutions such as BPOM and the Directorate General of Intellectual Property must play an active role in assessing the validity of claims used by producers. On the other hand, regulations on IPR-based advertising also need to be clarified so as not to become a legal loophole. Education for the public regarding the term IPR and consumer rights is also an important part of preventive efforts. Legal research can be a bridge to explain this problem more systematically. Thus, legal protection efforts can run more effectively and fairly.⁴

This article aims to examine legal protection for consumers in dealing with the practice of overclaiming skincare product content

³ Hernoko, A. Y. (2014). *Hukum perjanjian: Asas proporsionalitas dalam kontrak komersial*. Jakarta: Kencana. hlm. 112.

⁴ Hidayat, R., & Lestari, M. (2022). Analisis yuridis terhadap overclaim dalam iklan produk kosmetik. *Jurnal Ilmu Hukum*, 9(1). hlm 45.

associated with IPR claims. The focus of the research is directed at normative analysis of regulations governing product promotion and the legal responsibility of producers. This study uses a normative legal method with a statutory regulatory approach and literature study. The main objective is to find legal loopholes and policy recommendations to strengthen the position of consumers. This study will also describe how the term IPR is often used manipulatively in the promotion of product content. Thus, the contribution of this article is expected to provide benefits both theoretically and practically.

This study is relevant considering the high consumption of skincare products in society which is accompanied by weak control over advertising and product promotion. If not immediately regulated strictly, the practice of IPR-based overclaims will continue to grow and harm consumers. This research is presented as a form of academic contribution in strengthening supervision of the misuse of the term IPR. In addition, this article is also expected to be input for policy makers to evaluate the effectiveness of applicable regulations. In the long term, consumer protection will create a healthier and more competitive market. Therefore, this research is very important to be carried out comprehensively.⁵

B. RESULTS AND DISCUSSION

Legal Analysis of the Use of Intellectual Property Claims in Misleading Skincare Product Promotions

The use of intellectual property terms in skincare product promotions is becoming an increasingly widespread trend. Manufacturers often include the label "patent formula" or "exclusive technology" to attract consumer interest. Although it sounds convincing, not all of these claims are based on valid legal protection. Many manufacturers do not have official legal documents proving patent registration or copyright for the contents of their products. This

⁵ Sidharta, B. A. (2006). *Hukum perlindungan konsumen Indonesia*. Bandung: Citra Aditya Bakti. hlm. 89.

raises concerns about misleading advertising. Legally, deceptive advertising is a violation of consumer rights.⁶ From an intellectual property law perspective, every patent claim must be based on a valid registration and announced by the Directorate General of Intellectual Property. A patent is not just a label, but an exclusive right that goes through a substantial testing process. If a product has not officially obtained patent status, the use of the term can be stopped as an unlawful act. This is in line with the provisions of Law Number 13 of 2016 concerning Patents. Article 20 of the Patent Law explains that a patent is only valid after obtaining an official certificate. Therefore, the use of claims that have not been proven legally valid can be categorized as information manipulation.

Consumers generally do not have the technical knowledge to verify the validity of these claims. This information gap strengthens the dominance of producers in creating false perceptions. In this context, the practice of overclaiming through IPR claims provides unfair economic advantages for business actors. This violates the principle of fairness in trade transactions. In addition, honest business actors who follow legal procedures can be harmed by competitors who use false claims. This practice has the potential to create unfair business competition.⁷ Articles 10 and 12 of the Consumer Protection Law regulate the prohibition of the dissemination of false information and rentals. Business actors are required to provide true, clear, and honest information regarding the conditions and guarantees of the goods or services offered. Misuse of the term IPR directly contradicts these provisions. In addition, Article 18 also prohibits business actors from making unilateral statements regarding the benefits of products that have not been proven. If business actors continue to do so, they can be subject to administrative and criminal sanctions. Therefore,

⁶ Pratama, A. D., & Wulandari, S. (2023). Efektivitas penegakan hukum terhadap pelaku usaha yang melakukan overclaim produk skincare. *Jurnal Hukum dan Regulasi*, 15(3). hlm 20.

⁷ Taufik, M. (2015). *Hukum perlindungan konsumen dalam transaksi elektronik*. Jakarta: Sinar Grafika. hlm. 73.

the law has provided sufficient grounds for taking action against overclaimers.⁸

Unfortunately, there are still weaknesses in the monitoring and enforcement mechanisms for these violations. Supervisory institutions such as BPOM and the Indonesian Consumer Protection Commission (KPKN) have not been fully effective in verifying all promotional claims. In addition to limited resources, the lack of coordination between law enforcement agencies and regulators is also an inhibiting factor. Many cases of overclaims are not revealed due to minimal reporting from consumers. The public's ignorance of their rights also worsens this condition. Therefore, there needs to be institutional strengthening in supervising the promotion of IPR-based products.

Legal analysis also shows that there is a lack of norms in regulating the use of IPR terms in product advertisements. The Patent Law and the Trademark Law do not explicitly prohibit the use of these terms in the context of promotions. Existing provisions focus more on ownership rights and protection of rights, rather than on the use of terms for commercial purposes. This creates a legal loophole that is often exploited by business actors. For this reason, it is necessary to issue technical regulations or ethical guidelines for product advertising that contain strict rules regarding the use of IPR terminology. This regulation must be accompanied by clear sanctions in order to have coercive power.⁹

In addition, a preventive approach through public education is also important to reduce the spread of false claims. The public needs to be given an understanding of the meaning of the terms patent, trademark, and copyright in the context of products. With a good understanding, consumers can be more critical in choosing products and not easily fooled by malicious advertisements. The involvement

⁸ Rahmawati, N., & Yusuf, M. (2024). Perlindungan konsumen dalam menghadapi klaim palsu produk kosmetik. *Jurnal Perlindungan Konsumen*, 12(2). Hlm 89.

⁹ Wahyuni, S. (2018). *Perlindungan hukum terhadap konsumen dalam transaksi e-commerce*. Yogyakarta: Deepublish. hlm. 56.

of academics and the media is also needed in spreading legal literacy to the public. This education should be carried out in a sustainable and structured manner. Thus, prevention can be carried out from the start.¹⁰ Manufacturers also need to be guided to understand the limitations in promoting products based on the law. Training programs or workshops on IPR and business ethics can be a long-term solution. The government and cosmetic industry associations must take an active role in implementing this program. Manufacturers' awareness of the legal risks of overclaiming must be increased so that behavioral changes occur. Thus, business integrity can be better maintained. This will also create a healthier and fairer business climate.

Regulations on advertising and promotion on social media must also be tightened, especially regarding celebrity or influencer endorsements. Many promotions use the term IPR without legal basis, but are still trusted by consumers because of the presence of public figures. The government can enforce the obligation to verify facts for promotions carried out commercially. If an influencer is proven to have spread false information, they can be held legally responsible as a business actor. This approach will reduce the amount of false information circulating in the community. That way, consumer protection can be more optimal.¹¹ Weaknesses in the evidence system are also a challenge in prosecuting overclaimers. Consumers often have difficulty obtaining strong evidence that can be submitted to court. Therefore, the role of independent testing laboratories and research institutions is very important in providing scientific validation of product claims. Cooperation between law enforcement and research institutions must be strengthened. The results of this test can be used as evidence in the legal process. Thus, law enforcement efforts will be more effective.¹²

¹⁰ Santoso, B., & Amelia, T. (2021). Tinjauan hukum terhadap praktik overclaim dalam industri kosmetik. *Jurnal Hukum Bisnis*, 8(4). hlm 150.

¹¹ Sudarsono. (2010). *Hukum perlindungan konsumen di Indonesia*. Jakarta: Rineka Cipta. hlm. 101.

¹² Kurniawan, D., & Sari, M. (2022). Peran BPOM dalam mengawasi klaim produk skincare. *Jurnal Regulasi dan Kebijakan*, 10(1). hlm 70.

From a business ethics perspective, the practice of overclaiming shows a lack of corporate social responsibility towards consumers. Business ethics demands transparency and honesty in every aspect of product marketing. In the long term, this unethical practice will damage the brand's reputation and reduce market trust. Therefore, business actors must realize that integrity is more valuable than short-term profit. Business ethics education must be instilled early on in business actors. This can create a more ethical and sustainable business culture.¹³ Legal certainty is the main requirement for creating effective protection for consumers. Therefore, any legal loopholes in IPR regulations and consumer protection must be immediately closed with policy reforms. The government needs to formulate derivative regulations or revise relevant laws to adjust to the dynamics of the skincare industry. Public participation in the legislative process also needs to be increased. Thus, the resulting law truly reflects the needs and expectations of the community. Strong legal protection will provide a sense of security for consumers and encourage healthy industry growth.

This study uses a normative legal approach that aims to examine the applicable positive legal rules and their application in cases of overclaiming skincare products. This approach is important to describe the extent to which the law can respond to the development of increasingly complex marketing practices. Based on the results of the analysis, it was found that Indonesian positive law has not been responsive enough to the misleading use of the term IPR in product promotion. Therefore, the contribution of this study is expected to provide input for the development of adaptive and progressive laws. Ultimately, fair and proportional consumer protection can be realized. This is an important foundation for the development of equitable national law.¹⁴

¹³ Prasetyo, T. (2017). *Hukum perlindungan konsumen*. Jakarta: Sinar Grafika. hlm. 134.

¹⁴ Lestari, A., & Nugroho, H. (2023). Analisis hukum terhadap labelisasi produk kosmetik yang menyesatkan. *Jurnal Hukum Konsumen*, 14(2). hlm 110.

Effectiveness of Consumer Protection against Overclaims of Skincare Product Content Based on the Consumer Protection Law

Consumer protection is an important part of maintaining a balance between business actors and product users. In the skincare industry, content claims are often the main marketing strategy. However, the practice of overclaiming the content or benefits of a product has the potential to cause harm to consumers. Consumers can be deceived by information that is not in accordance with scientific reality. Therefore, the effectiveness of legal protection is very relevant to analyze. Law Number 8 of 1999 concerning Consumer Protection is the main basis for this protection.¹⁵

The articles in the Consumer Protection Law provide guarantees for consumers' rights to obtain correct and clear information. Article 4 letter c regulates consumers' rights to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services. This is directly related to the practice of overclaiming which can be categorized as misleading information. However, in practice, the effectiveness of law enforcement is still weak due to low reporting and follow-up. Many consumers are not aware that they have legal rights to the losses they experience. This ignorance makes consumers' positions increasingly weak in facing large producers.

The National Consumer Protection Agency (BPKN) and the Non-Governmental Consumer Protection Agency (LPKSM) have strategic roles. However, coordination and scope of supervision are still limited, especially in the regions. Many overclaim skincare products are freely circulated in the online market without strict supervision. In this case, the government has also not been optimal in conducting mass education regarding consumer rights. Consumers tend to be passive and rarely demand their rights because of the complicated legal process and the long time. Therefore, a more responsive and easily accessible mechanism is needed.¹⁶ The

¹⁵ Sutedi, A. (2011). *Aspek hukum perlindungan konsumen*. Jakarta: Sinar Grafika. hlm. 67.

¹⁶ Fauzi, R., & Dewi, S. (2024). Perlindungan konsumen dalam transaksi online produk skincare. *Jurnal E-Commerce dan Hukum*, 6(3). hlm 95.

effectiveness of legal protection is also influenced by the transparency of product labels. Products that include claims of "containing natural ingredients" or "safe without chemicals" must be scientifically proven and justified by laboratory tests. If not, the manufacturer can be considered to have violated Article 10 of the Consumer Protection Law. This article prohibits business actors from producing and/or trading goods that do not match the information on the label. Unfortunately, independent verification of product content by consumers is almost impossible. As a result, supervision must be carried out actively by supervisory agencies and the government.¹⁷

Field studies show that the majority of skincare consumers do not read labels carefully. They are more interested in visual promotions and testimonials spread on social media. Dependence on public opinion makes manufacturers focus more on overclaim campaigns than education. The Consumer Protection Law does provide space for administrative and criminal sanctions, but its implementation is not yet even. There are still many business actors who are free from legal entanglement due to weak control. This reduces public trust in the consumer protection system. Effectiveness is also closely related to the evidence system. In consumer disputes, the burden of proof for losses experienced often lies with the consumer. In fact, based on the principle of strict liability in consumer protection, business actors should be responsible without the need for proof of negligence. This is rarely implemented effectively in court. When consumers do not have strong evidence, lawsuits tend to be rejected. Therefore, a free legal assistance system and education about consumer rights and obligations are needed. Consumers must be empowered so that they can become active subjects in legal protection.¹⁸

The role of the courts in resolving disputes also needs to be considered. In many cases, mediation is a middle ground, but the

¹⁷ Yunus, M. (2019). *Hukum perlindungan konsumen dan peran pemerintah*. Bandung: Refika Aditama. hlm. 98.

¹⁸ Handayani, L., & Putra, Y. (2021). Pengaruh overclaim terhadap keputusan pembelian konsumen. *Jurnal Psikologi Konsumen*, 9(2). Hlm 130.

results are often not beneficial to consumers. The long process, high costs, and lack of access make consumers reluctant to continue to the realm of litigation. In fact, Article 45 of the Consumer Protection Law provides a way through a dispute resolution mechanism outside the courts. This mechanism must be strengthened so that it can reach cases of overclaiming skincare content. Without maximum effort, the effectiveness of consumer protection will only be a slogan without realization.¹⁹ The government needs to increase the capacity and frequency of pre-market and post-market supervision of skincare products. Institutions such as BPOM are responsible for ensuring that product claims are in accordance with scientific facts. However, products are still found that pass the market even though they contain false or misleading claims. Certification and laboratory tests must be tightened and the results must be available to the public. This will encourage manufacturers to be more careful in compiling labels and advertisements. At the same time, it will create a deterrent effect for business actors who violate.

Collaboration between regulators and civil society is important. NGOs, academics, and the media can act as social monitors of unethical business practices. Organized public pressure can encourage the government to act more firmly. In addition, consumer literacy about skincare products and their legal rights must be increased. Label awareness campaigns and legal education through digital media can be strategic steps. Smart consumers are important pillars in encouraging the effectiveness of legal protection. In the global context, several countries have implemented strict regulations on beauty product claims. For example, the European Union prohibits claims that cannot be scientifically proven. Indonesia needs to adopt similar standards in order to compete in the global market and protect domestic consumers. Harmonization between the Consumer Protection Law and sectoral regulations such as the BPOM Regulation needs to be clarified. Inconsistencies between regulations

¹⁹ Nugroho, R. (2020). *Perlindungan konsumen dalam perspektif hukum dan ekonomi*. Yogyakarta: Gadjah Mada University Press. hlm. 120.

often become legal loopholes for manufacturers. Legal certainty is greatly needed in the realm of cosmetic consumer protection.²⁰

The effectiveness analysis also touches on the dimension of the legal culture of society. Low legal awareness causes the practice of overclaiming to continue without resistance. Consumers prefer to replace products rather than demand their rights. This shows that the consumer protection system is not yet fully alive in community practice. Change must start from basic legal education from an early age. When the public is aware of their rights, pressure on business actors will naturally increase. Legally, perpetrators of overclaiming can be subject to administrative, civil, and criminal sanctions. However, the reporting mechanism and legal process are still complicated and not consumer-friendly. This requires reform of law enforcement procedures to be faster and more effective. Digitalization of reporting and an integrated complaint system could be the solution. Consumers can access their rights more easily without bureaucratic obstacles. The effectiveness of the law is not only measured by the content of the norms, but also by the ease of its implementation.

An empirical study of consumers of skincare products in several large cities shows that 78% of respondents do not know their rights. Most of them are even unaware of the existence of the Consumer Protection Law. This shows a big gap in the implementation of protection policies. Good regulations will not be effective without adequate socialization. The government and related institutions must allocate a special budget for consumer protection campaigns. Without concrete steps, the objectives of the law will not be achieved. Another challenge in the effectiveness of the law is the conflict of interest between business actors and supervisors. In some cases, economic and political relations can influence the legal process. For this reason, an independent and intervention-free supervision system is needed. The existence of an Ombudsman or independent institution is needed as a policy supervisor. They can provide annual reports

²⁰ Wibowo, A., & Sari, D. (2022). Strategi hukum dalam mengatasi overclaim produk kosmetik. *Jurnal Strategi Hukum*, 11(1). hlm 60.

regarding overclaim violations in the cosmetics sector. Transparency of public reports will encourage accountability.²¹

Based on the description above, it can be concluded that the effectiveness of consumer protection against overclaims of skincare content is still not optimal. Although regulations are available, their implementation is still weak and has not touched the root of the problem. Synergy is needed between the government, society, business actors, and academics to improve this system. Legal education, strict supervision, and reform of legal procedures are crucial steps. Consumer protection is not only the duty of the state, but also a shared responsibility. Thus, justice and legal certainty can be achieved in skincare product transactions.

C. CONCLUSION

Legal protection for consumers in dealing with the practice of overclaiming the contents of skincare products has been clearly regulated in Law Number 8 of 1999 concerning Consumer Protection. However, the implementation of this protection is still ineffective due to weak supervision, low public legal awareness, and minimal firm action against business actors who violate. Many consumers are not aware of their rights or are reluctant to take legal action because it is considered complicated and inefficient. In fact, the practice of overclaiming has the potential to cause health and economic losses for consumers. The inconsistency of product information with reality directly violates consumers' rights to correct and honest information. Therefore, legal protection must be strengthened through a mechanism that is fast, easily accessible, and pro-consumer.

Synergistic efforts are needed between the government, supervisory institutions, business actors, academics, and the community to increase the effectiveness of consumer protection. Massive legal education, stricter product supervision, and strict

²¹ Yuliana, M., & Prasetyo, T. (2023). Evaluasi efektivitas Undang-Undang Perlindungan Konsumen terhadap overclaim. *Jurnal Evaluasi Hukum*, 7(4). hlm18.

sanctions are the main steps that must be taken. In addition, there needs to be an update to the technical policy in testing skincare product claims so that it is based on scientific evidence and transparent to the public. Consumers must also be encouraged to be more active in voicing their rights through legal channels and social media. With strong protection and a responsive legal system, it is hoped that a healthier, fairer, and more just skincare market will be created for all parties.

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