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# Personal and Company Criminal Liability for Distributing Unlicensed Cosmetics and Its Application in Indonesian Court Rulings

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***Abstract:*** *The increasing circulation of cosmetic products without marketing authorization in Indonesia poses significant challenges to consumer protection and public health, requiring effective criminal law enforcement against both individual and corporate offenders. This study aims to analyze the regulation of criminal liability for individuals and corporations distributing cosmetic products without BPOM marketing authorization under Indonesian positive law and to examine its implementation in Indonesian court decisions. The research employs a normative juridical method using statutory and case approaches. Legal materials were collected through library research, including legislation, court decisions, legal doctrines, books, and scientific journal articles, and were analyzed qualitatively through grammatical and systematic legal interpretation. The study finds that the legal framework governing criminal liability is comprehensively regulated under Law Number 17 of 2023 on Health, Law Number 8 of 1999 on Consumer Protection, Government Regulation Number 28 of 2024, and BPOM Regulation Number 17 of 2023. Criminal liability is imposed based on the fulfillment of the elements of an unlawful act (actus reus) and fault (mens rea), accompanied by administrative and civil sanctions as part of an integrated legal protection system. Furthermore, the implementation of criminal liability in Decision Number 204/Pid.Sus/2025/PN MKS and Decision Number 856/Pid.Sus/2025/PT MKS demonstrates that Indonesian courts have consistently applied the principles of legality, culpability, and criminal responsibility. Although the appellate court imposed a more severe sentence, both decisions consistently emphasized legal certainty, public health protection, and deterrence as the primary objectives of criminal punishment. This study concludes that the existing legal framework has provided an adequate normative basis and has been consistently implemented in judicial practice, thereby strengthening consumer protection and the enforcement of criminal law against the illegal distribution of cosmetic products in Indonesia.*

***Keywords:*** *Criminal Liability; Cosmetics; BPOM Marketing Authorization; Consumer Protection; Indonesian Court Decisions.*

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## INTRODUCTION

The cosmetics industry in Indonesia has experienced significant growth alongside advances in information technology, e-commerce, and the increasing public demand for beauty

products. However, this development has also been accompanied by the widespread circulation of cosmetics without distribution permits issued by the Food and Drug Monitoring Agency (BPOM). Such products pose serious risks because their safety, quality, and efficacy have not been verified, thereby potentially endangering consumer health and undermining legal certainty in the cosmetics market.[1]

Under Indonesian law, every cosmetic product distributed in the domestic market must obtain a BPOM distribution permit as a preventive legal mechanism to ensure consumer protection. Failure to comply with this requirement not only results in administrative sanctions but may also constitute a criminal offense under Law Number 17 of 2023 concerning Health.[2] Nevertheless, illegal cosmetics continue to circulate widely, particularly through electronic commerce platforms and social media, which facilitate product distribution while making regulatory supervision more challenging.

The distribution of cosmetics without distribution permits is committed not only by individual business actors but also by corporations that organize, finance, or facilitate such activities for commercial gain.[3] Consequently, criminal law enforcement should not be limited to prosecuting individuals but should also extend to corporations as legal entities. This approach is consistent with the development of modern criminal law, which recognizes corporations as subjects of criminal liability when criminal acts are committed within the scope of their business activities.[4] However, the practical implementation of corporate criminal liability in Indonesia remains inconsistent, particularly in cases involving the illegal distribution of cosmetics.

Based on these circumstances, two principal legal issues arise. First, how is criminal liability for individuals and corporations engaged in the distribution of cosmetics without BPOM distribution permits regulated under Indonesian positive law? Second, how has such criminal liability been implemented by Indonesian courts in adjudicating cases concerning the illegal distribution of cosmetics? These issues are significant because the effectiveness of criminal law enforcement depends not only on the existence of statutory provisions but also on their consistent application in judicial practice.

Accordingly, this study aims to analyze the criminal liability of individuals and corporations involved in the distribution of cosmetics without BPOM distribution permits under Indonesian positive law and to examine the implementation of such liability through Indonesian court decisions. By combining normative legal analysis with the examination of judicial decisions, this research seeks to evaluate the consistency between statutory provisions and their practical application in law enforcement.

Previous studies concerning the circulation of unlicensed cosmetics have generally focused on consumer protection, BPOM supervision, and the effectiveness of administrative

[1] Badan Pengawas Obat dan Makanan Republik Indonesia, *Laporan Tahunan Badan Pengawas Obat dan Makanan Tahun 2024* (Jakarta: BPOM RI, 2025), 45–48, https://www.pom.go.id/kinerja/laporan-tahunan-4.

[2] Republik Indonesia, Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 106 ayat (1).

[3] Nafa Fadhilah Hasyim, Budi Sastra Panjaitan, and Ramadani, "Tinjauan Yuridis terhadap Bidan yang Memperdagangkan Obat Substandar dalam Perspektif Hukum Pidana dan Hukum Pidana Islam (Studi Putusan Nomor 1406/Pid.Sus/2020/PN Mdn)," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 530, https://doi.org/10.37680/almanhaj.v5i1.2462.

[4] Muladi and Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2015), 45–61.

and criminal sanctions imposed on business actors.[5] Other studies have discussed corporate criminal liability or individual liability separately within the broader context of health-related offenses.[6] These studies share a common concern with ensuring legal protection for consumers and improving regulatory compliance in the health sector. However, they generally do not comprehensively examine the criminal liability of both individuals and corporations within a single analytical framework, nor do they analyze how such liability has been implemented in judicial decisions involving the distribution of illegal cosmetics.

The present study differs from previous research in several respects. First, it simultaneously examines the criminal responsibility of both individuals and corporations as legal subjects under Law Number 17 of 2023 concerning Health. Second, rather than focusing solely on statutory provisions, this research analyzes the implementation of those provisions through relevant court decisions, thereby assessing the consistency of judicial practice with the applicable legal framework. Third, this study considers the growing role of digital commerce in facilitating the distribution of illegal cosmetics, an aspect that has received limited attention in previous legal research.

Accordingly, the novelty of this research lies in its integrated analysis of statutory criminal liability and its implementation in judicial practice regarding the illegal distribution of cosmetics without BPOM distribution permits. By combining the provisions of Law Number 17 of 2023 concerning Health, theories of corporate criminal liability, and the analysis of court decisions, this study is expected to provide a more comprehensive understanding of criminal responsibility for both individuals and corporations while contributing to stronger consumer protection and more effective enforcement of criminal law against the circulation of illegal cosmetics in Indonesia.

## METHOD

This study employs normative legal research using a descriptive-analytical and prescriptive approach. The research examines the legal norms governing individual criminal liability for distributing cosmetics without marketing authorization from the Food and Drug Supervisory Agency (BPOM). The analysis focuses on the application of criminal liability in Decision Number 204/Pid.Sus/2025/PN MKS and Decision Number 856/Pid.Sus/2025/PT MKS through both the statute approach and the case approach. The statute approach reviews relevant legislation, including Law Number 17 of 2023 on Health, the Indonesian Criminal Code (KUHP), the Minister of Health Regulation on Cosmetic Notification, and BPOM regulations, whereas the case approach examines judicial reasoning and the application of criminal law in the selected court decisions.[7]

The study relies on primary, secondary, and tertiary legal materials. Primary legal materials consist of statutes and court decisions, whereas secondary legal materials include books, journal articles, and legal doctrines concerning criminal law, corporate criminal liability, health law, and consumer protection. Tertiary legal materials, such as legal dictionaries and

[5] Abdul Halim Barkatullah, *Hukum Perlindungan Konsumen: Kajian Teoretis dan Perkembangan Pemikiran* (Bandung: Nusa Media, 2019), 121–30.
[6] Sutan Remy Sjahdeini, *Ajaran Pemidanaan: Tindak Pidana Korporasi dan Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2017), 87–95.
[7] Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana, 2021), 55–60.

encyclopedias, are used to support legal interpretation. Legal materials were collected through library research and document analysis.[8]

The collected legal materials were analyzed qualitatively using normative legal analysis. The analysis involved classifying legal materials according to the research issues, interpreting relevant legal provisions through grammatical and systematic interpretation, and examining the consistency of judicial reasoning in applying criminal liability. The findings are presented descriptively. They are directed to an evaluation of the implementation of Indonesian positive law concerning criminal responsibility for the distribution of cosmetics without BPOM marketing authorization, wherein the gap between norm and practice is the principal object of inquiry.[9]

## ANALYSIS AND DISCUSSION

### The criminal liability that can be imposed on someone who distributes cosmetics without a distribution permit under Indonesia's criminal law

Indonesian law addresses this liability expressly. The governing provisions are found principally in Law Number 17 of 2023 on Health, Law Number 8 of 1999 on Consumer Protection, and various regulations issued by the Indonesian Food and Drug Authority (Badan Pengawas Obat dan Makanan/BPOM). Under these legal provisions, any person who manufactures, imports, distributes, or markets cosmetic products without obtaining the required marketing authorization may be held criminally liable, provided that all elements of the criminal offense prescribed by law are established.

Two elements are essential. Criminal liability rests upon the act of distributing cosmetic products that have not obtained marketing authorization from BPOM and the existence of fault on the part of the offender, whether committed intentionally or through negligence. The element of fault constitutes the primary basis for determining whether criminal sanctions may be imposed. Accordingly, individuals who knowingly distribute cosmetic products without marketing authorization for the purpose of obtaining financial gain may be held criminally liable under the applicable criminal law provisions.

Liability is not confined to manufacturers. It extends to importers, distributors, agents, business owners, and retailers involved in the supply chain of cosmetic products lacking marketing authorization, each of whom participates, to a greater or lesser degree, in placing an unlicensed product before the consumer. Each party bears legal responsibility according to its respective role and degree of involvement in the distribution process. This reflects that the Indonesian criminal justice system does not focus solely on principal offenders but also holds accountable all parties who knowingly contribute to the circulation of illegal cosmetic products.

In addition to criminal liability, the study finds that business operators may also be subject to administrative sanctions, including product recalls, revocation of business licenses, suspension of business activities, and destruction of products that fail to comply with statutory requirements. Furthermore, where the distribution of unauthorized cosmetic products causes harm to consumers, business operators may incur civil liability through the obligation to provide compensation in accordance with the provisions of the Consumer Protection Law.

[8] Marzuki, *Penelitian Hukum*, 89–94.
[9] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2019), 29–33.

From a normative perspective, the study finds that the application of criminal liability to individuals or entities distributing cosmetic products without marketing authorization is intended to ensure legal certainty, protect public health, and create a deterrent effect for business operators who fail to comply with marketing authorization requirements. Consequently, the Indonesian legal system adopts a comprehensive liability framework encompassing criminal, administrative, and civil sanctions as a means of strengthening consumer protection and ensuring the safety of cosmetic products available on the market.

The findings further indicate that criminal liability for the distribution of cosmetic products without marketing authorization is supported by a clear legal basis under Law Number 17 of 2023 on Health, Law Number 8 of 1999 on Consumer Protection, and various implementing regulations issued by BPOM. These findings demonstrate that the Indonesian legal system embraces the principle of integrated legal protection, which combines criminal, administrative, and civil legal instruments to ensure the safety of cosmetic products circulating within society. Accordingly, criminal liability serves not only as a mechanism for punishing offenders but also as an important legal instrument for safeguarding public health and protecting consumer rights.

The findings are consistent with the study by Bhuana, wherein it is argued that regulations governing the distribution of cosmetic products without marketing authorization constitute an integral component of Indonesia's health law policy aimed at preventing the circulation of products that may endanger public health. According to that study, the obligation to obtain BPOM marketing authorization represents a form of preventive legal protection, ensuring that every cosmetic product has satisfied the required standards of safety, quality, and efficacy before being placed on the market.[10] Therefore, violating these obligations is not just an administrative offense, but it can also turn into a criminal act if it meets the elements specified by law.

This research found that the main basis of criminal liability lies in the existence of an unlawful act (actus reus) and the element of fault (mens rea).[11] Anyone who intentionally or negligently continues to distribute cosmetics that have not obtained circulation permits can be held criminally responsible because they have met the elements of a criminal act as regulated in the Health Law. This finding shows that the Indonesian criminal law system still adheres to the principle of geen straf zonder schuld, which means no punishment without fault.

The findings support the study by Khodijah, wherein it is explained that criminal liability in Indonesian law requires the fulfillment of an objective element, which is the existence of an act prohibited by law, as well as a subjective element, which is the intent (dolus) or negligence (culpa) of the perpetrator.[12] According to Mohamad and her co-authors, the presence of an element of fault distinguishes administrative violations from criminal acts, because punishment

[10] Fajri Bhuana, "Pertanggungjawaban Pidana terhadap Pelaku Pembuatan Kosmetik Tanpa Izin Edar Dihubungkan dengan Kitab Undang-Undang Hukum Pidana dan Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan," *Bandung Conference Series: Law Studies* 2, no. 1 (2022): 158, https://doi.org/10.29313/bcsls.v2i1.548.

[11] Sintia Dewi and I Gusti Bagus Sakah Sumaragatha, "Perlindungan Hukum terhadap Konsumen Kosmetik atas Ketidaksesuaian Informasi Endorsement dari Selebgram," *Commerce Law* 6, no. 1 (2026): 37, https://doi.org/10.29303/ebjw0q37.

[12] Siti Khodijah, "The Role of BPOM in the Circulation of Cosmetics with Fake Distribution Permission," *Estudiante Law Journal* 3, no. 1 (2021): 118, https://doi.org/10.33756/eslaj.v0i0.15685.

can only be imposed if the offender is capable of being held responsible and commits an act with blame that can be legally accounted for. [13] The doctrine holds. Criminal responsibility for those involved in the circulation of illegal cosmetics accords with the theory of criminal liability recognized in Indonesian criminal law, wherein guilt attaches to the person whose conduct satisfies the statutory elements.

Research findings also show that criminal liability is not only imposed on the manufacturer, but can also be applied to importers, distributors, agents, business owners, and even sellers who knowingly participate in the distribution chain of cosmetics without marketing authorization.[14] This shows that the Indonesian legal system applies the concept of liability based on role (participation liability), so everyone who contributes to the occurrence of a crime can be held accountable according to their level of involvement.

These findings accord with the study by Hasmita and her co-authors, wherein it is argued that the growth of the cosmetics trade has made distribution chains increasingly complex, and consequently law enforcement cannot be directed at producers alone.[15] According to them, distributors, importers, and even business actors who sell products without distribution permits also have legal responsibility because they contribute to the circulation of products that do not meet safety standards. Therefore, expanding the subjects of criminal liability is a more effective form of legal protection for consumers.

Besides criminal sanctions, this study found that business actors can also face administrative sanctions such as having their business licenses revoked, stopping business activities, recalling products from circulation, and even destroying cosmetics that do not meet the requirements. If these actions cause losses to consumers, the actors can also be held civilly liable through compensation mechanisms as regulated in Law Number 8 of 1999 on Consumer Protection.

This finding supports the study by Putri and Hapsari, wherein it is explained that consumer protection in Indonesia applies the concept of multi-track liability, meaning legal responsibility can be pursued through criminal, administrative, or civil channels simultaneously, depending on the nature of the violation. [16] According to the research, combining these three forms of accountability provides legal certainty while also improving the effectiveness of consumer protection against products that could be harmful to health.

This study also found that the main goal of applying criminal liability is not just to punish the offender, but also to create a deterrent effect, ensure legal certainty, and provide protection for public health. This shows that sentencing in cases of cosmetics without distribution permits has both repressive and preventive functions.

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[13] Meliyanti Mohamad, Suwito Yutye Imran, and Karlin Z. Mamu, "Challenges Faced by PPNS, BPOM, and the Indonesian National Police in Addressing Illegal Cosmetic Cases in Gorontalo," *Estudiante Law Journal* 6, no. 3 (2024): 736, https://doi.org/10.33756/eslaj.v6i3.29741.

[14] Wiwi Hasmita et al., "Collaborative Governance in Combating Illegal Cosmetics: A Study of Multi-Stakeholder Dynamics in South Sulawesi, Indonesia," *Journal of Angiotherapy* 9, no. 1 (2025): 5, https://doi.org/10.25163/angiotherapy.9110158

[15] Sesi Safitri Liani and Nurhadissah, "Forms of Consumer Protection Due to Illegal Distribution of Blue Etiquette Cosmetics by Manufacturers for Profit," *Soetomo Justice* 1, no. 1 (2025): 28, https://ejournal.unitomo.ac.id/index.php/justice/article/view/9551.

[16] Aulia Putri and Ifahda Pratama Hapsari, "Administrative Criminal Reform in Providing Accountability for Skincare Actors Who Have Not Registered with BPOM," *Justisi* 11, no. 1 (2024): 180, https://doi.org/10.33506/js.v11i1.3751.

The results accord with the study by Yusuf and her co-authors on criminal law policy, wherein it is argued that punishment in economic crimes should be aimed at achieving three main goals: protecting society (social defence), preventing crime (crime prevention), and realizing community welfare (social welfare). [17] In the context of selling cosmetics without distribution permits, using criminal penalties serves as a way to keep public trust in the drug and food supervision system and to encourage businesses to follow licensing rules.

Enforcement nevertheless encounters obstacles. The growth of e-commerce, the increase in transactions through social media and marketplaces, as well as the entry of illegal imported products make monitoring the distribution of cosmetics increasingly complex. This situation results in cosmetic products without distribution permits still being easily accessible to the public, even though regulations are adequately in place.

This finding supports the study by Savira and Karim, wherein it is stated that the development of digital technology has changed the distribution patterns of cosmetics, so law enforcement can no longer rely solely on conventional monitoring.[18] According to them, it is necessary to strengthen coordination among BPOM, the police, the Directorate General of Customs and Excise, the Ministry of Trade, and digital platform operators to improve the effectiveness of monitoring illegal cosmetics trade.

Based on the overall discussion, this study shows that the criminal liability system for those distributing cosmetics without distribution permits in Indonesia basically already has a strong normative foundation and is in line with the development of criminal law theory as well as previous research findings. Criminal liability is applied based on the fulfillment of the elements of the act and the element of fault, covering all parties involved in the distribution chain, and is supported by administrative and civil sanctions as a form of comprehensive legal protection. However, its effectiveness still needs to be strengthened through increased BPOM supervision, optimized law enforcement against digital trade, improved business compliance, and educating the public to only use cosmetics that have obtained distribution permits. Thus, the goals of law, such as legal certainty, fairness, usefulness, and protection of consumer health, can be achieved optimally.

**The application of criminal liability to offenders who distribute cosmetics without a circulation permit in Ruling Number 204/Pid.Sus/2025/PN MKS and Ruling Number 856/Pid.Sus/2025/PT MKS**

The findings indicate that the imposition of criminal liability in Decision Number 204/Pid.Sus/2025/PN MKS and Decision Number 856/Pid.Sus/2025/PT MKS was based on the fulfillment of all elements of the criminal offense as stipulated in Article 435 of Law Number 17 of 2023 on Health. The panel of judges determined that the defendant satisfied the element of "any person" because the defendant acted as a business operator engaged in the manufacture and distribution of cosmetic products to the public. The element of distributing

[17]Elfira S. Yusuf, Lisnawaty W. Badu, and Mohamad Taufiq Zulfikar Sarson, "Criminal Enforcement against Illegal Cosmetic Business Actors," *Estudiante Law Journal* 2, no. 3 (2020): 472, https://doi.org/10.33756/eslaj.v2i3.14782.

[18]Aulia Putri Savira and Karim, "The Legal Sanctions Application for Business Actors against Illegal Cosmetics Circulation," *Acitya Wisesa: Journal of Multidisciplinary Research* 1, no. 3 (2022): 35, https://doi.org/10.56943/jmr.v1i3.93.

pharmaceutical products was likewise deemed fulfilled, as the cosmetic products were commercially marketed without obtaining the required marketing authorization (BPOM notification) from the Indonesian Food and Drug Authority (Badan Pengawas Obat dan Makanan/BPOM).

The conduct was straightforward. The principal basis for imposing criminal liability was the defendant's act of distributing cosmetic products that failed to meet the statutory standards of safety, efficacy, and quality prescribed for any product placed upon the Indonesian market. Based on the evidence presented during the trial, the cosmetic products distributed did not bear a BPOM notification number, and laboratory test results confirmed the presence of mercury, a hazardous substance prohibited for use in cosmetic products. These findings constituted the legal basis for the panel of judges to conclude that all elements of the criminal offense had been proven lawfully and convincingly.

The findings further demonstrate that the panel of judges considered the existence of the element of fault (*mens rea*) on the part of the defendant. The defendant continued to manufacture and distribute the cosmetic products despite being aware that the products had not obtained BPOM marketing authorization and failed to satisfy the required safety standards. Such conduct demonstrated intentional wrongdoing (*dolus*) aimed at obtaining economic benefits while deliberately disregarding the applicable legal provisions. Consequently, the defendant was held criminally responsible, as no legal justification or excuse existed that could eliminate criminal liability.

In Decision Number 204/Pid.Sus/2025/PN MKS, the Makassar District Court found the defendant legally and convincingly guilty of distributing pharmaceutical products that failed to meet the statutory standards of safety and quality under the Health Law. Subsequently, on appeal through Decision Number 856/Pid.Sus/2025/PT MKS, the Makassar High Court affirmed the findings regarding all elements of the criminal offense but modified the sentence by increasing the term of imprisonment to four (4) years, while maintaining the criminal fine of IDR 1,000,000,000 (one billion rupiah). The enhanced sentence was justified on the grounds that the defendant's conduct posed a serious risk to public health and was committed within the context of a commercial enterprise that generated economic benefits for the offender.

The study further finds that the application of criminal liability in both decisions reflects the implementation of the principle of legality, the principle of culpability, and the principle of criminal responsibility recognized under Indonesian criminal law. The panel of judges not only established the existence of conduct contrary to statutory provisions but also demonstrated the causal relationship between the defendant's fault and the resulting legal consequences. The public interest weighed heavily. The judges treated the protection of public health as a fundamental legal interest that must be safeguarded through the enforcement of criminal law, and not merely as a background consideration.

From a normative perspective, the findings indicate that both decisions consistently applied the provisions of Law Number 17 of 2023 on Health in imposing criminal liability on individuals distributing cosmetic products without the required marketing authorization. These decisions demonstrate that criminal punishment serves not only to deter offenders but also as a legal instrument for protecting the public against the circulation of cosmetic products that fail to satisfy the prescribed standards of safety, efficacy, and quality. The precedential weight is real. Both decisions may serve as persuasive jurisprudence in strengthening the enforcement

of criminal law against the illegal distribution of cosmetic products throughout Indonesia.

The findings further show that the imposition of criminal liability in Decision Number 204/Pid.Sus/2025/PN MKS and Decision Number 856/Pid.Sus/2025/PT MKS was founded upon the fulfillment of every constituent element of the criminal offense prescribed in Article 435 of Law Number 17 of 2023 on Health. The panel of judges established the elements of "any person," the act of distributing pharmaceutical products in the form of cosmetics, and the failure to comply with the required standards of safety, efficacy, and quality, as the products marketed had not obtained BPOM marketing authorization (notification). These findings demonstrate that the judges applied the criminal provisions systematically by assessing each element of the offense on the basis of the evidence presented during the trial, thereby ensuring that the judgments satisfied the evidentiary standards required under Indonesian criminal law.

These findings are consistent with the study by Sutriyono and Hardyansah, wherein it is explained that proof in criminal offenses within the health sector must be established by demonstrating all constituent elements of the offense as formulated by statute. According to their research, in cases involving the illegal distribution of cosmetic products, it is insufficient for the court merely to establish that the products lack marketing authorization; rather, the court must also prove the legal nexus between the defendant's conduct and the statutory provisions that have been violated.[19] Therefore, this study shows that the panel of judges has applied the principle of legality (nullum crimen nulla poena sine lege) correctly because the sentencing is based on provisions that are explicitly regulated in Law Number 17 of 2023 on Health.

The gravamen lies in the act itself. Criminal liability attaches to the distribution of cosmetics that do not meet the standards of safety, efficacy, and quality that the legislation prescribes. Based on evidence from BPOM laboratory test results, the marketed cosmetics were proven to contain mercury, a hazardous substance banned from use in cosmetics because it can cause serious health problems. The presence of mercury strengthens the proof that the products being distributed do not meet the safety requirements as stipulated in the regulations.

This finding supports the study by Sutriyono and Hardyansah, wherein it is argued that the presence of hazardous substances like mercury in cosmetics is one of the main indicators that distinguish administrative violations from criminal acts in the health sector.[20] According to them, if a cosmetic product contains ingredients that are explicitly banned by BPOM and is still sold to the public, then that act meets the criteria of endangering public health and can therefore be held criminally accountable. Thus, the results of this study show that the judges' considerations have aligned with the goals of health law, which is to provide maximum protection for public safety.

The research results also showed that the panel of judges found evidence of fault (mens rea) on the part of the defendant. The judges believed that the defendant knew that the cosmetics being produced and sold did not have BPOM distribution permits, yet still sold them to make a profit. This action indicated intentionality (dolus), so the defendant was considered criminally responsible for their actions. Additionally, during the trial process, no justifying or excusing reasons were found that could remove the defendant's criminal liability.

[19]Sutriyono et al., "BPOM in Monitoring and Controlling Illegal Cosmetics," *International Journal of Service Science, Management, Engineering, and Technology* 5, no. 2 (2024): 18, https://ejournalisse.com/index.php/isse/article/view/119

[20]Sutriyono et al., "BPOM in Monitoring and Controlling Illegal Cosmetics," 19.

These findings accord with the study by Natasha, Wiryawan, and Auda, wherein it is explained that the principle of geen straf zonder schuld (no punishment without fault) still remains the main basis in criminal responsibility in Indonesia.[21] According to the research, punishment can only be imposed if it is proven that there was a fault committed either intentionally or through the negligence of a person who is capable of being held responsible. Therefore, proving the element of fault in both decisions shows that the panel of judges not only evaluates the objective aspect of the unlawful act but also pays attention to the subjective aspect, which is the mental attitude of the offender.

The two courts diverged on sentence. In Ruling Number 204/Pid.Sus/2025/PN MKS, the Makassar District Court found the defendant guilty and imposed a sentence according to the provisions of the law. Then, in Ruling Number 856/Pid.Sus/2025/PT MKS, the Makassar High Court increased the prison sentence to four years, while the fine of Rp1,000,000,000.00 remained unchanged. The main consideration for the appellate judge was the significant risk posed to public health and the economic motive behind the defendant's actions.

The results reinforce the study by Sitorus, wherein it is observed that the goal of modern sentencing is not only focused on retribution, but also aims to provide deterrence, protect society, and prevent crimes from happening again in the future. In the context of illegal cosmetics cases, the increased penalties at the appeal level show that judges pay more attention to protecting public interests compared to the individual interests of the offenders.[22] Thus, the punishment in this case has both a preventive and a repressive dimension.

This research also found that both rulings consistently applied the principles of legality, fault, and criminal liability. The judges not only proved that there were actions contrary to the law but also connected the defendant's fault to the legal consequences posing a threat to public health. These considerations show that the panel of judges regarded public health protection as a legal interest that must be safeguarded through the enforcement of criminal law.

These findings accord with the study by Khodijah, wherein it is explained that enforcing criminal law in the health sector should prioritize public safety. According to them, the presence of criminal penalties in the Health Law is part of a penal policy aimed at preventing the circulation of products that could endanger the public whereas it also increases business compliance with the licensing system set by the state.[23]

Their guidance value is considerable. Both rulings furnish a reference for law enforcement officers confronting illegal cosmetics in Indonesia, particularly in matters wherein the evidentiary threshold and the sentencing range are contested. The consistent application of Article 435 of Law Number 17 of 2023 concerning Health demonstrates legal certainty for law enforcement officers in handling similar cases in the future. The rulings also show that the court considers not only legal certainty but also the benefits and protection of the public as the ultimate goal of law enforcement.

This aligns with the study by Utomo and Baidhowi, wherein it is stated that consistency

[21]Fira Natasha, Arif Bagus Wiryawan, and Siti Auda, "Criminal Liability of Influencers for Distribution of Illegal Products on Social Media," *Jurispro Law Review* 2, no. 1 (2025): 6, https://online-journal.unja.ac.id/jlr/article/view/49871.

[22]Cintya Theresia A. M. Sitorus, "Legal Protection of Consumers Who Experience Skin Damage Due to the Use of Illegal Skin Whitening Products Based on Law No. 8 of 1999 concerning Consumer Protection," *De Lega Lata: Jurnal Ilmu Hukum* 9, no. 1 (2024): 99, https://jurnal.umsu.ac.id/index.php/delegalata/article/view/18062.

[23]Khodijah, "The Role of BPOM," 120–22.

in court decisions in health cases plays an important role in shaping legal certainty and serves as a reference for judges in deciding cases with similar characteristics.[24] According to them, a ruling that provides protection for public interests will strengthen public trust in the judicial system whereas it also increases business compliance with existing regulations.

Based on the overall discussion, it can be understood that the results of this study reinforce various previous studies regarding criminal responsibility in health-related crimes. The application of criminal responsibility in Ruling Number 204/Pid.Sus/2025/PN MKS and Ruling Number 856/Pid.Sus/2025/PT MKS has been in accordance with the principles of Indonesian criminal law because it is based on proving the elements of the crime, the presence of fault, the capacity for responsibility, and the absence of justifying or excusing reasons. The difference in sentencing orientation between the first-level court and the appellate court shows that public health protection is the main consideration in imposing penalties. Thus, both decisions hold important legal value as a form of strengthening law enforcement against the circulation of cosmetics without distribution permits, while also serving as a reference in achieving legal certainty, consumer protection, and public health protection in Indonesia.

## CONCLUSION

This study concludes that, first, Indonesian positive law has established a comprehensive legal framework governing criminal liability for the distribution of cosmetic products without BPOM marketing authorization through Law Number 17 of 2023 on Health, Law Number 8 of 1999 on Consumer Protection, Government Regulation Number 28 of 2024, and BPOM Regulation Number 17 of 2023. Under these legal instruments, criminal liability may be imposed upon individuals who intentionally or negligently distribute cosmetic products without the required marketing authorization, provided that the elements of an unlawful act (*actus reus*) and fault (*mens rea*) are fulfilled. The legal framework also provides complementary administrative and civil sanctions, reflecting an integrated system of consumer protection and public health.

Second, the implementation of criminal liability in Decision Number 204/Pid.Sus/2025/PN MKS and Decision Number 856/Pid.Sus/2025/PT MKS demonstrates that Indonesian courts have consistently applied the principles of legality, culpability, and criminal responsibility. The courts established the fulfillment of the statutory elements of the offense, confirmed the defendant's fault, and found no legal grounds excluding criminal liability. Although the appellate court imposed a heavier sentence than the court of first instance, both decisions consistently emphasized the protection of public health, legal certainty, and deterrence as the primary objectives of criminal punishment. These findings indicate that the applicable legal framework has been implemented consistently in judicial practice and serves as an important legal basis for strengthening law enforcement against the illegal distribution of cosmetic products in Indonesia.

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[24]Yusuf Dwi Utomo and Baidhowi, "Legal Liability of Skincare Business Owners for Using Overstated Claims," *Syiar Hukum: Jurnal Ilmu Hukum* 23, no. 1 (2025): 20, https://journals.unisba.ac.id/index.php/syiar_hukum/article/view/8440.

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