

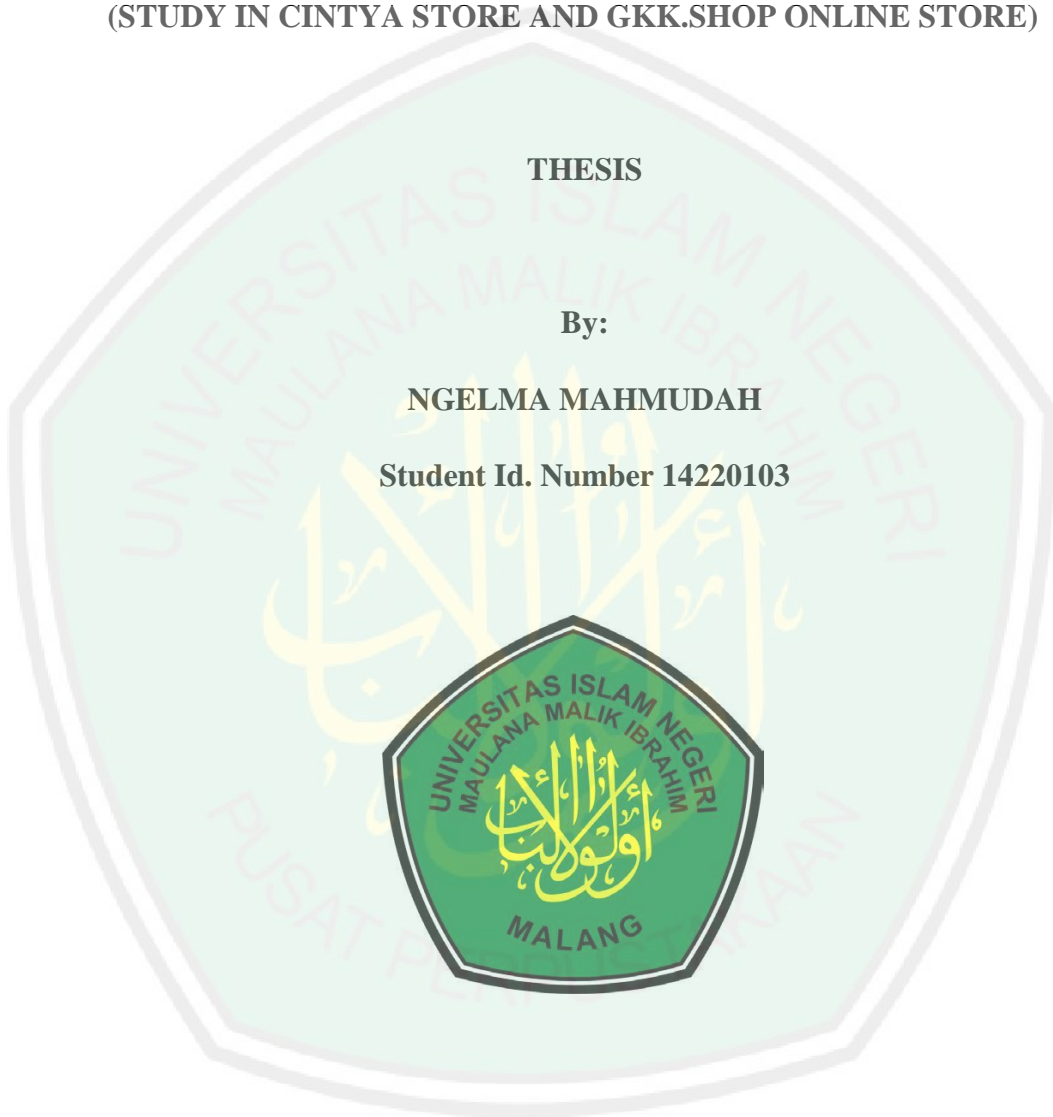
**LEGAL RESPONSIBILITY OF BUSINESS ACTORS FOR CONSUMERS  
ON IMPORT COSMETIC PRODUCTS WITHOUT INDONESIAN  
LANGUAGE LABEL UNDER PERSPECTIVE OF ISLAMIC LAW  
(STUDY IN CINTYA STORE AND GKK.SHOP ONLINE STORE)**

**THESIS**

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**ISLAMIC BUSINESS LAW DEPARTMENT**

**SHARIA FACULTY**

**MAULANA MALIK IBRAHIM**

**STATE ISLAMIC UNIVERSITY OF MALANG**

**2019**

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**THESIS**

Presented to

Sharia Faculty of Maulana Malik Ibrahim Malang State Islamic University

To Fill one of Requirements Used to Get Degree of

Bachelor Islamic Law (S.H)

By:

Ngelma Mahmudah



**ISLAMIC BUSINESS LAW DEPARTMENT**

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**2019**

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In the name of Allah (swt),

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**“LEGAL RESPONSIBILITY OF BUSINESS ACTORS FOR CONSUMERS  
ON IMPORT COSMETIC PRODUCTS WITHOUT INDONESIAN  
LANGUAGE LABEL UNDER PERSPECTIVE OF ISLAMIC LAW  
(STUDY IN CINTYA STORE AND GKK.SHOP ONLINE STORE)”**

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work, duplication, plagiarism, this thesis and my degree as the result of this action  
will be deemed legally invalid.

Malang, 30 April 2019

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**“LEGAL RESPONSIBILITY OF BUSINESS ACTORS FOR CONSUMERS  
ON IMPORT COSMETIC PRODUCTS WITHOUT INDONESIAN  
LANGUAGE LABEL UNDER PERSPECTIVE OF ISLAMIC LAW  
(STUDY IN CINTYA STORE AND GKK.SHOP ONLINE STORE)”**

The supervisor states that this thesis has met the scientific requirements to be  
proposed and to be tested by the Thesis Board of Examiners.

Malang, 2<sup>nd</sup> of April 2019

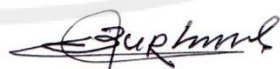
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Under Perspective of Islamic Law (Empirical Study in Cintya  
Thesis Title Store and Gkk.shop online Store)

No	Day/Date	Subject of Consultation	Signature
1	Wednesday, December 27 <sup>th</sup> 2017	Proposal	
2	Thursday, January 4 <sup>th</sup> 2018	Review Proposal	
3	Friday, January 5 <sup>th</sup> 2018	Chapter I and layout	
4	Tuesday, January 9 <sup>th</sup> 2018	Review of Chapter I	
5	Wednesday, May 2 <sup>nd</sup> 2018	Chapter II and III	
6	Tuesday, May 8 <sup>th</sup> 2018	Review of Chapter II & III	
7	Friday, May 11 <sup>nd</sup> 2018	Chapter IV	
8	Thursday, April 18 <sup>th</sup> 2019	Review of all Chapters in Indonesian Language	
9	Friday, April 19 <sup>th</sup> 2019	All Chapters in English	
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**“LEGAL RESPONSIBILITY OF BUSINESS ACTORS FOR CONSUMERS  
ON IMPORT COSMETIC PRODUCTS WITHOUT INDONESIAN  
LANGUAGE LABEL UNDER PERSPECTIVE OF ISLAMIC LAW  
(STUDY IN CINTYA STORE AND GKK.SHOP ONLINE STORE)”**

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## MOTTO

*as big as your conviction, that is your luck. -K.H. Imam Zarkasyi-*

يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ

*O Children of Adam! wear your beautiful apparel at every time and place of prayer: eat and drink: But waste not by excess, for Allah loveth not the wasters*

*Do not worry. As humans, our job is to do everything with all our heart and try as well as we can. about the results, leave it all to Allah Almighty, because that is his authority.-Ngelma M-*

## ACKNOWLEDGMENT

All Praise due to Allah SWT who has guided me in the course of my life, which has given me many conveniences and fortunes that I never expected before, thank you for the patience that you have given me interrupted by all the tests you gave me to rise higher level of life. Thank you for the spirit that you always embraced myself and *khusnudzon* which always defeated *Su'udzon* in this mind. With only His Grace and Guidance, this thesis entitled “ Legal Responsibility of Business Actors toward Consumers on Imported Cosmetic Products without Indonesian Label According to Islamic Law ( Empirical Study in Malang). All praise due to prophet Muhammad SAW who has provided guidance for life on the path of *Tawheed* that Allah revealed to him, and thank you for the teachings that he brought which provided education for his people. Prayers and greetings always come to you.

With all support and help, discussion, guidance and directions from all parties involved during the process of completing this thesis, the Writer wishes to express his utmost gratitude to the following :

1. Prof. Dr.H. Abdul Haris, M.Ag as the Rector of Maulana Malik Ibrahim State Islamic University of Malang
2. Dr. Saifullah, S.H, M.Hum, as the Dean of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University



3. Dr. Fachruddin, M.H.I, as the head of Islamic Business Law Department of Sharia Faculty
4. Dr. H. Mohamad Nur Yasin, SH., M.Ag., Dr. Burhanuddin Susanto S.H., M.Hum., Dr. Khoirul Hidayah MH., as thesis board of examiners. *Jazakumullah khairan katsir*, thanks for giving many suggestions and criticism for this thesis
5. Dr. Burhanuddin Susanto, S.H.I., M.Hum. as the supervisor and examiner. The writer expresses her gratitude for the guidance and directional motivation given in this course until this thesis had been successfully completed. May Allah (swt) bless him and his family
6. H. M. Thoriquddin, Lc, M.H.I., as supervisory lecturer during the writer's study in Islamic Business Law Department of Sharia Faculty of Maulana Malik Ibrahim State Islamic University of Malang
7. The lecturers and all staff of Sharia Faculty who have developed, educated and provided useful knowledge and valuable experience
8. For my lovely husband, Gagah for his a lot of sacrifice and his patience, even moral side and material side for the implementation of this thesis until it is finished, and for my precious princess, Aliya, who has been forced to stay away from her daddy because of accompanying my thesis in Malang
9. For Ibu, Karyani and Bapak, Suroto who has raised me and provided the best education and prayer for me, thank you for the prayers from younger siblings Akbar Fahmi Pranata and Wira Noor Farhana

10. For my father-in-law and my mother-in-law and brothers-in-law who have supported this thesis.

11. Thank you for the Anisah who has loved my princess very much and looked after her while I had to leave her for the sake of implementing this thesis

12. To landlady of sunan kalijaga 1 hostel for the words of her pearl which became my guide so that I could finish this thesis.

13. And all friends and people who have directly or indirectly that i can't mention them one by one who involved in the success of this thesis

Thanks to all your prayers, sacrifices and intervention, and finally I get to complete this thesis. May God reward you with better things. I also apologize for the many shortcomings in the writing and also the imperfections of the myselfes. But believe me, I've done my best.

The author also thanked herself for being patient with all the pressure and forging that she received at the same time thanking her for her enthusiasm to continue completing this thesis until it was completed amid conditions that could not be said to be very easy and smooth.

Malang, April 22<sup>nd</sup> 2019

Writer,

Ngelma Mahmudah

NIM 14220103

## TRANSLITERATION GUIDE

### A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No.158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide'book, INIS Fellow 1992.

### B. Consonants

ا	=	Unvocalized	ض	=	Dl
ب	=	B	ط	=	Th
ت	=	T	ظ	=	Dh
ث	=	Ts	ع	=	' (comma facing upards)
ج	=	J	غ	=	Gh
ح	=	H	ف	=	F
خ	=	Kh	ق	=	Q
د	=	D	ك	=	K
ذ	=	Dz	ل	=	L
ر	=	R	م	=	M
ز	=	Z	ن	=	N

س	= S	و	= W
ش	= Sy	هـ	= H
ص	= Sh	ي	= Y

The hamzah (ء) which is usually represented by *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of the word, it is represented by comma facing upwards (‘), as oppose to a comma (‘) which replaces the “ع”

### C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i” and *dhammah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال become qâla

Elongated (i) vowel = î example قيل become qîla

Elongated (u) vowel = û example دون become dûna

Specially for the pronouncing of *ya’ nisbat* (in association), it cannot be represented by “i”, unless it is written as “iy” so as to represent the *ya’ nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya’* after *fathah* it is written as “aw” and “ay”. Read the following examples :

Diftong (aw) = و example قول become qawlun

Diftong (ay) = ي example خير become khayrun



#### D. *Ta' marbûthah* (ة)

*Ta' marbûthah* is transliterated as “t” in the middle of the word, but if *ta' marbûthah* in the end of words, then it is transliterated as “h”. for example : الرسالة المدرسية will be *al-risalat li al-madarrisah* or if it happens to be in the middle of a phrase which constitutes *mudlaf* and *mudlafilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example في رحمة الله becomes *fī rahmatillah*

#### E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of a word, while “al” in the phrase of *lafadhjalalah* (speaking of God) which in the middle of a sentence and supported by *and* (*idhafah*) then it is not written. Read the following :

1. Al Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâh 'azza wa jalla.*

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## ABSTRAK

Ngelma Mahmudah. NIM : 14220103, ***Tanggung Jawab Hukum Pelaku Usaha Kepada Konsumen Terhadap Produk Kosmetik Tanpa Label Bahasa Indonesia Menurut Hukum Islam (Penelitian Empiris di Malang)***, Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing : Dr. Burhaniddin Susanto, S.HI., M.Hum.

Kata Kunci : *Kosmetik Impor, Label Bahasa Indonesia, Tanggung Jawab Hukum, Pelaku Usaha.*

Kegiatan perdagangan produk kosmetik impor di Indonesia telah diatur dalam peraturan perundang-undangan yang berlaku di Indonesia. Salah satu peraturan yang wajib ditaati oleh pelaku usaha adalah keharusan memasarkan produk kosmetiknya dengan menggunakan label bahasa Indonesia. Menurut Undang-Undang No.8 Tahun 1999 tentang Perlindungan Konsumen menyebutkan bahwa konsumen memiliki hak informasi yang benar, jelas dan jujur mengenai kondisi serta jaminan barang dan/atau jasa. Namun belakangan ini telah marak beredar produk kosmetik impor yang tidak mencantumkan label bahasa Indonesia dan tidak sesuai dengan ketentuan perdagangan kosmetik yang berlaku.

Maka dari itu, penelitian ini bertujuan untuk mengetahui bagaimanakah tanggung jawab hukum dari pelaku usaha yang menjual kosmetik impor tanpa label bahasa Indonesia tersebut. Kemudian bagaimanakah pandangan hukum Islam tentang transaksi perdagangan kosmetik tanpa label bahasa Indonesia tersebut. Penelitian ini menggunakan metode penelitian empiris kualitatif yang menggunakan data primer dari studi lapangan. Kemudian penelitian ini menggunakan pendekatan yuridis sosiologis yaitu diangkat dari fenomena yang ada dimasyarakat dan dianalisis dengan aspek-aspek yuridis.

Kemudian dari hasil penelitian ini kita dapat mengerti bahwa sesungguhnya pelaku usaha memiliki tanggung jawab atas pencantuman informasi yang sesuai dengan peraturan yang berlaku terhadap produk yang mereka jual, yaitu dengan label berbahasa Indonesia sebagai media perantara komunikasi antara pelaku usaha (produsen produk) dengan konsumen secara jelas dan mudah dimengerti. Namun, karena kelalaian mereka terhadap pencantuman informasi ini, para pelaku usaha ini memiliki beban tanggung jawab berupa pengembalian uang ganti rugi, penggantian barang/jasa yang serupa serta perawatan kesehatan ataupun pemberian santunan atas kerugian yang diderita oleh konsumen. Selain itu pelaku usaha juga terancam hukuman pidana penjara paling lama 5 tahun atau pidana denda paling banyak Rp. 2,000,000,000. Sedangkan menurut pandangan hukum Islam, transaksi ini termasuk transaksi jual-beli *gharar* karena adanya ketidakjelasan tentang informasi dari produk yang diperjualbelikan. Namun hukum perdagangan *gharar* ini bisa berubah menjadi perdagangan yang sah apabila konsumen memiliki kemampuan berbahasa asing sesuai bahasa yang tercantum dalam label bahasa asing tersebut.

## ABSTRACT

Ngelma Mahmudah. NIM : 14220103, *Legal Responsibility of Business Actors Toward Consumers on Imported Cosmetic Products Without Indonesian Label According to Islamic Law (Empirical Study in Malang)*, Thesis, Islamic Business Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University, Supervisor : Dr. Burhanuddin Susanto, S.HI., M.Hum.

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Key Words : *Import Cosmetics, Indonesian Labels, Legal Responsibility, Business Actors.*

The trade activities of imported cosmetic products in Indonesia are regulated in the laws and regulations that applicable in Indonesia. One of the regulations that must be adhered to by business actors is the obligation to market their cosmetic products using Indonesian labels. Because of statement that mentioned at law no.8 of 1999 concerning about Consumer Protection that the consumers have the right to the correct, clear and honest information about the conditions and guarantee of goods and / or services. But lately there has been widespread circulation of imported cosmetic products that do not include Indonesian labels and are not in accordance with applicable cosmetic trade provisions.

Therefore, this study aims to find out how the legal responsibilities of business actors who sell imported cosmetics without the Indonesian label. Then what is the view of Islamic law regarding cosmetic trade transactions without the Indonesian label. This study using qualitative empirical research method that using primary data from field research in the form of descriptive data. And this study using a sociological juridical approach that is lifted from phenomena that exist in the community and analyzed with juridical aspects.

Finally, from the results of this research we can understand that in fact business actors have a responsibility for the inclusion of information in accordance with the regulations that apply to the products they sell, that was Indonesian labels as a medium of communication between business actors (product producers) and consumers clearly and easy to understand. However, due to their negligence on the introduction of this information, these business actors have a burden of responsibility in the form of returning compensation, replacing similar goods / services and health care or providing compensation for losses suffered by consumers. In addition, business actors also face a maximum 5 years imprisonment or maximum fine Rp. 2,000,000,000. Whereas according to Islamic law, this transaction includes *gharar* buying and selling transactions because of the lack of clarity about the information of the products being traded. But this *gharar* trade law can be turned into a legitimate trade if the consumer has foreign language skills in accordance with the language listed on that foreign language label.

## المستخلص

علما محمودة. رقم القيد: 14220103، مسؤولية الحكمة لرجال العمل نحو المستهلكين عن إنتاج مستحضرات التجميل بدون الوسم باللغة الإندونيسية من خلال ضوء الأحكام الإسلامية (دراسة واقعية بمالانج)، بحث جامعي، قسم أحكام التجارة الشرعية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، المشرف: دكتور برهان الدين سوسانطا، الماجستير.

الكلمات الأساسية: مستورد التجميل، وسم باللغة الإندونيسية، مسؤولية الحكمة، رجال العمل

تنظم عملية التجارة لمنتجات التجميل المستوردة إلى إندونيسيا حيث يقوم بها الدستور الساري بإندونيسيا. من إحدى النظم الواردة نحو رجال العمل هي وجوب تسويق منتجات التجميل بوسم اللغة الإندونيسية. وذلك بمثابة ما قاله الدستور رقم 8 سنة 1999 عن حماية المستهلكين حيث يقول أن المستهلكين لهم حق في نيل المعلومات الصحيحة، والوضيعة، والصدقية عن حالة الأشياء أو البضاعة وضماناتها. ولكن من الأسف، لقد انتشرت في هذه الأواخر المنتجات التجميلية التي لم تسجل الوسم باللغة الإندونيسية ولم تناسب بقوانين التجارة لمستحضرات التجميل السارية.

فلذلك، يهدف هذا البحث إلى معرفة مسؤولية الحكمة من قبل رجال العمل الذين يبيعون مستوردات التجميل دون الوسم باللغة الإندونيسية، واكتشاف رؤية الأحكام الإسلامية عن عقد التجارة لمستحضرات التجميل بدون الوسم باللغة الإندونيسية. يستخدم هذا البحث منهج البحث القضائي الكيفي بمصادر البيانات الأساسية من دراسة عقلية. وبالتالي، تستخدم الباحثة المدخل القضائي الاجتماعي الصادر من الظواهر بين المجتمع ويتم تحليلها بالعناصر القضائية.

ونائج هذا البحث تدل على أن رجال العمل لهم مسؤولية في تسجيل المعلومات المناسبة بالقوانين الموجودة للمنتجات المبعة، وهي بتسجيل الوسم باللغة الإندونيسية كوسيلة التواصلية بين رجال العمل والمستهلكين بشكل ميسور. ولكن لوجود غفلتهم لتسجيل المعلومات، فيكلف رجال العمل بإعادة التعويض، تبديل الأشياء المتمثلة وتوعية صحية أو منح المساعدة على خسارة المستهلكين. ويكاد رجال العمل يتعزز بالسجن لمدة خمس سنوات أو الدية بمبلغ 2.000.000.000 روبية. أما من قبل نظرة الأحكام الإسلامية، يتضمن هذا العقد من ضمن عقد الغرار لغموض المعومات عن المنتجات المبعة. لكن يتغير هذا العقد إذا كان المستهلك يتمكن باللغة الأجنبية مثل اللغة الموجودة في تلك المنتجات.

## CHAPTER I

### PREFACE

#### A. Background Of Research

Nowadays cosmetics are not only used among women only, but men also not a few who use it, in addition to the purpose of meeting the needs of work, the beauty explorer who loves cosmetics were also many who come from men. And the role of cosmetics has now shifted from the tertiary needs to the primary needs for most consumers and also not a few who make it as a hobby.

Lately the growth of cosmetic use is very rapid. Based on data from the Ministry of Industry (2016), the growth of this industry market averaged 9.67% per year in the last six years (2009-2015). It is estimated that the market size (market size) of the cosmetic market is Rp.46.4 trillion in the year 2017 ago. With this amount, Indonesia is a potential market for beauty industry entrepreneurs both from outside and within the country<sup>1</sup>.

In Islam itself, beautifying is the advice of god, as long accordance with the provisions of sharia and not excessive. In Al A'raaf verse 31 Allah says:

يَا بَنِي آدَمُ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ

<sup>1</sup><http://sigmaresearch.co.id/tren-dan-perilaku-pasar-kosmetik-indonesia-tahun-2017/>, accessed 30/3/2018-7.51 pm



*O Children of Adam! wear your beautiful apparel at every time and place of prayer: eat and drink: But waste not by excess, for Allah loveth not the wasters<sup>2</sup>.*

In Indonesia itself there are cosmetics circulating widely to meet the desires and interests of various consumer today. Therefore, so much of the market demand for cosmetics, cosmetics market today not only provide cosmetics products in the country alone, but also come from imported products from various foreign countries. Even the local cosmetics industry is considered difficult to improve its business performance due to the import market share of 60% of the total domestic market worth Rp15 trillion. Based on data from the Food and Drug Supervisory Agency (BPOM), cosmetics products notified by the majority came from imported products within the period of 2011 - 2014. Last year, registered cosmetic products of 36,642 came from local products of 40.52%, ASEAN 4.69%, Europe 28.58%, and other countries 26.21%<sup>3</sup>.

In addition, the circulation of cosmetics that do not meet the current requirements are seen increasingly alarming. Cosmetic products in the Indonesian market today are mostly derived from unregistered imported products and which do not contain the substances contained therein. The sale of beauty products both in stores and over the internet makes it easier to get the product. Various ways done by business actors to market their products, one of them by stating that the

<sup>2</sup>[http://www.theonlyquran.com/quran/Al-A%27raf/English\\_Abdullah\\_Yusuf\\_Ali/?ayat=26&pagesize=0](http://www.theonlyquran.com/quran/Al-A%27raf/English_Abdullah_Yusuf_Ali/?ayat=26&pagesize=0), accessed 04/04/2018-8.30 pm

<sup>3</sup><http://kemenperin.go.id/artikel/11943/Produk-Impor-Kuasai-Pasar-Kosmetik>, accessed 04/04/2018 8.07 pm

product is made in foreign countries that imported directly to Indonesia, whereas in fact the cosmetics products do not have a marketing license and the absence of registration number from BPOM makes the price of the product cheaper. Some of the differences of illegal beauty products with official beauty products namely the absence of BPOM registration number, the absence of the translation label of cosmetic raw materials in the Indonesian language, the absence of product expiration date.

As the latest news published in detik.com dated March 29, 2016 Jakarta Food and Drug Control Center (BB POM) re-conduct routine operations to prevent the circulation of illegal cosmetics, where BB POM has raided four shops which became a cosmetics manufacturing factory illegal. Head of BB POM DKI Jakarta, Dewi Prawitasari explained the four shop houses are circulating in the region of Mangga Besar and Jelambar of West Jakarta. Manufacture of cosmetics is home-scale and operated by citizens of Indonesia<sup>4</sup>.

The emergence of news about dangerous cosmetics was increasingly rife found and became a separate concern for consumers. As quoted from life.idntimes.com on March 19, 2018. Which states that South Korea's Food and Drug Administration, as one of the largest cosmetic importers in Indonesia found the heavy metal that exceeds the recommended limit of use in some cosmetic products in South Korea manufactured by *Hwasung* Cosmetic. Known hazardous

<sup>4</sup> [www.acemark-ip.com/id/news\\_detail.aspx?ID=129&URLView=default.aspx](http://www.acemark-ip.com/id/news_detail.aspx?ID=129&URLView=default.aspx)  
04/04/2018-10.13 pm

accessed

metals named antimony or kohl are found excessively in some beauty products from well-known brands in South Korea.

South Korea's Food and Drug Administration says that the allowed use of antimony should not exceed  $10\mu\text{g} / \text{g}$  in each product. However, in those products were found  $10.1\text{-}14.3 \text{ g} / \text{g}$  antimony which caused the products to be withdrawn from the market. Excessive use of antimony can cause various health problems to the user, such as respiratory, cardiac, digestive disorders if inhaled. As if used in excess can also cause irritation and other skin problems.

South Korea's leading beauty products brand, Etude House, is certainly no stranger to Indonesian cosmetics consumers, especially fans of Korean cosmetics and skin care. Etude House itself has opened their official store in several shopping centers in Indonesia. Their products always be the target of the most fans of Korean cosmetics addict in Indonesia, not only because of their affordable price but also it has unique and eye catching packaging. However, unfortunately some of etude house and some another brand of Korean cosmetics products have to be withdrawn from market place as indicated by heavy metals in excess amounts. But for consumers who have already purchased the product, they can ask the compensation in the form of money of exchange with other items from the responsible storefront<sup>5</sup>.

Actually, the activities of Importing cosmetic products in Indonesia itself is a legal transaction, as long as it does not violate the rules applicable Indonesia

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<sup>5</sup> <https://life.idntimes.com/women/dessyl/semptat-ramai-ini-8-kosmetik-korea-selatan-yang-ditarik-dari-peredaran-cl> c2

and in particular does not violate the provisions of cosmetic imports in accordance with applicable legislation in Indonesia. The regulations governing import trade in Indonesia are very diverse, including on language labels that should be included on the product in accordance with the author's research focus which is cosmetic products, as stated in PERMENDAG No.73 / M-DAG / PER / 9/2015 on obligations inclusion of labels in the Indonesian language on the replacement of Regulation of the Minister of Trade (Permendag) No. 67 / M-DAG / PER / 11/2013.

In the preceding provision, the obligation to include label in Indonesian for imported goods is done before goods enter the customs area. Whereas in the new provisions, such obligations may not be made when the goods enter the customs area, but still required before the goods are traded in the domestic market. In addition, the obligations on the management / ownership SKPLBI or SPKPLBI removed, so it is no longer a customs document.

In its use in the community, this Indonesian language label is important, because the label is one of the intermediary media between producers and consumers. From this label consumers should be able to understand and understand will something related to cosmetic products, such as the use of the product, how to use the right and of course the information of all the ingredients contained in the cosmetic products. Because of understanding and understanding of this label then the next consumer in determining which products in accordance with himself and how to use it so that later will not cause harm and unwanted grievances.



This is also in accordance with the provisions of point 3 of Article 4 of Law No. 8 of 1999 concerning consumer protection which affirms that every consumer is entitled to correct, clear and honest information regarding the condition and guarantee of goods and / or services. This right is also absolutely the right of consumers of cosmetic products, including imported cosmetics circulating in the Indonesian market.

Although it has been clearly stamped Indonesian language labels on imported products that go to Indonesia which is mentioned above, but in fact the author still finds many cosmetics without Indonesian labels are sold freely by online and offline methods. The worst thing is not only stores that get their imported goods illegally without BPOM supervision, but also brands that have licenses to market their products in Indonesia officially, which should also have good faith to comply with the applicable regulations on the permission to market their products in Indonesia. Like some cosmetic products from Korea origin in its official stores scattered in several shopping centers in Indonesia are still selling some products that do not exist or plastered with Indonesian labels.

From this social phenomenon, then the question arises whether the business actors in Indonesia, especially business actors involved in the imported cosmetics business actually know about the regulations in force in Indonesia on the objects of goods traded and procedures related to the trade of this cosmetics imports, then the extent to which they know and understand the rules?, and how the form of accountability as a businessman who has good intentions, whether to consumers and countries?.

Then the author as an Islamic academic who was studying at an Islamic-based institution, with the phenomenon and question of law above, arise also the worries about the responsibilities and capabilities of business actors according to Islamic law. How is the concept of trade and the concept of responsibility of business actors according to Islamic law?. Then how was the view of Islamic law itself about this phenomenon?. Therefore, the authors want to conduct research related to the legal liability of business actors to consumers related to imported cosmetics products that are marketed in Indonesia according to Islamic law perspective.

## **B. Problem Formulation**

From the description that has been put forward in the background above, to carry out his research the author will examine the point question as below:

1. How was the form of legal responsibility of business actors for consumers from import cosmetic business actors without an Indonesian language label of the products they marketed?
2. How was the Islamic law's perspective of the marketing of import cosmetics products that do not use the official language label (mother tongue)?

## **C. Research Purpose**

1. To know and understand about the legal responsibility of business actors for consumer of imported cosmetic products that do not have Indonesian language label
2. To know and understand about the Islamic law's perspective of the marketing of import cosmetics products that do not use the official language label (mother tongue)

## **D. Benefits Of Research**

From the research objectives described above, this research will provide benefits, both practical and theoretical.

### 1. Practical benefits

This research can provide understanding and knowledge for society in general and especially business actors and consumers of imported cosmetic about the legal responsibility of business actors to consumers related to imported cosmetics marketed that do not use Indonesian label and Islamic legal opinion on the responsibility of business actor such as this trade.

### 2. Theoretical benefits

This research can provide theoretical understanding and knowledge for the authors in particular and the academic community in general about the legal responsibility of business actors to consumers related to imported cosmetics marketed that do not use Indonesian label and the Islamic legal view on the responsibility of business actors.

## E. Systematic Of Discussion

Systematic discussion describes the logic of the discussion that will be used in this research<sup>6</sup>, systematically this research contains five chapters of discussion, namely:

CHAPTER I. INTRODUCTION. In this introductory chapter is divided into five sub-chapters namely, background of research that discuss about the problems and anxiety that became the background of this theme

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<sup>6</sup> Tim Penyusun, *Pedoman Penulisan Karya Ilmiah*, p. 19

and became to be the title of research and discussion to find the answer. Then the formulation of the problem that contains the point of question that will leads the focus of research discussion for this research to be more systematic and not ambiguous. And then followed by the purpose of the discussion or research purpose which contains about the follow-up of the formulation of the problem which has been mentioned before and become the common goal thread of this research. Then proceed with the elaboration of the benefits of this title being the study, which in its division is divided into theoretical and practical benefits. And the last is the systematic discussion so that in the course of this research discussion is more systematic and easy to understand.

CHAPTER II. LITERATURE REVIEW. The discussion in this chapter is divided into two parts of the sub-chapter, the first one is the previous research that presented with a description of sentence and table that aims to mention some similar previous research titles with a brief explanation which then can be used as a reference writer to enrich the source of research and as evidence of the absence of 100% similar research or in other words plagiarism. And the second is the Theory / Theory Framework that contains of some theories and / or juridical concepts as the theoretical foundation for problem



assessment and analysis. The theoretical basis and / or concepts will be used in analyzing every problem discussed in this research<sup>7</sup>.

CHAPTER III. RESEARCH METHODE. Unlike the normative research that places the method of research in the first chapter, empirical research puts the research method in the third chapter independently. Discussion of this research method mentions seven kinds of discussion, namely the type of research taken by the author, so then what approach is taken, after that mention the location of the study, afterward the type and source of data. And hereafter this data collection method explains the working order, tools and ways of collecting primary and secondary data that is tailored to the research approach as each. And the last is the method of data processing that describes the processing procedures and data analysis in accordance with the approach used<sup>8</sup>.

CHAPTER IV. RESULT AND DISCUSSIONS. This chapter is the goals point of research because in this chapter will analyze the data either through primary data or secondary data to answer formulation of problem which have been determined<sup>9</sup>.

CHAPTER V. CLOSING. In this chapter will continue to cover about two things, which are conclusions and suggestions. The conclusion here

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<sup>7</sup> Tim Penyusun, p. 20

<sup>8</sup> Tim Penyusun, p. 20

<sup>9</sup> Tim Penyusun, p. 21

contains a summary of all the research results and discussion as well as answering the problem formulation of chapter one which is the purpose of this study. Then the latter is a suggestion section that contains suggestions or suggestions to relevant parties or parties who have more authority over the theme under study for the good of the community, and proposals or suggestions for future research in the future.



## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

In this research, the writer finds some previous writings in the form of journals and theses to enrich the insights related to this title material. from previous research the authors did not find similarities related to the series of composition of titles, objects and research subjects exactly the same as the author's, so it can be said this study there is no duplication or plagiarism.

#### **1. Pelaksanaan Tanggung Jawab Pelaku Usaha Terhadap Konsumen Berkaitan Dengan Pelabelan Produk Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen(Studi Kasus : Label Produk Bandeng Hermon Di Semarang)**

This research was conducted by Adriana Kartika Sari, a student of Law Faculty of Soegijarpranata Catholic University, Semarang in 2012. This research has a similarity element in terms of business actor's responsibility approach and approach involving Law No. 8 of 1999 on Consumer Protection. But this research also has many differences, one of them from the object of different research, research conducted by brother Adriana Kartika Sari is more focused only on food label and the absence of information altogether from one of food product in Semarang. While my research is more specialized in the absence of labels that use the Indonesian language on cosmetic products circulating in Indonesia, but this is

a requirement that must be obeyed by dealers or sellers and business actors who want to market their products in Indonesia.

## **2. Tanggung Jawab Seller Atas Kerugian Konsumen Akibat Pembelian Barang Elektronik Secara Online**

This research was conducted by I Made Widyantara University law student Warmadewa, Denpasar. This study also examines the responsibilities of business actors or who are often called sellers of the products they market. While the object of discussion of this research is more focused on the aspect of legal protection to the consumer if it has happened loss. And the goods are discussed is the sale and purchase transaction of electronic goods online only.

## **3. Perlindungan konsumen terhadap produk kosmetik import tanpa izin edar dari badan POM ditinjau dari hukum perlindungan konsumen di Indonesia**

Anastasia Marisa R. Hutabarat, student of Law Faculty at Indonesia University, Depok, 2011. This research also discussed the same object of research with the author, the imported cosmetic products, only this cosmetic object is more specialized in cosmetic products that no distribution permit from BPOM. In addition to the differences of the specificity of the object of research, this study also has a different perspective, namely in this study more emphasize the consumer protection law in Indonesia, and not the responsibility of business actors.

#### **4. Perlindungan Hukum Terhadap Konsumen Produk Pangan Impor Yang Tidak Mencantumkan Label Berbahasa Indonesia Di Kabupaten Banyumas**

Yuli Mega Anggraeni, Law Faculty of General Soedirman University, Purwokerto, 2015. The similarity of this research is the similarity of the theme of inclusion of Indonesian language label that must be included on food products, cosmetics and drugs marketed in Indonesia. However, this study only selects one of the compulsory trade objects, namely food. While the authors choose the object of cosmetic trading, especially imported cosmetics that are widely circulated in Indonesia legally or illegally. In addition, this study examines the object of this view from the perspective of legal protection to consumers and not the responsibility of business actors.

**Table 2.1**

##### **Previous Research**

<b>Name /Univ /Year</b>	<b>Title</b>	<b>Differences</b>	<b>Equations</b>
Adriana Kartika Sari, a student of Law Faculty of Soegijarpranata Catholic University, Semarang in 2012	Pelaksanaan Tanggung Jawab Pelaku Usaha Terhadap Konsumen Berkaitan Dengan Pelabelan Produk Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan	This study was examined about the label of home-based food products as object of material review	Both of this research are examine about the responsibility of business actors with the consideration of Law no. 8 of 1999 on Consumer Protection



	Konsumen(Studi Kasus : Label Produk Bandeng Hermon Di Semarang)		
I Made Widyantara university law student warmadewa, Denpasar	Tanggung Jawab Seller Atas Kerugian Konsumen Akibat Pembelian Barang Elektronik Secara Online	This research was more focus on the responsibility for the loss if it happen or arise. other than that, the material object discussed here is the electronic goods that are marketed online	This study also discussed the responsibilities of sellers who belong to the business class to consumers for the products they sold
Anastasia Marisa R Hutabarat, law Faculty Of Indonesia University, Depok, 2011	Perlindungan konsumen terhadap produk kosmetik import tanpa izin edar dari badan POM ditinjau dari hukum perlindungan konsumen di Indonesia	The cosmetics discussed here are imported cosmetics that obviously do not have distribution authorization from BPOM. Other than here, this research was using the theory of law for consumers and not discussing about labeling products	Both are discussing about the material project in the form of imported cosmetics that circulating in Indonesia with a review of consumer protection Law perspectives
Yuli Mega Anggraeni, Law Faculty of Jendral Soedirman University,	Perlindungan Hukum Terhadap Konsumen Produk Pangan Impor Yang Tidak	This research using legal protection theory toward consumer as	This research also aximine the theories and arrangements

Purwokerto, 2015	Mencantumkan Label Berbahasa Indonesia Di Kabupaten Banyumas	formal study and food product as the material review	about labeling products marketed in Indonesia
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## B. Theoretical Framework

### 1. Legal Responsibility

#### a. The Principle of Legal Responsibility

Two important principles in UUPK that accommodated are product responsibility and professional responsibility. Both of these issues are actually included in the principles of responsibility, but both are dealt with separately as they need to be given their own disclosure.

#### 1) Product Liability

Product liability actually refers to the manufacturer's responsibility, which in German terms is called *produzenten-haftung*. Agnes M. Toar defines the responsibility of the product as the responsibility of the producers for the products it carries in circulation, causing good or causing loss due to the defects attached to the product<sup>10</sup>. The product word by Agnes M. Toar is defined as the goods, either moving or immovable. The responsibility may be contractual or statutory (lawsuit on the basis of acts against the law), but product responsibility, its emphasis on the latter (tortious liability).

<sup>10</sup>Agnes M. Toar, *Tanggung Jawab Produk Dan Perkembangannya di Beberapa Negara*, (makalah, dibawakan dalam penataran hukum perikatan II, Ujung Pandang, 17-29 Juli 1989). p. 1-2

In Indonesia, defects in defective products or products are defined as follows: "any product which not fulfill its purpose of manufacture either due to intent or omission in the process or due to other matters occurring in its distribution, or does not provide humanitarian conditions for human or their possessions in the use, as people expect"<sup>11</sup>.

Product responsibilities by many experts are incorporated into different legal systems. Some say the responsibility of the product as part of the legal engagement, law tort law, accident law (*ongevallenrecht*, casualty law), and there which mention it as part of the consumer law. A more advanced view represents the responsibility of this product as a product liability law<sup>12</sup>. The grounds of lawsuits for product liability may be made on the basis of:

- a) Breach of warranty
- b) Negligence
- c) Strict liability<sup>13</sup>

Violation of warranties relates to the guarantees of business actors (especially producers), that the goods produced or sold do not contain defects. Understanding defects can occur in the construction of goods (construction defect), design (design defect), and / or labeling (labeling defect). The negligence means that if the sued business actor fails to show that they are

<sup>11</sup> Az. Nasution, *Hukum Perlindungan Konsumen Suatu Pengantar*, (Jakarta : Diadit Media, 2001), p. 248.

<sup>12</sup> Agnes M. Toar, p. 4

<sup>13</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia*, ( Jakarta : PT Grasindo, 2006), p. 81

Careful enough to create, store, supervise repairing, putting up labels or distributing goods.

In the Civil Code, the provisions on the responsibility of this product are actually known, namely in article 1504. This article deals with articles 1322, 1473, 1474, 1491, 1504 to 1511. In the UUPK provisions that imply the existence of responsibility the product is contained in article 7 through article 11. Violation of these articles (starting Article 8) is categorized as a criminal act under the provisions of article 62 UUPK. Article 19 Paragraph (1) of the UUPK is more explicitly formulating the responsibility of this product by stating: "business actor is responsible to provide compensation for damage, pollution, and / or consumer loss due to consuming goods and / or services produced or traded".

## 2) Professional responsibilities

If the responsibility of the product is related to the product of the goods, then the professional responsibility is more related to the service. According to Komar Kantaatmadja, professional responsibility is the responsibility of law in relation to professional services provided to clients<sup>14</sup>. Just as in product responsibility, the source of the problem in this professional responsibility may arise because they (professional service providers) do not comply with the agreements that they have agreed with their clients or as a result of the negligence

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<sup>14</sup> Komar Kantaatmadja, *Tanggung Jawab Professional*, Jurnal Era Hukum Tahun III No. 10 (Oktober 1996), p.4

of the service providers result in legal action<sup>15</sup>. Development of Principles of Responsibility:

a) The Principle of Responsibility Based on Errors

The principle of fault-liability or liability-based on fault is a fairly common principle applicable in criminal and civil law. In KHUP, especially articles 1365, 1366, and 1367, this principle is firmly held<sup>16</sup>. The provisions above in line with the general theory of law in law, namely the principle of *audi et alterm partem* or equal position of the equal between all parties litigation. Here the judge must give the parties a balanced and proper burden, so that each has the same opportunity to win the case.

Pure theory in the principle of responsibility based on negligence is a responsibility based on the existence of the element of error and the contractual relationship (privity of contract). The theory of responsibility based on negligence is the most disadvantageous consumers, because the consumer lawsuit can be filed if they have met these two conditions, namely the existence of elements of failure or negligence and contractual relations between producers and consumers.

The formation of the theory of responsibility on the basis of the element of error and contractual relations is fundamentally influenced by some thoughts, namely individualism in *laissez faire* principle, strong interests of producers who

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<sup>15</sup> Shidarta, p.82

<sup>16</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Edisi revisi (Jakarta: Grasindo, 2004), p. 73



are considered as agents of industrial / economic development, social contract theory and legal formalism principle coloring the justice world<sup>17</sup>.

b) The principle of responsibility based on defaults (*Wanprestasi*)

In addition to filing a lawsuit based on manufacturer's negligence, the law teaches consumers to file a lawsuit based on a breach of warranty. The responsibility of the manufacturer known as *wanprestasi* (default) is the responsibility under the contract<sup>18</sup>. Thus, when a product is damaged and resulted in a loss, the consumer usually first sees the contents of the contract or agreement or guarantee that is part of the contract, either written oral. The advantage for consumers in a lawsuit based on this theory is the application of strict liability, which is an obligation that is not based on the efforts that the seller has made to fulfill his promise. That means if the producer has tried to fulfill his promise, but the consumer still suffers losses, then the producers are still charged with the responsibility to compensate.

But basically, as the usual basis of a breach of warranty lawsuit which commonly applied in trade practice, default as a basis for claims for compensation is faced with several weaknesses that can reduce the form of legal protection against the interests of consumers, which are the form of time limitations of the

<sup>17</sup> Abdul Halim Barkatullah, *Hukum Perlindungan Konsumen Kajian Teoritis dan Perkembangan Pemikiran*, (Bandung: Nusa Media, 2008), p. 53-54

<sup>18</sup> Etsuko Fujimoto, *products Liability in the US s. 44 The Federal Products Liability Bil*, Thesis (Seattle: University of Washington, School of Law, August 1992), p. 4

lawsuit, notice requirements, the possibility of a counter (disclaimer) and terms of contractual relationship, either horizontally or vertically<sup>19</sup>.

#### c) Absolute Liability Principle

The principle of responsibility in consumer protection law is generally used to "ensnare" business actors, especially producers of goods, who sell their products and harming the consumers. This principle of responsibility is known by absolute liability principle. According to this principle, producers shall be liable for losses suffered by consumers for the use of marketed products<sup>20</sup>.

A slightly different variation in the application of mutational responsibility lies in risk liability. In risk liability, the indemnity obligations are liable to the party who poses the risk of loss. However, the plaintiff (consumer) is still given the burden of proof, although not as big as the defendant. In this case, they only needs to prove a causal relationship between the act of the business actor (producer) and the loss that they have suffered. The rest can be used strict liability principle<sup>21</sup>.

#### d) The principle of liability with restrictions

Limitation of liability principle is favored by business actors to be listed as an exoneration clause in the standard agreement that they made. In the film printing washing agreement, for example, if the film was to be washed or damaged (including the consequences of an officer's error), the customer is only

<sup>19</sup> Kimberly Jade Tillman, *Product Defect Resulting in Pure Economic Loss: Under What Theory Can Consumer Recover?*, (Journal of Liability , Vol. 9, 1986), p. 286

<sup>20</sup> Abdul Halim Barkatullah, p. 65

<sup>21</sup> Shidarta(2006), p. 79

limited to ten times the price of a new roll. The principle of responsibility is very detrimental to the consumer when it is determined unilaterally by the business actor. In UUPK, business actors should not unilaterally determine the clause that harms the consumer, including limiting the maximum responsibilities. If there are restrictions, absolutely must be based on clear legislation<sup>22</sup>.

#### b. Responsibility of Business Actor

In article 1 number 3 of Law no. 8 Year 1999 mentioned business actor is any individual or business entity, either in the form of legal entity or illegal entity established and domiciled or doing activities in law territory Republic of Indonesia, both alone and Together through agreement of business activity in various field economy<sup>23</sup>. In the explanation of the Law included in the business actors are companies, corporations, state enterprises, cooperatives, importers, traders, distributors and others<sup>24</sup>.

Bussiness actors covering various forms/types of bussiness as referred to the UUPK, should be determined the sequences that should be sued by consumers when harmed by business actors. The sequence should be arranged as follows<sup>25</sup>:

- 1) The first to be sued is a business actor who makes the product if domiciled in the country and its domicile is known by the disadvantaged consumers.

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<sup>22</sup> Shidarta(2006), p. 80

<sup>23</sup> Az, Nasution, p. 17

<sup>24</sup> Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, (Jakarta: Sinar Grafika, 2011), p. 41

<sup>25</sup> Ahmadi Miru, *Prinsip-prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*, Disertasi (Surabaya:Program Pascasarjana Universitas Airlangga, 200), p. 31-32

- 2) If the product that harms the consumer is produced abroad, then the defendant is importer, because UUPK does not cover the overseas business actor.
- 3) If the producer or importer of the product is unknown, then the defendant is the seller from whom the consumer buys the goods<sup>26</sup>.

Taking into account the substance of article 19 paragraph (1) it can be seen that the responsibility of business actors, including:

- 1) Responsibility for damages
- 2) Responsibility for pollution
- 3) Responsibility for loss of consumers<sup>27</sup>

The demand for indemnification for losses suffered by consumers as a result of the use of the product, whether in the form of material, physical or mental damages, may be based on several provisions already mentioned, in which there are only two categories. namely, a compensation claim based on default (wanprestasi) and demand on compensation which is based on illegal acts. In more detail the scope of liability for payment of compensation is as follows:

- 1) Demand for default

If the indemnification claim is based on default, then the defendant firstly (the producer with the consumer) is bound by an agreement. Accordingly, a disadvantaged third party(not a party to the agreement) would not claim damages for default.

<sup>26</sup> Abdul Halim Barkatullah, p. 35-36

<sup>27</sup> Ahmadi Miru, Sutarman Yodo, *Hukum Perlindungan Konsumen*, (Jakarta: PT Raja Grafindo Persada, 2007)p. 25-126

Indemnification of damages arising from default is the result of nonfulfillment of any major obligation or additional liability in respect of the principal performance obligations or obligations of warranty/ warranty in the agreement. These forms of wanprestasi can be<sup>28</sup>:

- a) The debtor did not meet the achievements at all
- b) The borrower is late in fulfilling the achievement
- c) Outstanding debtors are not as they should be

## 2) Demands based on legal violation

A compensation claim based on an offense is not necessary preceded by an agreement between the producer and consumers, so that the the compensation claim can be made by any injured party, although never any agreement happened between the producer and the consumer. Thus, a third party may claim damages.

To get the claim compensation, then the lost must be the result of violation of the law. This means that to be able to claim compensation must be fulfilled with the following elements; There is violation of the law, There is a loss, There is casual relationship between the act of breaking the law and the loss, as well as and There was an error<sup>29</sup>

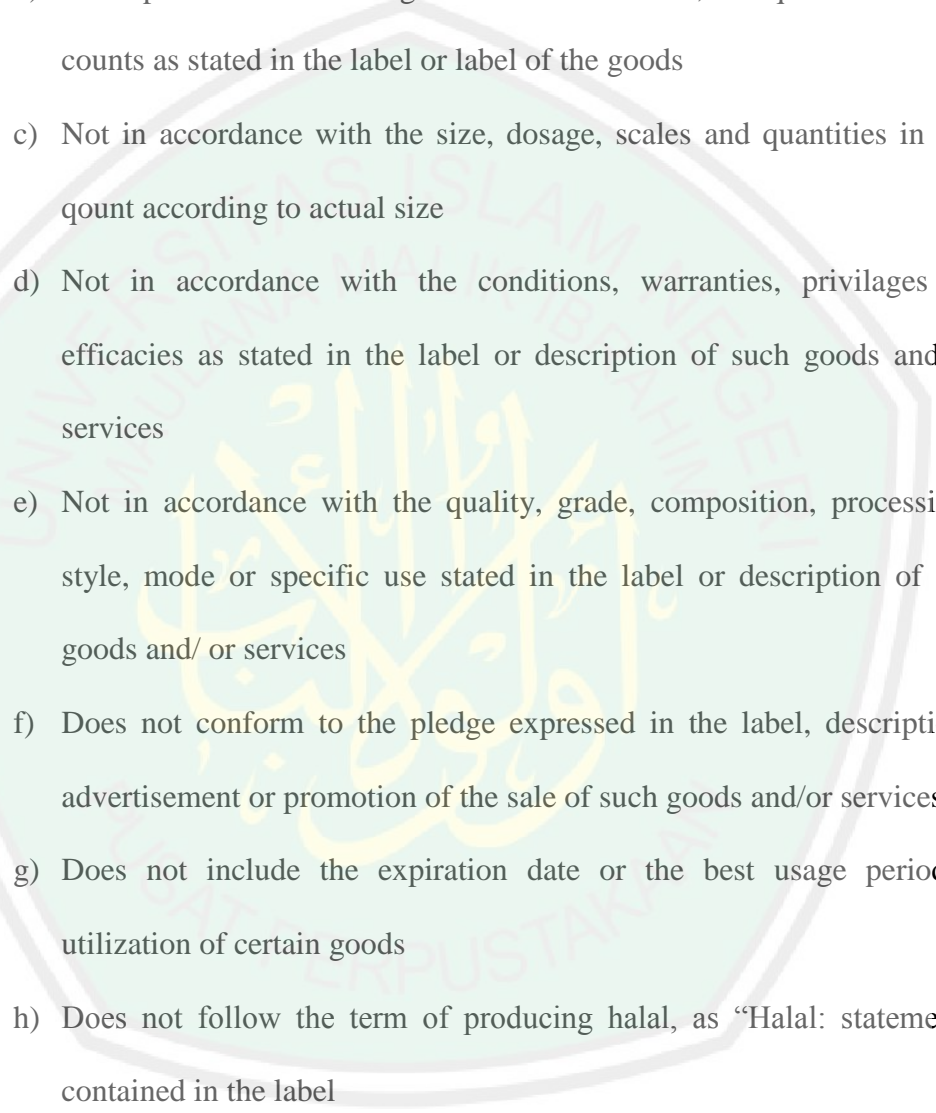
Article 8 UUPK was mentioned about the actions prohibited for business actor that is as follows:

- (1) A business actor shall be prohibited from producing and/or trading goods and/or services that:

<sup>28</sup> Purwahid, *Dasar-Dasar Hukum Perikatan ( Perikatan Yang Lahir Dari Perjanjian dan Dari Undang-Undang)*, (Bandung : Mandar, 1994), p. 11

<sup>29</sup> Ahmadi Miru & Sutarman Yodo, p. 130



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- a) Does not meet or not comply with the required standards and the provisions of law and regulations
  - b) Incompatible with net weight and/or net contents, and quantities in the counts as stated in the label or label of the goods
  - c) Not in accordance with the size, dosage, scales and quantities in the count according to actual size
  - d) Not in accordance with the conditions, warranties, privileges or efficacies as stated in the label or description of such goods and/or services
  - e) Not in accordance with the quality, grade, composition, processing, style, mode or specific use stated in the label or description of the goods and/ or services
  - f) Does not conform to the pledge expressed in the label, description, advertisement or promotion of the sale of such goods and/or services
  - g) Does not include the expiration date or the best usage period / utilization of certain goods
  - h) Does not follow the term of producing halal, as "Halal: statements contained in the label
  - i) Does not put a label on or make an explanation of goods containing the name of the goods, size, weight/net or net contents, composition, rule of use, date of manufacture, side effects, name and address of business actor and other information for use which according to the conditions shall be installed/made

- j) Does not include information and/or instructions on the use of goods in the Indonesian language in accordance with applicable laws and regulations.
- (2) Business actors are prohibited from trading of defective or used goods, and polluted without providing complete and correct information on the goods.
- (3) Business actors are prohibited from trading of pharmaceutical and food preparations that are damaged, defective or used and polluted, with or without providing complete and correct information.
- (4) A business actor who commits a violation in paragraph (1) and paragraph (2) shall circulate the goods and/or services and must withdraw from circulation.

## 2. Legal Protections of Consumer

### a. Legal Protection

Legal protection is the existence of an effort to protect one's interests by allocating a power to him to act in the framework of his interest<sup>30</sup>. Meanwhile, according to Muchsin's statement, legal protection is an activity to protect individuals by harmonizing relationships values or rules that incarnate in the attitude and action to creating the existence of order in the intercultural life among humans<sup>31</sup>.

<sup>30</sup> Satjipto Raharjo, *Sisi-sisi Lain Hukum di Indonesia*, (Jakarta: Kompas, 2003), p. 121

<sup>31</sup> Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003), p. 14.

According to UUPK Consumer is every user or consumer of goods and / or services available in the community, either for self-interest, family, other people, or other living creatures and not to be traded. The terms “Consumer Law” and “Consumer Protection Law” are very often heard. However, it is not clear what is going into the material of both. Also, whether the two branches of law are identical.<sup>32</sup>

M.J. Leder states: in a sense there is no such creature as consumer law.<sup>33</sup> Nevertheless, in general it is actually the consumer law and consumer protection law as stated by Lowe: “....rules of law which recognize the bargaining weakness of the individual consumer and which ensure that weakness is not unfair exploited<sup>34</sup>.”

Consumer protection is based on benefits, equity, balance, security and consumer safety, and legal certainty. The purpose of consumer protection itself is regulated in article 3 UUPK, among others:

- 1) Increase awareness, ability and independence of consumers to protect themselves
- 2) Raising the dignity of consumers by evoding them from negative excesses of goods and/or services.
- 3) Increasing the empowerment of consumers in choosing, determining and demanding their rights as consumers.

<sup>32</sup> Shidarta, *Hukum Perlindungan Konsumen*, (Jakarta: Grasindo, 200), p. 9

<sup>33</sup> M.J. Leder, *Consumer Law*, (Playmounth: Macdonald and Evans, 1980) p. 1

<sup>34</sup> R. Lowe, *consumer Law ed-6* (London: sweet & maxwell, 1983) p. 23

- 4) Create a consumer protection system that contains elements of legal certainty and information disclosure and access to obtain information.
- 5) Growing awareness of business actors on the importance of consumer protection and to grow an honest attitude and responsible soul.
- 6) Improve the quality of goods and/or services that ensure the viability of goods and/or services production, health, convenience, security, and consumer safety.

b. The concept of Legal Protection in Islam

In the Islamic law (Sharia), a simple muslim who obidient is a muslim who runs the command of his God and avoid His ban. Broadly speaking, human actions in islamic law are classified into halal, haram, mubah and syubhat categories. And among those who recommended is everything that was halal and mubah stuff, then Allah SWT forbade His people to do or consume everything thas was haram and avoid the syubhat. In His firman QS Al Baqarah verse 168, Allah SWT said:

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا وَلَا تَتَّبِعُوا خُطُواتِ الشَّيْطَانِ ۚ إِنَّهُ لَكُمْ عَدُوٌّ مُبِينٌ - 2:168

*“O mankind, eat from whatever is on earth [that is] lawful and good and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy<sup>35</sup>.”*

In this case Allah has also ordered the leaders to remind and guarantee to their people to this halal and haram term, so that Muslim are protected from that cursed by Allah SWT. As mentioned in this verse below:

<sup>35</sup> <https://quran.com/2/168-174>

يُذَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ ۚ إِنَّ الَّذِينَ  
يَضِلُّونَ عَنْ سَبِيلِ اللَّهِ لَهُمْ عَذَابٌ شَدِيدٌ بِمَا نَسُوا يَوْمَ الْحِسَابِ<sup>36</sup>

*[We said], "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah ." Indeed, those who go astray from the way of Allah will have a severe punishment for having forgotten the Day of Account<sup>37</sup>.*

From these verse above, we know that the leaders or ruler maker (*Khalifa*) have an obligation to declare the cases among his people with the fairest without following the lust. And it was includes everything about the halal and haram affairs that include the actions and consumer goods and other that require legal fatwa.

Further, we can conclude that Muslims have the right to be protected by the right to get information related to product including cosmetics which will bring it together in the law of consumption of the goods, so the legal protection of Muslim here is based on the protection of its right in terms of information on the concept of sharia law, that is halal, haram, *mubah*, *syubhat* on the content of a product and how to use.

And it has become the duty of the leader of people (*khalifa*) to fulfill it by providing information as clear as possible to everything that is circulated and marketed in his country.

<sup>36</sup> Shaad verse 26

<sup>37</sup> <https://quran.com/38/26>



### 3. Regulations of Cosmetics Label

#### a. Imported Cosmetic

According to the decree of head of BPOM of the Republic of Indonesia No. HK.00.05.4.1745 about Cosmetic, cosmetic means ingredients or preparations intended for use on the outside of the human body (epidermis, hair, nails, lips and external genital organs) or teeth and oral mucosa primarily to cleanse, perfume, and or improve body odor or protect or maintain the body in good condition. While the imported cosmetics means cosmetic production of foreign cosmetics factory that is entered and circulated in the territory of Indonesia<sup>38</sup>.

In practice, cosmetics are usually used by consumers as a cleanser, moisturizer, face makeup, bleach, thinning, protecting, makeup of creative characters and so on. Based on the usefulness of cosmetics can be divided into two, namely:

##### 1) Skincare Cosmetic

It was usually consist of cleansers, moisturizers, protectors, lighters, hydrating and so forth. Some skincare cosmetics has a direct and indirect effect in facial care, but most of the benefits will be obtained when using it continuously and gradually.

##### 2) Make up Cosmetic

It was usually use to cover the imperfection or certain parts of the face that want to be covered or as a sharpen the character of the face and bias is used to

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<sup>38</sup> Keputusan Kepala BPOM RI No HK.00.05.4.1745 Tentang Kosmetik

create a character on the outside of the human body such as face, body and hands or often called make up characters. Different from the benefits of skin care that can be felt directly with repeated using, make up cosmetic benefits can be felt instantly and immediately visible all the difference to user.

#### b. Regulation of Labels

Labels are a part of product that carries verbal information about the product or its seller<sup>39</sup>. Meanwhile, according to the minister of trade regulation No. 73/M-DAG/PER/9/2015 the definition of label is any information about articles in the form of writing, combination of drawing and writings or other forms containing information about goods and businessmen information, and other information included on goods, inserted into, pasted/attached to the goods, imprinted on the goods, and / or part of the goods.

In article 2 of the regulation of the minister of trade No.73/M-DAG/PER/9/2015 stipulates that business actors producing or importing goods to be marketed domestically shall include labels in Indonesian Language. And the inclusion obligation as meant in that addressed to:

- 1) Manufacturer for domestic production
- 2) Importer for imported goods

And goods that are marketed domestically by a business actor must have been labeled in Indonesian language. And that means there is a change in the arrangement, which leniency in the inclusion of label does not have to be before

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<sup>39</sup> Marinus Angipora, *Dasar-dasar Pemasaran*, (Jakarta: PT. Raja Grafindo Persada, 2002),

the products entered in customs territory in Indonesia, but inside and before the product was marketed into the hands of consumers.

In addition, act No. 8 of 1999 on Consumer Protection has also regulated the obligations of business actors to include information on goods in Indonesian language. As mentioned in article 8 paragraph (1) letter j of Consumer Protection Law: “Business actors are prohibited from producing and / or trading goods and/or services that do not include information and/or instruction on the use of goods in the Indonesian language in accordance with the provisions of applicable legislation”. And the threat of sanctions for business actors violating the above provisions is a maximum imprisonment of 5 (five) years or a fine of not more than 2 billion rupiahs.<sup>40</sup>

#### 4. The Concept of Buying and Selling in Islam

In *fiqh* terms, the sale is often referred to *Al-Bai'* which epistemologically means replacing or exchanging something with something else.<sup>41</sup> Besides means *Al-Bai'*, the language of buying and selling is also often referred to as *At-Tijarah* as listed in the QS. Al Fathiir verse: 29:

إِنَّ الَّذِينَ يَتْلُونَ كِتَابَ اللَّهِ وَأَقَامُوا الصَّلَاةَ وَأَنفَقُوا مِمَّا رَزَقْنَاهُمْ سِرًّا وَعَلَانِيَةً يَرْجُونَ تِجَارَةً لَّنْ تَبُورَ

<sup>40</sup> Article 62 paragraph (1) Of The Consumer Protection Law

<sup>41</sup> Ali Hasan, *Berbagai Macam TRansaksi Dalam Islam (Fiqh Muamalah)*, (Jakarta: Raja Grafindo Persada, 2003), p. 110

*“Indeed, those who recite the Book of Allah and establish prayer and spend [in His cause] out of what We have provided them, secretly and publicly, [can] expect a profit that will never perish.”<sup>42</sup>*

While terminologically, many give the definition of buying and selling (*Al Bai'*) with the same core substance. That is an agreement of exchange of goods or goods that have a voluntary value between the two parties, one receives the goods and other parties who receive them in accordance with the agreement or provision that has been justified by *syara'* and has been agreed<sup>43</sup>.

Then, there are prohibition of transactions by *fiqh*<sup>44</sup>. Prior to the implementation of laws and regulations related to monopoly unhealthy business competition, *fiqh muamalah* have introduced some basic principles of the prohibition of future transactions should be used as a reference in formulating this law. The scope of the prohibition is either caused by the prohibited factors inherent in the substance (*haram li dzatihi*) or prohibited other than the substance (*haram li ghairihi*).

- 1) Prohibited inherent substance (*haram li dzatihi*) for example: carrion, blood, pork (QS. An Nah: 115), *khamr*, *asnam* (statue) (QS. Al Maidah[5]:90), and others are similar to her.

<sup>42</sup> <https://quran.com/35/29-30>

<sup>43</sup> Hendi Suhendi, *Fiqh Muamalah*, (Jakarta : Raja Grafindo Persada, 2005), p. 67-68

<sup>44</sup> Burhanuddin, *Pemikiran Hukum Perlindungan Konsumen dan Sertifikasi Halal*, (Malang : UIN Maliki Press, 2011), p.100.

- 2) Prohibition other than substance (*haram li ghairihi*) such as *riba*, *gharar*, *tadlis*, *ihtikar*, *bai' najasy*, *maisyr* (gambling), *riswah* (bribery), adultery, theft, and others directly related to the deed.

Further explanation of some basic principles of unfair business competition prohibition are:

#### 1) *Riba*

*Riba* (usury) in English means extra (*ziyadah*). While in terminology, usury can be interpreted as taking additional from basic treasures in false, then it was being unlawful. Among the *fuqaha* there are differences of opinion about the division of usury. But in general, the practice of usury can occur in the contract of debt or the sale and purchase. Includes the category of usury debt includes debt *qardh* and *riba jahiliyah*. While including usury buy and sell include *riba fadhl* and *riba nasi'ah*.

- a) *Riba qardh*, it was the benefits or certain excess levels required in debt. The legal basis for the prohibition of usury is the same as the usury of ignorance, the difference that the return of certain excess rates, on *riba qardh* is certain.
- b) *Riba jahiliyah*, which is the repayment of debt exceeds the point after the borrower is unable to pay off at the specified time.
- c) *Riba Nasi'ah* they are usury which occurs due to the compensation for the delay of payment. QS. Al Lukman(31):34
- d) *Riba fadhal*, it was the usury that arising from the exchange of similar goods, but with different levels and quantities in terms of quality (*mistlan bi*



*mistlin*), quantity(*sawaan bi sawain*), and delivery that is not done in cash (*yadan bi yadin*)<sup>45</sup>.

## 2) *Tadlis*

In islam, every single transaction and action must be based on the principle of pleasure (QS. An Nisa[4]: 29). In order not to damage the pleasure of both parties must have the same information to the object of *akad*. Ignorance of one party to the object of the contract due to shame (*'aib*) that deliberately hidden is called a *tadlis*<sup>46</sup>.

- a) *Tadlis* in quantity, such as reduction of calculations, scale and deses in the contract of sale and purchase. As mentioned in Al Muthafifin (83):1-3
- b) *Tadlis* in quality, for example, hide the defects of goods that the contract is sold to the buyer. As stated in HR. Ibn Majah which means a muslim is another muslim brother, unless he has explained the defect of the goods.
- c) *Tadlis* in price, such as selling goods at the price higher or lower than the actual price on the market due to the ignorance of one party. Including *tadlis* in price is raising product price offer with the intention that buyers bid with a high price too.
- d) *Tadlis* in time of submission, such as fraud in terms of time of delivery of objects of sale and purchase. Included in this *tadlis* category is the promises of the seller to surrender the object of sale purchase that is beyond his ability.

<sup>45</sup> Burhanuddin, *Pemikiran Hukum Perlindungan Konsumen Dan Sertifikasi Halal*, (Malang: UIN Maliki Press, 2011), p. 103-104

<sup>46</sup> Adiwarman A. Karim, *Bank Islam: Analisis Fiqih dan Keuangan* ( Jakarta: Rajawali Press, 2004), p. 31

### 3) *Gharar*

According to Arabic, the meaning of *al gharar* is betting (*al khatar*). It is said betting because something that is made object of *akad* is not clear (intangible). Therefore, based on the meaning of the language can be seen that transactions that contain unclear object clarity can be referred to *Gharar*.

a) *Gharar* in quantity, such as buying fish that are still in the water (pond).

Buying and selling fish is in the water, so should be known by both parties how the amount and scale is a scam.

b) *Gharar* in quality, such as selling calves still in the mother's womb. In this sale, each of the sellers and buyers both do not know the quality of the transacted object.

c) *Gharar* in price, occurs when a merchant sells at two prices uncertainly. Uncertainly arises because of two hashes in one transaction.

d) *Gharar* in time of submission, any object of buying and selling that is not known to exist at the time the contract lasts, certainly will not know when submission.

In epistemology *gharar* means things that are not known, certain hazards or bargains that contain the sale of disgust. Meanwhile, according to the *fiqh* term, *gharar* interpreted by the scholars of *fiqh* experts about the matter of ignorance of the consequences of transaction, or the uncertainly between good and bad or a sale

that contains impurity. While terminologically, sayyid sabiq means that gharar is a fraud which is expected to result in the absence of willingness if examined<sup>47</sup>.

*Gharar* are prohibited in islam based on the Quran and Hadith. The ban on the sake of *gharar* is based on the verses of the Quran forbid to eat the trasures of others by vanity, as Allah said in surah an nisa' verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا - 4:29

The ban of *Gharar* in sharia also mentioned by Sunan ibn majah in history:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ

Thus it is clear the ban on buying and selling *gharar* in islam. Kinds of *gharar* which is prohibited there are 10 kinds that are as follows:

- a) Unable be submitted. That is not the ability of the seller to submit the contract object at the time of the contract, whether the object of the contract already exist or not yet.
- b) Sell something that has not been under the control of the seller. This kind of contract contain *gharar*, because there are a possibility of damaged or missing object contract, so than the contract of sale first and second to be canceled.
- c) There is no certainty about certain types of properties of the goods being sold.

<sup>47</sup> Sayyid Sabiq, *Fiqh Sunnah*, jillid III, (Kairo: Dar Al-Fath Li A'lam Al Araby, 1994), p. 144

- d) There is no certainty about the amount to be paid.
- e) No firmness of transaction form. That was there are two or more different kinds in one contract object without affirming which form of transactions to be selected at the time of the contract.
- f) Unknown size of goods unauthorized buying and selling of something that measure is not known.
- g) Sale and purchase of *mulamasah*. That is the sale and purchase of each other touches, in other word each of the sellers and buyers of clothing or other goods, and with that sale and purchase should be executed without pleasure to him or seller said to the buyer, 'if anyone touches the clothes then it means you have to buy it with the price.' so that they make a touch of the business object as the reason for the ongoing sale and purchase transaction.
- h) Sale and purchase of *munabadza*. That was buying and selling each other throw away, each of two people who agreed to throw what is in it and make it as the basis of transaction without the pleasure of both. Example: a seller said to prospective buyer: "if I throw something at you, then buying and selling transactions make take place between us."
- i) Sale and purchase of *al hashah*. This is a business transactions which the seller and the buyer agree on the sale and purchase of an item at a certain price with a small stone throw done by one of the parties to the other party as the guidance on whether or not the transaction take place.
- j) Sale and purchase *urbun*. It was a transactions that are made through the agreement. Example: a person buy a commodity and part of his payment is

left to the seller as a down payment. If the buyer take the commodity then the down payment was included to the calculation of the price, but if the buyer does not take the commodity then the advance becomes the property of the seller. In the community known as ‘charred money’ or “lost money” should not be billed back by the buyer<sup>48</sup>.

- 4) *Ghalat*. is a form error that occurs on the object of the contract. This error occurs because of a mismatch between the object and the expected desire by either party. In contrast to *tadlis* and *gharar*, the blame on *ghalat* is caused by an unintentional element between each party.
- 5) *Ghabn*, the term of *Ghabn* in English means subtraction. In other words *ghabn* is a reduction in the number of objects of akad. So it was not accordance with the agreement. In *fiqh muamalah*, *ghabn* transaction was forbidden, because by reducing the object of the contract will harm the other side.(Surah Al Anam[6]: 152)
- 6) *Al Ikrah*, forcing people to do or not to do something that causes loss of pleasure.
- 7) *Ihtikar* (hoarding), its mean collecting certain commodities done deliberately until the time bats until there is increase in prices.
- 8) *Tallaqi rukhban*, it was an act of merchant in the city which is welcomes the caravan of the journey before it gets to the market and then to buy cheaply to get the double benefits.

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<sup>48</sup> M. A li Hasan, *Berbagai Macam Transaksi dalam Islam*, (Jakarta: PT Raja Grafindo Persada, 2003), p. 131



- 9) *Bai' najasyy*, It was an act of creating false request, so the other people are deceived to make a purchase at a high price.
- 10) *Bai' Al Ma'dum*, that was the sale and purchase of some goods that does not exist (unseen). Buying and selling of illegitimate law because it was not known at all the object to be transacted, so it was likely to cause disputes.
- 11) *Bai' Al Inah*, buy back in cash at a cheaper price on one's own merchandise that has been sold to someone else for a price so that profit is called *Bai' Al Inah*.
- 12) *Risywah*, it was a bribe activity that was unlawful. There is no difference among the scholars about the *risywah*<sup>49</sup>.

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<sup>49</sup> Burhanuddin, p. 114

## CHAPTER III

### RESEARCH METHODE

Research is a scientific activity related to analysis and construction, which is done methodologically, systematically and consistently. Methodological means in accordance with a method or a particular way, systematic is based on a system, while consistent means the absence of things that are contradictory in a particular framework<sup>50</sup>.

According to Morris L. Cohen "... legal research is the process of finding the law that governs activities in human society, it involves locating both the rules which are enforced by states and commentaries which explain or analyze these rule<sup>51</sup>". Meanwhile, according to Soerjono Soekanto, legal research is a scientific activity, based on methods, systematics and certain thoughts, which aims to study or some specific legal phenomena, by analyzing it. In addition, there is also an in-depth examination of the legal facts to get a solution to the problems then that arise in the symptoms concerned<sup>52</sup>.

<sup>50</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Ed.3 (Jakarta: Universitas Indonesia Press,1986), p. 43

<sup>51</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Ed.2, (Jakarta : Kencana, 2008), p. 29.

<sup>52</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Ed.3 (Jakarta: Universitas Indonesia Press,1986), p. 43

## A. Types of Research

In this study the author uses research empirical law, another term used is sociological law research and can be called also with field research<sup>53</sup>. This sociological research is based on primary data, which is are using data from the community directly as the main source through field research. From the point of view, this research is also called descriptive research because aims to describe something in a certain area and at a certain moment<sup>54</sup>. This law study is done with empirical research because in this study aims to find out how the form of responsibility of business actors to consumers on imported cosmetics products they marketed or sold without using the label on Indonesian language.

## B. Research Approach

In empirical research methods, the approach used was sociological jurisdiction and qualitative approach. What is meant by the sociological juridical approach is the approach with the method of identifying and conceptualizing law as a real social institution and functional in real life system<sup>55</sup>. The sociological juridical approach emphasizes research aimed at obtaining legal knowledge by using field studies. This study takes a field study through observation and interviews to the shopkeeper in Cyntia store at Malang Town Square Mall and online interview with the owner of @gkk.shop that selling some import beauty products.

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<sup>53</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, cet-4 ( Jakarta : Sinar Grafika, 2008), p. 15-16

<sup>54</sup> Bambang Waluyo, p. 8-9

<sup>55</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, ( Jakarta : Universitas Indonesia Press, 1985), p. 51

While in terms of method, this research also uses qualitative<sup>56</sup> approach because it does not use numbers and statistical variables as the source data. The qualitative approach is an approach which focuses on the general principles underlying the embodiment of the existing set of symptoms in human life, or patterns analyzed by sociocultural phenomena by using the culture of the society concerned to obtain an overview regarding the prevailing patterns<sup>57</sup>. Then after that the researcher associate it with the legislation approach by tackling and researching all the arrangements relating to the object of research that is PERMENDAG No.73 / M-DAG / PER / 9/2015 about the obligation of labeling in Indonesian language on goods, Law No. 8 of 1999 on the Protection of consumers and other laws and regulations related to the title of this study.

### C. Research Sites

The implementation of this research was carried out in the city of Malang which included 2 locations. The first was Cintya store located on the 2nd floor of Mall Malang town square, and then the online shop gkk.shop on the Instagram platform based in Malang. These two locations were chosen because they support the author's research theme. Cintya store that was based on offline shops and stores @ gkk.shop that sells various kinds of cosmetics and imported beauty tools that do not put Indonesian language labels up, but apply foreign language labels originating from their home countries which mostly Korean and English.

<sup>56</sup> Bahder johan nasution, *Metode Penelitian Hukum*, (bandung : mandar maju, 2008) p. 127

<sup>57</sup> Burhan ashshofa, *Metode apaenelitian Hukum*, cet-4, (Jakarta :Rhineka Cipta, 2004) page. 20-21

#### D. Types and Sources Of Data

In this research, the type and source of data was divided into two kinds, as mentioned below:

##### 1. Primary data

Primary Data is data obtained directly from the first source<sup>58</sup>. In empirical juridical law research or field research uses primary data from interviews and observations conducted by the author. To enrich the primary data in this study, interviews were conducted to the shopkeeper of Cintya store directly at their store and to the owner directly by online chatting in WhatsApp.

##### 2. Secondary data

Secondary data, among others, include official documents, research results, tangible reports, and so forth<sup>59</sup>. In this study the authors use document studies of books, scientific research reports, as well as review of legislation such as Law no. No. 8 of 1999 on Consumer Protection and PERMENDAG No.73 / M-DAG / PER / 9/2015 on the obligation to include label in Indonesian on goods, as well as legal literature and scientific literature related to the research theme.

In this study, in addition to using primary and secondary legal sources above, in preparing his research the author also enriched with tertiary legal

<sup>58</sup> Amiriddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta : PT Grafindo Persad, 2006), p. 30

<sup>59</sup> Amiriddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta : PT Grafindo Persad, 2006), p. 30



materials, which are materials that provide guidance and explanation of the primary law and secondary law, such as dictionary (law) and encyclopedia<sup>60</sup>.

### **E. Method of Collecting Data**

This data collection method describes the working order, the means and the means of collecting primary and secondary data that are adapted to the research approach because each approach has different procedures and techniques. The method of collecting primary data in empirical research with qualitative approach is interview, observation, and documentation<sup>61</sup>.

#### **1. Interview**

Interviews conducted by interviewers with direct face to face with respondents to ask about the respondent's personal, the facts that exist and the opinions and self-perceptions of respondents and even the suggestions of respondents<sup>62</sup>. In this interview the authors use the guidance questions that are prepared first before the interview so that questions in the interview more focused and get answers according to the purpose of the interview. In this study the authors conducted interviews to the shopkeeper of Cintya store and the owner of @gkk.shop.

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<sup>60</sup> Amiriddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta : PT Grafindo Persad, 2006), p. 32

<sup>61</sup>Tim Penyusun, p. 20

<sup>62</sup>Tim Penyusun, p. 20

## 2. Observation

Field observations or surveys were conducted with the aim of testing hypotheses by studying and understanding the behavior of public law which can be observed in the eyes of the head<sup>63</sup>. In this study the authors use the technique of systematic observation<sup>64</sup> or skeletal observation, by making or determining characteristic of the main characteristics of the observations in the form of a framework containing the factors that have been set categorical first and the special characteristics of each factor in various categories. In general, the systematic observation is done briefly with the time period not too long to get or to know as much as social phenomenon of society life.

## 3. Documentation

According Suharsimi Arikunto, the documentation comes from the word document which means the goods written<sup>65</sup>. Document studies for legal research include the study of legal materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. Each of these legal substances should be re-examined for its validity and reliability, as this will largely determine the outcome of a study<sup>66</sup>.

<sup>63</sup>Nasution, Bahder Johan. p. 169

<sup>64</sup>Nasution, Bahder johan, p. 170-171

<sup>65</sup>Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, (Yogyakarta : PT. Rhineka Cipta, 1989), p. 200

<sup>66</sup>Amiriddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta : PT Grafindo Persad, 2006), p. 68

## F. Method Of Data Processing

Data processing is the activity of smoothing the collected data from the field research to get ready to use for analysis<sup>67</sup>. As data analysis, must adapt to the methods and approaches used. Empirical data management is usually done through the stages: editing, classifying, verifying, analyze (data analysis) and concluding<sup>68</sup>. The explanation is more detailed was mentioned:

### 1. Editing

Editing is a process of re-examination of records, files, information that has been collected by the writer<sup>69</sup>. Editing is important to do to examine the completeness and quality and compatibility of data with other data so that these data will be biased as a reference for solving and searching answer of the problem formulation of this research. And make sure that was no inappropriate data or deviated from the theme of research.

### 2. Classification

Classification is to reduce existing data by arranging and classifying the data obtained into a particular pattern or a particular problem to facilitate the explanation<sup>70</sup>. Classification here aims to classify data and make it not overlape and make it easy to understand, and for this research more systematic.

### 3. Verification

<sup>67</sup> Bambang Waluyo, *penelitian Hukum Dalam Praktek*, cet-4, ( Jakarta : Sinar Grafika, 2008), p. 72

<sup>68</sup> Pedoman penulisan p. 20

<sup>69</sup> Amiriddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta : PT Grafindo Persad, 2006), p. 168

<sup>70</sup> Lexy J Moloeng, *Metode Penelitian Kualitatif*, (Bandung : Remaja Rosdakarya, 2002), p. 103

After the data obtained are classified, then the next step is to verify the data. Verification is to check back the data that has been collected to determine the validity of the data whether it is really valid or in accordance with the expected researcher<sup>71</sup>. This verification aims to determine the truth data obtained by the author with various way for the results of this research will not just be a writing that is wrong analysis and not appropriate reality. In the process, verification of data was done in several ways, one of which can be used is to arrange the interview result and field observation in the form of a written editor and then ask it back to the informant about the truth and suitability of the data that was described in the initial interview.

#### 4. Data analysis

Based on the nature of this research using the method of research is descriptive analytical, data analysis was use in qualitative approach to primary data and secondary data. Descriptive include the content and structure of positive law, which is an activity undertaken by the author to determine the contents or meaning of the rule of law which used as a reference and solve the legal problems that become the object of research<sup>72</sup>.

#### 5. Concluding

The conclusion is the part of the research which is the result of the inference made by the authors of the scientific research. After performing the intact writing of all the items arranged and discussed systematically. Therefore, a good

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<sup>71</sup> Lexy, p. 104

<sup>72</sup> Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta : Sinar Grafika, 2011), p. 107

conclusion will include four conditions, which is a summary of the argument, brief, clear and convincing<sup>73</sup>.



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<sup>73</sup> Zainuddin, p. 121



## CHAPTER IV

### RESEARCH RESULT AND DISCUSSION

#### **A. The form of Business Actor Responsibility at Gkk.shop and shop Cintya, Malang against Imported Cosmetics without the Indonesian Language Label They Marketed**

In research on the responsibilities of these business actors, the author uses data from two different shops which are using the different marketing method. That is offline marketing from the Cintya store and online marketing from the Gkk.shop store through the Instragram platform, Whats app and also Line, before heading to the main analysis of this research, the writer should describe the profiles of the two stores as follows:

##### 1. @ Gkk.shop online shop, Malang

@ Gkk.shop is an online shop selling a wide range of imported cosmetics products mostly imported from ginseng country, South Korea and based in unfortunate area. But the market reach from the online shop has penetrated to various regions outside Malang and spread in various regions in Indonesia with social media promotion platform in the form of Instagram which has about 947 followers.

@ Gkk.shop is a cosmetics online shop established since 2014. The owner and founder of this online shop is Qorina El Baroroh, a student who is studying at one of State University in Malang. In addition to the owner of the online shop @

Gkk.shop. In addition he also has two branches online shopping branch of @ Gkk.shop which also markets imported cosmetics products that are also mostly imported directly from the distributors of South Korea, namely @innisfreemalang and @ koreancosmeticmalang.

In practice, the owner of @ Gkk.shop claims to import his own products directly from South Korea with an international supplier of the ginseng country to Indonesia, which means that the owner here is also a part of the importer. Product List marketed by @ Gkk.shop consisting of several famous brands, as follows:

a) Innisfree, Kind of:

- Innisfree Aloe Revital Soothing Gel
- Innisfree Green Tea Seed Cream
- Innisfree Green Tea Cleansing Foam

b) Nature Republic, kind of:

- NR 92% Aloe Vera Soothing Gel
- NR 92% Aloe Vera Soothing Gel Mist

c) Laneige, kind of:

- Laneige Water Sleeping Mask
- Laneige Water Bank kit

d) Etude House, kind of:

- EH Ac Clean Up Gel Lotion
- EH Bubble Tea Sleeping Mask (green tea, black tea, strawberry)
- EH Dear Darling Water Tint
- EH Baking Powder BB Deep Cleansing Foam
- EH Moistfull Collagen Water Jelly Cream

e) Skin Food, kind of:

- SF Rice Mask Wash Off
- SF Black Sugar Mask
- SF Egg White Pore Mask

f) Bragg Apple Cider Vinegar,

g) And so on.

## 2. Cintya Store, Malang Town Square, Malang

Cintya Store is a cosmetics store and women's trinkets that sells various cosmetic makeup and cosmetic skin care import mostly come from Korea, besides that she sells small knick-knacks of women needs such as hairpin, powder puff, keychain and so on . Cintya Store located in Malang Town Square Mall, Malang, precisely in front of Matahari Department Store second floor and beside Malang Town Square food court. All imported cosmetics they market, they do not use the

Indonesian label they should paste or paste before they are marketed, but foreign languages, Korean and English mostly.



Illustration 1.1

Location Map of Mall Malang Town Square (source: Google Map)

In its stores, Cintya Store not only sells one brand of imported cosmetics, but there are various famous brands such as:

a. Nature Republic, kind of:

- NR 92% Aloe Shooting Gel
- NR Shooting & Moisture Aloe Vera 90% Toner

b. Natural Pacific, kind of:

- NP Fresh Herb origin Serum
- NP Real Rose Floral Toner
- Real Calendula Floral Toner NP

- NP Green Tea Seed Serum, etc.

c. Innisfree, kind of:

- Innisfree Special Green Tea Kit
- Innisfree Super Volcanic Pore Clay Mask
- Innisfree Green Tea Seed Serum
- Innisfree Volcanic Color Clay Mask
- My Real Pet Mask
- Innisfree Green Tea Foam Cleanser, etc.

d. Etude House, kind of:

- EH Baking Powder BB Deep Cleansing Foam
- EH Moistfull Collagen Water Jelly Cream
- EH Air Mask Sheet

e. And so forth.

Actually, most of the imported cosmetics brands marketed by @ Gkk.shop and Cintya store are legal products in Indonesia, even the manufacturers from their home countries already have the official store and marketing authorization from BPOM. Such as Etude House brand, Nature Republic and Innisfree. But in practice, outside the official store that has been widely circulated their products through online shop and offline shop that even more not infrequently prior to



marketing them before they open an official store in Indonesia. Because they usually get their merchandise through international distributors with their own use permits which can be a loophole for them to import their merchandise in ways that should not. In addition, because of the regulations stating the amount considered normal for personal use (Individual category / self-use) a cosmetic:

a. Products and Food Supplements

1) Products used for acute illness or to increase endurance are limited to 3 months usage only

2) Products used for chronic degenerative diseases are limited to 6 months of use only.

b. Cosmetics

1) Compact powder / powder

a) size <20 grams, number 5 - 10 pieces

b) size 20 - 100 grams, the number of 4-7 pieces

c) size 100 - 500 grams, the amount of 3 - 5 pieces

d) size > 500 grams, the number of 2 -3 pieces

2) Liquid / viscous liquid

a) size <20 ml / gram, the amount of 5 - 10 pieces

b) size 20 - 100 ml / gram, the amount of 4 - 7 pieces

c) size 100 - 500 ml / gram, the amount of 3 -5 pieces

d) size> 500 ml / gram, the number of 2 -3 pieces

3) Cream, gel / pasta

a) size <10 ml / gram of 5 - 10 pieces

b) size 10 - 50 ml / gram number of 6- 8 pieces

c) size 50 - 100 ml / gram amount 4 - 6 pieces

d) size of 100 - 200 ml / gram amount of 3 - 5 pieces

e) size> 200 ml / gram the amount of 2 - 3 pieces

4) Lipstick = 3 pieces

5) Solid soap = 10 pieces<sup>74</sup>

In addition, there is a gap in how to send imported cosmetics on the grounds of personal use to the specified size as mentioned above, in the new regulation on Permendag No.73 / M-DAG / PER / 9/2015 there is no provision on Letter of License Exemption Labeling In Bahasa Indonesia or SPKLBI (Letter of License of Label Inclusion in Bahasa Indonesia). In the previous regulation, Permendag No.67 / M-DAG / PER / 11/2013, this letter is a document explaining that domestically produced goods have complied with the stipulation of the label,

<sup>74</sup> Anastasia Marisa R Hutabarat, *Perlindungan konsumen terhadap produk kosmetik import tanpa izin edar dari badan POM ditinjau dari hukum perlindungan konsumen di Indonesia*, Skripsi (Depok: FH Universitas Indonesia, 2011), p. 62-63

or the label imprinted on the imported goods has fulfilled conditions. And this SPKLBI become complementary customs document in customs settlement in import field. It is also recalled because of the leniency of regulation regarding the time of inclusion of Indonesian Label that was not necessarily before the product entering customs area, but before marketed by consumer.

In the case of a business actor who acts as both a seller and an importer of the product they have been marketing has violated several regulations applicable in Indonesia, firstly on terms of consumer protection law, the business actor has ignored the provisions to fulfill the consumer rights listed in article 4 letter c which states that the consumer has the right to the right information, clear and honest about the condition and the guarantee of the goods / services that they were sell because they does not include or attach the Indonesian language label which they should put or paste before being marketed to the consumer.

More details on the clarity of information and labeling of Indonesian on merchandise, consumer protection laws have also prohibited business actors and / or traded goods and / or services by excluding information and / or instructions on the use of goods in Indonesian in accordance with the provisions the applicable legislation referred to in Article 8 paragraph (1) letter J.

In addition to violating several articles in the consumer protection law, business actor also violates the provisions in BPOM Decree No. HK.00.05.4.1745 about cosmetics stating that special imported cosmetics which have labeling with foreign language label must be accompanied with a description in Bahasa

Indonesia. And then reinforced by the Regulation of the Head of BPOM Number HK.03.1.23.12.10.12459 Year 2010 on Cosmetic Technical Requirements which expressly states that "Marking must use Bahasa Indonesia".

In an interview that the author has done to @ Gkk.shop, they admitted that they will replace the product with a new similar product if there is a mistake in the packaging such as negligence in sending product expired or defect seal and so forth which is the result of negligence and negligence business actor , but they will not claim if there is a loss to the consumer complaining about the product and the loss due to wrong misuse, whereas the obligations of business actors include embedding or posting information on the use of the Indonesian label to avoid errors in the use of products by consumers.

*@ Gkk.shop: kalo memang salah di kta ya kita ganti kak ...kaau misal kesalahan di customer ya kita ngga bisa apa-apa...*

*@ Gkk.shop: ya engga ganti produk. Kita ganti produk yang sama. Tapi kita sebelum kirim selalu dicek lagi. Bahkan kalau ada segel yang sobek kita jual di bawah harga pasar.*

*@ Gkk.shop: belum ada komplain sih ini ya.dan kalau alergi atau tidak cocokkita ngga bukan tanggung jawab. Karena selain pakai skincare itu sifatnya trial and error jadi juga pembeli yang paling tahu kondisi kulitnya bagaimana. Kita mungkin sebatas memberi rekomendasi produk berdasarkan kondosi kulitnya*

*Toko Cintya staff: kami akan mengganti produk yang merupakan keluhan tentang produk yang palsu dan tampilan tidak bertanggung jawab jika ada keluhan tentang penyalahgunaan produk dan sebagainya, di luar wewenang kami.*

*Toko Cintya staff: dan kami hanya akan mengganti produk apabila konsumen dapat menunjukkan bukti pembelian*

After this conversation, the writer ask to them about their knowledge about the regulation of business actors obligation to fasten the Indonesian language label to all product that marketed in Indonesia, include cosmetic product that they sold, and their answer as bellow:

*@gkk.shop: beda lagi kak kalau itu, beda sama olshop biasa kaya kita kak. Kalau yang berkaitan hal kaya gini bisa ditanyakan ke toko resmi merknya yang ada di Indonesia kak*

*Cintya Store staff: wah kalau yang kaya gitu kita gatau mba, kayanya yang kaya gitu aturan bukan kewajiban kita yang jual deh*

Article 19 of Law No. 8 of 1999 concerning consumer protection formulates the responsibilities of producers as follows:

- a. The business actor is responsible to provide compensation for damage, pollution, and / or consumer loss due to consuming goods and / or services produced or traded.



- b. Indemnification as referred to in paragraph (1) may be a refund or replacement of goods and / or services of the same or equivalent value, or health care and / or compensation in accordance with the provisions of applicable legislation.
- c. The indemnification shall be held within 7 (seven) days after the date of the transaction.
- d. The provision of indemnity as referred to in paragraphs (1) and (2) does not exclude the possibility of criminal prosecution on the basis of further evidence of an element of error.
- e. The provisions referred to in paragraph (1) and paragraph (2) shall not apply if the business actor can prove that the error is a consumer error.

Furthermore, the regulation which is more specific to the importer business actor is contained in Article 21 consisting of paragraph (1) stating that the responsibility is charged to the importer of goods as the imported goods manufacturer, if the importation of the goods is not done by the agent or the representative of the foreign producer<sup>75</sup>.

#### **B. Sanctions for Businesses who violate the marketing provisions of Imported Cosmetics Products without using Indonesian Label**

In Indonesia, the law regulating the consumer protection aspect was not only contained in Law No. 8 of 1999 on Consumer Protection, but also directly and indirectly stipulated in the Government Regulation (PP), the Regulation of the POM, Ministerial Regulation (Permen) and so on. The aspect of customer

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<sup>75</sup> Abdul Halim Barkatullah, p. 70

satisfaction is highly praised in Indonesia as one of human rights and to create a good economic climate, because customer satisfaction is the key to the running of the economic system of society.

In the case of violations committed by a business actor in relation to the obligation to use Indonesian Label on the Product that they are marketed, especially imported cosmetics products has a sanction rule that can be a risk in conducting transactions if causing harm to consumers and if the violation is intentionally or unintentionally they do, because in the world of law there is a legal fiction adopted in Indonesia. In a legal fiction, anyone without exception is considered to know the law. It's a big mistake if someone does not know the law (*ignorante legs est lata culpa*). In plain language, one can not solve that he does not know the law if one day has to account for something before the law. Adagium legal fiction has long been abandoned, but in fact this view is embraced the world of justice, both the Supreme Court (MA) and the Constitutional Court (MK). Supreme Court Decision. 645K / Sip / 1970 and Decision No. MK. 001 / PUU-V / 2007 contains the same principle: "a person's ignorance of the law can not be the excuse of forgiveness". Supreme Court Decision. 77 K / Kr / 1961 asserted that "each person is considered to know the law after the law is enacted in the state gazette."<sup>76</sup>

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<sup>76</sup> <http://www.hukumonline.com/berita/baca/lt4ffe7ed9ac70f/menjadikan-fiksi-hukum-tak-sekadar-fiksi> accessed 20/05/2018 at 3.04

In the case of a violation committed by a Business Actor with regard to the marketing provision of Imported Cosmetics Products without using Indonesian Label has several types of sanctions namely:

1. Violation of these Indonesian label provisions may be subject to administrative sanctions in the form of:
  - a. written warning;
  - b. temporary suspension of import and / or distribution activities;
  - c. extermination or re-export;
  - d. free distribution permits; and / or
  - e. revocation of marketing authorization<sup>77</sup>.
2. in addition to being able to be subject to gradual administrative sanctions, in Article 62 paragraph (1) Law No.8 Year 1999 concerning consumer protection, violation of Indonesian Label by business actor may also be subject to criminal sanction in the form of a maximum of 5 (five) years of imprisonment or a fine of a maximum of 2 billion rupiahs.

As a party who feels aggrieved, the consumer can also ask for civil liability with a lawsuit based on the act of violating the law, because in this case the business actor has violated some regulations related to the absence of the use of Indonesian labels that they must be included on the packaging of imported cosmetics products that they have sold. Then the elements that can be used to claim compensation on the basis of a violation of the law are as follows:

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<sup>77</sup> Pasal 31 ayat (1) Peraturan BPOM 12/2015 Tentang Pengawasan Pemasukan Obat dan Makanan ke Dalam Wilayah Indonesia

- a. There is an act of breaking the law
- b. There is a loss
- c. There is a causal relationship between lawlessness and loss
- d. There is a mistake<sup>78</sup>

### **C. The Islamic Law Perspective related to the sale of imported cosmetics without labels marketed by Gkk.shop and Cintya Store**

The rapid development and advancement of the present age, in line with the mobility improvement in various aspects. As well as from the aspect of trade that extends from all commodities and from all corners of the world without the geographical limitations, time and space constraints that have accelerated. To support their business, business actors also undertake trade innovations such as export and import activities. In this study we discuss about the import of cosmetics that have been very vibrant and always increase every year.

In Islam, an innovation means a new way to facilitate humanity in its activities and efforts to improve its welfare, but all things developments and progress must remain based on the rules of Islamic law and Sharia and does not far and even violate the rules of Allah SWT which will ultimately not bring blessings, or even bring sin and disaster.

Along with the proliferation of international trade activities, the term of export and import of goods, as well as cosmetic trade activities in Indonesia, but in its development is not a bit of fraud or inconsistency with regulations that

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<sup>78</sup> Ahmadi Miru dan Sutarman Yodo, p. 130

should be obeyed for reasons of personal interest and profit in some parties and interested groups.

So here, research on Islamic law study associated with daily events is needed to be created and created balance of human activities (*muamalah*) with the Islamic law as the foundation of *muamalah* itself. All aspects of *muamalah* in Islam has set the terms and limitations in *fiqh*, it seems the *muamalah* aspects of buying and selling and everything associated with it and the process. In the case of buying and selling in Islam Allah SWT says in surah Al Baqarah verse 275 as its basic principle, which reads as follows:

وأحل الله البيع وحرم الربا

"... when Allah has justified the sale and purchase and forbidden the usury ..." (Surah al-Baqarah: 275)

In addition to the above principle, in the sale and purchase of Islam also provides more detailed Limitations of valid terms in the transactions that determine the validity of a transaction, the terms are:

1. Terms of Agent: for the perpetrator of the contract is required, intelligent and have the ability to choose. So crazy people, drunk people, and small children (who could not distinguish) were unable to be declared legitimate.
2. Conditions of goods to be made:
  - a. Holy (lawful and good).
  - b. Helpful.
  - c. Belonging to the person making the contract.



- d. Able to be submitted by the perpetrator of the contract.
- e. Knowing the status of goods (quality, quantity, type and others)
- f. It can be accepted by the contracting party<sup>79</sup>.

While in the trade conducted by @ Gkk.shop and Cintya shop do not meet the requirements of one of the categories of the terms of the goods that are made (the object of the transaction), that was the point to know the status of goods clearly (including quality, quantity, type, mode of use and others) as mentioned above. This lack of clarity is the result of not attaching or embedding Indonesian language labels on the products they sell. Though they know that their target market is mostly and almost all of them are Indonesian citizens.

Therefore, in the case of sale and purchase transactions of imported cosmetics has an indication that this is a buying-sale was *gharar*, because the object of buying and selling there is no clear label with the Indonesian language that consumers could understand directly, except by consumers who have an ability to understand the foreign language attached to the original label of the imported cosmetics. In short, there is an element of vagueness in this buying and selling product that causes it to be classified in terms of *gharar*. However, this *gharar* category can change if the buyer has foreign language ability, especially mastering the foreign language used on the original label of imported cosmetics products, namely Korean language and partly with English. While the *gharar* transaction itself is actually prohibited in Islam, as contained in the Hadith of Muslim RA History below:

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<sup>79</sup> Sayyid Sabiq, *Fiqh Sunnah*, juz III, (Beirut: Al I'thishom, 1973), p. 123

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ

*"The Messenger of Allah (peace and blessings of Allah be upon him) prohibited from buying and selling hashoh (the result of a pebble that was bought) and forbidding it from the gharar" (Muslim: 1513).*

The problem of *gharar* (unclear), this is the main cause that makes the majority of buying and selling to be invalid. But there are *gharars* that are allowed, namely:

1. Which contains little loss speculation. As Ibn Rushd said,

وقد اتفق العلماء على أن الغرر ينقسم إلى مؤثر في البيوع وغير مؤثر، ويشترط في الغرر حتى يكون مؤثرا أن يكون كثيرا، أما إذا كان يسيرا أو تدعو إليه الضرورة فإنه لا تأثير له على العقد.

"The jurists agree that the *gharar* on the merchandise that contains the many losses that should not be. Whereas if only a little, still tolerated (allowed) ".

2. It is a follow-up from another, not *ashl* (principal). If we buy a fetus in the livestock, it should not be. Because there is a *gharar* on purchased goods. Whereas if the purchased is the cattle that are pregnant and coupled with the fetus, then it is okay.

3. In the state of intent (need). Sort of buying a house underneath there is a foundation, of course we could not see the condition of the foundation, meaning there is a *gharar*. But still be allowed to buy a house even though it does not look the foundation because there is an intention at that time.

4. On the *tabarru'at* contract (which is not withdrawn), as in gift giving. We may just give gifts to friends in a wrapped state so it is not clear what the contents. This is fine. Unlike the case if the transaction is *mu'awadhot*, there are advantages in it kind of in buying and selling.

Thus our discussion of terms of sale and purchase. We always pay attention to this when we make a contract. May Allah always bless the buying and selling we do<sup>80</sup>.

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<sup>80</sup><https://rumaysho.com/2310-aturan-jual-beli-3-syarat-pada-barang-yang-dijual.html> 19/05/2018 at 10.39 pm

## CHAPTER V

### CLOSING

#### A. CONCLUSION

Base on the explanation and discussion above, then we can get the conclusions as follows:

1. The form of legal responsibility of business actors of two store for consumers on import cosmetics without Indonesian language label was can not be said to be fulfilled. Because, the use of Indonesian labels in the cosmetics trade in Indonesia is an obligation that has been regulated in legislation. Which is the inclusion of Indonesian language labels is an absolute obligation and responsibility of business actors before marketing their products to consumers, as regulated in Law No. 8 of 1999, Permen (Minister Regulation) and several other regulations. And this obligation is aimed at manufacturers of cosmetic products, including foreign cosmetic manufacturers who want to import their products to Indonesia to be widely marketed to consumers in Indonesia. In addition to producers, all business actors play a role in the implementation of these obligations, including distributors, importers, and also traders as final business actors who directly interact with consumers.

However, if the business actor does not heed this regulation and still sells his cosmetic products without including the Indonesian label, but other foreign languages. then he is responsible for consumer complaints because of the lack of clarity of information from the products being marketed, which should be

the right to information clarity is one of the consumer's rights as a product user. in accordance with article 19 of Law No. 8 of 1999 concerning consumer protection, that business actors have a responsibility to compensate consumers in the form of refunds, replacement of goods and / or similar services or health care and / or compensation in accordance with the applicable legal provisions.

In addition to the above responsibilities, due to legal violations committed by business actors, they are also threatened by various legal sanctions, that was administrative sanctions and a maximum sentence of 5 years imprisonment and a maximum fine of IDR 2,000,000,000 if the consumer can prove the claim in accordance with Law No. 8 of 1999 concerning consumer protection article 62.

2. Then next, the islamic law perspective related to views of the marketing transaction of import product that do not using the official language label(mother tongue) is classified as a trade that containing the elements of *gharar* because of lack of clarity of information and how to use the product and obscurity of guarantee. But this *gharar* law can be erased if consumers have foreign language skills and understand the information contained in the original packaging label of the product.

## **B. RECOMMENDATION**

From the above research, in order to create a good cosmetics trading market and in accordance with applicable regulations and to guarantee consumer rights, the authors provide the following suggestions:

1. For the Government to further tighten supervision of export-import activities of cosmetic products and other consumer products in general so that all



mechanisms are in accordance with applicable regulations and there are no illegal products and do not meet Indonesian trade standards to enter freely which will later harm the consumers of society and also the government directly or indirectly (related to taxes and so on).

2. For businesses to produce, distribute and trade their products in good faith in accordance with government regulations and do not neglect broad consumer rights.
3. For consumers to be more careful in buying cosmetic products, and not only based on cheaper prices, but also pay attention to the product's legacy in order to create a healthy trade to avoiding undesirable things in the future.

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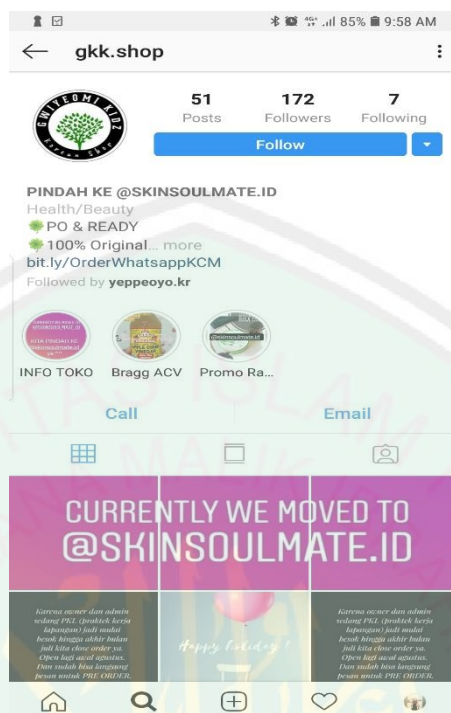
## ATTACHMENT



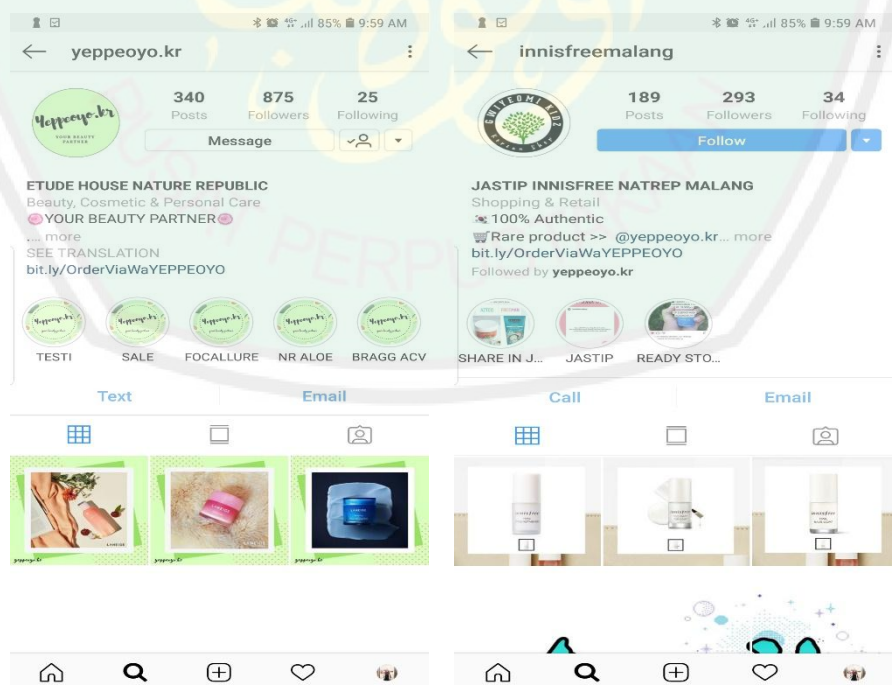
Cintya store appearance at Malang Town Square



Interview with CINTYA Store staff



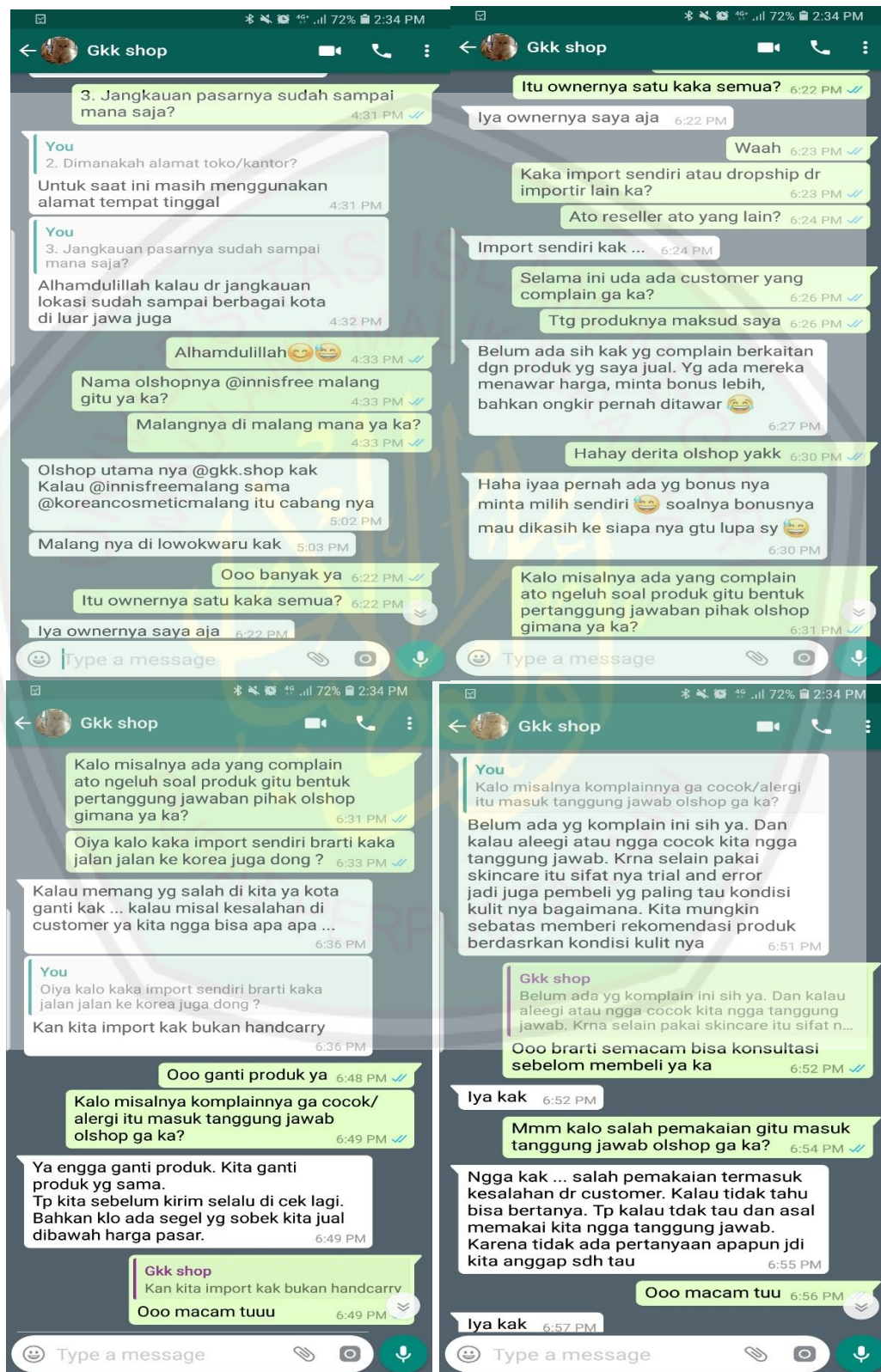
Main account of @Gkk.shop which move to @skinsoulmate.id and renamed to @yeppeoyo.kr



Current account of @yeppeoyo.kr and their branch store account @innisfreemalang



## Interview with @Gkk.shop owner by social media; Whats Apps







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 2007-2009 : SMP Muhammadiyah III Ngawi  
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