

## THE ROLE OF DRUG AND FOOD SUPERVISORY AGENCY (BPOM) IN COMBATING COSMETIC CIRCULATION AND DANGEROUS FOOD

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### ABSTRACT

*In order to cope with the circulation of cosmetics, drugs and dangerous foods, the government continues to increase its response efforts, starting from the community members, government officials and law enforcement officers, in this case BPOM. The establishment of the Badan POM (BPOM) aims to detect, prevent and supervise products including to protect the security, safety and health of consumers. The Badan POM has national and international networks and law enforcement authority and has high professional credibility. Therefore this study aims to find the right legal strategy taken by BPOM as an authorized agency in tackling and providing legal protection to consumers due to the circulation of cosmetics and dangerous foods. Based on the results of research and discussion, the requirements for cosmetics production must meet the requirements as stated in Article 2 of the Decree of the Indonesian National Drug and Food Control Agency No. HK.00.05.4.1745 on Cosmetics, The Role of BPOM Jambi In the context of overcoming the circulation of cosmetics and foods that are harmful to health. This law applies two stages of supervision, namely Pre-Market supervision and Post-Market supervision. As a post-market control effort, BPOM continuously provides education to consumers through communication, information and education as well as issuing public warnings when harmful cosmetics and food products are found, as well as increasing collaboration with relevant agencies such as the Health Office and Industry and Trade Office so that the use of materials dangerous to control. The comprehensive supervision of cosmetics, drugs and food (POM) which includes pre-market evaluation and post-market control is routinely carried out by the POM. The existence of Non-Pro Justitia and Pro Justitia is a safeguard effort to protect the public from the circulation of harmful cosmetics and food, meet quality and / or safety and / or efficacy / benefits, and the supervision and security activities in the cosmetics and food sector can be fulfilled.*

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### 1. INTRODUCTION

Rapid economic development, advances in technology and science have caused fairly rapid changes in the needs of human life, including among other cosmetic products, medicines and medical devices and food. This led to the establishment of many industries in the form of new cosmetic industries, pharmaceutical industries, and food industries. With the advances in science and technology that are all sophisticated at the present time certainly these industries are able to produce their products in very large quantities and are supported by the advancement of transportation equipment. As a result, these products

can quickly spread throughout the country in a very fast and safe time even between countries.

As the current era of free trade various types of cosmetics and food on the market with various uses from various brands can be found on the market. Cosmetic Products which are the result of the development of the pharmaceutical industry today have developed into one of the basic needs of the community along with the development of people's lifestyles. Businesses are competing to produce various kinds of beauty products with various uses for the community to attract as many consumers as possible. This condition is exploited by cosmetic manufacturers. Human desire to always look beautiful and even perfect in every opportunity is used by a group of business people who are not responsible for producing or trading cosmetics that do not meet the requirements of the community.<sup>1</sup>

Therefore, in order to provide certainty for the protection of the public in this case consumers, the government created a body tasked with monitoring drugs and food. Based on Presidential Regulation No. 11/2005 concerning Fifth Amendment to Presidential Decree No. 103/2001 concerning Position, Duties, Functions, Authority, Organizational Structure, and Work Procedures of Non-Departmental Government Institutions, Drug and Food Supervisory Bodies are stipulated as Non-Ministry Government Institutions (LPNK) responsible to the President. This BPOM is in the field of drug and food control in accordance with the applicable laws and regulations. The establishment of the POM is aimed at detecting, preventing and supervising products, including to protect the security and safety and health of consumers. With the existence of a body tasked with supervising drugs and food, it is expected to play an active role in dealing with drug and food and health problems. Therefore, supervision is needed for cosmetics and dangerous foods that have been verified by POM so that they are safe for use by the public. This body is coordinated by the Minister of Health and the Minister of Social Welfare who is assigned the task of overseeing the circulation of drugs and food including cosmetics in Indonesia, which is formed in each province throughout Indonesia.

In the provision of Article 2 of the Decree of the Head of the Republic of Indonesia Drug and Food Supervisory Agency Regarding Cosmetics explains that cosmetics manufactured and or distributed must meet the following requirements:

- a) use materials that meet the quality standards and requirements and other requirements specified;
- b) produced using the means of making good cosmetics; registered with and obtained a marketing authorization from the Food and Drug Supervisory Agency.

Furthermore, it has been regulated in Article 10 of the Decision of the Drug and Food Control Agency, which explains the marketing authorization, namely:

- 1) cosmetics before being distributed must be registered to get permission from the head of the body.

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<sup>1</sup>

Novel Dominika dan hasym. (2019), *Perlindungan HUKUM Terhadap Konsumen Atas Penjualan Kosmetik Berbahaya di Indonesia*, NIAGAWAN Vol. 8, hlm. 61

2) those entitled to register are:

- a) cosmetics manufacturer that has received an industrial business permit;
- b) a legal entity appointed or authorized by a company from the country of origin.

In supervising cosmetic medicines the Minister of Health has issued Regulation of the Minister of Health of the Republic of Indonesia Number 1175 / MENKES / PER / VII / 2010 regarding cosmetics production permits that require all cosmetics in circulation must meet quality, safety and benefit requirements.

Supervision of dangerous cosmetics is very important considering that in the era of globalization there is an increasingly free economy between sellers and buyers. The advancement of technology and its clever manufacturing of drugs and cosmetics are sometimes utilized by individuals who are not responsible for making dangerous cosmetic ingredients that can endanger their users. <sup>2</sup>Regarding food and beverage security, according to Article 111 paragraph 1 of Law Number 36 Year 2009 concerning Health Law, food and beverages used for the community must be based on health standards and / or requirements.

Concerning safe food standards is also regulated in Article 86 paragraph (1) and (2) of the Food Law, which is that every person who manufactures and trades Food must meet the Food Safety and Food Quality standards set by the Government. In the city of Jambi various cosmetic products and dangerous foods have sprung up and counterbalanced by the many who consume these dangerous cosmetic and food products. On the other hand, people's knowledge in Jambi is still inadequate to be able to choose and use cosmetic products appropriately, correctly and safely and foods that do not contain harmful ingredients, such as formalin and borax.

Based on data obtained from Jambi Drug and Food Control Agency Officers, throughout 2019 BPOM has secured several types of cosmetics and food products that are harmful to health from a number of shops and kiosks in the Jambi City Market Area. 83 types of beauty products that are suspected to contain mercury and do not have a distribution and food permit as many as 10 products that contain harmful ingredients, such as formalin and borax.

Consumer protection is seen both materially and formally as increasingly important, given the increasingly rapid pace of science and technology which is a driving force for the productivity and efficiency of producers of goods or services produced in order to achieve business goals. In order to pursue and achieve both of these, ultimately both directly and indirectly, consumers will generally feel the impact.<sup>3</sup> Thus, efforts to provide adequate

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<sup>2</sup> Rezky Nur Amelia, (2018) *Peran Balai Pengawas Obat dan makana (BPOM) Dalam Pengawasan Kosmetik Tanpa Izin Edar di Kota Makassar*, Eprints UNM, hlm 2.

<sup>3</sup> Dian Uly Meinar, Sunarmi, Detania Sukarja, (2019), *Perlindungan Hukum Bagi Konsumen, Terhadap Peredaran Kosmetika yang Tidak Memenuhi Standar Mutu Menurut UU No.8 Tahun 1999 Tentang Perlindungan Konsumen*, Transparency Journal, Volume 2 No.2, hlm 2 .

protection to the interests of consumers is an important and urgent matter to immediately find a solution. Therefore, in order to overcome the circulation of cosmetics, drugs and dangerous foods, then efforts to improve prevention, starting from citizens community, government officials and law enforcement officers. Based on this, the study examines: The Role of the Food and Drug Supervisory Agency (BPOM) in Overcoming the Circulation of Cosmetics and Hazardous Foods (Case Study in Jambi City).

Based on what is explained above, the problems in this study can be formulated as follows:

1. How is the BPOM's response to the circulation of cosmetics and dangerous foods.
2. What is the form of supervision carried out by BPOM in overcoming and providing protection to consumers due to the circulation of cosmetics and dangerous foods. The purpose of this study are:
  - a. To find out and analyze the handlers in tackling the circulation of cosmetics and dangerous foods.
  - b. To find out and analyze the forms of protection provided by BPOM to consumers due to the circulation of cosmetics and dangerous foods.

The benefits of the research carried out are theoretically expected to be able to add insight and knowledge to the development of legal science in general and in particular in the field of criminal law regarding the prevention of the distribution of cosmetics and dangerous foods, especially in the city of Jambi. In addition, this research is expected to be one of the references or library materials regarding this matter. Practically, this research is expected to help develop the reasoning and knowledge of the author to be a form of thought contribution to the author in the field of criminal law, especially in tackling the circulation of cosmetics and dangerous foods.

## **2. METHODOLOGY**

The author uses a type of empirical juridical research. Empirical jurisprudence is tasked with explaining facts and explaining them with the help of hypotheses that are in accordance with the law, namely by explaining social facts through legal aid, or conversely legal norms are explained with the help of social facts. On that basis the object of the study of empirical law is social facts. While the nature of this research is descriptive in nature, which is describing the law enforcement against cosmetics criminal acts dangerous to health

The data collected in this study the authors grouped into two groups, namely, Primary data that the authors obtained directly through interviews in the form of data about the resolution of cases of distribution of cosmetics and dangerous drugs in BPOM, police, prosecutors and courts, the Department of Health. Secondary data is data derived from literature and laws, as well as other regulations relating to the object of research. Tertiary data is supporting material that provides instructions or explanations regarding primary and secondary data. Tertiary data used in this study are the Large Indonesian Dictionary, Legal Dictionary, Journal, Internet also to be additional to the writing of this research as long as the information is relevant.

From the data obtained, both primary and secondary data, collected, selected and classified in the form of juridical. Next analyzed is analyzing the form of statements as outlined in the writing of the article. The data collected by the author were obtained from interviews conducted by the author, the authors describe in the form of sentence descriptions about the steps to overcome the circulation of cosmetics and illegal foods.

### **3. RESULTS AND DISCUSSION**

#### **a. The Role of BPOM in Tackling Criminal Acts on Circulation of Cosmetics and Hazardous Foods**

The Food and Drug Supervisory Agency is designated as a Non-Ministry Government Institution (LPNK) responsible to the President. The establishment of the POM body aims to detect, prevent and supervise products including to protect the security and safety and health of consumers. With the existence of a body tasked with supervising drugs and food, it is hoped that they can play an active role in handling matters of medicine and food and health.

As a follow up to the establishment of the POM, a Technical Implementing Unit has been established within the POM Agency in Jambi through the Decree of the Head of the POM No. 12 / SK / KBPOM in 2012 concerning the Organization and Work Procedures of the Technical Implementation Unit within the Drug and Food Supervisory Agency. In the Decree stated the Main Tasks and Functions and Organizational Structure of Balai POM in Jambi.

Organizational Structure and Work Procedure of POM in Jambi compiled based on Regulation of the Head of POM Agency Number 12 / SK / KBPOM of 2012 Concerning Organization and Work Procedure of Technical Executing Units within the Drug and Food Control Agency, Article 5 paragraph (1) and (2) as well Article 23, the organizational structure of Balai POM in Jambi is categorized as Balai POM Type A.

Drug and food control is carried out strategically and continuously as an integral part of general health development. Supervision must be able to anticipate changes in the strategic environment that is constantly changing dynamically, so that it is increasingly able to protect and empower the public in protecting themselves against cosmetics, drugs and foods that are not eligible, fake, substandard, and illegal.

In the context of overcoming the criminal acts of the circulation of cosmetics and foods that are harmful to health, the steps taken by the Jambi Food and Drug Supervisory Agency can be divided into two stages namely, the preventive stage and the repressive stage.<sup>4</sup>

#### **a. Preventive Stage**

Preventive prevention efforts are efforts to tackle crime, through non-penalty channels or constitute prevention of crime. Measures of prevention in the

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<sup>4</sup>Antoni Asdi Kepala BPOM Provinsi Jambi, diakses tanggal 15 Agustus 2019

circulation of cosmetics and dangerous foods in the jurisdiction of Jambi City include:

### **1). Supervision**

In the context of protecting the community of users of medicinal and food products that are of a health nature, the drug and food regulatory agency is given the authority by the government to supervise the outstanding products including cosmetics. Supervision of the circulation of cosmetics and dangerous foods can be done by the BPOM itself or in collaboration with the Jambi Police.

Oversight is carried out by the BPOM on the circulation of cosmetics and food products containing hazardous ingredients in the community is to ensure the quality of cosmetics and foods that are safe for consumption and not harmful to health.

In supervising the circulation of cosmetics and dangerous food products, Balai POM in Jambi city implements two stages of supervision, namely Pre-Market supervision and Post-Market supervision.

#### **1a). Pre-Market Supervision**

Pre-Market Supervision is supervision that is carried out before the product circulates on the market. In this case, the business actor wishing to register his business license can register by filling in the production permit application form in Balai POM in the city of Jambi. Furthermore, at the same time the business actor also made a letter of approval to lay out addressed to the POM Balai in Jambi city. The approved production permit application letter will be followed up by the Ministry of Health or the Provincial Health Office and then forwarded to the Agency and Balai POM.

After the Ministry of Health gives permission then a letter will be given to the POM Office to conduct an inspection of the production facilities to see the suitability of the layout given to the real conditions in the field and to consider whether the production facilities have met the requirements to carry out a production activity. If during the inspection the conditions set by the Balai POM have not met the requirements, a re-inspection will be conducted by the Balai POM until all the requirements are met. However, if all of the stipulated requirements are met, then it will be continued by giving a recommendation letter from the results of the examination of the local POM that is addressed to the POM Agency and submitted to the Directorate General of Pharmacy and Medical Devices (DirJen BinFarAlKes). Then after obtaining approval from both of them, the business actor will obtain a production permit.

After obtaining a production permit, the business actor can apply for a marketing authorization by giving a sample of the product to the central POM for laboratory testing to obtain a marketing authorization. The forms of Pre-market supervision conducted by BPOM mentioned above are:

1. Certification and registration of cosmetic and food products

2. Halal certification and halal labeling on cosmetics and food.
3. Checking permits for making cosmetics and food from pharmacies, factories and other facilities that produce cosmetics and food.
4. Providing information services and consumer complaints regarding cosmetics and food
5. Providing education and training to Human Resources (hereinafter referred to as HR), especially the Regency / City Governments as controllers and supervisors, as well as giving advice to producers, retailers, and the public regarding good and safe cosmetic and food products.

**1b). Post-Market Supervision**

The main activities of the Balai POM in Jambi and the POM Workshop in Sungai Penuh are the Post-Market supervision of medicinal and food products including cosmetics circulating in Jambi Province to ensure product quality and safety consistency in accordance with pre-market supervision. This supervision is carried out by sampling cosmetics, drugs and food products in circulation, as well as examining the means of production and distribution of drugs and food as well as supervision of labels / markings and advertisements.

Post-Market is an oversight carried out in the circulation of cosmetics and food on the market. Post-Market Supervision covers production and distribution supervision, sampling inspection, advertisement supervision, and public warning. Of the 320 available cosmetics distribution facilities, 240 facilities have been inspected with 75% coverage with 221 facilities (92.08%) fulfilling the provisions and 19 facilities (7.92%) not complying with the details, 18 cosmetics distribution facilities have been found. TIE and 1 cosmetic distribution facility contained dangerous / prohibited ingredients. The follow up actions were 18 facilities warning and 1 facility loud warning.

As for the types of food, inspection of hazardous material distribution facilities (formalin, which has existed in Jambi Province, has been carried out on 15 facilities with 14 results). (93.33%) complied with the provisions and 1 suggestion that did not meet the provisions, with the findings not being able to show that stock cards packed in formalin had no marketing authorization. Follow-up is done on facilities that do not meet the provisions, namely warnings.

Supervision is carried out by applying strictly the rules of standardization; safety assessment, efficacy and quality of products before they are allowed to circulate in the community.

As a post-market control effort, BPOM continuously provides education to consumers through communication, information and education and issues public warnings when food products are found that are harmful and unfit for consumption, and increases collaboration with relevant agencies such as the

Health Office and the Department of Industry and Trade so that the use of hazardous substances in food can be controlled.

In this routine supervision, BPOM checks unregistered products, products that contain hazardous materials, expired products including food, and gives warnings to naughty business actors with the aim that business actors do not sell illegal products and contain dangerous substances.

As a preventive measure, supervision and inspection are carried out by BPOM on a regular basis, namely every month and directly to each food and beverage processing location and to the places of its distribution facilities based on the rules established by the Minister of Health Regulation of the Republic of Indonesia No. 329 / Men-Kes / PER / XII / 1976 concerning Food Production and Distribution.

**a. Counseling / Appeal**

In addition to conducting surveillance and raids, the BPOM of the city of Jambi made an appeal or counseling to the community. Community outreach is done 2-4 times a year. Explained about the dangers of using hazardous products, how to choose good products, regulations on drugs and food and their legal consequences, supervision conducted by the drug and food regulatory office and actions taken by the drug and food regulatory agency for the illegal product as well as the dangers of using harmful cosmetics. In addition, the Food and Drug Monitoring Office also participates in exhibitions conducted by the regency / city or provincial government by displaying types of medicinal and food products, traditional herbs that are both used and not well used, including cosmetics.

BPOM issues rainy public warnings so that people do not use cosmetics because they can endanger health. This can be done through mass media advertising and information dissemination through public education or through the sector by distributing brochures or stickers. Counseling and appeal is one of the efforts to increase public legal awareness. This counseling can take the form of providing information and direction or input to the public, especially regarding the distribution of cosmetics and illegal foods or containing harmful substances. Awareness counseling also includes reporting to the authorities if there are known businesses that sell cosmetics and foods that are harmful to health.

Another effort is dissemination through brochures about cosmetics which contains about five steps on how to choose cosmetics and cosmetics books that contain cosmetic Public Warning, which means it is not good to use. For this brochure the drug and food regulatory agency distributes brochures to schools, markets, supermarkets, production facilities and drug and cosmetic shops. The contents of the brochure itself is before choosing cosmetics must first consider the packaging, label, distribution permit, usability, how to use and expire the cosmetics.



The main thing that causes the prohibition of illegal cosmetics to circulate in the community is dangerous ingredients in the manufacture of cosmetics, especially if they do not include an expiration date. Chemicals are found in illegal cosmetics that can harm the human body, including dexamethasone, antibiotics, retinoic acid, hydroquinone, and mercury (Hg).

Head of the Center for Drug and Food Data and Information (Posdatin) Food and Drug Supervisory Agency (BPOM) Roby Darmawan<sup>5</sup> revealed, there are several ways to choose foods and drugs that are not dangerous. You do this by checking the packaging, label, distribution permit, and expiration. "If the packaging is broken, torn, bitten by animals, bloated dents and others do not buy. Bloated cans are usually caused by bacteria. Do not buy, if necessary, report to BPOM.

The next step is to conduct socialization on the dangers of formaldehyde, borax and Rhodamin B on health to small scale industry entrepreneurs (home industries) in several districts in collaboration with the local government. According to him accuracy is the first step to a healthy life. For this reason, it is expected that before buying, the public can read the labels listed first. It starts from the name of the type of food, ingredients and composition, net weight, registration number, name and address and others. Because consuming food in unregistered packaging can endanger health. With the BPOM website the public can easily check it. Just click through the smartphone you have.

So, based on the results of the research above, it is known that in an effort to tackle the circulation of harmful cosmetics and foods is a good collaboration between BPOM and other law enforcement officers. In addition this also increases public awareness that security and order is a shared responsibility in order to reduce the circulation of cosmetics and dangerous foods.

#### **b. Combined Raids Operations**

The rise of criminal acts in the circulation of cosmetics and dangerous foods is one reason that makes the Police in collaboration with BPOM continue to try to capture the perpetrators of violations. One of the efforts made is through joint joint police and BPOM raid operations.

The Food and Drug Supervisory Agency often performs routine operations, this operation is carried out 5 to 6 times a month. The targets are drug and food distribution facilities, markets, cosmetics shops, mini markets, supermarkets, supermarkets. This operation was carried out by the BPOM office, police investigators and the Ministry of Industry and Trade.

In addition to routine operations there are also regional joint operations and national joint operations, for joint regional operations carried out 3 times a year

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<sup>5</sup> Roby Darmawan, Kepala Pusat Data dan Informasi Obat dan Makanan, diakses tgl 20 Agustus 2019

carried out in district and city areas carried out by drug and food inspection centers, Korwas Civil Servant Investigators and the Department of Industry and Trade.

National joint operations are carried out simultaneously with BPOM throughout Indonesia, carried out on the same day and at the same time throughout Indonesia where this operation is carried out once a year.

### **c. Repressive Stage**

The next stage is the repressive stage. What is meant by a repressive action is all actions carried out by law enforcement after the occurrence of a crime or crime. Repressive actions only occur after the occurrence of a crime or a crime, namely by the functioning of all elements in the criminal justice system starting from the investigation stage to the implementation of the criminal (execution).<sup>6</sup>

In addition to supervising illegal products and containing hazardous substances, the Food and Drug Supervisory Agency also conducts law enforcement against sellers who deliberately distribute dangerous products that are not good for health. The application of this stage is carried out if it is found that the distribution of cosmetics and illegal foods when carrying out routine operations and joint operations to the production facilities for drugs and food, markets, salons, and cosmetics shops.

The comprehensive supervision of cosmetics, medicine and food (POM) which includes pre-market evaluation and post-market control is routinely carried out by POM, including Balai / Balai POM throughout Indonesia. Cross-sectoral coordination is also intensified in order to strengthen the Food and Drug surveillance system in Indonesia.

### **Forms of Supervision Performed by BPOM in Providing Protection for Consumers**

Law enforcement carried out by the Police and BPOM is an effort to conduct surveillance and security of cosmetics and food that are circulating in the community.<sup>7</sup> The monitoring effort aims to carry out its activities not in violation of the provisions stipulated in the applicable laws and regulations. Meanwhile security measures are organized to protect the public from the circulation of cosmetics and dangerous foods, because these cosmetics and foods do not meet the quality and / or safety and / or efficacy / benefits requirements. So that the implementation of surveillance and security activities in the field of cosmetics and food can be fulfilled, then there are several efforts undertaken by the Police and BPOM in the form of efforts Non-Pro Justitia and Pro Justitia

#### **1. Non pro justitia Stage**

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<sup>6</sup>Moeljatno. *Perbuatan Pidana dan Pertanggungjawaban Dalam Hukum Pidana*. Bina Aksara, Yogyakarta, 2002.

<sup>7</sup>Firganefi, (2006), *Penegakan Hukum Pidana Terhadap Pelaku Usaha Makanan Berbahaya yang melanggar Undang-Undang*, Jurnal Hukum Projustitia, Volume 24, hlm 86

Based on the Decree of the Head of BPOM Number: HK.00.05.72.4473 <sup>8</sup>concerning the Permanent Procedure of Criminal Investigation in the Field of Medicine and Food, what is meant by Non Pro Justitia efforts is a series of actions or processes carried out by BPOM outside the criminal justice process, by imposing administrative sanctions.

In the case of cosmetics and dangerous foods that do not have a marketing authorization is an attempt by the police and BPOM to provide warnings, as well as administrative sanctions to businesses suspected of producing cosmetics and circulating food that is not in accordance with the Health Law.

For businesses that provide and circulate and do not have a marketing authorization as in violation of the provisions of the Health Law and Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) several efforts will be made, namely through the Non Pro Justitia and Pro justitia channels. by BPOM as PPNS to provide warnings and administrative sanctions to business actors who are suspected of producing cosmetics and food that are not in accordance with the Health Law and also some efforts made by the government through BPOM, Polri, and related agencies to reduce the circulation of cosmetics and food that is dangerous.

## **2. *Pro Justitia* Stage**

Pro Justitia's efforts are a series of actions taken by BPOM through a judicial process in cases in the health sector with the threat of criminal sanctions. The Pro Justitia effort is the stage where dangerous cosmetics and illegal food cases that do not have a marketing authorization have been proven to violate the Health Law, and will then be processed by the relevant District Court.

Pro Justitia's own effort is the stage where the case found by BBPOM has been proven. Pro Justitia is still divided into two stages, namely the investigation and non-investigation stages. During the investigation stage, cases that have been proven will be followed up with the transfer of files from BPOM to the Prosecutor's Office which will then be tried in the District Court or District Court in accordance with Locus Delicti. Whereas in the non-investigation stage, if the case is proven but it can be considered so that it is not prosecuted, coaching will be held and / or a warning letter will be given. The warning letter here is harsh issued directly by the Head of Health Office.

If a business actor is proven to provide and / or distribute dangerous cosmetics and does not have a marketing authorization that is processed in court, then criminal provisions will be imposed. The Health Act governs criminal provisions listed in article 196 and article 197.<sup>8</sup>

Business actors who produce and sell dangerous illegal cosmetics not only violate the provisions of the Health Act but also violates the provisions of the Consumer Protection

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<sup>8</sup>Lihat Pasal 196 dan Pasal 197 Undang-Undang Kesehatan

Act. The Consumer Protection Act regulates the obligations of business actors in producing goods and / or services.

The existence of dangerous illegal cosmetic cases carried out by business actors violates the provisions as stated in Article 7 of the UUPK. Business actors have obligations that must be fulfilled as regulated in Article 7 of the UUPK. The essence of the article is that business actors must have good faith in carrying out their business activities, and state that business actors must contain and provide true, clear and honest information about the conditions and guarantees of the goods and / or services they produce. The purpose of regulating the obligations of business actors is to guarantee the quality of goods and / or services produced and / or sold based on the provisions of quality standards that have been determined by law.<sup>9</sup>

Article 4 of the Consumer Protection Act gives the consumer the right, that the problem of consumer comfort, security, and safety is the most important and main thing in consumer protection.<sup>10</sup> Goods and / or services whose use does not provide comfort, especially endangering consumers clearly do not deserve to be circulated in the community. There are administrative provisions, civil sanctions and even criminal threats for business actors who do not have such bad intentions.

In addition to business actors who are burdened with the responsibility to provide compensation to consumers who are disadvantaged, business actors must be criminally accounted for to create a deterrent effect so that business actors can pay more attention to the products they are trading.<sup>11</sup>

Food that is circulated must meet food and beverage security provisions which according to Article 111 paragraph (1) of Law Number 36 Year 2009 concerning Health Law food and drinks used for the community must be based on health standards and / or requirements. Concerning safe food standards is also regulated in Article 86 paragraph (1) and (2) of the Food Law, which is that every person who manufactures and trades Food must meet the Food Safety and Food Quality standards set by the Government.

### **Prohibition of Selling Foods That Contain Hazardous Materials**

Basically, everyone is prohibited from distributing contaminated food. Contaminated food is food which:

- a. contain toxic, dangerous or dangerous material that can endanger human health or life;
- b. contain contamination that exceeds the maximum limit set;

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<sup>9</sup>Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, PT Citra Aditya Bakti, Bandung, 2000, hlm. 235.

<sup>10</sup>Gunawan Widjaja dan Ahmad Yani, *Hukum Tentang Perlindungan Konsumen*, PT Gramedia Pustaka Umum, Jakarta, 2000, hlm. 29.

<sup>11</sup>Firganefi, *Penegakan Hukum Pidana Terhadap Pelaku Usaha Makanan Berbahaya Yang Melanggar Undang-Undang*, Jurnal Hukum Projustitia, Januari 2006. Volume 24 No.12

- c. contain materials that are prohibited from being used in Food Production activities or processes;
- d. contain material that is dirty, rotten, rancid, decomposed, or contains vegetable or animal material which is diseased or derived from a carcass;
- e. produced in a way that is prohibited; and / or
- f. has expired.

Government Regulation No. 28/2004 concerning Food Safety, Quality and Nutrition ("PP 28/2004") also regulates the same thing, that everyone is prohibited from distributing:

- a. food containing toxic, dangerous or which can harm or endanger human health or life;
- b. food containing contamination that exceeds the maximum limit set;
- c. food containing ingredients which are prohibited from being used in food production activities or processes;
- d. food containing material that is dirty, rotten, rancid, decomposed, or contains vegetable or animal material which is diseased or derived from a carcass which makes the food unfit for human consumption; or
- e. food that has expired.

### **Sanctions for Dangerous Food Sellers**

Any person who violates the provisions regarding the fulfillment of food quality standards and contaminated food as mentioned above, is subject to administrative sanctions. These administrative sanctions include:

- a. fine
- b. Temporary cessation of production and / or distribution activities
- c. Withdrawal from the circulation by the manufacturer
- d. Compensation and / or revocation of permission.

In addition to these sanctions, criminal sanctions can also be imposed, as regulated in Article 62 of Law No.8 of 1999 concerning Consumer Protection. If dangerous cosmetics and food products are found, the PPNS investigator will conduct an investigation. The investigation activities carried out by PPNS Investigators are as follows:

1. After getting the results of product testing with TMS results, it is reported to the Indonesian National Drug and Food Control Agency
3. After receiving an order to be followed up from the Indonesian National Drug and Food Control Agency, the PPNS Balai POM conducts an investigation and checks to the location of the food and beverage business
4. Furthermore, the withdrawal of food products, then the food and beverage products are withdrawn from circulation. Officers of the POM Center, the Ministry of Health and the Ministry of Industry and Trade went to the field to meet with food and beverage businesses while their products were withdrawn from circulation.

5. Provide administrative sanctions in the form of oral and written warning (written warning. Then the business actor promises / makes a statement, among others: will not use prohibited food additives, explain the composition of ingredients on the label and others.

**Considerations taken to determine whether an investigation or a non-investigation are included are:**

1. There is an element of intent
2. Business people knowingly and deliberately sell cosmetics and food ingredients that contain harmful ingredients for health.
3. Contains hazardous materials.
4. Products sold by means / seller do not have a marketing authorization and contain hazardous ingredients so that it will have a direct impact on consumers' health.
5. Do it repeatedly although already being warned.<sup>12</sup>

During 2018 violations were found as many as 23 cases with an estimated nominal of Rp. 304,383,350 (three hundred four million three hundred eighty three three hundred fifty rupiah). Whereas for investigating drug and food crime there are at least 11 cases of drug and food violations handled by B POM Jambi from the results of routine supervision in 2018 and 2019. The case was obtained by storm operations, food operations, regional joint operations, and joint operations National.

During the period January - June 2019 A total of 665 product items did not have official permission from the Food and Drug Administration (BPOM), with a loss of Rp 490 million, and most cosmetic products.

Of the several categories secured, the most were cosmetic products. Because, in Jambi there are still many cosmetic products that contain ingredients of mercury. Nearly 70 percent of cosmetic products are secured. Of the 11 cases, which were processed up to stage two were five cases. SP3 is 1 case, stage 1 or P19 is 3 case, and SPDP is 2 case.

Based on the description above, if it is connected with the crime prevention policy using the theory from G.P. Hoefnagels namely through the channels of penalties and non-penalties. Both of these pathways are also used by Law No. 8 of 1999 concerning Consumer Protection, as explained by Barda Nawawi Arief, namely: the handling can be done by means of penalties with the provision of criminal sanctions including Article 61-63 UUPK,<sup>13</sup> in these articles have been arranged with a 5 year criminal sentence and a fine of Rp 2 billion. This if we associate with the principle of ultimum remedium that the imposition of criminal sanctions is the last weapon. This has the meaning that if a case can be resolved through other channels (kinship, negotiation, mediation, civil law, or administrative law) the path must be passed first. Thus not all cases are yes, so by also considering the impact

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<sup>12</sup>Antoni Asdi Kepala BPOM Provinsi Jambi, diakses tanggal 15 Agustus 2019

<sup>13</sup>Lihat Pasal 61-63 Undang Perlindungan Konsumen

of criminal prosecution. Most sanctions in the form of supervision and guidance by relevant agencies.

#### **4. CONCLUSION**

Based on the results of research that has been done, it can be concluded that the preventive measures in controlling the circulation of cosmetics and dangerous foods in the jurisdiction of the City of Jambi, include In the supervision of the circulation of cosmetics and dangerous food products, Balai POM in Jambi City implements two stages of supervision, namely Pre - Market and Post-Market surveillance.

Counseling and appeal is one of the efforts to increase public legal awareness. This counseling can take the form of providing information and direction or input to the public, especially regarding the distribution of cosmetics and illegal foods or containing harmful substances. Awareness raising also includes reporting to the authorities if there are known businesses that sell cosmetics and foods that are harmful to health.

The Food and Drug Supervisory Agency often performs routine operations, this operation is carried out 5 to 6 times a year. The targets are drug and food distribution facilities, markets, cosmetics shops, mini markets, supermarkets, supermarkets. This operation was carried out by the BPOM office, police investigators and the industry and trade department.

Repressive actions are all actions taken by law enforcers after a crime or crime has taken place. Repressive actions only occur after the occurrence of crime or crime, namely by the functioning of all elements in the criminal justice system starting from the investigation stage to the implementation of the criminal (execution).

#### **Forms of Supervision Performed by BPOM in Providing Protection for Consumers**

So that the implementation of surveillance and security activities in the cosmetics and food sectors can be fulfilled, and the community feels protected, there are several efforts undertaken by the Police and BPOM in the form of Non-Pro Justitia and Pro-Justitia efforts.

In the case of cosmetics and dangerous foods and not having marketing authorization is an effort made by the police and BPOM to provide warnings, as well as administrative sanctions to business actors who are suspected of producing cosmetics and circulating food that is not in accordance with the Health Law.

Pro Justitia's own effort is the stage where the case found by BBPOM has been proven. Pro Justitia is still divided into two stages, namely the investigation and non-investigation stages.

#### **Suggestion**

1. Business actors proven to harm consumers as a result of producing and distributing cosmetics and food that endanger health, law enforcement officials

should actually apply criminal sanctions, compensation and revocation of marketing and production permits.

2. Supervision should be carried out by BPOM, namely by applying strictly the rules relating to the use of hazardous substances and safety and product quality before being allowed to circulate in the community.

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