

## ANALYSIS OF SHARE IN JAR PRACTICE, POSITIVE LAW VS ISLAMIC LAW PERSPECTIVE

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### ABSTRACT

Cosmetics are an important need for most women, therefore many cosmetic industries continue to try to meet consumer needs for cosmetics. Then the term share in jar appears, share in jar is the process of dividing the contents of an original size product into several smaller places or containers. This product is loved by consumers who want to try it on their skin. However, this practice creates problems that can harm consumers and brand holders, so there needs to be a solution according to positive law and Islamic law. The author uses a qualitative method where the data sources are obtained from literature and legislation and then described in the form of information. The results of this study indicate that the practice of share in jar causes losses to consumers and brand owners because it violates the UUPK and does not fulfill the CPKB requirements and there is an element of gharar where the harm is greater, therefore this practice is better avoided. The author's suggestion for this research is that consumers are expected to avoid share in jar products and the government is expected to make specific regulations regarding the distribution of share in jar products.

**Keywords: cosmetics, share in jar, positive law, Islam law**

### ABSTRAK

Kosmetik merupakan kebutuhan penting untuk sebagian besar wanita, oleh sebab itu banyak industri kosmetik terus berusaha memenuhi kebutuhan konsumen akan kosmetik. Maka muncul istilah *share in jar*, share in jar ialah proses membagi isi sebuah produk ukuran asli kedalam beberapa tempat atau wadah yang lebih kecil. Produk ini digemari oleh konsumen yang ingin untuk dicoba pada kulit mereka. Namun praktik tersebut menimbulkan permasalahan yang dapat merugikan konsumen dan pihak pemegang merk sehingga perlu adanya solusi menurut hukum positif dan hukum islam. Penulis menggunakan metode kualitatif dimana sumber data didapatkan dengan literatur dan perundang-undangan lalu diuraikan dalam bentuk keterangan. Hasil dari penelitian ini menunjukkan bahwa praktik share in jar menimbulkan kerugian pada konsumen dan pemilik merk sebab melanggar UUPK dan tidak terpenuhinya syarat CPKB serta terdapat unsur gharar dimana mudharat lebih besar oleh sebab itu praktik tersebut lebih baik dihindari. Saran penulis untuk penelitian ini diharapkan bagi konsumen menghindari produk share in jar dan bagi pemerintah diharapkan membuat peraturan yang spesifik tentang peredaran produk share in jar.

**Kata kunci : kosmetik, share in jar, hukum positif, hukum islam**

## INTRODUCTION

Cosmetics are one of the important needs for women, so many cosmetic industries continue to try to meet consumer needs for cosmetics with various kinds of innovations according to market demand. In 2016 a new idea emerged to follow the market by providing sample products for consumers who want to try an original packaged product, namely share in jar. The method is where cosmetics with large sizes or packaging are transferred into several economical or smaller containers to make it easier for consumers who just want to try a product or who want to save money.

There are quite a variety of cosmetic products on the market and are made in attractive packaging, but often local and imported products do not have licenses and product standardization is still inadequate. According to the findings of BPOM Medan, they succeeded in destroying 632 types of illegal confiscated products throughout 2019, 632 types of products destroyed consisted of 441 types of drugs consisting of 18,323 packages, then 175 types of cosmetics with 24,763 packages, and 16 types of food products. with 8,261 packs. (Kumparan.com, 2019)

Behind the benefits above, the share in jar system has turned out to be causing several problems, there are several factors that should be prohibited because they can cause harm and possibly harm consumers. Based on applicable laws or regulations, the sale of skin care with the share in jar system turns out to contain an element of brand infringement. However, in reality, there are still many business actors who dare to sell these products, which causes losses to brand holders who have struggled to pioneer and maintain the brand image of the brand.

Based on applicable law, the sale of skin care with the share in jar system turns out to contain an element of brand violation as regulated in article 66e (RI Law No. 20 Yrs, 2016) concerning brands and geographical indications which reads:

*“imitation or misuse that can be misleading in relation to the place of origin of the goods and/or products or the quality of the goods and/or products contained in:*

1. *wrapping or packaging*
2. *captions in advertisements*
3. *information in the document regarding the said goods and/or products*
4. *misleading information regarding its origin”*

In Islam, there is a possibility that the product with the share in jar system contains an element of gharar, because the packaging does not include detailed information related to the original product and the possibility of product counterfeiting. Due to the rise of share in jar products which have several impacts and legal vacuums, legal protection for brand owners and consumers and the perspective of the share in jar system according to Islam is an important thing. So the researchers tried to compile it in a thesis entitled " **ANALYSIS OF SHARE IN JAR PRACTICE, POSITIVE LAW VS ISLAMIC LAW PERSPECTIVE**"

## LITERATURE STUDY

Dita Dwi Lestari (2020) explained that in practice, cosmetics in the share in jar system at the Cantiqueute Purwokerto cosmetic store were initially allowed because they had met the requirements and pillars of buying and selling in Islam. but because it is always packaged in a new container and there is no longer a description such as an expiration date. So the sale and

purchase of share in jar cosmetics based on an analysis of the benefits and harms is not allowed because the share in jar cosmetics are feared to exceed the expiration date which can cause harm to consumers.

Rani et al. (2021) they revealed that a form of legal protection for consumers who use cosmetic products (share in jar) is the right of consumers to clear information regarding the composition of the cosmetic products sold (share in jar). They also explain the form of responsibility of business actors in which business actors are obliged to compensate for losses suffered by consumers which must be carried out by business actors. In accordance with the statement of Article 19 of the UUPK which requires business actors to compensate for losses suffered by consumers. And if the business actor does not want to be responsible for the loss he makes, the consumer has the right to file a lawsuit in court.

Wahyuningtyas et al. (2021) concluded that the online store @share\_skincarekediri's share in jar system does not use labels and does not include information clearly which causes consumers to doubt the product. According to Sad al-Dhari'ah's analysis, the use of the share in jar system at the @share\_skincarekediri online store is not allowed because if viewed from a quality perspective, it is included in the actions carried out which are likely to lead to death, because it uses the practice of eliminating information clearly and lucidly. of the product so that it causes qat'i mafsadatan. In addition, the analysis of Law Number 8 of 1999 on the use of skincare with the share in jar system is also still not appropriate because it does not match what consumers want and there is no accountability from @share\_skincarekediri, there are some cosmetics that have not been registered with BPOM, and there are no marketing authorization for selling cosmetics using the share in jar system.

Intan Puspita Sari (2020) explained that Consumer Protection for Share In Jar Cosmetic Products that do not have a distribution permit has not run optimally because many business actors are not aware of the law and do not understand their rights and obligations as share in jar business actors to be required to register their distribution permit. in accordance with applicable law.

Nafida Ika Apriyana (2021) concludes that based on the current laws and regulations in Indonesia, share in jar cosmetic products are included in the dangerous category and are prohibited from being traded or distributed. Because it violates the consumer protection law and the health law on distribution permits.

Dai et al. (2019) concluded that legal protection for cosmetic consumers to feel comfortable, safe and secure in relation to the distribution of cosmetics without a normative distribution permit has actually been attempted by the government and its staff by establishing regulations regarding guidance and supervision based on the Decree of the POM Agency. RI Number HK.03.1.23.12.11.10052 of 2011 concerning Supervision of the production and distribution of cosmetics and sanctions based on Law Number 36 of 2009 concerning health which is expected to make business actors aware so that they do business in good faith.

Azizah et al. (2021) stated that the practice of buying and selling with the share in jar system is legal, because it has fulfilled the pillars and conditions of buying and selling. Buying and selling with the share in jar system does not contain elements of fraud and does not include gharar because the nature and type can be known. In this buying and selling transaction, there is a willingness between two parties and an element of consensual ('an tarāḍin minkum).

## **METHOD**

This study uses the library research method, which is a research that collects literature, laws and regulations, arguments and hadiths that are processed and related to the issues that are the subject of research. Then the data is described and presented in the form of information.

## **RESULTS AND DISCUSSION**

### **1. Possible Losses in the Share In Jar System According to BPOM**

According to the Food and Drug Supervisory Agency (BPOM) in its 2018 report, the Food and Drug Supervisory Agency (BPOM) has made the distribution of packaged products (share in jars) a study of drug and food crimes. Therefore, cosmetics with the share in jar system cause losses to several parties.

#### **1.1 Brand Owner**

Based on the applicable legal provisions, the distribution of share in jar packaging products is included in the element of violation of Marks and Geographical Indications which have been regulated under Law 20 of 2016 concerning Marks and Geographical Indications article 1 Number 1 that Marks are: “Signs that can be displayed visually graphics in the form of pictures, logos, names, words, letters, numbers, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, holograms, or a combination of these 2 (two) or more elements to distinguish goods and/or services produced by persons or legal entities in the activities of trading goods and/or services.”( RI Law No. 20 Yrs, 2016)

Another risk that arises is not including the identity of the product, such as the expiration date, restrictions and side effects on the product and the last is the composition of the ingredients of the original product. So that consumers do not get clear information on the products purchased so that it has the potential to cause harm to the brand owner if one day something unwanted happens to the consumer, one of which is the damage to the brand image. But there are also business people who try to include expiration information even though the business is still not safe, because the expiration date listed and valid for products that have been opened is the After Opening Period or abbreviated as PAO, while the expiration date listed by skincare product business actors share in jar only valid when the product packaging has not been opened. PAO itself is symbolized by a logo such as a product lid that has been opened and indicates the period of time the product can be used after the packaging is opened. So, for example, a skincare product has an expiration date in 2022 with a PAO of 6M or 6 months, then the product opens in early 2021, then the product can only be used for 6 months. If it passes the PAO period, then the product is considered unfit for use. (parapua.co, 2021)

Sales of well-known brands without a permit can harm the holders of well-known brands who have registered their products, as well as harm the original image of the brands that have been successfully and painstakingly pioneered by the holders of the well-known brands, this is contrary to the applicable regulations in Law no. 20 of 2016. However, in reality the distribution of cosmetic products with a share in jar packaging system for skincare products has no legal provisions that specifically regulate the circulation of these products.

#### **1.2 Consumers**

Buying and selling in the practice of the share in jar system does not include clear and detailed information which causes consumers to be doubtful about the product. Because cosmetics with the share in jar system are included in the category of repackaging a product that was initially in a large container and then repackaged into a smaller or economical

container. It is clear that this is strictly prohibited because it does not meet the requirements for the Good Manufacturing Practice of Cosmetics (CPKB) in accordance with those stipulated in the regulation of the minister of health.

In the production process of share in jar cosmetic products there is interference and air which can reduce the quality and possibility of contamination by bacteria entering the share in jar product, this is still ignored by share in jar business actors and directly causes the possibility of harm to consumers. So the application of the requirements in obtaining a distribution permit is considered very important because it involves quality and safety.

In Purbasari's Beauty Talk at AEON BSD, Saturday (2/2/2019) Soraya Hylmi commented about the share in jar *"I'm really concerned about share in jar make up. That's the contents of make up or skin care transferred from the original packaging to the mini packaging, we don't know whether the mini packaging has been sterilized or not, there is air contact too, so it's risky," Soraya Hylmi added, "air contact during the process of transferring make up or skin products. care can change the texture, color and function of the product. Of course this can affect your skin."*(Suara.com, 2019)

Based on an interview with a victim on May 10, 2019, named Nadya Chrismonika, she once bought and used cosmetic products in share in jar packaging at an economical price, she got them online (online-shop). The risk that arises from using this product is that pimples appear on his facial skin which are very painful even though he has only used the product once and makes his face breakouts which are very hard. Finally she decided to stop using the product and consulted a dermatologist and the doctor said that her face was irritated due to the harsh ingredients of the beauty products she bought.(Intan Puspita Sari, 2020)

From these problems, consumers should get legal protection in order to get security, comfort, and safety in using cosmetic products. The form of consumer legal protection from these products is the right to get clear information about the composition of the share in jar product. Actions taken by business actors who do not provide clarity in the product can result in harm to consumers.

### **1.3 Share In Jar in Practice**

Based on the statement from the seller or share in jar business actor that the share in jar product they circulate is genuine without mixing it with other substances/ingredients. For the expiry period of share in jar products, some business actors do not include the expiration date on the grounds that it is still old and the stock is always new, but there are also business actors who include the expiration date by explaining that the EXP of the original product is 3 years but for PAO it is 1 year from opened the original packaging. So it can be concluded that share in jar skincare products can only be used within a year or even less than a year. If the consumer experiences a loss, the business actor protects himself by saying "it may not be suitable for the product (original brand product)" and explains that the share in jar product they sell is safe because all the packaging has been sterilized and does not mix anything in the product and says that consumers who decide to buy share in jar products are beyond their responsibility, especially if there is a match / unsuitability problem because the purpose of share in jar is only to try or as a tester before buying a full size product. And the responsibility of business actors is only if there is damage in packaging or product shortages can be refunded.

## **2. How Share In Jar Relates to Possible Disputes and Legal Vacancies and Consumer Protection**

Because the information about the share in jar product is not clear, there is a possibility of a dispute between the business actor and the consumer or the business actor and the brand owner. If there is a dispute between the consumer and the brand owner and the business actor, then the dispute resolution with the business actor can be done through litigation (court) and non-litigation (outside court). (Intan Puspita Sari, 2020)

These disputes can occur between business actors and consumers or business actors and product/brand owners. According to one resource person from Almira Mey Theda's research, he as the Directorate General of Intellectual Property explained that "share in jar business actors do not have a legal umbrella in distributing their products, unless the share in jar business actor has permission from the brand owner". (Theda et al., 2021)

With this legal vacuum, consumers need guarantees for protection from transactions carried out so that there are no disputes or fraud from business actors on the goods being transacted. A form of legal protection for consumers who use cosmetic products in packages (share in jars) is the right of consumers to clear information regarding the composition of cosmetic products sold in these containers. Actions carried out by business actors who do not provide clarity in the product can harm consumers in an immaterial aspect. (Rani et al, 2021)

Based on the statement above, share in jar cosmetic products have a legal vacuum. This results in the absence of legal regulations that specifically violate the distribution of the share in jar product. This includes legal uncertainty (*rechtsonzekerheid*) and is more severe if it results in legal chaos (*rechtsverwarring*). This is because the void of legal instruments is the reason for the opportunity for cosmetic business actors to run their business by selling share in jar products.

Legal protection for consumers' rights to correct, clear, and honest information regarding the condition and guarantee of goods in the Regulation of the POM RI Number HK.00.05.4.17.45 Regarding Cosmetics has actually been clearly regulated in relation to the obligations of business actors to provide complete information. in full to avoid loss to cosmetic consumers. And for cosmetic consumers who experience losses, based on Article 19 of the UUPK, business actors are required to provide compensation, while the government has the responsibility to foster, supervise and facilitate so that cosmetic consumers get what they are entitled to. (Dai et al., 2019)

Because the share in jar process is classified as a prohibited act, because it is not in accordance with BPOM standardization. If at any time the product is processed in accordance with BPOM standards, such as maintaining hygiene, completing related product information, under the supervision of BPOM, and registering a distribution permit, the share in jar product may be allowed to be circulated. (Nafida Ika Apriliya, 2021)

### **3. How to practice sharing in jar according to Islam and the solution**

In accordance with the provisions of buying and selling practices where the terms and pillars must be met, namely the absence of fraud, manipulating the product and must comply with the regulations both Islamic law and positive law. The fraud in question is one of them falsifying the product or mixing the product with other products. Based on the reality on the ground, the practice of buying and selling skincare using the share in jar system is not appropriate because it does not use labels and there is no clear information that causes consumers to doubt the product.

Skincare product transactions are actions that are basically allowed, but using the share in jar system is an act that should be avoided because there is uncertainty in the

transaction and in the object because of the possibility of not fulfilling the terms of sale and purchase and violating applicable regulations, the regulation in question is the right to get information about the object being transacted. In the practice of buying and selling skincare, share in jar is also inseparable from the possibility of a risk occurring, in this case the risk in question is that something unexpected happens or fraud occurs in practice.

The practice of buying and selling skincare using the share in jar system actually provides benefits for consumers and brand holders, one of the benefits for consumers is getting cheaper prices and as a tester before buying products with full size packaging. Meanwhile, the benefit for product owners is indirectly increasing product sales due to demand from consumers who are interested in the share in jar system as long as there are no complaints and losses from consumers. However, these benefits are not proportional to the possibility of harm to consumers and brand owners. One of the disadvantages for consumers is the possibility of counterfeiting by business actors for profit, while for brand owners it is the damage to the brand image if things happen that are not desired by consumers.

Based on a statement by the chairman of the MUI, Muahammad Cholil Nafis, he said that "what the government thinks is illegal for the benefit of the people, religion also prohibits it" (Cnnindonesia.com, 2021). The illegal determination in question is violating the BPOM rules regarding distribution permits as regulated in Law Number 36 Year 2009 Article 106 paragraph 1 concerning Health which explains that "Pharmaceutical preparations and medical devices can only be circulated after obtaining a distribution permit". So, in this practice the disadvantaged party is the consumer and the brand holder and this practice does not contain any benefits when there is harm.

From the description of the legal perspective and literature above, the practice of buying and selling products with a share in jar system is included in the sale and purchase of gharar, because there is an unclear type of contract object. Knowing the type of object being traded is a legal requirement for buying and selling. So, if the object being traded in the practice of the share in jar system is unknown, the law is invalid. (Harun, 2017)

In Islam, this gharar transaction is included in the sale and purchase which is prohibited. Based on the words of the Prophet sallallaahu 'alaihi wa sallam in the hadith of Abu Hurairah which reads:

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

*"Rasulullah sallallaahu 'alaihi wa sallam forbade buying and selling al-hashah and buying and selling gharar"*

Judging from the form of gharar, share in jar is classified as majhul buying and selling, namely buying and selling in which the goods/objects are not clear. Many of the consumers who buy share in jar products while the product is not known for information about the truth whether the share in jar product comes from the original product. Meanwhile, business actors should have an honest attitude because this must be instilled in every Muslim, moreover it concerns information that must be provided to consumers, because if not, it can cause harm to consumers and possibly cause other impacts. And Allah has said in Surah Al-Baqarah/2:188

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

*"And let not some of you eat up the wealth of others among you in a false way and (do not) bring (the affair) the property to the judge, so that you may eat some of the property of others by sinning, even though you are knowing"*

Based on the classification of share in jar products included in the gharar katsir category, namely the obscurity of the object is at the top level or the level of ambiguity is high, it is proven that in the plain packaging container and in the process of transferring the contents of the product where the consumer does not know directly the possible transfer process can cause harm to consumers.

Basically, buying and selling skincare cosmetics with a share in jar system if viewed from a quality perspective, is classified as an act that is likely to cause damage. However, the share in jar practice causes damage because it causes losses and even endangers consumers. Judging from the fact that the packaging process and the absence of information create doubts and safety when using the product. Therefore, the practice of buying and selling skincare with the share in jar system leads to more damage than benefits, so the law is not allowed.

## **CONCLUSION**

- a. Cosmetic products with the share in jar system cause losses to several parties, namely the damage to the brand image of the original brand / brand owner if there is a loss to consumers. While the loss from the consumer is the possibility of product counterfeiting where the share in jar product does not meet the requirements for Good Cosmetics Manufacturing Practices (CPKB).
- b. The void of legal instruments in the distribution of cosmetics with the share in jar system, namely the absence of legal regulations that specifically regulate the distribution of share in jar products, this creates confusion among the public regarding the quality and safety of cosmetic products with the share in jar system. Therefore, some problems that arise such as lack of information and clarity on the product so that it has the potential to cause harm to the brand holder and the consumer.
- c. In Islam, the practice of selling with the share in jar system is classified as an element of gharar because there is no clarity of the object and it causes damage in terms of quality, even though at first the act contains benefits for the brand holder and consumers. But the element of damage is more than the element of benefit, therefore the law is prohibited.

## **Suggestions**

- a. BPOM as the drug and food regulatory agency should give an appeal to consumers to avoid skincare cosmetic products with the share in jar system and appeal to business actors not to distribute skincare cosmetics with this method, because it causes some harm to consumers and even brand holders.
- b. Consumers should always be aware of the widespread circulation of cosmetic products and always prioritize the quality and clarity of a product. Meanwhile, business actors should prioritize rights and obligations to consumers as stipulated in the UUPK. In addition to this, business actors should show good faith by providing detailed and honest information about the goods they sell.
- c. It is hoped that the government will immediately make legal regulations that specifically prohibit the distribution of share in jar products and should conduct regular checks on business actors and conduct socialization to the public so that their rights as users or consumers of skincare cosmetics are not harmed.
- d. As Muslims, in conducting buying and selling transactions as a form of muamalah as a necessity of life, they should avoid buying and selling that contains an element of uncertainty, because it allows losses to arise.



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