# CHAPTER 1

# INTRODUCTION

## A. Background

The cosmetic industry in Indonesia, particularly cosmetic products, has experienced significant growth in recent years. This growth has been driven by increasing public awareness of the importance of skincare, technological advancements, and the influence of global beauty trends. In line with the progress of time and technology, women in modern society have shown an increasingly strong tendency to pay attention to their appearance, especially physical appearance, in order to look attractive and appealing. As a result, many women are willing to allocate additional financial resources for beauty treatments by visiting aesthetic clinics, as well as purchasing beauty products either directly or through online platforms.[1] This desire of women to appear attractive is often exploited by irresponsible business actors to obtain unlawful profits through distribution.[2]

This phenomenon has also contributed to the emergence of various brands and types of cosmetic products in the market, offering diverse price ranges, quality levels, and benefit claims. The desire to appear attractive also leads some women to prefer low-priced beauty products as a practical solution, even though this often

[1] Michelle Ferdinand, Wakhid Slamet Ciptono, "Indonesia's Cosmetics Industry Attractiveness, Competitiveness, and Critical Success Factor Analysis," *E-Journal Unair*, Vol. 15, No. 2, July 2022, page 217. Accessed on November 24, 2025, at 21.12.

[2] Asti Nurmala Putri, Rani Apriani, "Perlindungan Konsumen Atas Peredaran Skincare yang Belum Mendapat Izin Edar Dari BPOM," *UM- Tapsel Press*, Vol. 9, No. 3, 2022, page 1227-1228. Accessed on November 24, 2025, at 02.45.

involves disregarding the legality and safety aspects of such products.[3] Products priced below prevailing market standards generally do not undergo official verification or regulatory supervision by the National Agency of Drug and Food Control (BPOM), thereby posing potential risks to consumers.[4]

Along with the rapid growth of the cosmetic industry, the government bears a constitutional responsibility to maintain public safety, order, and health. As a state organ, the government is obligated to ensure that every product circulating in the market complies with the established standards of safety and quality and does not pose risks to consumers. This responsibility is realized through regulation and supervision based on statutory provisions as a form of protection of the public interest. In carrying out this function, the Government of Indonesia established the National Agency of Drug and Food Control (BPOM) as the authority responsible for supervising the distribution of drugs, food, and cosmetics. BPOM is vested with the authority to conduct testing, supervision, and enforcement actions against products that fail to comply with regulatory requirements.[5]

The role of the National Agency of Drug and Food Control (BPOM) is crucial in ensuring that products consumed by the public are safe, of good quality, and provide benefits consistent with the claims presented.[6] The National Agency of Drug and Food Control (BPOM) is also authorized to take enforcement actions against business actors proven to have committed violations. The law enforcement

[3] *Ibid.*
[4] *Ibid.*
[5] Regulation of the Indonesian Food and Drug Authority (BPOM) Number 12 of 2023 concerning the Supervision of the Manufacture and Distribution of Cosmetics, art. 3 sec. (3).
[6] *Ibid.*, art. 3 sec. (2).

process generally begins with the issuance of written warnings and guidance to business actors, followed by the imposition of administrative and criminal sanctions on business actors involved in the production and distribution of such products.[7]

According to data from the Ministry of Industry, the number of cosmetic businesses increased by 77%, from 726 units in 2020 to 1,292 units in 2024, with 83% of them classified as micro and small enterprises.[8] This industry is projected to continue growing at approximately 5.35% per year until 2028, driven in part by increasing demand for halal-labeled products and the rapid expansion of electronic commerce (e-commerce). Indonesia itself is recorded as the second-largest consumer of halal products globally, with consumption value reaching USD 5.4 billion in 2022.[9]

Based on the 2024 Annual Report of the Directorate of Cosmetic Supervision (Ditwakos) of the National Agency of Drug and Food Control (BPOM), out of a total of 24,827 cosmetic samples tested, 1.6% of the products were found not to meet quality and safety requirements (*Tidak Memenuhi Syarat* / TMS), an increase from 1.3% in 2023. In the course of thematic intensified supervision activities, BPOM also discovered illegal products with a total value of

[7] *Ibid.*, art. 25 sec. (1).

[8] Ministry of Industry of the Republic of Indonesia, "Kemenperin Gadang Potensi Industri Kosmetik Semakin Gemilang," *ikm.kemenperin.go.id,* February 19, 2025. Accessed on November 22, 2025. https://ikm.kemenperin.go.id/kemenperin-gadang-potensi-industri-kosmetik-semakin-gemilang

[9] Dwitri Waluyo, "Pasar Kosmetik Indonesia Melesat 48 Persen, Peluang IKM Berinovasi," *Indonesia.go.id,* August 19, 2024. Accessed on November 22, 2025. https://indonesia.go.id/kategori/editorial/8516/pasar-kosmetik-indonesia-melesat-48-persen-peluang-ikm-berinovasi?lang=1

IDR 2.8 billion, including blue-labeled products that should only be obtainable with a doctor's prescription.[10]

These findings indicate that there remains circulation of cosmetic products that do not comply with distribution permit requirements as stipulated under prevailing laws and regulations. Such products fall within the category of hazardous cosmetic products, namely products that not only contain toxic chemical substances such as mercury, hydroquinone, retinoic acid, or other ingredients whose use is prohibited or exceeds the safe limits as determined by applicable regulations, but also include cosmetic products that have not been registered and have not obtained distribution authorization from the National Agency of Drug and Food Control (BPOM), yet are nevertheless sold to the public.[11] Such products are classified as hazardous because they do not undergo the required evaluation processes of safety, quality, and efficacy as mandated within the drug and food regulatory supervision system, thereby potentially causing adverse effects detrimental to consumer health, including skin irritation, systemic disorders, as well as long-term risks to the health of the skin and other bodily organs.[12]

In addition to the circulation of products without distribution permits, BPOM supervision also indicates an increase in violations related to promotional practices. In 2025, BPOM reported that more than 305,000 cosmetic product links

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[10] National Agency of Drug and Food Control of the Republic of Indonesia, *Laporan Tahunan Ditwaskos Tahun 2024* (Jakarta: BPOM, 2025), page 25; 34; 44, https://waskos.pom.go.id/storage/informasipublik/Laporan%20Tahun%20Ditwaskos%20Tahun%202024.pdf

[11] Tiara Susilo Putri, et al, "Analisis Yuridis Perlindungan Konsumen Terhadap Kosmetik Kecantikan yang Tidak Layak Edar," *QISTINA*, Vol. 3, No. 1, June 2024, page 336. Accessed on December 17, 2025, at 02.09.

[12] *Ibid.*

across various e-commerce platforms had been taken down, illustrating the large-scale circulation of hazardous products in the digital sphere.[13] On the other hand, violations of cosmetic advertising increased from 21.63% to 26.12% in 2024, indicating that online promotional practices are still widely carried out without due regard to the legal provisions governing cosmetic advertising.[14]

These conditions indicate that the circulation of illegal cosmetic products in Indonesia has taken increasingly diverse forms and modes of operation. Such practices are not limited to violations of distribution permit requirements or the use of prohibited substances, but also encompass the distribution, promotion, and sale of products without safety verification on digital platforms.[15] This complexity poses challenges for law enforcement authorities in determining the most appropriate legal basis to hold perpetrators accountable.

Normatively, law enforcement against the circulation of illegal cosmetic products may be carried out using two main legal instruments, namely Law Number 17 of 2023, which amends Law Number 36 of 2009 on Health, and Law Number 8 of 1999 concerning Consumer Protection. Both statutes contain criminal provisions

[13] Fadhli Ramadhan, "BPOM Takedown 305.000 Tautan Produk Pangan dan Kosmetik Ilegal di E-commerce," *DetikHealth,* July 25, 2025. Accessed on November 22, 2025. https://health.detik.com/berita-detikhealth/d-8029019/bpom-takedown-305-ribu-tautan-produk-pangan-kosmetik-ilegal-di-e-commerce

[14] National Agency of Drug and Food Control of the Republic of Indonesia, "BPOM Tegaskan Aturan Penandaan, Promosi, dan Iklan Kosmetik Wajib Dilaksanakan Pelaku Usaha," *pom.go.id*, February 17, 2025, https://www.pom.go.id/siaran-pers/bpom-tegaskan-aturan-penandaan-promosi-dan-iklan-kosmetik-wajib-dilaksanakan-pelaku-usaha

[15] Asirah, et al, "Upaya Penegakan Hukum Peredaran Kosmetik Ilegal Melalui E-Commerce Oleh PPNS BBPOM Makassar," *UNES LAW REVIEW*, Vol. 1, No. 3, February 2023, page 1018. Accessed on November 24, 2025, at 20.48.

that may be applied to the circulation of hazardous products, but with different regulatory focuses.[16]

To clarify the differences in the scope of regulation between Law Number 17 of 2023 concerning Health and Law Number 8 of 1999 concerning Consumer Protection, the following table presents a comparison of court decisions under both statutes, which are frequently used as the legal basis for law enforcement in cases involving the circulation of illegal cosmetic products:

| No. | Decision Number | Indictment | Verdict |
|---|---|---|---|
| 1. | 6/Pid.Sus/2025/PN. Skw | Single Indictment: Article 435 of Law Number 17 of 2023 jo. Article 14 (a) of the Criminal Code (KUHP) jo. Law Number 8 of 1981 | Article 435 of Law Number 17 of 2023 jo. Article 14(a) of the Criminal Code (KUHP) jo. Law Number 8 of 1981 |
| 2. | 204/Pid.Sus/2025/PN. Mks | Single Indictment: Article 435 jo. Article 138 paragraphs (2) and (3) of Law Number 17 of 2023 | Article 435 jo. Article 138 paragraphs (2) and (3) of Law Number 17 of 2023 |
| 3. | 205/Pid.Sus/2025/PN. Mks | Subsidiary Indictment: Article 435 of Law Number 17 of 2023 in the subsiarily Article 62 paragraph (1) of Law Number 8 of 1999 | Article 62 paragraph (1) of Law Number 8 of 1999 |

[16] Law No. 17 of 2023 concerning Health and Law No. 8 of 1999 concerning Consumer Protection.

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|---|---|---|---|
| 4. | 79/Pid.Sus/2025/PN.<br><br>Soe | Alternative Indictment:<br><br>Article 62 paragraph (1) jo. Article 8 paragraph (1) letter (a) of Law Number 8 of 1999<br><br>or<br><br>Article 198 jo. Article 108 paragraph (1) of Law Number 36 of 2009 | Article 62 paragraph (1) jo. Article 8 paragraph (1) letter (a) of Law Number 8 of 1999 |

One of the most prominent juridical issues in the enforcement of laws against the circulation of illegal cosmetics is the absence of uniformity in the selection of legal instruments applied by public prosecutors and judges. Law Number 17 of 2023 concerning Health and Law Number 8 of 1999 concerning Consumer Protection both contain criminal provisions that may be applied to the circulation of cosmetic products that do not meet safety standards, however, the two laws differ substantially in their paradigms, the formulation of criminal elements, and the severity of sanctions.

This inconsistency is vividly illustrated in two decisions of the Makassar District Court issued within nearly the same period in 2025, namely Decision Number 204/Pid.Sus/2025/PN Mks and Decision Number 205/Pid.Sus/2025/PN Mks. Both cases share highly similar substantive characteristics: each involved perpetrators who produced and distributed cosmetic creams proven to contain mercury, used social media as a marketing platform, and operated within an organized distribution network. Nevertheless, Decision Number 204 resulted in the application of Article 435 of Law Number 17 of 2023 concerning Health, while Decision Number 205, in

contrast, ended with the application of Article 62 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, after the court acquitted the defendant of the primary charge under the Health Law.

This inconsistency is further compounded by a more fundamental problem, namely the absence of clear and structured criteria for determining which legal instrument should be applied to cases involving the circulation of illegal cosmetics with distinct characteristics of conduct, resulting in differing sanctions and divergent applications of legal bases even among cases exhibiting similar characteristics. This divergence constitutes the central focus of the present analysis and underscores a legal gap concerning the extent to which judges incorporate the specific characteristics and complexity of offenders modus operandi into their legal reasoning and sentencing considerations. Given the increasing sophistication and diversity of violations in the circulation of illegal cosmetic products, this study examines offender's modus operandi in conjunction with judicial considerations, employing selected legal theories as analytical frameworks to assess the consistency, comprehensiveness, and legal relevance of judicial reasoning in such cases.

## B. Problem Formulation

1. What are the modus operandi of criminal offenses related to the production and distribution of illegal cosmetic products?
2. What considerations are applied in determining the criminal act in cases involving offenses related to the circulation of illegal cosmetic products?

## C. Research Purposes

1. To identify and explain the forms and modus operandi of criminal offenses related to the circulation of cosmetic products in the relevant court decisions.
2. To analyze the judges considerations in determining the criminal acts in cases involving the circulation of cosmetic products.

## D. Originality of Research

The author has undertaken a comprehensive review of scholarly literature and compiled an inventory of prior research concerning Modus Operandi and Judicial Consideration in Criminal Cases Related to the Distribution of Illegal Cosmetics. The review indicates that no existing studies fully correspond to the scope of this research. Nonetheless, there are several works exhibit thematic or methodilogical relevance in specific aspects. The following section outlines the findings and catalog of the reviewed literature.

| No. | Identity of Previous Research | Research Results | The Differences |
|---|---|---|---|
| 1. | Journal article by Surya Novinda Isnaini and Pudji Astuti, published in *Jurnal NOVUM* Universitas Negeri Surabaya, entitled *"Analisis Putusan Nomor 102/Pid.Sus/2019/PN. Trg tentang Tindak Pidana Peredaran* | This research examines a case concerning the circulation of cosmetics without a distribution permit adjudicated by the Trenggalek District Court. The study focuses on a juridical analysis of the judges considerations in rendering the decision, with particular emphasis | The difference between this research and the author's thesis lies in the scope and focus of the study. The NOVUM research only examines judicial considerations in a single decision and does not provide an in-depth analysis of the |

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|---|---|---|---|
| | *Kosmetik Tanpa Izin Edar" (2022)* | on the application of the Health Law. It also briefly addresses the modus operandi of business actors involved in the distribution of illegal cosmetics, but primarily concentrates on judicial reasoning. | perpetrator's modus operandi. In contrast, the author's thesis adopts a normative juridical approach with a national scope and is more comprehensive, as it integrates an analysis of the modus operandi of illegal cosmetic distribution, judicial considerations across multiple court decisions, and differences in the application of criminal regulations under Law No. 17 of 2023 and Law No. 8 of 1999. Therefore, the author's thesis offers a novel contribution by addressing the research gaps left by the NOVUM study. |
| 2. | Scientific publication by Fadilla Putri Afriyanti and Kelik Wardiono, published in the UMS Library, entitled *"Pertimbangan Hukum Hakim: Studi Kasus Putusan Nomor 13/Pid.Sus/2020/PN. Skh tentang Produksi Sabun Kosmetik Ilegal" (2023)* | This study focuses on the judges considerations in imposing a decision against perpetrators involved in the production of illegal cosmetic soap. The findings indicate that judges took into account normative aspects, namely the Health Law and the Consumer Protection Law, as well as sociological aspects such as social impact and the community's sense of justice. The research primarily analyzes judicial considerations without an in-depth | The difference between this research and the author's thesis lies in the focus of the study. The UMS research only highlights judicial considerations in a single case. The author's thesis is more comprehensive, as it incorporates an analysis of the modus operandi of illegal cosmetic business actors based on multiple court decisions and links it to judicial considerations in |

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| | | discussion of the perpetrator's modus operandi. | applying criminal regulations under Law No. 17 of 2023 and Law No. 8 of 1999. Thus, the author's thesis not only examines judicial reasoning but also assesses how the perpetrator's modus operandi may influence the choice of legal basis and the effectiveness of criminal regulations in the context of consumer protection. |
| 3. | Undergraduate thesis by Natasya Azahra Putri, published in the Unila Repository, entitled *"Analisis Dasar Pertimbangan Hakim Terhadap Tindak Pidana Penggelapan Kosmetik Glamshine di Pesawaran (Studi Putusan No. 125/Pid.B/2023/PN. Gdt)" (2025)* | This research discusses judicial considerations in a case of embezzlement involving Glamshine cosmetics. The focus is directed toward juridical and non-juridical aspects that formed the basis for judges in rendering their decision, particularly emphasizing consumer losses and aggravating and mitigating factors in sentencing. | The difference in this research can be seen from the object of study. The research conducted at Universitas Lampung focuses on the criminal offense of cosmetic embezzlement. In contrast, the author's thesis not only examines aspects of distribution but also links them to the perpetrator's modus operandi and emphasizes a comparative analysis of the application of Law No. 17 of 2023 concerning Health and Law No. 8 of 1999 concerning Consumer Protection based on judicial assessment. |

## E. Literature Review

### 1. Illegal Production

Illegal production constitutes a form of legal violation that occurs when goods are manufactured without complying with the standards, permits, or regulatory requirements mandated by the state. From the perspective of criminal law, such conduct is not merely regarded as an administrative violation, but also as a threat to the public interest, as it may result in health hazards, economic losses, and the deprivation of consumers' rights to obtain safe products. Sudarto explains that the essence of criminal law lies in protecting societal interests through the designation of prohibited acts and the imposition of sanctions on those who violate them.[17] Accordingly, the production of hazardous cosmetics falls within the category of acts that disrupt public order and endanger public safety.

Barda Nawawi Arief states that criminal law policy must be directed toward efforts to protect societal interests from harmful crimes, including criminal offenses in the field of drugs and food.[18] Prof. Hanafi Amrani also emphasizes that criminal law should be applied when administrative and civil measures are no longer effective in curbing the

[17] Sudarto, "Hukum Pidana I," (Fakultas Hukum UNDIP: Semarang, 1990), page 10.

[18] Barda Nawawi Arief, *"Pokok-Pokok Pemikiran (Ide Dasar) Asas-Asas Hukum Pidana Nasional,"* paper presented at Seminar Nasional Asas-Asas Hukum Pidana Nasional, Semarang, Indonesia, April 2004, page 20.

conduct of business actors (*ultimum remedium*).[19] In the context of hazardous cosmetics, criminal law policy plays a crucial role in creating a deterrent effect through criminal sanctions, while simultaneously regulating the behavior of business actors through the state supervision system. Weaknesses in the supervision of the circulation of illegal cosmetic products are not only caused by the limited availability of product testing facilities, but also by the low level of professionalism among enforcement officials, a permissive mentality that is easily influenced by business interests, and the perception among business actors that their conduct does not constitute a serious crime. These factors render law enforcement weak and ineffective.[20]

The concept of social defense as proposed by Marc Ancel is also relevant, in which the ultimate objective of criminal law is to create a sense of security for society against all forms of threats.[21] In this context, the existence of criminal provisions in Law Number 17 of 2023 concerning Health constitutes a concrete instrument of the state to prevent and address health-related harms arising from the production of illegal cosmetic products.

The effectiveness of criminal law enforcement against the production and circulation of hazardous cosmetic products is strongly influenced by the three components of the legal system as explained by

[19] Hanafi Amrani, "Politik Pembaruan Hukum Pidana," (UII Press: Yogyakarta, 2019), page 198.

[20] *Ibid.*, page 199-200.

[21] Marc Ancel, "Social Defence," (Routledge: London, 1965), page 28.

Lawrence M. Friedman, namely legal substance, legal structure, and legal culture.[22] Legal substance encompasses criminal provisions within health and consumer protection regulations; legal structure includes institutions such as the National Agency of Drug and Food Control (BPOM), the Police, the Public Prosecutor's Office, and the Courts; while legal culture reflects the level of awareness among the public and business actors regarding the importance of product safety.[23] These three elements must operate in harmony to ensure that efforts to combat the production of illegal cosmetics can be carried out effectively and sustainably.

2. The Offenses of Illegal Goods Distribution

Trade and distribution of goods constitute a multidimensional phenomenon involving aspects of production, distribution, marketing platforms, as well as consumer needs and demand.[24] The growth of online commerce has facilitated access for perpetrators to distribute illegal goods due to anonymity, wide market reach, and relatively simple payment mechanisms, thereby accelerating the circulation of hazardous products or products without distribution permits. International studies emphasize that e-commerce amplifies the risk of counterfeit goods

[22] Lawrence M. Friedman and Grant M. Hayden, "American Law: An Introduction," (New York: Oxford University Press, 2017), page 6.

[23] *Ibid.*

[24] Mikael Hang Suryanto, "Sistem Operasional Manajemen Distribusi," (PT Grasindo: Jakarta, 2016), page 111.

circulation and complicates traditional supervision. Therefore, regulatory approaches and multi-stakeholder cooperation among regulators, digital platforms, and brand owners are required.[25]

In the Indonesian context, empirical studies and reports highlight the widespread marketing of cosmetics and pharmaceutical products without distribution permits through e-commerce and social media.[26] Local law enforcement faces several obstacles, including limited supervisory capacity, fragmented institutional authority, and evidentiary challenges in identifying behind-the-scenes actors (such as home-based producers, distributors, resellers, or influencers).[27] Consequently, many local studies stress the need for memoranda of understanding (MoUs) and collaborative efforts among BPOM, law enforcement agencies, the Ministry of Communication and Informatics, and e-commerce platforms to implement takedown mechanisms, seller verification, and consumer education initiatives.[28]

Several legal scholars also emphasize that, in addition to administrative sanctions, criminal measures may be imposed where it is proven that the production or circulation of products endangers

[25] OECD, "E-Commerce Challenges in Illicit Trade in Fakes: Governance Frameworks and Best Practices," (OECD Publishing: Paris, 2021), page 27.

[26] *Ibid.*, page 3.

[27] Ela Aprida Nafliana, "Penegakan Hukum Terhadap Influencer yang Mengiklankan Produk Kosmetik Ilegal pada Platform Media Sosial Instagram Di Wilayah Kepolisian Resor Kota Pekanbaru," *Sibatik Journal*, Vol. 2, No. 5, April 2023, page 1427. Accessed on December 8, 2025, at 18.30.

[28] Jovanka Boby Rahardian, et al, "Peran Pengawasan Marketplace Terhadap Produk Kecantikan yang Tidak Memiliki Izin Edar dalm Upaya Perlindungan Hukum Terhadap Konsumen," *Borobudur Law and Society Journal*, Vol. 2, No. 1, January 2023, page 19. Accessed on December 8, 2025, at 19.18.

consumer safety or involves elements of fraud or deception.[29] Accordingly, within the framework of Law Number 8 of 1999 concerning Consumer Protection, the circulation of goods that endanger consumer safety or contain elements of fraud and deception may, in principle, give rise to criminal liability.

3. Criminology

Criminology is a discipline that focuses on the study of crime, offenders, victims, and social responses to crime. Edwin H. Sutherland emphasizes that criminology does not merely study what is defined as crime, but also explains how and why crime occurs and how society responds to it.[30] This concept allows for analyses that are not only normative, but also empirical and sociological. Modern literature positions criminology as the foundation of *criminal policy*, namely the use of scientific knowledge to determine the most appropriate response to criminal phenomena.[31]

Theoretically, classical criminological literature outlines three major approaches: biological, psychological, and sociological theories. Biological theory, as proposed by Cesare Lombroso, links criminal

[29] Melina Gabrila Winata, "Perlindungan Hukum Bagi Korban Pengguna Produk Kosmetik Ilegal Berbahaya," *Journal Sapientia et Virtus*, Vol. 7, No. 1, March 2022, page 41. Accessed on December 8, 2025, at 19.40.

[30] Edwin H. Sutherland, et al, "Principles of Criminology," (Bloomsbury Academic: California, 1992) page 3.

[31] Richard V. Ericson, "The Culture and Power of Criminological Research," in The Criminological Foundations of Penal Policy: Essays in Honour of Roger Hood, ed. Lucia Zedner and Andrew Ashworth, (Oxford: Oxford University Press, 2003), page 33–34.

behavior to innate characteristics; however, this theory has been widely criticized and is increasingly abandoned.[32] Psychological theories view crime as a consequence of personality disorders, moral development issues, or internal individual dynamics.[33] Meanwhile, sociological theories have developed into the mainstream approach. Robert K. Merton, through Strain Theory, explains that social pressure and the discrepancy between culturally prescribed goals and legitimate means can drive individuals or groups to commit crimes in order to achieve those goals.[34] This theory is highly relevant to modern economic crimes, including the production or distribution of illegal goods, which are often driven by significant financial opportunities and the weakness of formal economic access.

One of the most widely used theories in the study of contemporary crime is Routine Activity Theory (RAT) developed by Lawrence Cohen and Marcus Felson. According to this theory, crime occurs when a motivated offender encounters a suitable target and there is an absence of a capable guardian or effective supervisory mechanism to prevent the crime.[35] This theory explains that changes in patterns of human activity and criminal opportunities are the primary factors contributing to the increase in crime.

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[32] Larry J. Siegel, "Criminology," (Belmont: Wadsworth, 2012) page 142.
[33] *Ibid.*, page 104.
[34] *Ibid.*, page 193.
[35] Lawrence E. Cohen and Marcus Felson, "social change and crime rate trends: a routine activity approach," *American Sociological Review*, Vol. 44, No. 4, August 1979, page 589. Accessed on December 19, 2025 at 04.10.

Differential Association/Social Learning Theory proposed by Sutherland views criminal behavior as something learned through social interaction within particular groups.[36] This theory is highly relevant to modern illegal economic activities, where offenders learn production techniques, concealment strategies, and modes of operation from community networks, both online and offline. On the other hand, the concepts of White-Collar Crime and Organized Crime expand the understanding that crime is not only committed by individuals, but can also be organized, adaptive, and exploit institutional weaknesses, thereby making law enforcement increasingly complex.[37]

## F. Operational Definition

1. Consumer Protection

According to Prof. Dr. Mochtar Kusumaatmadja, consumer protection is a system of legal norms consisting of principles and rules that regulate interactions and disputes among various parties within society, particularly those related to the utilization of goods and/or services by consumers.[38]

[36] Edwin H. Sutherland, op. cit., page 95.

[37] Liberti Rumahorbo and Hudi Yusuf, "Analisis Mendalam Perilaku Menyimpang White-Collar Crime (melalui Lensa Teori Convenience)," *Media Hukum Indonesia*, Vol. 3, No. 3, July 2025, page 2. Accessed on December 12, 2025, at 20.50.

[38] A.Z. Nasution, "Hukum Perlindungan Konsumen; Suatu Pengantar" (Diadit Media: Jakarta, 2001), 23.

2. Pharmaceutical Preparations

Pharmaceutical preparations consist of medicines, medicinal substances, traditional medicines, including traditional medicinal substances, cosmetics, health supplements, and quasi-drugs.[39]

3. Modus Operandi

Edwin H. Sutherland defines *modus operandi* as the principle that a criminal is likely to use the same techniques repeatedly, and that any analysis or record of the techniques employed in each serious crime can provide a method for identifying the offender in a particular crime.[40]

## G. Research Methods

1. Type of Research

The type of research employed in the preparation of this thesis is normative juridical legal research. Normative legal research is a method of inquiry that examines law as norms, principles, and systems of a prescriptive nature, positioning legal materials as the primary object of study. This method is considered the most appropriate for analyzing the issues raised in this thesis, namely the modus operandi patterns of offenders and the judicial considerations of judges in criminal cases

[39] Law Number 17 of 2023 concerning Health, art. 1 sec. (12).

[40] Anisha M, "Identification of Pttern in Crimes: A Study on Principle of Modus Operandi and Its Attributes," Internasional Journal of Law Management & Humanities, Vol. 3 Iss. 1, 2024, page 2029. Accessed on December 22, 2025, at 13.49.

concerning the circulation of illegal cosmetics. Both issues are essentially matters of the application of positive law and judicial interpretation, the answers to which can only be obtained through in-depth analysis of legal norms and court decisions, rather than through direct empirical data collection in the field.

The choice of normative legal research in this thesis can be justified by several mutually reinforcing reasons. First, the core problem under examination is how the modus operandi of offenders in the circulation of illegal cosmetics is reflected in court decisions and how judges construct their reasoning in determining the legal basis and sanctions imposed. This is a matter whose resolution depends entirely on how positive legal norms are formulated, interpreted, and applied. The question of whether a particular modus operandi fulfills the elements of an offense under Article 435 of Law No. 17 of 2023 on Health or Article 62 paragraph (1) of Law No. 8 of 1999 on Consumer Protection can only be answered through normative analysis of statutory texts and the ratio decidendi of judges in their rulings, not through surveys or field interviews. Second, the primary object of this research is court decisions as products of judicial interpretation, which constitute formal sources of law. Accordingly, the most relevant method is one that treats legal documents as primary research material. Third, the objective of this thesis is to identify, describe, and evaluate the modus operandi patterns of offenders as well as the consistency of judicial reasoning in cases

concerning the circulation of illegal cosmetics. These are questions of a normative nature that can only be addressed through analysis of the legal system itself.

2. Research Approach

The approach employed in this research consists of the statute approach and the case approach. The statute approach is used to examine in depth the criminal provisions contained in Law No. 17 of 2023 on Health and Law No. 8 of 1999 on Consumer Protection, together with their implementing regulations that are relevant to the supervision and enforcement of law against the circulation of illegal cosmetic products. Through this approach, the research seeks to analyze the applicable positive legal norms as the juridical basis for prosecuting offenders involved in the circulation of illegal cosmetics. It also examines how the two laws delineate their respective scopes of regulation, the similarities and differences in the elements of offenses they formulate, and the implications of this dualism of legal instruments in the practice of law enforcement. The statute approach thus provides the foundation for understanding the normative framework employed by judges in assessing whether a particular modus operandi of offenders satisfies the elements of the criminal charges brought against them.

In addition, the case approach is used to analyze court decisions related to criminal acts involving the circulation of illegal cosmetics.

Within normative legal research, the case approach does not aim to analyze empirical facts sociologically but rather to examine the ratio decidendi or legal reasoning that forms the basis of judicial considerations in rendering decisions. The purpose is to identify patterns of reasoning that are applied consistently or inconsistently across cases with similar characteristics. In the context of this thesis, the case approach is specifically directed toward identifying how judges assess and qualify the modus operandi employed by offenders, how judges select and apply the appropriate legal instruments between the Health Law and the Consumer Protection Law, and how judges determine the severity of criminal sanctions imposed based on their overall consideration of the facts of the case. By combining these two approaches, this research aims to provide a comprehensive understanding of the relationship between the modus operandi of offenders and the judicial considerations of judges in criminal cases concerning the circulation of illegal cosmetics.

3. Data Research Sources

The sources of data in this research consist of three main categories, primary legal material, secondary legal material, and tertiary legal materials.

i. Primary legal material:

The legislation and court decisions that serve as the basis of analysis in this research include Law No. 17 of 2023 on Health, Law No. 8 of 1999 on Consumer Protection, as well as several court rulings, namely, Decision No. 6/Pid.Sus/2025/PN.Skw, Decision No. 204/Pid.Sus/2025/PN.Mks, Decision No. 205/Pid.Sus/2025/PN.Mks, and Decision No. 79/Pid.Sus/2021/PN.Soe. These four decisions were purposively selected because each illustrates a different modus operandi in the circulation of illegal cosmetics. All of the decisions were obtained through the Decision Directory of the Supreme Court of the Republic of Indonesia, which can be accessed online via the official website https://putusan3.mahkamahagung.go.id. This directory is an information system for court decisions managed by the Supreme Court of the Republic of Indonesia and contains all rulings that have been officially published, thereby ensuring the authenticity and validity of the documents analyze.

ii. Secondary legal material:

Secondary legal materials are sources of law that do not possess binding legal force but serve to provide explanation, interpretation, and analysis of primary legal materials. The secondary legal materials used in this research include academic literature such as textbooks on criminal law, health law, and consumer protection law; scholarly legal journals containing

research findings and academic studies relevant to the issues of offenders modus operandi and judicial considerations in cases involving illegal cosmetics; as well as scientific articles discussing matters related to law enforcement in the fields of pharmacy and cosmetics. Secondary legal materials are employed to strengthen the theoretical foundation and to provide an academic perspective on the problems examined in this thesis.

iii. Tertiary legal material:

Tertiary legal materials are sources of law that function to provide guidance and supplementary explanation to both primary and secondary legal materials. These include legal dictionaries, legal encyclopedias, and other supporting references that are used to clarify legal terms or concepts applied in this research.

4. Data Collection Technique

The data collection techniques in this research were carried out through library research and document study. This method was implemented by systematically examining all legal materials relevant to the issues of offenders modus operandi and judicial considerations in criminal cases involving the circulation of illegal cosmetics, including legislation, court decisions, and academic literature. The collection of court decisions, which serve as the most central primary legal materials

in this study, was conducted through access to the Decision Directory of the Supreme Court of the Republic of Indonesia at https://putusan3.mahkamahagung.go.id. All decisions under review are available in digital document format that can be downloaded and verified for authenticity. This directory system enables the research to access court decisions from various jurisdictions across Indonesia in a centralized manner, thereby supporting the completeness of the data used to analyze variations in offenders modus operandi and judicial considerations in different regions. In addition, academic literature in the form of books, journals, and scholarly articles was systematically collected from reliable academic sources to strengthen the theoretical foundation of the research. All data were gathered in a systematic and organized manner to support a comprehensive normative analysis of the two main issues that constitute the focus of this thesis.

5. Data Analysis Technique

The data analysis technique employed in this research is descriptive qualitative analysis. The data obtained from primary, secondary, and tertiary legal materials were analyzed in a descriptive-analytical manner, which involved describing, interpreting, and examining the applicable legal norms, and then comparing them with practices reflected in court decisions. In the context of this thesis, descriptive analysis was directed toward systematically identifying and describing the patterns of modus

operandi used by offenders in the circulation of illegal cosmetics as illustrated in the four court decisions under review, including variations in distribution methods, marketing strategies, and mechanisms for evading detection employed by each offender. At the same time, critical analysis was directed toward evaluating how judges assessed these modus operandi patterns, including the consistency in selecting legal instruments between the Health Law and the Consumer Protection Law, as well as the proportionality of the criminal sanctions imposed in relation to the seriousness of each offender's modus operandi. Taken as a whole, this analysis aims to address the two main research questions of this thesis, namely how the modus operandi of offenders in criminal cases involving the circulation of illegal cosmetics is characterized, and how judges construct their legal reasoning in determining the legal basis and imposing decisions on offenders in such cases.

## H. Thesis Framework

This research is divided into 4 (four) chapters, as follows:

CHAPTER 1: This chapter contains the introduction, which includes the background of the study, problem formulation, research objectives, research significance, and the conceptual framework underlying the analysis. This section provides an overview of the urgency of the research, particularly in relation to the phenomenon of illegal cosmetic

circulation and its relevance to health criminal law and consumer protection.

CHAPTER 2: This chapter presents the literature review, which provides a more in-depth theoretical and conceptual discussion compared to the explanations in the first chapter. In this chapter, the author elaborates relevant legal theories, previous research findings, and the normative foundation in the form of laws and regulations that serve as references. This literature review functions to strengthen the theoretical framework and to demonstrate the position of the research within the academic context.

CHAPTER 3: This chapter contains the analysis of the formulated legal issues. The analysis is conducted normatively by examining applicable legal provisions, reviewing court decisions related to criminal offenses involving the circulation of illegal cosmetic products, and assessing the perpetrator's modus operandi as well as judicial considerations. This chapter constitutes the core of the research, as it connects legal theory with legal practice.

CHAPTER 4: This chapter serves as the conclusion, consisting of conclusions and recommendations. The conclusions are drawn based on the results of the analysis, while the recommendations are directed toward improving regulatory frameworks and law enforcement practices to enhance their effectiveness in combating the circulation of illegal cosmetic products. This chapter also emphasizes the contribution

of the research to the development of legal scholarship, particularly in the fields of health law and consumer protection.