

## CONSUMER PROTECTION AGAINST REPACKAGED IMPORTED PRODUCTS

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### *Abstract*

*The sales of skincare are varied, one of which is repackaging the original packaging. This study aims at determining consumer protection on the sale of imported products that are repackaged and analysis made based on saddu adz-dzari'ah perspective. This research is a normative legal research. The results of the study show that consumer protection for imported products that are repackaged is a violation because the producers of the imported products did not attach the information that should be obtained by consumers as arranged in Article 8, Paragraph 1 of Consumer Protection Act. It becomes a concern since it could harm the consumers. Meanwhile, the saddu adz-dzari'ah perspective suggests that this repackaged products sale is included in the sale and purchase that are allowed since it does not lead to something bad or a loss for both parties because, in the buying process, the producer will explain the content that the product contains. Sellers who repackaged the products should provide complete information and explain the repackaging process so that consumers' rights to obtain clear information about the products they buy are fulfilled. This article may enrich the literature of consumer protection and provide recommendations for law enforcement of consumer protection.*

*Penjualan skincare di pasar bervariasi salah satunya dengan melakukan kemasan ulang dari kemasan asli. Penelitian ini bertujuan untuk mengetahui perlindungan konsumen terhadap penjualan produk impor yang dikemas ulang dan analisis dengan perspektif saddu adz-dzari'ah. Penelitian ini adalah penelitian hukum normatif dengan menggunakan bahan-bahan hukum sebagai sumbernya. Pendekatan yang digunakan dalam penelitian ini adalah yuridis normatif serta hukum Islam. Bahan*

*hukum primer, sekunder dan tersier diperoleh melalui studi kepustakaan kemudian dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan perlindungan konsumen terhadap produk impor yang dikemas ulang merupakan suatu hal yang melanggar karena dalam packaging produsen kemas ulang tidak mencantumkan hak informasi yang seharusnya diperoleh konsumen seperti yang terdapat dalam Undang-Undang Perlindungan Konsumen Pasal 8 ayat 1 huruf a,c,g,i sehingga hal ini dikhawatirkan dapat membahayakan konsumen. Sedangkan, perspektif saddu adz-dzari'ah penjualan secara kemas ulang ini termasuk kedalam jual beli yang diperbolehkan karena tidak membawa kedalam jalan yang menimbulkan sesuatu yang buruk atau kerugian untuk kedua belah pihak karena dalam proses pembelian produsen akan menjelaskan kandungan yang terdapat dalam produk. Artikel ini dapat memperkaya literatur perlindungan konsumen dan memberikan beberapa rekomendasi untuk penegakan hukum di bidang perlindungan konsumen.*

*Keywords: consumer protection, import, repackaging*

## Introduction

Indonesia has various types of people with various ways to meet the needs of life; one of the examples is the transaction in buying and selling. Buying and selling or *al bai'u*, a terminology that means exchanging something with the aim of possessing or obtaining, are indicated by a contract that is in accordance with the Sharia. It is in the form of words or deeds with various conditions and pillars that must be fulfilled. Community needs are very diverse. One of the things that are considered basic needs nowadays are skincare and health products. These products are essential for supporting one's appearance, especially facial and body beauty. Skincare products made for facial and body health are not only local products but also international products imported to Indonesia. Based on the data released by one of the media<sup>1</sup>, it is stated that the influence of lifestyle which continues to grow and the level of public consumption that continues to follow the developments trigger the level of skincare sales in Indonesia to become fairly high. Thus, in today's era, many beauty doctors provide education through social media.

The large and broad market opportunities make Indonesian traders also take part in this phenomenon to obtain various benefits. In addition to selling using their own brand, traders in the market place also do the selling activity by repackaging imported products. Regarding the distribution of skincare products involving various brands in Indonesia, based on the data released by the statistics

1 Citra Narada Putri, "Ini Kata Dr. Richard Lee Yang Perlu Diketahui Sebelum Beli Skincare," *Kompas*, 2021, <https://www.kompas.com/parapuan/read/533062940/ini-kata-dr-richard-lee-yang-perlu-diketahui-sebelum-beli-skincare#:~:text=Melansir dari parapuan%2C Dr. Richard,terjebak dengan skincare abal-abal.&text=Berdasarkan video edukasi kecantikan yang,berbagi tips sebelum membeli skincare.>

of the Ministry of Industry of the Republic of Indonesia, Indonesia stated that the skincare imports carried out by Indonesia continued to experience growth from 2020 in December to US\$527. Then, it increased to US\$850 in 2022 in February. This shows that the number rose from 5.8% to 8.2%, and the total growth was 3.2% within one year.<sup>2</sup> This growth is also supported by Indonesia's population, which reaches 278 million people, and 135 million people among them are women. This demonstrates that the women population continues to increase; thus, the influence of the skincare industry is very influential to the lifestyle model of the Indonesian people.<sup>3</sup>

Product repackaging is known as Repack, according to the Head of Pharmaceutical and Medical Devices of the Purbalingga Health Office, Sugeng Santoso. It is about repackaging products to be marketed to consumers. Food or drug products that are repackaged are not only packed, but the labels informing packaging and expiration date must be attached on the products. An example is the case of a distributor who repackaged imported products from foreign companies, such as a breast enlargement product, which is branded as "Health Breast Mask" that is sold on the Lazada Tiens Store Malang marketplace containing spirulina products registered as Tiens products. Afterward, the distributor repackaged this mask with the intention to add more functions so that it can provide two benefits, face masks and facial skin health. However, this distributor used it as breast enlargement masks.<sup>4</sup>

In addition to these products, the sale of illegal repackaged snacks that consumers complained about was recognized by the Indonesian Consumer Community (KKI) because it was in accordance with the results of their investigation. KKI found that there were sales of goods or products in the form of food and beverage products that were suspected to have been expired. The method used is repackaging the goods or changing the expiration date illegally on several online sites in Indonesia. Based on the results of research conducted by

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2 Central Bureau of Statistics, "Ekspor Dan Impor," *Badan Pusat Statistik*, last modified 2022, <https://www.bps.go.id/exim/>. Lihat juga Hanni Sofia, "Indonesia dan Proyeksi Pasar Kosmetik Terbesar Dunia", *Antara* (Indonesia, 2021), <https://www.antaraneews.com/berita/2190778/indonesia-dan-proyeksi-pasar-kosmetik-terbesar-dunia>.

3 Ayu Caesar Monica Isabela, "Jumlah Penduduk Indonesia 2022," *Kompas* (Indonesia, 2022), <https://nasional.kompas.com/read/2022/04/27/03000051/jumlah-penduduk-indonesia-2022?page=all#:~:text=Worldometer merilis data jumlah penduduk,Perserikatan Bangsa-bangsa atau PBB.&text=Jumlah penduduk Indonesia merupakan 3%2C51 persen dari total penduduk dunia>.

4 Asrul Septian Malik Atika Oktarian SN, "Snack Kemasan Ulang Tanpa Izin Edar Langgar UU," *Lampost.Co* (Bandar Lampung, 2020), <https://m.lampost.co/berita-snack-kemasan-ulang-tanpa-izin-edar-langgar-uu.html>.

KKI on September 5, 2019 to April 1, 2020 on 4 marketplace sites in Indonesia, by purchasing more than 100 repackaged products, the majority of repackaged products are snacks consumed by children. One can find out that the goods or products are “fake” through the repackaging or repacking model.

Sometimes, the repackaging of the product is not in accordance with the use and function of the original product. In addition, repackaging a product also has risks because the product repackaging is carried out by removing the product, then pouring it into an unsterile drug container or bottle. This repackaging activity has the potential to make the product unhygienic. This can give an adverse impact on the health of the consumers. Repackaging the product may violate the provisions of Article 8, paragraph 1, letters a, c, g, i and paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection. Repackaging products without obtaining a permit also violates Article 84, paragraph 1 and Article 99 of Law Number 18 of 2021 concerning Food. Product repackaging carried out with the absence of a permit also has the potential to violate Article 3, paragraph 1 and 3, Article 3, paragraph 1 to 3, Article 5 paragraph 1, Article 69 and Article 70 of the Regulation of the Food and Drug Monitoring Agency (BPOM) Number 31 of 2018 concerning Processed Food Labels.

Through marketplace, the consumers of e-commerce transactions include the sales transactions that have greater risk than entrepreneurs or merchants. In other words, the rights of consumers in e-commerce transactions are very vulnerable; hence, the consumers of e-commerce transactions are in a very weak bargaining position.<sup>5</sup> Consumers must obtain certainty over the quality, quantity, and safety of the goods and/or services they obtain in the market, including the marketplace. Protecting consumers is important in all buying and selling transactions. Consumers have the right to benefit from products that have been purchased. For this reason, it is crucial to disclose information to the consumers about the goods traded by sellers, and it is in compliance with Article 8, letter i of Law Number 8 of 1999 concerning Consumer Protection.

The product repackaging is included in the *saddu adz-dzari'ah* case against consumers. *Saddu adz-dzari'ah* is etymologically defined as “closing the road” so that it does not cause an *al-mafsadah* (damage) if the implementation of the activity will cause *mafsadah*.<sup>6</sup> The book written by Asmawi also explained that *saddu adz-dzari'ah* is a prohibition against a legal case that is basically a permissible case; it is an attempt performed by the mujtahid (an authoritative interpreter of

5 Abdul Halim Barkatullah, “Urgensi Perlindungan Hak-Hak Konsumen Dalam Transaksi Di E-Commerce,” *Jurnal Hukum IUS QULA IUSTUM* 14, no. 2 (2007): 247–270.

6 Abd. Rahman Dahlan, *Ushul Fiqh* (Jakarta: Amzah, 2011).

the religious law of Islam) to determine it. The emergence of this prohibition is intended as an effort to avoid acts or actions prohibited in Islam.

Intan Arafah,<sup>7</sup> in her research, explains that the *saddu adz-dzari'ah* method is a method used by the previous Fiqh scholars aiming to encourage doing something according to the objectives, which are the result of the act without violating the rules set by Islamic law. In its practice, the concept of *saddu adz-dzari'ah* is manifested in people's social life. Zhuhro Uliiffani<sup>8</sup> discusses the review of *saddu adz-dzari'ah* regarding the Office of Religious Affairs' (KUA) considerations in determining the status of illegitimate daughters who converted to Islam in his research. He affirms that *saddu adz-dzari'ah* is considered eligible as an analytical study of socioreligious issues because it is in conformity with the concept discussed in *ushul fiqh*. It is about rejecting evil that takes precedence over attracting goodness, which in this case is considered invalid because it concerns a marriage that is not in conformity with Islamic law. Based on the explanation above, this study employs the same theory, *saddu ad-dzari'ah*, as a theory concerning social problems in society, but in different aspects. The differences this research possesses lie in how the researchers examine the repackaging activity executed by most people for health products that have registered labels. This research has contributed to scientific insight for the community in economic activities for the registered products as well as legal protection for registered brand owners for every legal act committed by the community based on a bad trust.

A research with a similar theme has been conducted by Ni Putu Dinar Nareswari and Ida Ayu Sukihana on Consumer Protection for the Sale of Repackaged Hand Sanitizers Without a Marketing Permit. The results indicate that the entrepreneurs have violated consumer rights, so consumers can claim their rights through a compensation process and/or rehabilitation.<sup>9</sup> Another research with the same theme has also been carried out by Asram A.T. Jadda entitled Legal Protection for Consumers Against Unlabeled Home Industry Food Products in Enrekan Regency. This research shows that legal protection for consumers against unlabeled home industry food products is a preventive and repressive legal

7 Arafah Intan, "Pendekatan Sadd Adz-Dzari'ah Dalam Studi Islam," *Hukum, Jurnal Ilmu Syariah, Ekonomi* 6, no. 2 (2021): 60–74.

8 Uliiffani Zhuhro, "Tinjauan Sadd Adz-Dzari'ah Terhadap Pertimbangan KUA Dalam Menetapkan Status Anak Perempuan Tidak Sah Dari Pasangan Mualaf (Studi Kasus Di KUA Kecamatan Unggaran Timur)" (Universitas Islam Negeri Walisongo, 2017), <https://eprints.walisongo.ac.id/id/eprint/8073/1/132111001.pdf>.

9 Ni Putu et al., "Perlindungan Hukum Terhadap Konsumen Atas Penjualan Hand Sanitizer Yang Dikemas Ulang Tanpa Izin Edar," *Jurnal Kertha Negara* 9, no. 4 (2021): 255–266.

protection.<sup>10</sup> Meanwhile, Cindy Aulia Khotimah's research entitled *Legal Protection for Consumers in Online Buying and Selling Transactions (E-Commerce)* suggests that consumers must be given various special protections, which are very vulnerable, with various possibilities that will harm the consumer from the perpetrators who do not have good intentions in conducting online buying and selling transactions.<sup>11</sup> While carrying out online transactions, both entrepreneurs and consumers must have a good trust since the beginning. The sanctions related to food labeling are only given in the form of administrative sanctions. These research are considered almost the same as the existing research, but they contain differences in terms of discussion. This research focuses on consumer protection for products that are repackaged without considering the benefits of the original product, involves a review of the related Act, and incorporates Islamic law in it by discussing *Saddu adz-dzari'ah* on a repackaged product.

### Research Methods

The type of research used is a normative juridical research because the focus of the discussion is the consumer protection of repackaged products involving a review of consumer protection laws and the integration of Islamic law and *Saddu adz-dzari'ah* analysis. The approach used is a normative juridical approach using consumer protection laws and *saddu adz-dzari'ah*. The primary legal material in this research is Law Number 8 of 1999 concerning Consumer Protection and other regulations related to the legal issues discussed in the research. The secondary legal materials used are the materials obtained from journals, books and student writings such as undergraduate theses and master's theses corresponding to the discussion of the research, namely consumer protection. Legal materials were obtained through library research. Legal materials are then interpreted and analyzed based on legal norms and theories so that conclusions of the problems discussed in the study can be obtained.

### Discussion

#### Consumer Protection Against Repackaged Imported Products

Today's consumer protection law is getting enough attention since it comprises rules for the welfare of the community, not only as protection. However,

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10 Asram AT Jadda, "Perlindungan Hukum Bagi Konsumen Terhadap Produk Pangan Industri Rumah Tangga Yang Tidak Berlabel Di Kabupaten Enrekang," *Madani Legal Review* 2, no. 2 (2019): 186–204.

11 Cindy Aulia Khotimah and Jeumpa Crisan Chairunnisa, "Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli-Online (E-Commerce)," *Business Law Review: Volume One* 1 (2005): 14–20.

entrepreneurs also have the same right to get protection; they the same rights and obligations.<sup>12</sup> Consumers Protection is observed substantially and formally as it is increasingly felt vital, given the rapid advancement of science and technology. These are the driving force for the productivity and efficiency of producers of goods or services to achieve business goals.<sup>13</sup>

Article 1 number (1) of Law Number 8 of 1999 concerning Consumer Protection defines consumer protection as the efforts to ensure legal certainty to provide protection to consumers. This consumer protection is a guarantee that should be obtained by consumers for every food product purchased from producers or entrepreneurs.<sup>14</sup> Consumer protection is not applied only for low-quality goods, but also for goods that endanger people's lives.<sup>15</sup> The losses experienced by these consumers can arise as a result of the existence of a legal relationship agreement between entrepreneurs and consumers as well as as a result of unlawful acts committed by entrepreneurs.<sup>16</sup>

With regard to repackaging activities, manufacturers in Indonesia often carry out the repackaging process, particularly for imported products that have very expensive initial prices, then they make the products in small sizes and sell them on several online buying and selling sites such as Tokopedia, Lazada, Shopee and more. The initial goal is to anticipate the high price so that it is affordable for consumers who are interested in these imported products, which are both food and cosmetic products. However, entrepreneurs do not pay attention to the impact. If the repackaging is not carried out in a sterile and correct manner, it can damage the contents and can have a bad impact on the users. Furthermore, repackaged products do not contain information on the ingredients or substances they contain and description of the products' manufacture and expiration date. Having beautiful skin is the dream of many women. However, that dream can turn into a nightmare if you choose the wrong cosmetics, especially if the cosmetics used are not licensed and contain harmful ingredients. That is what happened to Pitrianti (20). This woman who lives in Ciamis, West Java, remembers her high school years as one of the darkest period of her life due to choosing the wrong

12 Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, ed. Tarmizi, March 2018. (Jakarta: Sinar Grafika, 2008).

13 Niru Anita Sinaga, "Pelaksanaan Perlindungan Konsumen Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 5, no. 2 (2014), <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/110/107>.

14 Junawa Hikmahanto, *Hukum Ekonomi Dan Hukum Internasional* (Jakarta: Lentera Hati, 2002).

15 Soekanto Soerjono, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1984).

16 Shelly Kurniawan, "Perbandingan Penyelesaian Sengketa Merek Berdasarkan Undang-Undang Merek Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Jo. Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Dengan World Intellectual Proper," *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi* 11, no. 1 (2019): 97–113.

skin cream or skincare. Four years ago, terrible pimples took away Pitrianti's joy as a teenager. The photos on her Instagram account show the pimple all over her face. In the cheek area, the pimple looks lumpy, blackened, and even bleeds.

Numerous aspects characterized consumers cause the producers to carry out the marketing and distribution activities of goods and services in the most effective way possible in order to reach broad and diverse consumers. For this reason, all approaches are sought so that they may cause various impacts, including situations leading to negative and dishonorable actions triggered by bad intentions. These cause impacts that encompass the quality or quality of goods, unclear or misleading information, counterfeiting and so on.<sup>17</sup> In fact, the number of violations committed by producers on April 20, 2020 coincided with the national consumer day, KKI that has Mr. David Tobing as the chairperson, carried out an investigation regarding repackaged goods containing food and beverage products that were suspected to have been initially expired, but they were then repackaged and sold using clear plastic containers. Starting on September 5, 2019 until April 1, 2020, it is found out that the items, which were allegedly faked and have exceeded the expiration date, were illegally repackaged.

Repackaging a product is considered an act that is not in compliance with the rules and violates the provisions of Article 8, paragraph 1, letters a, c, g, i.<sup>18</sup> dan Article 2<sup>19</sup> Law Number 8 of 1999 concerning Consumer Protection. Repackaging is allowed as long as it complies with the rules stipulated by the prevailing laws in Indonesia such as Article 2 and Article, 8 paragraph (1 letter a, c, g, i and 2) of the Consumer Protection Law because this repackaging activity is directly related to consumers whose rights in buying and selling transactions in e-commerce must be given and protected. Doing repackaging without a permit also violates Article 84 paragraph 1 and article 99 of Law Number 18 of 2012 concerning Food as well as violates the regulation of BPOM Number 31 of 2018 concerning Processed Food Labels mentioned in Article 3, Paragraph 1 and 3, Article 3 Paragraphs 1

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17 Luthvi Febryka Nola, "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (Tki)," *Negara hukum* 7, no. 1 (2016): 40, <https://jurnal.dpr.go.id/index.php/hukum/article/view/949>.

18 Article 8 Paragraph (1) The entrepreneurs are not allowed to produce and/or trade goods and/or services which: (a) do not meet or accord with the required standard and provisions of the law; (c) do not accord with the actual size, measurement and total amount; (g) do not mention expiry dates or best before for the use of the said goods and/or services; (i) do not have labels explaining the name, size net weight/volume, composition, directions, product dates, side effect, name and address of the company or other information required to be labeled or made by the law.

19 Article 8 Paragraph (2) Entrepreneurs are prohibited from trading damaged, defective or used and tainted goods without providing complete and correct information.



to 3, Article 5 Paragraph 1, Article 69 and Article 70.<sup>20</sup>

Automatically, based on these regulations of consumer protection, the state must also be present in providing the protection. Whereas, according to Article 29 (1) of Law number 8 of 1999, the Government is responsible for fostering the implementation of consumer protection, which ensures that the rights of consumers and entrepreneurs are obtained. It also ensures that the obligations of the consumers and entrepreneurs are carried out. Consumer protection is understood as an effort to guarantee legal certainty to provide protection to consumers and one of the principles of consumer protection is the principle of legal certainty. In consumer protection, legal certainty implies that both entrepreneurs and consumers should obey the law and obtain justice in the implementation of consumer protection, and the state guarantees legal certainty.<sup>21</sup>

The main factor of consumer protection is the problem of responsibility for losses caused by the product.<sup>22</sup> Repacking is a repackaging activity using the product's brand, and the packaging is adjusted to the amount and size of the product's container.<sup>23</sup> Repackaged products that are marketed independently have a high risk because the producers use their own brand and do not provide clear information as in conformity with the rules stipulated in Article 8 of Law Number 8 of 1999 concerning Consumer Protection. In general, the abovementioned actions carried out by entrepreneurs have an impact on consumers. The responsibility of entrepreneurs who provide products without providing any information on the product packaging is different from the responsibilities of entrepreneurs in general.<sup>24</sup> The application of this responsibility is referred to as the presumption of guilt for repacking the product without the permission granted by the brand owner.

Entrepreneurs are obliged to provide protection to consumers from products having low quality and a situation when the price paid is not commensurate with the quality.<sup>25</sup> Therefore, entrepreneurs who sell products of low quality and

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20 Tobing David, "KKI Laporkan Hasil Penelitian Dan Pengawasan Penjualan Produk Yang Dikemas Ulang (Kemas Ulang) Di Situs Online," *Facebook*.

21 Musa Taklima, "Urgensi Perlindungan Hukum Terhadap Konsumen Motorcycle Taxi Perspektif Hukum Perlindungan Konsumen Dan Teori Mashlahah," *Jurisdictie* 10, no. 2 (2020): 192.

22 A.A Gde Agung Brahmanta, Ibrahim. R, and I Made Sarjana, "Perlindungan Hukum Bagi Konsumen Dalam Perjanjian Baku Jual Beli Perumahan Dengan Pihak Pengembang Di Bali," *Acta Comitatus* (2016): 208–219.

23 Christian Lasander, "Citra Merek, Kualitas Produk, Dan Promosi Pengaruhnya Terhadap Kepuasan Konsumen Pada Makanan Tradisional," *Jurnal Riset Ekonomi, Manajemen, Bisnis dan Akuntansi* 1, no. 3 (2013): 284–293.

24 Sidabalok Janus, *Hukum Perlindungan Konsumen* (Bandung: Citra Aditya Bakti, 2006).

25 Muthia Aulia, *Hukum Perlindungan Konsumen Dimensi Hukum Positif Dan Ekonomi Syariah* (Yogyakarta: Pustaka Baru Press, 2018).

do not comply with the standards regulated in a statutory regulation should be subject to sanctions for their actions. This is stated in Article 8 Paragraph (2) of Law Number 8 Year 1999 concerning Consumer Protection “entrepreneurs are prohibited from trading damaged, defective or used and tainted goods without providing complete and correct information”. This article is a manifestation of the standardization of safety, is the feasibility of a product that is traded and will be used by consumers.<sup>26</sup>

Article 3 of Government Regulation Number 102 of 2000 concerning National Standards that: 1) promote the protection of consumers, entrepreneurs, workers and other communities in safety, security, health and preservation of environmental functions; 2) build smooth trade; 3) create fair competition in trade. Based on the article, the government’s efforts are preventive in regards to increase consumer satisfaction and improve the quality of a product.<sup>27</sup> In general, there are four basic rights of consumers; those are: the right to safety, the right to be informed; the right to choose; and the right to be heard.<sup>28</sup>

The importance of consumer protection laws encompasses none other than the weak position of consumers compared to producers. The process to produce goods or services is carried out without the slightest intervention done by the consumer. However, this goal can only be achieved if consumer protection laws can be applied consistently. If the entrepreneur violates the prohibitions and/or causes damage, pollution and/or loss to the consumer due to consuming the goods and/or services traded while carrying out his business, then this person is responsible for providing compensation. The compensation can be given in the form of a refund or replacement of goods and/or services of the same type or value equivalent to the provisions of the applicable laws and regulations.

Furthermore, Article 2 of Law Number 8 of 1999 concerning Consumer Protection states that Consumer Protection is based on benefits, justice, balance, security, and consumer safety as well as legal certainty, so entrepreneurs who repackaged products must also think about the safety and safety of consumers for their products. The products sold are in accordance with the benefits written on the packaging and can be accounted for if undesirable things happen in the business process. The nature of consumer protection implies that it is taking sides

26 Miru Ahmadi dan Yodo Sutarma, *Hukum Perlindungan Konsumen* (Jakarta: PT. RajaGrafindo Persada, 2015).

27 Gita Saraswati, Anak Agung Istri Ari Atu Dewi Specialist Program of Business Law, Faculty of Law, Universitas Udayana, and Abstract, “Pertanggungjawaban Pelaku Usaha Bagi Konsumen Yang Menggunakan Produk Kosmetik Ilegal Dan Berbahaya ?,” *Paper Knowledge. Toward a Media History of Documents* (2014): 1–15, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/50287/29919>.

28 Shidarta, *Hukum Perlindungan Konsumen* (Jakarta: PT. Grasindo, 2000).

with the (legal) interests of consumers. The interests of consumers, according to United Nations Resolution Number 39/248 concerning the Guidelines for Consumer Protection, are (1) the protection of consumers from hazards to their health and safety; (2) the promotion and protection of the economic interests of consumers; (3) Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs; (4) consumer education; (5) the availability of effective consumer dispute resolution and redress; (6) freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in the decision-making processes affecting them.<sup>29</sup>

### **Saddu Adz-Dzari'ah Review of Repackaged Imported Products**

Observed from the perspective of Islamic law, looking beautiful in front of your husband or wife is one of the recommendations given by the Prophet *sallallaahu 'alaibi wassallam* (Peace Be Upon Him) for women. He said: "The best wife is the one who pleases you when you see her, obeys you when you tell her to, and takes care of herself and your property when you are gone" (HR. Ath Thabrani). Taking care of their body is one of the efforts and also an asset for women in the current era. So, this has become one of the priorities of women. Various beauty products to treat one's body and face distributed in the market are very diverse with various claims that will attract the consumers' interest. More and more consumers of beauty products cause the market demand increases rapidly. Hence, various packages made to meet market needs and distribution to consumers are very diverse. One of which, the rampant actions found in online buying and selling transactions, is repackaging imported products. Repackaging a product without the permission of the owner is certainly not justified because brand rights are the property of the owner. Repackaging without permission, which is not in accordance with the rules set out by the Consumer Protection Act, is also not recommended in Islam because it can harm other people and take away the rights of others to the goods that can be purchased by the buyer or consumer. Islam always teaches human beings to respect the property of others and the results of one's hard work. As stated in Surah an-Nisa 'verse 29: "O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill each other or yourselves. Surely Allah is ever Merciful to you."<sup>30</sup>

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29 Kristiyanti, *Hukum Perlindungan Konsumen*.

30 QS. An-Nisa'(4) : 29

As a legal state where the majority of the people are Muslim, apart from being guided by government regulations, it is also guided by the Quran and hadith or *fatwas* (formal ruling or interpretation on a point of Islamic law given by a qualified legal scholar) that have been set by the Indonesian Ulama Council (IUC). As mentioned in the verse of the Quran above, it is explained that trading or buying and selling activities must be carried out fairly between sellers and buyers as well as sellers and fellow sellers. Every seller must be able to distinguish between right and wrong to prevent causing any harms to any party and to fulfill the buyer's rights with clear information attached on the goods that become the object of the transaction. Then numerous Hadiths also explain how the property of fellow human beings is protected by the owner and we must not take the property without the permission given by the owner of the property such as the Hadith narrated by Ahmad "The Messenger of Allah the Almighty delivered an Islamic preaching to us, saying: know that it is not lawful for a person to have any of his brother's property except with the willingness of his heart." (HR. Ahmad). The Quran also mentions a verse about halal products, which is particularly written in the QS. Al-Baqarah: 168 "O humanity! Eat from what is lawful and good on the earth and do not follow Satan's footsteps. He is truly your sworn enemy." (Surah Al-Baqarah: 168).<sup>31</sup>

It is also explained in Law Number 33 of 2014 concerning Halal Product Guarantee that halal products are products that have been declared halal in accordance with Islamic law. Likewise, the *Fatwa* Decision of the *Fatwa* Commission of the IUC concerning the Stipulation of Halal Products on Muharram 13, 1431 H/December 30, 2009 M regarding the Stipulation of Halal Products states that Muslims have the obligation to pay attention to the food, beverages, medicines, cosmetics and others that they will consume and believe in their halalness and purity. The halalness or purity of food, drinks, medicines, cosmetics and other processed products are often doubted. Based on several considerations, including the Fiqh rules, it is affirmed that "the law of origin of something that is useful is permissible and the law of origin of something that is harmful is haram" and "the law of origin regarding something is permissible as long as there is no conclusive argument that forbids it".<sup>32</sup> Based on the *fatwa*, it can be seen that everything used by Muslims must be halal products and have been tested by IUC in collaboration with the Assessment Institute for Food, Drugs, and Cosmetics of IUC. Islam truly regulates the activities of Muslims in detail so that they can live in compliance with the Sharia taught in Islam and various studies of Islamic law reform in Indonesia

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31 Indonesian Ulama Council, "Penetapan Produk Halal," *Fatwa MUI* (2000): 624–631.

32 Ibid.

carried out by the IUC. The halal status of imported products that are repackaged must be made clear. This is about product adjustment standards to obtain IUC halal certificates. The product must not be a dangerous one and is not prohibited by Islamic law. The issuance of a halal certificate of a product proves that the product has met the principles of halal product guarantee arranged in Article 2 of the Halal Product Guarantee Act, namely “protection, justice, legal certainty, accountability, transparency, effectiveness, efficiency, and professionalism.”

The Fatwa of IUC Number: 1/MUNAS VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights (IPR) also mentions the provisions of Islamic law as follows: (1) IPR is seen as one of the *huquq maliyyah* (property rights) protected by law (*mashun*) as *mal* (wealth), (2) IPR protected by Islamic law are intellectual property rights that do not have any conflict with Islamic law, (3) HIPRKI can be used as objects of contract (*al-ma'qud 'alaih*), both *mu'awadhab* contracts (exchange, commercial), and *tabarru'at* contracts (non-commercial), and it can be granted as a waqf and inherited, (4) Infringement of intellectual property rights, such as using, disclosing, making, using, selling, importing, exporting, distributing, handing over, providing, announcing, reproducing, plagiarizing, counterfeiting, and illegally hijacking other people's IPR is an injustice and the law is unlawful.<sup>33</sup>

The government made various efforts by issuing several regulations including the Law on Trademark Rights Number 20 of 2016, the Consumer Protection Law Number 8 of 1999 as well as the IUC Fatwa on IPR Protection. These are the efforts to protect the rights of every citizen who has IPR and the position of consumers in buying and selling transactions that are vulnerable so that all their rights are properly fulfilled. Fulfillment of rights regulated by the government is an obligation given to the holder of responsibility to protect the community. It is also hoped that the regulations governing various things performed by the community can provide *mashlahah* to avoid the occurrence of *saddu dzari'ah* cases so that life can be carried out properly and comfortably because of the protection given by the government through its law.

As analyzed more deeply based on Law Number 20 of 2016 concerning Trademark Rights Article 1 Paragraph (1), it is affirmed that a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, and color arrangement in the form of 2 (two) dimensions and/

33 Indonesian Ulama Council, “Perlindungan Hak Kekayaan Intelektual (Fatwa Decision of the Indonesian Ulama Council's Fatwa Commission Regarding the Protection of Intellectual Property Rights), No. 1/MUNAS VII/MUI/5/2005 Tahun 2005,” *Indonesian Ulama Council* (2005): 462–471, <http://mui.or.id/wp-content/uploads/files/fatwa/37.-Perlindungan-Hak-Kekayaan-Intelektual.pdf>.

or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities participated in the activities of trading goods and/or services. This is in line with Islamic law which explains that a trademark is one of the *huquq maliyyah* (property rights) that has legal protection as stated in the Fatwa of the IUC Number: 1/MUNAS VII/MUI/5/2005 concerning IPR.

In Islamic law, trademarks are parts of private property rights. Private property rights are sharia property rights granted to individuals so that they can use them personally, both in the form of goods and services. As stated in the Fatwa of the IUC Number: 1/MUNAS VII/MUI/5/2005 concerning the Protection of IPR, point 4, it is indeed true that every form of IPR violation, including but not limited to using, disclosing, making, using, selling, importing, exporting, distributing, delivering, providing, announcing, reproducing, plagiarizing, falsifying, and illegally hijacking other people's IPR is an injustice and the law is unlawful. In addition to protecting IPR for imported products that are repackaged, the government also protects the public in buying and selling transactions with law number 8 of 1999 concerning consumer protection for consumers who are vulnerable to anything that could harm them in their transactions. Technological developments causes consumers vulnerable to risk because of a lot of products are sold in various versions and containers. Therefore, the consumer protection law becomes one of the legal foundations for producers and consumers to stay within the correct path during buying and selling transactions.

Further, as shown by the current phenomenon in society, the majority of women attach great importance to their physical appearance. Clean, healthy skin, stay young, and proportional body are women's dreams today. Various whole body care products are being created more and more to keep up with the times; various types of treatments that can change God's creation are therefore haram because God's creation is basically good. Allah SWT says: "Indeed We created humans in the best form" (Surah At Tiin: 4). Changing Allah's creation means denying Allah's favor and following the devil's persuasion as Allah the Almighty explains in His word that one of the devil's missions is to command humans to change His creation: "Also, I will order them and they will slit the ears of cattle and alter Allah's creation" (Surah An Nisaa ' : 119). If a woman does plastic surgery to just look beautiful instantly and permanently, then it should not be done because it can change God's creation from its normal condition.

Imam Nawawi in Syarah Muslim states that Islam commands Muslims to be grateful for their real physical appearance without changing it. If one wants to

change parts of themselves, then she should change the mental and morals for the better because the true attraction of a woman lies there. In addition, Islamic law has clearly stated several actions that are forbidden for women to beautify themselves, such as plucking eyebrows, connecting hair, filing teeth, and tattooing the body because it means changing Allah's creation. The Prophet PBUH said: "Allah has blasphemed against women who ask for and do hair extensions as well as women who ask for and imprint tattoos on their bodies" (Narrated by Bukhari, Muslim, and Tirmudhi). In a Hadith, Abdullah bin Mas'ud also mentions, "The Messenger of Allah has blasphemed against those who put on tattoos, sharpen their teeth, pluck their eyebrows, and who change Allah's creation." (HR. An Nasa'i).

Thus, any action that can change Allah's creation from its normal condition is haram to do including performing surgery to tighten the skin that is already wrinkled. However, it is an exception for a woman who has a disease or disorder that makes her face does not look like a normal woman; she is allowed to perform surgery. A woman, for example, who is only 20 years old but has a lot of wrinkles on her face due to a certain disease may perform surgery to restore her face to her normal age. This can be analogous to the case of a child who was born with a cleft lip. According to the scholars, this kind of thing can be operated to return the lips to a normal state. However, if the woman is already in her 50's and normally has a few wrinkles on her face, she should not have surgery to remove her wrinkles or to make her face decades younger.

If the treatment to enlarge the breasts is purely applied in order to care for and keep God's creation good, then the law allows it; for example, exercising regularly to keep the body healthy as well as to tighten the breasts and put on masks or creams to keep the skin firm and increase the volume of the breasts. This can be performed because it is categorized as an action of taking care of the body, not replacing it such as doing plastic surgery. However, in general, the Muslim scholars still do not allow surgery except for an emergency, such as for treatment and others.<sup>34</sup>

To avoid various injustices that will occur in the world of business, a supervision should be carried out on every product that is marketed to the public, and this has indeed been carried out and managed by BPOM. As observed through *saddu al-dzari'ah*, the monitoring process is considered as a process to avoid the occurrence of *saddu al-dzari'ah*. Nowadays, in the world of trade and

<sup>34</sup> Bukuyuni, "Hukum Perawatan/Mengubah Fisik Dan Wajah Menurut Syariat Islam (Hukum Mengubah-Ubah Bentuk Tubuh)," *SandeqPosNews.Com* (Sulawesi Barat, 2019), <https://sandeqposnews.com/2019/07/18/hukum-perawatan-mengubah-fisik-dan-wajah-menurut-syariat-islam-hukum-mengubah-ubah-bentuk-tubuh/>.

business, there are so many platforms that provide ease for the entrepreneurs to make sales. The supervision applied on every product being sold is less optimum because there are also many products being traded that are also accompanied by so much interest from the public such as beauty products.

By using *saddu al-dzari'ah* theory, this provision aims to avoid fraud which is useful for protecting consumer rights and also the rights of the brand holders. Based on the views of scholars, it is found out that not all scholars agree with *saddu adz-dzari'ah* as a method of establishing law. In general, several "classifications which are fully accepted as methods of establishing law" come from Maliki and Hambali schools of thought. The reason they put it forward was the word "Allah" that is written in Surah al-An'am (6) verse 108. The scholars of the Maliki school of thought, for example, "even developed this method in their various fiqh and ushul fiqh discussions" so that it could be defined more broadly. Imam al-Syathibi (d. 790 H) describes this method in his book entitled *al-Muwafaqat*. Further, Imam Al-Qurtubi, the follower of the Maliki school, said that, "holding on to *saddu adz-dzari'ah* and applying it life are the principles of Maliki school and its followers". Likewise, Ibn Taimiyyah (w. 728 H), the follower of Hambali school of thought, said that "indeed, Allah SWT has closed the *saddu adz-dzari'ah* that leads to 'haram'; in fact, He forbids it". Another scholar, Ibn Qayyim (w. 751 H), also said that, "*saddu adz-dzari'ah* is one of a quarter of '*taklif*'. He expanded his 'discussion on *saddu adz-dzari'ah* in his books titled *Plamu Muqi'in Li Ibn Qayyim* and '*Majmu' Fatawa li Ibn Taimiyyah*'.<sup>35</sup> In the book written by Abdul Karim Zaidan dzara'i, it is stated if the facility leads to an unlawful act or damage, then the facility is haram, and it must be closed and prevented from developing the means of damage. Furthermore, if this facility leads to the realization of the things required in the Sharia, then this facility or means is also required. These means are prevented and hindered if they bring harm, but they are obligatory and permissible if they bring benefit.<sup>36</sup> This case is discussed in fiqh rules stating that "the law of origin of something useful is permissible and the law of origin of something harmful is haram".<sup>37</sup>

Repackaging is an activity of using other people's products and marketing them using a different brand. In this study, the product used and analyzed is a product of Tiens which is repackaged and marketed as a breast enlargement

35 Hifdhotul Munawwaroh, "Sadd Al- Dzari'At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer," *Ijtihad : Jurnal Hukum dan Ekonomi Islam* 12, no. 1 (2018): 63.

36 Abdul Karim Zaidan, *Pengantar Studi Syari'ah* (Jakarta: Robbani Press, 2008).

37 Indonesian Ulama Council, "Penetapan Produk Halal."



product. The use of trademark rights is regulated in Law Number 20 of 2016 concerning Trademark Rights and Geographical Indications; meanwhile, it is regulated in the fatwa of IUC<sup>38</sup> in Islamic law. Along with the growing needs in the community, especially for health and beauty products, new innovations were made to respond to the market demand. This situation corresponds to Ibn Qayyim's statement in viewing *saddu adz-dzari'ah* from the consequences (impact), which states that this act is basically permissible but sometimes can cause harm (*mafsadah*). The good consequence caused is greater than the bad ones. However, the regulations that have been set certainly needs to be focused on to prevent any deviations that are detrimental to the involved parties. Based on the explanation of repackaging imported products based on the *saddu adz-dzari'ah* perspective, these activities are not prohibited. This is caused by the fact that the products produced do not harm both product brand owners and distributors who repackage it. Although the distributor repackages products with different names, the packaging has listed the benefits of the products sold so that consumers are expected to be more careful in purchasing. It can also be done by asking the seller about the content and so on via room chat or inbox available in the applications.

Based on observations made by researchers on one of the marketplus platforms<sup>39</sup> that sells the product, it can be seen that the sales of repackaged products do not have a detrimental impact on any party. This can be indicated by the positive comments, given for the product, which is written in the column of comments provided in the e-commerce that is Lazada. Many consumers can give comments on the product received encompassing the speed of product delivery, packaging managed by the manufacturer, the benefits of the product and much more that can be directly conveyed and read by all consumers of the store. The benefits that can be taken from this activity include the opportunity of creating new jobs so that many business opportunities can be generated and the unemployment rate in Indonesia will be reduced. Besides, it can also increase the creative power of human resources to create new innovations and opportunity to compete in the world of marketing, especially in health and beauty aspects. Although this activity has benefits, repackaging means using other people's products and marketing them under another brand, which is should not be recommended. This can harm consumers with product deception,

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38 Indonesia, "Perlindungan Hak Kekayaan Intelektual (Fatwa Decision of the Indonesian Ulama Council Fatwa Commission Regarding Protection of Intellectual Property Rights), No. 1/MUNAS VII/MUI/5/2005."

39 Lazada.co.id: Komentar Produsen atas Produk @tiensstoremalang accessed on March 6, 2020.

which is usually sold at a higher price than the original price and have different sizes. However, in Indonesia, this can be suppressed by existing regulations. Both government regulations and IUC fatwa.

### Conclusion

Based on the results of research and discussions that have been discussed previously in this study, it can be concluded that buying and selling repackaged goods according to Law Number 8 of 1999 concerning Consumer Protection is a violation because the producers do not provide any information on the repackaged product. This information should be obtained by the consumers as arranged in Article 8 paragraph (1) of the Consumer Protection Act. It becomes a concern since this could harm the consumers as stated in Article 2 which states that “Consumer Protection is based on benefits, justice, balance, security and consumer safety as well as legal certainty”. Based on the *saddu adz-dzari'ah* perspective, the sale of the repackaged product is included in the buying and selling activities that are allowed because these do not lead to something bad or a loss for both parties, such as buying and selling using prohibited objects or buying and selling by cheating. It is possible because the producer, in the purchasing process, will explain the contents of products that consumers will buy.

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