

The Legal Responsibility Of Social Media Influencer By Advertising Dangerous Products: Consumer Protection Perspective

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ABSTRACT

Advertising is one of the marketing tools that is widely used by business people to present their products to consumers. One of the most popular advertisements today uses the services of artists on Instagram to promote the products sold by the online store. This term is known as endorsement. In its development, advertising with labels has caused many problems that can harm consumers. The purpose of the study is to determine the effect of legal protection on the advertising of dangerous products. The research method used in this research is the normative juridical legal research method, which is research that seeks to examine the application of positive law in society and is protected by law. The technique used is mainly to explore data and sources obtained from literature (library research), namely by researching sources, written readings from experts and other scholars. The results showed that the regulations on Consumer Protection are contained in Law Number 8 of 1999 concerning consumer protection. If the products they promote violate existing regulations then they can be punished according to Law No. 8 of 1999 concerning consumer protection

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PRELIMINARY

Globalization is an inevitable phenomenon in the current era, triggered by the rapid development of technology, information, and communication. These advancements make it easy to interact and make new acquaintances instantly¹. Social media emerged as an innovative tool that facilitates social interaction without the need for physical meetings. With these platforms and applications in place, individuals from different parts of the world can easily connect, creating virtual communities that we know as social media. Platforms

¹ Anoop MADhok. (2021). Globalization, de-globalization, and re-globalization: Some historical context and the impact of the COVID pandemic. BRQ Business Research Quarterly, 24(3), 199-203.

such as Twitter, YouTube, and Instagram have become an everyday part of people's lives, changing the way we interact and socialize.²

Along with the rapid growth of the internet and social media, new opportunities have emerged, especially in the field of marketing. Marketing is a complete range of business activities aimed at designing, pricing, promoting, distributing products or services, and ultimately meeting consumer needs.

In recent years, online marketing has become the fastest growing marketing method, with the main advantage being its interactive capabilities. This means that the internet enables dynamic interactions, provides a great opportunity to strengthen customer relationships and satisfaction, and provides extremely fast feedback to consumers and businesses.³

Advertising is a marketing tool that is often used by entrepreneurs to promote their various products to consumers. It is not surprising that there have been significant advancements in the advertising industry over time. This trending advertisement uses /nstagram artists called "celebrities" to promote products from online stores. This practice is known as endorsement. Endorse can be called the modern advertising of the 21st century. This system is based on a contract between the e-store owner and the celebrity promoting the product, also called endorsement. Once the agreement is reached, there will be responsibilities and rights that must be fulfilled according to the agreement in the endorse agreement.⁴

In this agreement, the party acting as an endorser or celebrity has an obligation to promote the products marketed by the online store that has chosen him as a favorite.⁵ In return, the witness receives reimbursement according to the agreed rate or agreement that has been set. The celebrity carries out his duties by promoting the product through pictures or videos and adding captions that show the usefulness of the product as if by itself. of. Usually when promoting products, celebrities only emphasize the positive side and benefits of the product. This can be contrary to the provisions of the Consumer Protection Law stipulated in Article 17 of the Consumer Protection Law Number 8 Year 1999:

"It is prohibited to produce advertisements that: (a) deceives consumers regarding the quality, quantity, materials, usefulness and price of goods and/or service rates as well as the timeliness of receipt of goods and/or services; (b) deceives the guarantee/warranty of goods and/or services; (c) contains false, incorrect, or inaccurate information regarding goods and/or services; (d) does not contain information regarding the risks of using goods and/or services; (ec) exploits events and/or a person without the permission of the authorized person or the consent of the person concerned; (f) violates ethics and/or the provisions of laws and regulations regarding advertising."

Consumer rights are also explained in Article 4 of the Consumer Protection Law Number 8 of 1999 which explains that consumers have the following rights:

"Consumer rights are: (a) The right to comfort, security, and safety in consuming goods and / or services; (b) The right to choose goods and / or services and to obtain these goods and / or services in accordance with the exchange rate and the conditions and guarantees promised; (c) The right to correct, clear, and honest information about the conditions and guarantees of goods and / or services; (d) The right to be heard for their opinions and complaints about the goods and / or services used; (ce) The right to obtain advocacy, protection, and efforts to resolve consumer protection disputes properly; (f) The right to be informed of the rights of consumers. (g) The right to be treated or served correctly and

² Hafsa Moosa. 2024. Importance of social media in Our Lives in Today's Age, Cited in April, 13 2024, From <https://iimskills.com/importance-of-social-media-in-our-lives/>

³ George E. Belch and Michael. (2003). *Advertising and Promotion: An Integrated Marketing Communications Perspective*, Sixth Ed. New York: Mc Graw Hill, 16

⁴ Imam Sjahputra. (2010). *Perlindungan Konsumen Dalam Transaksi Elektronik*. Bandung: PT Alumni, 43

⁵ Maryam Nasafa. (2024). Fenomena Endorse Produk Kecantikan oleh Influencer Tasya Farasya Melalui Media Sosial Tiktok. *Jurnal Ilmiah Mahasiswa (JIM)*. 9 (1), 1-19

honestly and nondiscriminatory; (h) The right to compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be; (i) the rights stipulated in the provisions of other laws and regulations.”

In reality, consumers are often caught up in scams perpetrated by endorsers or celebrities, who want to have skin like these celebrities.⁶ Hence, they use potentially harmful whitening creams as the use of these products can cause harmful side effects. As a business actor who advertises or sells goods and services, but is misleading because it turns out that what is traded is not in accordance with reality, full of lies and falsehoods.⁷

Several incidents have occurred, including the case observed by the author, namely that of Kartika Putri and Dr. Richard Lee. Kartika Putri, like any approved celebrity, promoted a beauty care product, Helwa Beauty Care. In August 2020, Dr. Richard Lee, a doctor specializing in dermatology and beauty, conducted an evaluation and laboratory testing of the product.⁸ The results were shared in a video on his personal Youtube channel.

in the product shows that the product contains toxic and hazardous materials (B3), namely hydroquinone at 5.7% while the safe limit of hydroquinone according to him in the video is 2%, so according to Dr. Richard, these cosmetics and products are not allowed in beauty procedures.⁹

In its development, this advertising activity through endorsement creates a sense of injustice to them. On the other hand, consumers cannot demand responsibility from endorsers who carry out promotions because usually, the responsibility is more related to producers or entrepreneurs according to the GCPL Law. However in reality, consumers know the product and use it based on the influence of advertising done by the endorser or celebrity who advertises it.

The importance of product information for consumers is huge, especially before a transaction is made. With the information available, consumers can carefully choose how to use the money they have available to them. buy products that meet their needs. If consumers accept inaccurate information can cause them to make poor decisions, which in turn can put them at risk.¹⁰ Based on the above background, the author is intended to discuss the legal responsibility of social media influencers for advertising dangerous products based on the consumer protection law perspective in Indonesia.

METHOD

The research method used in this work is the normative jurisprudence research method. The research aims to study the application of positive law in society and protected by law. The technique used is mainly to explore data and sources obtained from library research, namely source research, written readings of experts, and other experts.¹¹ While

⁶ Afandi, et.al. (2021). Pengaruh Endorsement Influencer Instagram Terhadap Keputusan Pembelian pada Generasi Z. Jurnal Pengembangan Ilmu Komunikasi dan Sosial. 5(1) 1-15

⁷ Jacobus jopie Gilalo. (2023). Application of Consumer Criminal Sanctions in Case of Business Crime. Jurnal Ilmiah Living Law. 15 (2). 119-128

⁸ Sekar Langit Nariswari. 2022. Kronologi Kasus Kartika Putri dan Richard Lee, Berawal dari Krim Mengandung Merkuri. Cited in April 13, 2024, From <https://lifestyle.kompas.com/read/2022/11/17/133411120/kronologi-kasus-kartika-putri-dan-richard-lee-berawal-dari-krim-mengandung>

⁹ Ferry Noviani. 2022. Kasus dengan Kartika Putri Selesai, Richard Lee Bebas dari Status Tersangka. Cited in April, 13 2024, From <https://www.suara.com/entertainment/2022/11/16/140645/kasus-dengan-kartika-putri-selesai-richard-lee-bebas-dari-status-tersangka>.

¹⁰ Dedi Harianto. (2010). *Perlindungan Hukum Bagi Konsumen Terhadap Iklan Yang Menyesatkan*. Bogor: Ghalia Indonesia, 9

¹¹ Jonaedi Effendi and Johnny Ibrahim. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*. Jakarta: Prenada Media, 27

the analysis used is qualitative analysis, which is obtained from various sources, all primary and secondary data collected are written in the form of detailed descriptions or reports, then arranged more systematically, and then conclusions are drawn.

The type of data in this research is secondary data. Secondary data is obtained from library research to obtain the theoretical basis in the form of research) to obtain a theoretical basis in the form of opinions, opinions, writings from experts or authorities and to obtain information in the form of formal provisions and data through manuscripts. obtain information in the form of formal provisions and data through existing official texts. existing official texts.¹²

Secondary data is obtained from laws and regulations applicable in Indonesia, books, seminars, journals, documents, archives, and the Internet. After the data is collected, the data analysis technique that the author will use in analyzing the above problems is a qualitative data analysis technique. The aim is to describe a phenomenon and its characteristics. This research is more concerned with what than how or why something happens. This technique is not centered on numbers but on explanations, causes, as well as things that underlie the topic

RESULT AND DISCUSSION

Legal Liability of Influencers for Advertising Products on Social Media

The position of an influencer who gets endorsements and then promotes or advertises on their social media accounts is a business activity where they act as an advertising service provider, according to the provisions of Article 17 of the Consumer Protection Law, the prohibitions that should not be practiced by business practitioners are:

- 1) The behavior of business actors who lie to consumers about the usefulness, price, goods, quality, and quantity of goods and services
 - 2) Lying to consumers in guarantees/warranties regarding goods and services;
 - 3) Contains false or inaccurate information about goods and/or services, false information.
 - 4) Does not contain information regarding the risks associated with the use of goods and/or services;
 - 5) Exploitation of the event without the permission of the authorized party based on the authorization approval letter or approval of the relevant party;
 - 6) Violate advertising ethics or laws
- a Advertising actors are prohibited from continuing the circulation of advertising that violates the provisions; Illustrating endorsement events in Indonesia, there was an incident involving a well-known influencer, Kartika Putri, a celebrity from the capital city, who endorsed the promotion of Helwa Beauty Care beauty products. The Food and Drug Administration apparently found indications that the product was later revealed not to hold an official license (illegal).

Business activities undertaken by an influencer include the provision of advertising services, which is also recognized as a subject in the advertising industry.¹³ This applies to influencers, whether they are ordinary or well-known individuals, where their business is focused on promoting or advertising products in the form of goods or services. In Article 1 paragraph 6 of the Consumer Protection Law:

"In the concept of promotion relating to activities and dissemination of information about goods or services to attract the purchasing power of consumers who are traded."

¹² Zainuddin Ali. (2021). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 107

¹³ Dintan Falya and Rianda Dirkareshza. (2021). Urgensi Peraturan Pajak Dalam Aktivitas Endorsement Yang Dilakukan oleh Influencer Instagram. *Jurnal USM Law Review*. 4 (2), 756-776

In conducting their business, in the field of advertising, business actors need to avoid violating the rules stipulated in business regulations and consumer protection. Influencers must not violate the applicable rules, either during the promotion or afterwards, and that is If the influencer causes harm, then the influencer must be responsible for the advertisement or product being promoted.¹⁴

This obligation is reinforced in Article 20 of GCPL: "in the production of advertisements all the consequences caused need the responsibility of the perpetrators" Influencers need to be vigilant and careful when there is an endorsement offer regarding cosmetic products, for example regarding the endorsement case experienced by Kartika Putri, an artist who received an offer to endorse cosmetics from the illegal helwa beauty care and then several problems occurred and experienced very serious impacts, the impact could be very serious.

Kartika Putri only realized that the cosmetics she used from the endorsed products had a negative impact and were not suitable but also had an impact on consumer users who used the product after she promoted it through endorsed advertisements.¹⁵ Influencers should not only see endorsements as ordinary advertisements that have no consequences for the law, such advertising and promotion if carried out continuously will harm consumers.

According to the author, if an influencer is not careful in promoting a product and the result causes consumer harm, such as in the promotion of cosmetics and is entangled in endorsement cases involving several famous artists, the influencer is held responsible for the promotion. This is because the promotion has an impact on consumer harm. It is important to understand that cosmetics are considered illegal by the BPOM if they do not have a distribution license, especially if they contain hazardous ingredients. The determination of the legality of cosmetics by the BPOM refers to the health Law regulations.

Legal protection for consumers against dangerous products advertised by influencers

Ensuring that people's needs are met is vital. In an effort to fulfill their daily needs, people often conduct buying and selling transactions. One of the tangible forms of people's efforts in fulfilling their needs is through an agreement. Article 1313 of the Civil Code states that: "an agreement is 2 or more people who bind themselves to an agreement." That article briefly explains the meaning of an AOU or agreement that reflects the involvement of 2 parties who remind themselves.

The validity of the agreement is substantially dependent on the agreement between the parties involved regarding the format and substance of the agreement. Agreement in this context refers to alignment in the views and desires of both parties in making payments.¹⁶ Currently, transactions are divided into two, namely conventional trade transactions, and modern trade transactions through e-commerce.

Article 1 Paragraph 1 of the ITE Law Electronic transactions are legal actions carried out through computers, networks, cell phones etc. besides that the development of technology is progressing rapidly so that trade through online is very salable on e-commerce social media on goods and services. Online refers to the exchange of goods or services between individuals over the internet, without the restrictions of time or location, and without the direct interaction of sellers and consumers.¹⁷

¹⁴ Annasya Fefatikha, Rini Heryanti, and Dharu Triasih. (2023). *Perlindungan Hukum Bagi Konsumen Terkait Influencer Pelaku Endorsement Pada Media Sosial Instagram*. Semarang Law Review. 4 (2), 26-35

¹⁵ Dyah Ayu Pamela. 2022. *Kronologi Perseteruan Kartika Putri dan Richard Lee, Berpangkal dari Dugaan Kosmetik Mengandung Merkuri*, Cited April 13, 2024, From <https://www.liputan6.com/lifestyle/read/5127855/kronologi-perseteruan-kartika-putri-dan-richard-lee-berpangkal-dari-dugaan-kosmetik-mengandung-merkuri>

¹⁶ Agus Yudha Hernoko. (2019). *Hukum Perjanjian*. Jakarta: Prenada Media, 156

¹⁷ Meida Lutfi Samawi. (2020). *Jual Beli Online Dalam Perspektif Ekonomi Islam*. Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam. 8 (1), 52-64

The agreement between the parties occurs without the need for a physical meeting, relying on the trust between them. Nonetheless, the transaction is valid if both parties have agreed without the need for face-to-face contact. Buying and selling is the process of exchanging goods or services or property rights between two or more contracting parties. This sale and purchase can occur directly or indirectly between the seller and the buyer, but buying and selling in the online media is usually buying and selling through electronic commerce, and the business ends when the consumer wants the item available in the online store.¹⁸

Transactions are the process of buying and selling services through the internet or other electronic platforms. In online transactions, buyers can make purchases without physically seeing or coming directly to the store or point of sale. These transactions generally involve the use of credit cards. Online transactions also involve the delivery of goods or services directly to the personal address we have listed on the platform.¹⁹

Law enforcement is an effort to protect the rights, freedoms, or interests of individuals or groups from an action that can harm consumers and legal protection in consumers includes a system when buying goods or services for consumers, in this case legal protection must follow the rules and norms that apply according to the legislation. In consumers includes a system when buying goods or services for consumers, in this case legal protection must follow the rules and norms that apply according to statutory regulations.

In legal protection for consumers, it is necessary to pay attention to aspects of consumer aspects, one of which is clear information, protection of consumer safety and health, the right to choose goods, the right to file complaints and receive compensation. If the goods purchased are not suitable, and protection against business practices.²⁰

In the aforementioned case, business actors are prohibited from including standard clauses and whose position or format is not easy to find or read clearly, or whose content and purpose are not easily understood in this study, it was found that the existence of current regulations and laws does not fully offer guarantees of legal protection for individuals involved in online transactions, including in situations where liability is required.

Article 1 paragraph (1) of the GCPL states that, "consumer protection is a form of legal protection". Efforts that ensure legal certainty to provide protection to consumers". Along with technological advancements, promotion through the Instagram platform is becoming more common. Online sellers who want to market products to cosmetics to consumers often collaborate with celebrities as intermediaries in advertising these products.

The practice of endorsement through the Instagram application is very often done because the application is very popular among artists or celebrities to promote the goods or products being sold.²¹ The existence of applications or social media provides benefits for businesses to market these products and consumers will find it easier to buy products. However, over time, consumers often face problems such as fraud and illegal products. This paper will describe the regulation of consumer legal protection in terms of harmful practices carried out by sellers or business actors when promoting the goods they sell. In terms of consumer protection to provide guarantees for consumer protection there are several laws that regulate:

a Consumer Protection Law

The protection of consumers involved in online businesses based on GCPL is the same as that of direct or conventional consumers. However, in 2008, the government issued the ITE Law. This law regulates online shopping, specifically in Article 9 which states that

¹⁸ Agus Y. Hernoko, *Op. cit.*, 159

¹⁹ Yanci Libria Fista. (2023). *Perlindungan Hukum Konsumen Dalam Transaksi E-commerce Ditinjau dari Perspektif Undang-Undang Perlindungan Konsumen*. Binamulia Hukum 12(1), 177-189

²⁰ Abdul Halim Barkatullah. (2009). *Perlindungan Hukum Bagi Konsumen Dalam Transaksi E-Commerce Lintas Negara di Indonesia*. Yogyakarta: Naskah Publikasi Pasca Sarjana FH UII Press, 27.

²¹ Carolina Herrando. (2022). *Influencer endorsement posts and their effects on advertising attitudes and purchase intentions*. International Journal of Consumer Studies. 46 (2), 88-99

business actors offering products through electronic systems must provide complete and correct information about the terms of the contract, the producer, and the products offered.

b Civil Code

The Civil Code in Indonesia is the Civil Code that was enacted in 1874. laws relating to civil relations such as agreements. In Article 1320 of the Civil Code that an agreement requires standard conditions to bind themselves in an agreement and the existence of a halal cause, the contract made is *pacta sunt servanda* or a civil law contract made under the Law or the Consumer Protection Law.

c Criminal Code

In online transactions, violations can involve criminal law. Before the enactment of the ITE Law in 2008 and regulated or revised based on the new rules in 2016, the relevant legal basis was in the Criminal Code. In online transactions through e-commerce, the most relevant regulation is Article 378 of the Criminal Code regarding fraud, which reads: "Whoever, with intent to unlawfully benefit himself or another, uses a false name or false dignity, by means of deceit or a series of lies, to induce another person to deliver an object to him or to extinguish a debt, shall be punished by a maximum imprisonment of 4 years."

The increasing cases of fraud on online platforms, in this case business actors often sell products that are not suitable, the use of the fraud article in the Criminal Code is an appropriate basis for protecting the interests of consumer actors.²² According to the author, these regulations are sufficient to ensure safe shopping for consumers. However, until now, regulations regarding electronic commerce through electronic commerce have not been specifically regulated in these regulations. Social media in e-commerce consumer protection needs to be explored from various legal sources.

Moreover, although there are regulations covering online transactions, there are still many weaknesses in_ their implementation because the need for transactions with various types of businesses needs legal protection. The regulations mentioned earlier are in principle quite effective in providing and as a form of consumer protection efforts to prevent violations of their rights by business actors as a means for consumers to enforce rights that violate civil and criminal law.

Therefore, consumers have the right to conduct such as reporting violations either criminally or seeking damages or compensation civilly based on the rule of law, the government has affirmed the protection of consumer rights through legal regulations. However, it is also important to recognize that consumer freedom plays an important role in the protection of consumer rights.

This is an important role, because sometimes consumers who suffer losses do not take legal action. This makes it difficult to enforce the law against dishonest sellers. Therefore, consumer awareness about their rights is crucial; if consumers are harmed, they should report the matter to the authorities so that their rights are protected.

CLOSING

The implementation of endorsements through influencers often leads to future problems related to the promotion carried out. This is due to the lack of accuracy or inaccuracy in conveying product information by influencers as advertising actors. Such errors include inaccurate product descriptions, safety, superiority, and legality. The lack of caution and accuracy in this regard is often overlooked by influencers when accepting offers to make endorsements. Influencers' position as advertising business actors must comply with regulations and principles of advertising ethics as they may be subject to penalties under Law no. 8/1999 on Consumer Protection, if the products they advertise violate the provisions of the GCPL and other laws and regulations.

²² Jennifer Lawlor, et.al. (2021). Suspicious and fraudulent online survey participation: Introducing the REAL framework. *Methodological Innovations*, 14(3), 1-21

Legal protection of consumers in electronic business buying and selling transactions is sufficiently regulated to provide assurance to consumers that companies do not violate their rights. If consumers are harmed by the actions of entrepreneurs, the law provides a means by which consumers can protect their violated rights and report the problem to the appropriate authorities.

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