



# CONSUMER PROTECTION AGAINST THE SPREAD OF MISLEADING INFORMATION CONVEYED THROUGH ADVERTISING

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**Abstract:** Advertising communicates the marketing function by a business, promoting products effectively to increase their selling value. However, many businesses exaggerate the benefits of their products, generating misleading information that often contradicts the actual benefits. Advertising through electronic and print media must comply with the Indonesian Advertising Code of Conduct, ensuring truthfulness, clarity, honesty, and promoting healthy competition. However, businesses often ignore these rules in favor of greater profits, which ultimately harm consumers. This study discusses (1) the regulation of liability for misleading information under Indonesian law, and (2) how consumer disputes over misleading advertising are resolved. Through normative research and legal approaches, findings include: (1) existing regulations have weaknesses in holding businesses accountable for misleading advertising information versus actual product conditions, and (2) dispute resolution is categorized into court and out-of-court methods, lacking certainty and fairness for consumers who trust advertised product information.

**Keywords:** *consumer protection; misleading information; advertising*

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## I. INTRODUCTION

Indonesia is recognized as one of the developing countries that is constantly involved in systematic and sustainable development in all aspects, thus striving to achieve the welfare and well-being of its citizens in a fair and equitable manner. These development initiatives are designed to improve various aspects of the lives

of individuals, as well as the lives of nations and states, with a special emphasis on the economic dimension. The development of the national economy in the era of globalization must allow the business world to produce goods and/or services that improve people's welfare without causing losses to consumers. This means that there is certainty about the quality, quantity, and safety of goods obtained in the market by consumers.<sup>1</sup>

One of the media that is often used by business practitioners to market their products. This serves as a mechanism for disseminating information about goods offered by business actors to consumers. As a result, the role of advertising is crucial for business professionals, as it serves as an essential tool in introducing their products to the consumer market. In the business world, advertising is an important factor in marketing a product. Without advertising, various goods and products cannot flow to consumers. Advertising is defined as a mechanism that influences consumers in their decision-making process or conveys a message containing information about a product, which is disseminated to consumers through various forms of print media (such as newspapers, magazines, and brochures) and electronic media (including television, radio, and the internet).

Promotion is an activity designed to disseminate information about a product through various channels, including brochures, advertisements, sales representatives, store signs, and additional forms of communication.<sup>2</sup> Meanwhile, as noted by William J. Stanton in a quote provided by Danang Sunyoto, promotion is a component of a company's marketing mix that is used to inform, persuade, and remind stakeholders about business product actors.<sup>3</sup> Ideally, all marketing communication media used by business professionals must convey information accurately, clearly, and honestly, so as not to mislead consumers by adhering to the principles commonly referred to as business ethics, namely fairness and honesty to the public, consumers, competitors, and the government.<sup>4</sup>

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<sup>1</sup> Goods and/or services are referred to as products.

<sup>2</sup> Harianto Dedy, *Legal Protection for Consumers Against Misleading Advertising* (Bogor: Ghalia Indonesia, 2010), p. 104.

<sup>3</sup> Danang Sunyoto, *Consumer Behavior (A Simple Research Guide to Recognizing Consumers)*, CAPS (Yogyakarta, 2013), p. 512.

<sup>4</sup> Husni Syawali and Neni Sri Imaniyati, *Consumer Protection Law* (Bandung: Mandar Maju, 2000).

Advertising is an important means of communication that must meet the following criteria:<sup>5</sup>

1. Indirect communication;
2. Through mass communication media;
3. Paid based on a specific rate;
4. Know the sponsor or advertiser.

All ads contain information, because advertising means informing. One of the business obligations of business actors is everything that includes information contained in advertisements that will be provided to consumers. This means that providing information about their products to consumers is a must in business. In addition to business obligations, it can also be seen as a right. Furthermore, for the benefit of consumers, it is necessary to limit the provision of information through advertising legally.

Ad restrictions are intended to minimize the excessive presentation of misleading information.<sup>6</sup> Basically, ads are divided into five categories, namely:<sup>7</sup>

1. Information;
2. Invitations/invitations;
3. Influence/persuasion;
4. Promise;
5. Commemoration.

The five ad categories above do not contain just one category, but always contain a combination of those categories. Advertisements can contain promises from business actors that consumers will get more uses and benefits than other goods when consuming the advertised products, or they can also contain guarantees provided by business actors that consumers will benefit if they consume the products offered. In this case, business actors must be careful in giving promises and guarantees to consumers, because the promises and guarantees given in terms of law are binding, so they must be fulfilled.<sup>8</sup>

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<sup>5</sup> Alo Liliweri, *Basics of Advertising Communication* (Bandung: Balai Citra Aditya Bakti, 1996), p. 72.

<sup>6</sup> Janus Sidabalok, *Consumer Protection Law in Indonesia* (Bandung: PT. Citra Aditya Bakti, 2014), p. 229.

<sup>7</sup> *Ibid.*, p. 228.

<sup>8</sup> *Ibid.*, p. 231

Unhealthy business practices (dishonest) by providing false business information (*fraud misinterpretation*) is the provision of false information or information to obtain personal or group benefits in a way that is contrary to laws and/or laws and regulations. <sup>9</sup>This will undoubtedly have an impact on consumers, resulting in losses. Most consumers often suffer losses due to promotions offered by business actors. These losses are caused by consumer temptation towards the goods advertised in product advertisements. Ads don't always contain the correct information, as they generally only highlight the advantages of the product being promoted; on the contrary, the weaknesses of the product are covered.<sup>10</sup>

The delivery of precise, complete, accurate, transparent, and honest information is one of the obligations of business actors; On the other hand, the obligation of these business actors is the right of consumers. The information on goods submitted by business actors not only highlights the advantages of a product, but also needs to be balanced with information that contains risks associated with the product. Marketing activities are part of business activities carried out by business actors to offer the goods they produce. Healthy business activities are a balance of legal protection between consumers and business actors.

In a healthy business, unfair trading practices are *strictly* prohibited. This kind of practice includes:<sup>11</sup>

1. Wrong or misleading actions;
2. Misleading statements about the nature, characteristics, standards, or quality of an item;
3. False statements in the giving of gifts or discounts;
4. Fake advertisements;
5. The promise of a discount accompanies the sale of the product if the buyer brings another potential buyer to the seller.
6. The sale of products that do not meet consumer safety standards;
7. Sales of products that do not meet consumer information standards.

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<sup>9</sup> Hamzah Hatrik, *The Principle of Corporate Accountability in Indonesian Criminal Law* (Jakarta: Raja Grafindo Persada, 1996), p. 140.

<sup>10</sup> Ahmadi Miru & Sutarman Yado, *Consumer Protection Law* (Jakarta: Rajagrafindo Persada, 2010), p. 55.

<sup>11</sup> Ari Purwadi, "The Implications of False and Irresponsible Advertising on the Emergence of Consumer Disputes," *Yustika* 7 (July 2004): pp. 231–50.

The absence of balanced protection puts consumers in a vulnerable position. A product produced by a business actor can exploit this situation by monopolizing it, which can be detrimental to consumers.<sup>12</sup> Judging from the general legal objectives, namely justice, usefulness, and legal certainty, the weakness of the consumer's position cannot create justice for both parties who are within the scope of consumer protection.

Consumer law and consumer protection law are two areas of law that are difficult to separate and draw different boundaries between them.<sup>13</sup> A weak consumer position is closely related to the promotional activities of business operators that often show dishonesty and can mislead consumers. As a result, there is a need to involve the state in the provision of consumer protection. States bear the responsibility to protect every citizen from actions, threats, or interference that may result in harm, including ensuring protection from deceptive information providers. This initiative aimed at protecting consumers led to the enactment of the Consumer Protection Law Number 8 of 1999 (UUPK), which came into effect in 2000. This law serves as a legal framework for the regulation of existing consumer protection mechanisms.<sup>14</sup> Other norms outside the law can be used as a reference to place the UUPK as a legal protection system for consumers. Through these provisions, it can be understood that the UUPK is a special provision for existing laws and regulations before this law.<sup>15</sup>

The legal basis for consumer protection is contained in Article 27 paragraph (2) of the 1945 Constitution which states that: "every citizen has the right to work and a decent livelihood for humanity, is the right of citizens and the rights of all people and is a basic right for the people as a whole".<sup>16</sup> Meanwhile, the definition of consumer protection is "all efforts that guarantee legal certainty to protect consumers."<sup>17</sup> Basic consumer rights are:<sup>18</sup>

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<sup>12</sup> Ahmadi Miru, *Principles of Legal Protection for Consumers* (Jakarta: Rajagrafindo Persada, 2011), p. 1.

<sup>13</sup> Shidarta, *Consumer Protection Law* (Jakarta: PT Grasindo, 2006), p. 11.

<sup>14</sup> *Ibid.*, p. 77.

<sup>15</sup> Yusuf Shofie, *Consumer Dispute Resolution According to the Consumer Protection Law (UUPK) Theory and Law Enforcement* (Bandung: PT Citra Aditya Bakti, 2003), p. 9.

<sup>16</sup> AZ. Nasution, *Consumer Protection Law: An Introduction* (Jakarta: Diadit Media, 2002).

<sup>17</sup> "Article 1 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection," Pub. L. No. 8 (1999).

<sup>18</sup> Janus Sidabalok, *Consumer Protection Law in Indonesia*, p. 31.

1. The right to security and safety;
2. Right to information;
3. The right to vote;
4. The right to hear their grievances.

Regarding acts that are prohibited for business actors, Article 17 of the UUPK states them as follows:

1. Advertising business actors are prohibited from producing advertisements that:
  - a. Deceiving consumers regarding the quality, quantity, materials, usability, and price of goods and/or service rates, as well as the timeliness of receipt of goods and/or services;
  - b. Contains false, untrue, or inaccurate information about goods and/or services;
  - c. Violates ethics and/or provisions of laws and regulations regarding advertising.
2. Advertising business actors are prohibited from continuing the circulation of advertisements that have violated the provisions in paragraph (1).

The company lacks in-depth knowledge *of its consumers, failing to provide a clear* explanation of all product-related information. As a result, consumers are ultimately disadvantaged. For each medium on which an ad is served, a policy should be in place regarding the honesty and accuracy of the message information in the advertisement, ensuring that dishonest and inappropriate advertising is not allowed. Based on this background, several interesting problems can be taken to be analyzed and studied in this study, how is the regulation of responsibility for the dissemination of misleading information reviewed based on laws and regulations in Indonesia? And what are the efforts to resolve consumer disputes carried out by business actors for the dissemination of misleading information conveyed through advertising?

## **II. RESEARCH METHODS**

This research uses a normative legal research method, which focuses on library research based on secondary data. Normative legal research is used to analyze applicable legal norms, legal principles, and systematic legal structures, especially in relation to the responsibility of business actors to disseminate misleading information through advertising. The approaches used are the legal approach and

the conceptual approach, which aim to examine relevant laws and legal concepts. Data collection was carried out through a literature study involving:

1. Key legal materials, including:
  - a. Constitution of the Republic of Indonesia 1945,
  - b. Law No. 8 of 1999 concerning Consumer Protection,
  - c. Law Number 32 of 2002 concerning Broadcasting,
  - d. Related decisions from the Consumer Dispute Resolution Agency (BPSK) and the Supreme Court.
2. Secondary legal materials, such as scholarly papers by legal experts, books, journal articles, and other academic resources.
3. Tertiary legal materials, such as legal dictionaries and *the Great Dictionary of the Indonesian Language*, are used to clarify legal terminology.

The data were analyzed using a qualitative-normative method with deductive reasoning, which involves deducing the general legal norms of certain cases. The analytical process consists of selecting data, interpreting legal standards, and connecting them with relevant legal facts to arrive at valid and meaningful conclusions. This research is descriptive-analytical, aiming to systematically describe relevant laws and regulations and legal theories to better understand the legal responsibility of business actors to disseminate misleading information through advertising.

### **III. ANALYSIS AND DISCUSSION**

#### **a. Definition of Consumer Protection Law**

Consumer protection is motivated by the rapid development of industry, which shows high complexity, and thus needs to be addressed as one of the negative consequences of industrialization, which results in many victims due to the use or consumption of industrial products. <sup>19</sup>Efforts to provide legal protection for consumers do not mean that there is a basic assumption that all parties engaged in business and trade are always involved in manipulation that is detrimental to consumers and is not intended to make society non-consumptive. However, legal protection for consumers is based on the existence of several consumer rights that need to be protected from adverse actions committed by other parties. These rights

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<sup>19</sup> *Ibid.*

are fundamental and comprehensive, so it is necessary to obtain state guarantees for their fulfillment.<sup>20</sup>

Consumer protection laws are the legal framework that governs the provision of protection to consumers, ensuring that their needs are met. In other words, the consumer protection law regulates the rights and obligations of consumers, as well as the rights and obligations of business actors. It outlines procedures for enforcing these rights and fulfilling these obligations.<sup>21</sup> Consumer law is the whole set of principles and rules that govern the relationship and issue of the supply and use of goods and products between providers and their users in social relations<sup>22</sup>. Meanwhile, consumer protection law is defined as the totality of principles and rules that govern and protect consumers in the relationship and issue of the supply and use of consumer products between providers and users in people's lives.<sup>23</sup> The UUPK mentions a different definition between consumer and consumer protection, where consumer protection is defined as any effort that guarantees legal certainty to protect consumers.

## 1. Legal Principles of Consumer Protection

To provide legal protection to consumers, several of the main principles underlying the consideration of the UUPK are outlined in Article 2 of the UUPK, which states that consumer protection is based on the benefits, justice, balance, security, and safety of consumers, as well as legal certainty, namely:

a. Principle of Benefits

All efforts in implementing consumer protection must provide the most significant benefits for the interests of consumers and business actors as a whole.

b. Principles of Justice

This is intended so that everyone's participation can be realized to the maximum, and provides opportunities for consumers and business actors to obtain their rights and carry out their obligations reasonably.

c. Fundamentals of Balance

Providing a balance between the interests of consumers, business actors, and the government in a material and spiritual sense.

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<sup>20</sup> *Ibid.*, p. 24.

<sup>21</sup> *Ibid.*, p. 37.

<sup>22</sup> N.H.T. Siahaan, *Consumer Protection Law "An Introduction"* (Jakarta: Daya Widya, 1999), p.

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<sup>23</sup> *Ibid.*



d. Principles of Consumer Safety and Security

Providing security and safety guarantees to consumers in the use, use, and utilization of goods and/or services consumed or used.

e. Principle of Legal Certainty

So that business actors and consumers obey the law and obtain justice in implementing consumer protection, and the State guarantees legal certainty.

The term "consumer" in English is derived from the word "*consumer*," while in Dutch, the term "consumer". Consumers have several definitions, including:

- a. As a person or company that buys certain goods or uses certain services;
- b. A person who buys goods and/or uses services;
- c. Something or someone who uses a particular service;
- d. As someone who uses a variety of items <sup>24</sup>

Consumers in general are users, and/or users of goods and or services for certain purposes.<sup>25</sup> The definition of consumer can also be narrowed down to middle and end consumers. Intermediate consumers are anyone who acquires goods to be used to produce other goods for resale (commercial). Meanwhile, the end consumer is anyone who acquires and uses goods to meet the needs of their own life, family, and/or household and is not involved in resale (non-commercial). The definition of consumer is regulated in Article 1 paragraph (2) of the UUPK, which states that: every person who uses goods and/or services available in society, either for the benefit of himself, his family, other people, or other living beings, and not for trade.<sup>26</sup>

According to the Civil Code (BW), Book VI, Article 236, consumers are defined as individuals. This means that when approving, he does not act as a person who carries out the company's profession.<sup>27</sup> Hondius argues that: legal experts generally agree to define consumers as the final users of goods and services (*uitendelijke user van goederen en diensten*). With this formulation, Hondius wants to differentiate between the last non-consumer (medium consumer) and the last consumer.<sup>28</sup> Based on Article 1 paragraph (1) of the UUPK, consumer protection is all efforts to ensure legal certainty to protect consumers. With the emergence of the law, it is hoped that

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<sup>24</sup> AZ. Nasution, *Consumers and Law* (Jakarta: Pustaka Sinar Harapan, 1995), p. 71.

<sup>25</sup> Abdul Halim Barkatullah, *Consumer Protection Law* (Bandung: Nusa Media, 2008), p. 8.

<sup>26</sup> AZ. Nasution, *Consumer Protection Law: An Introduction*, p. 13.

<sup>27</sup> *Ibid.*, p. 13.

<sup>28</sup> *Ibid.*, p. 14.

consumer protection efforts in Indonesia will be more guaranteed, ensuring that consumers in Indonesia feel safer and more comfortable when buying goods and services in this country. Consumer protection arrangements are carried out by, among others:

- a. Creating a consumer protection system that provides access and information, as well as ensuring legal certainty.
- b. Protecting the interests of consumers in particular and the interests of all business actors in general;
- c. Improving the quality of goods and services;
- d. Protect consumers from deceptive and misleading business practices;
- e. Combine the implementation, development, and regulation of consumer protection with the field of protection in other fields.<sup>29</sup>

## **2. Rights and Obligations of Consumers and Business Actors**

### **a. Consumer Rights and Dignity**

Consumer rights are not only regulated in laws and regulations but also in international declarations, including in the International scope, the introduction to "the general rights of consumers delivered by President John F. Kennedy to the Congress of the United States on March 5, 1962." General consumer rights consist of:<sup>30</sup>

- 1) The right to a safe product;
- 2) The right to be informed about the product;
- 3) The right to choose a definite choice in choosing a product;
- 4) The right to be heard about the interests of the customer.
- 5) To create certainty and justice in implementing consumer protection, Indonesian law, through Article 4 of the UUPK, also regulates consumer rights, namely:
  - a) The right to comfort, security, and safety in consuming goods and/or services;
  - b) The right to accurate, transparent, and honest information about the condition and warranty of goods and/or services;
  - c) The right to be heard and to lodge a complaint about the goods and/or services used;

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<sup>29</sup> Husni Syawali and Neni Sri Imaniyati, *Consumer Protection Law* (Bandung: Mandar Maju, 2000), p. 7.

<sup>30</sup> Sudjana and Elicentris Gultom, *Trade Secrets in the Perspective of Consumer Protection* (Bandung: Keni Media, 2016), p. 89.

- d) The right to obtain advocacy, protection, and appropriate consumer protection dispute resolution efforts;
- e) The right to be treated or served properly, honestly and non-discriminatory;
- f) The right to compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or are not as they should be.

Consumers not only have rights but also obligations that must be fulfilled in the implementation of consumer protection laws. Article 5 of the Consumer Protection Law (UUPK) regulates consumer obligations, including:

- 1) Reading or following information and procedures for the use of goods and/or services for safety and security purposes;
- 2) Act in good faith when making transactions to purchase goods and/or services;
- 3) Make payments at the agreed exchange rate;
- 4) Properly participate in legal remedies to resolve consumer protection disputes.

#### **b. Rights and Obligations of Business Actors**

The UUPK regulates the rights and obligations of business actors as a means to provide legal certainty and equal protection for these actors. The rights of business actors are regulated in Article 6 of the UUPK, namely:

- 1) The right to receive payment under an agreement regarding the conditions and exchange rates of goods and/or services traded;
- 2) The right to receive legal protection from the actions of consumers with bad intentions;
- 3) The right to conduct an appropriate self-defense in the legal settlement of consumer disputes;
- 4) The right to rehabilitation of good name if it is legally proven that consumer losses are caused by the goods and/or services being traded;
- 5) Rights are regulated in other statutory provisions.

Meanwhile, the obligations of business actors are regulated in Article 7 of the UUPK, namely:

- 1) Have good intentions in carrying out their business activities;

- 2) Provide true, transparent, and honest information about the condition and warranty of goods and/or services, as well as explain use, repair, and maintenance;
- 3) Treat or serve consumers honestly and without discrimination;
- 4) To ensure the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
- 5) Provide opportunities for consumers to test and/or try certain goods and/or services, as well as provide guarantees and/or guarantees for goods made and/or traded;
- 6) Provide compensation, restitution, and/or replacement if the goods and/or services received or used are not in accordance with the agreement.

### **c. Prohibited Actions for Business Actors**

Business actors are prohibited from producing goods and/or services that are not in accordance with laws and regulations or quality standards of goods and/or services listed on the label or label on the goods and/or services themselves, as stipulated in Article 8 of the UUPK. In addition to regulating prohibitions for business actors, UUPK Article 8 paragraph (4) of the UUPK explains that: regarding the obligations of business actors, namely if they trade goods and/or services that are not in accordance with laws and regulations or quality standards listed on the goods and/or services produced, they must withdraw them from circulation. It can be concluded in general that the substance of this article focuses on two things, namely:<sup>31</sup>

- 1) Prohibition of producing goods and/or services; and
- 2) Prohibition of trading in the relevant goods and/or services.

Article 9 of the UUPK states that business actors are prohibited from offering, promoting, or advertising goods and/or services excessively, without complying with the terms and guarantees promised for the goods and/or services. The prohibition on business actors regulated in the UUPK results in violations of the prohibition being qualified as an unlawful act. The goal is to encourage orderly trade and create a healthy business climate. This order is a form of consumer protection because it prohibits ensuring that products traded in the public are not carried out in an unlawful manner, such as

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<sup>31</sup> Ahmadi Miru & Sutarman Yudo, *Consumer Protection Law* (Jakarta: Rajagrafindo Persada, 2007), p. 65.

misleading practices when offering, promoting, advertising, trading, or distributing counterfeit goods and/or services, or as a result of an piracy activity.

<sup>32</sup>Other prohibitions for business actors are contained in the following articles:

- 1) Article 10 of the UUPK prohibits business actors from providing misleading information about the goods and/or services produced.
- 2) Article 12 of the UUPK prohibits business actors from providing information that is not intended to be carried out as previously mentioned. The prohibition regulated for business actors in Article 12 of the UUPK aims to "avoid disorderly trade and an unhealthy business climate, in addition to protecting consumers from misleading activities."<sup>33</sup>
- 3) Article 13 of the UUPK prohibits business actors from "offering, promoting, advertising goods and/or services, including medicines, supplements, medical devices, and health services by promising to provide gifts in the form of goods and/or other services".
- 4) Article 17 of the UUPK is an article that specifically regulates the behavior of advertising business actors. Based on Article 17 of the UUPK, business actors are prohibited from deceiving consumers by producing advertisements that provide misleading information about the quality of goods and/or services, and are prohibited from producing advertisements that violate ethics/laws and regulations.

### **3. Regulation of Business Actors' Responsibility for the Dissemination of Misleading Information Through Advertisements Reviewed from Laws and Regulations**

The liability of business actors in civil matters can be categorized into 2 two. *First*, claim compensation based on default. *Second*, claims for damages based on unlawful acts. <sup>34</sup> A form of liability that can be sued against business actors in the form of civil if it is proven that they have caused losses to consumers.

#### 1) Claims for Damages Based on Default

Compensation obtained for default results from non-fulfillment of principal obligations or additional obligations, which can be in the form of performance

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<sup>32</sup> *Ibid.*, p. 91

<sup>33</sup> Ahmadi Miru & Sutarman Yado, Consumer Protection Law, p. 95.

<sup>34</sup> *Ibid*, p. 127.

obligations, additional obligations, or guarantee/warranty obligation agreements.<sup>35</sup>

The default form can be:

- a. Not doing what he should be doing;
- b. To carry out what he promised, but not as promised;
- c. Doing what he promised, but it was too late;
- d. Doing something that, according to the agreement, he was not allowed to do.<sup>36</sup>

Negligence by business actors can result in various sanctions or penalties. The law on negligent business actors can be divided into 4 (four) types, namely:

- a. Paying for the losses suffered by consumers is called compensation;
- b. Cancellation of the agreement;
- c. Pay the case fee if the case is resolved in court.

A business actor can be said to have committed a default if the business actor has a promise to the consumer but cannot fulfill the promise as promised due to negligence. To determine when the business actor has neglected his obligations, it can be seen from the content of the agreement. If the business actor defaults, then the responsibility becomes the responsibility of the business actor. To file a lawsuit based on this default, consumers must be able to prove that there has indeed been an agreement born from a contract between the consumer and the business actor concerned.

#### 1) Claims for Damages Based on Unlawful Acts

The provisions of the unlawful act state that: every act that violates the law and harms another person, obliges the guilty person to compensate for the damages.<sup>37</sup>

Claims for compensation based on unlawful acts do not need to be preceded by a contract between the business actor and the consumer, so that the compensation is granted. This means that in order to claim compensation based on unlawful acts, the following elements must be met: claims can be filed by each aggrieved party, even if there has never been an agreement between the business actor and the consumer. Thus, third parties can also claim compensation. To be able to claim compensation, the loss must be the result of an unlawful act.<sup>38</sup> This means that to be able to claim compensation based on unlawful acts, the following elements must be met:

- a. The act must be contrary to the law;  
Unlawful acts are no longer just unlawful, but unlawful acts can be:
  - (1). Fighting for the rights of others;
  - (2). Contrary to the legal obligations of the maker;
  - (3). Contrary to good decency;

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<sup>35</sup> Ibid., p. 128.

<sup>36</sup> Subekti, *The Law of Treaties* (Jakarta: Intermasa, 2005), p. 45.

<sup>37</sup> "Article 1365 of the Civil Code" (n.d.).

<sup>38</sup> Ahmadi Miru & Sutarman Yado, *Consumer Protection Law*, p. 129.

(4). Contrary to the cautious attitude that must be observed in society's association with oneself or other objects <sup>39</sup>

b. There are drawbacks

Real losses suffered by aggrieved consumers, where the concrete situation is taken into account with the subjective circumstances of the person concerned. In addition, it is also possible to think objectively, in which he can completely or partially detach himself from the concrete circumstances of the aggrieved person. <sup>40</sup> Compensation in the UUPK only includes the return or replacement of goods of equal or equivalent value, or health care or compensation based on applicable laws and regulations. <sup>41</sup> The compensation adopted in the UUPK is subjective.<sup>42</sup>

c. There is a cause-and-effect relationship.

The doctrine of causality is essential to examine the causal relationship between unlawful acts and the resulting losses, allowing business actors to be held accountable. The first theory of causality is Von Bun's teaching, which is the theory of *Conditio Sine Qua Non*, which means that the absolute condition under which an effect occurs is the cause of an impact. This teaching is also called the Theory of Equality. This teaching is too broad to be used in civil or criminal law.<sup>43</sup>

#### **4. The Responsibility of Business Actors is reviewed from Law Number 8 of 1999 concerning Consumer Protection.**

The responsibility of business actors for consumer losses in Indonesia in the UUPK is explicitly regulated in one chapter, namely Chapter VI, starting from Article 19 to Article 28, as follows:

- 1) The responsibility of business actors is regulated in Article 19, Article 20, Article 21, Article 24, Article 25, Article 26, and Article 27;
- 2) Proof is regulated in Article 22 and Article 28;
- 3) Dispute resolution for business actors who fail to fulfill their obligations to provide compensation to consumers is regulated in Article 23.

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<sup>39</sup> *Ibid.*, p. 130.

<sup>40</sup> *Ibid.*, p. 134.

<sup>41</sup> Article 19 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection.

<sup>42</sup> *Ibid.*

<sup>43</sup> Rosa Agustina, *Unlawful Acts* (Depok: FHUI Postgraduate, 2004).

The articles that regulate the responsibilities of business actors, in principle, are differentiated into:

- 1) Articles that expressly regulate the liability of business actors for losses that are detrimental to consumers, namely, Article 19, Article 20, and Article 21. The liability of business actors in general can provide compensation for damage, pollution, or losses to consumers due to consuming goods produced or traded. Provisions regarding compensation can be made in the form of: return or replacement of goods of equal or equivalent value, health care, or by providing compensation in accordance with the provisions of applicable laws and regulations. Compensation must be provided within 7 (seven) days from the date of the transaction.<sup>44</sup>

Individuals involved in the advertising industry are responsible for the ads they create and any impact that may arise from those ads.<sup>45</sup> By imposing responsibility on the importer of goods as the maker of imported goods. If the import of goods is not carried out by agents or representatives of foreign producers, the importer of services is obliged to be responsible as a foreign service provider if the agent or representative of the foreign service provider does not provide foreign services.<sup>46</sup>

- 2) The transfer of responsibility from one business actor to another business actor says that a business actor who sells goods to another business actor is responsible for a consumer compensation claim or lawsuit if:
  - a. Other business actors sell to consumers without making changes to goods and/or services;
  - b. Other business actors, who are involved in buying and selling transactions, are not aware of any changes in goods and/or services made by business actors, or are not aware of changes in examples, quality, and composition.<sup>47</sup>

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<sup>44</sup> Article 19 of Law No. 8 of 1999 concerning Consumer Protection.

<sup>45</sup> *Ibid.*, Article 20.

<sup>46</sup> *Ibid.*, ch. 21.

<sup>47</sup> *Ibid.*, Article 24.



## 5. The Responsibility of Business Actors Reviewed from Law Number 32 of 2002 concerning Broadcasting

### 1) The Responsibility of Business Actors Reviewed from Law Number 32 of 2002 concerning Broadcasting

The responsibilities of business actors in the Broadcasting Law are not explicitly regulated. The Indonesian Broadcasting Commission (KPI), both at the central and regional levels, has the same functions, authorities, duties, and obligations. What distinguishes Central KPIs and Regional KPIs is their responsibility. The Central KPI is responsible to the President and submits reports to the House of Representatives of the Republic of Indonesia. Meanwhile, the Regional KPI is responsible to the Governor and submits a report to the DPRD of the Republic of Indonesia (RI). Regarding the responsibilities of business actors in the advertising sector, it is regulated in the UUPK, the Press Law, the Broadcasting Law, the Food Law, the Government Regulation on Food Labels and Advertisements, the Government Regulation on Cigarette Safety and the Decree of the Minister of Health of the Republic of Indonesia Number 368/Men.Kes/SK/IV/1994.<sup>48</sup>

### 2) Business Actors' Responsibilities Reviewed from Indonesian Advertising Ethics

The responsibilities set forth in the Indonesian Advertising Ethics apply to advertisers if, in the creation or production, publication, or dissemination of advertising material content, the advertisement violates the Advertising Procedures and Procedures and causes harm to consumers. Responsibilities are carried out jointly which can be applied to advertising business actors in making and distributing advertisements as follows:<sup>49</sup>

#### a. Advertisers

Responsible for the correctness of information about the product provided to the advertising company, including providing directions, limitations, and message input so that there are no *over-claims* of the true capabilities of an item.

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<sup>48</sup> "Article 53 of Law No. 32 of 2002 concerning Broadcasting," Pub. L. No. 32 (2002).

<sup>49</sup> Indonesian Advertising Ethics, *Indonesian Advertising Etiquette and Procedures* (Jakarta: Indonesian Advertising Council, 2020).

b. Arau Agent Advertising Company

Responsible for the accuracy of the persuasive elements he includes in the advertising message through the sorting and selection of information provided by the advertiser, as well as exploring and utilizing his creativity.

c. Medical advertising

Responsible for advertising equality between the advertisements broadcast and the socio-cultural values of the audience profile. In carrying out their cooperation, the three parties interested in advertising have signed a written agreement or contract, because it concerns the burden of responsibility they bear. In addition, the agreement can also be used as evidence in court if consumers sue for harmful advertising.

The rules in the Indonesian Advertising Procedures are as follows:<sup>50</sup>

1. Advertising must be honest, responsible and not contrary to applicable law;
2. Advertisements must not be offensive and/or degrading to dignity, religion, morals, customs, cultures, ethnicities, and groups;
3. Advertising must be imbued with the principles of healthy competition.

### **3) Efforts to Resolve Consumer Disputes in Accordance with Law Number 8 of 1999 concerning Consumer Protection**

Based on Article 45 paragraph 1 of the UUPK, consumers are given the right to sue business actors who have caused losses to consumers through authorized institutions. In addition to giving consumers the right to sue, as mentioned above, the UUPK has also given consumers the right to choose how their dispute resolution efforts will be handled, i.e. through court or out of court.<sup>51</sup> Consumer dispute resolution can be divided into 2 (two) parts, namely out-of-court dispute resolution and in-court dispute resolution.<sup>52</sup>

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<sup>50</sup> *Ibid.*

<sup>51</sup> Article 42 of Law No. 8 of 1999 concerning Consumer Protection.

<sup>52</sup> Susanti Adi Nugroho, *The Process of Consumer Dispute Resolution Reviewed from the Procedural Law of the Region and the Obstacles to Its Implementation* (Jakarta: Kencana, 2008), p. 121.

#### **4) Consumer Dispute Resolution Efforts at BPSK**

One of the dispute resolution cases that occurred in Jakarta can be solved by providing administrative sanctions to business actors from BPSK. In the case of N brand cars with type M, the legal remedy chosen by the aggrieved consumer is an out-of-court dispute resolution effort through BPSK, which is carried out through arbitration. Based on the decision, the business actors refused and filed an objection to the District Court, on the grounds that they felt they had been cornered and believed that the consumer had committed fraud.

Consumers choose to resolve disputes out of court through BPSK, which is conducted through arbitration, because the confidentiality of disputes between consumers and business actors is guaranteed, delays caused by procedural and administrative matters can be avoided, and can choose arbitrators who have sufficient experience and background regarding disputed issues in a fair and honest manner. The results of the BPSK decision are binding on both parties through direct procedures that can be implemented immediately.

The disadvantages of dispute resolution through BPSK carried out through arbitration include the fact that the outcome of the arbitration award is highly dependent on the arbitrator's technical ability to provide a decision that satisfies both parties. Although the arbitrator is an expert, it is not necessarily able to meet with the parties. Not bound by a prior arbitration award or not recognized by legal precedent. Therefore, there may be an adverse arbitration award. The execution and recognition or enforcement of an arbitral award depends on the recognition and trust of the arbitral institution itself. The arbitration process will take a lot of time, effort, and money, which is not cheap if there is one party who is dissatisfied and still wants to challenge the arbitration award.

#### **5) Consumer Dispute Resolution Efforts in District Court**

Dispute resolution in district court involves business actors filing lawsuits. The district court rejected the objections, so the business actors appealed the BPSK decision, claiming that the decision unfairly targeted them and involved consumer fraud. Business actors choose the district court because of the formal process. The judge makes a decision, focusing on the legal facts, and the process is conducted openly and promptly. The decision is final and binding. However, district court dispute resolution has drawbacks, such as judges who are inexperienced in certain cases. The presiding judge must have knowledge of various laws, but since neither

party can vote, the judge must remain neutral and fair. There is also an unstable legal certainty, which can be a problematic time.

Based on the results of the BPSK Assembly Decision and the Supreme Court Decision, the claim of the N-type M brand car advertisement stating that the fuel consumption of an economical car is said to violate Article 9 paragraph (1) letter (k) and Article 10 letter (c) of the UUPK. The application of this article is appropriate because it can ensnare business actors with the elements contained in the article. Business actors are prohibited from offering, promoting, or advertising goods incorrectly or as if offering something that contains uncertain promises.

#### **IV. CONCLUSION**

Based on the results of the research and discussion, it can be concluded that, from a normative perspective juridically, there are still weaknesses in regulating the responsibility of business actors to disseminate misleading information through advertising, because the UUPK, the Broadcasting Law, and the Advertising Ethics have not explicitly addressed this issue. This jeopardizes consumers' right to accurate and honest information, and there is no legal certainty or justice for consumers, especially when there is a discrepancy between the conditions of the advertised and actual products. As a result, consumers have difficulty demanding legal accountability from business actors and have to navigate the time-consuming and expensive dispute resolution process.

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