

Form of Business Responsibility for Consumer Losses Caused by Misleading Promotions

*Mulia Akbar Santoso, Muskibah, Johni Najwan

Faculty of Law, Universitas Jambi, Indonesia

*E-mail: santosoakbar7@gmail.com

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ABSTRACT

The purpose of this study is to analyze the form of accountability of business actors when there are losses experienced by consumers who consume products because they are interested in the promotion of these products. To analyze the objectives of this study, this research method uses normative juridical research methods, using a statutory approach obtained through literature and documents. Legal responsibility must have a basis, where accountability has to do with the violation of regulation as well as an obligation that must be carried out based on agreements or legal provisions. Business actors who provide misleading information in marketing their products can be held responsible for losses suffered by consumers due to promotions.

KeyWords: Consumer, Accountability of Business Actors, Misleading Promotion.



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INTRODUCTION

The right to information is a very important right for consumers because the inadequate information conveyed to consumers can also be a form of product defect, which is known as an instruction defect or a defect due to inadequate information. The right to clear and correct information is intended so that consumers can get a correct picture of a product. With this information, consumers can choose the product they want or according to their needs and avoid losses due to errors in product use. Information that is the consumer's right includes the benefits of using the product and the side effects of using the product.

This information can be conveyed either verbally or through promotions delivered by producers, both through print and electronic media. This information can have a significant impact on increasing the efficiency of consumers in choosing products and increasing their loyalty to certain products so that it will provide benefits for companies that meet their needs. Thus, the fulfillment of this right will benefit both consumers and producers.

How important consumer rights are, giving birth to thoughts that argue that consumer rights are "the fourth generation of human rights," which is the keyword in the conception of human rights for future developments (Barkatullah, 2007). Ahmadi said, "The tendency of consumers to consume a product is closely related to the information consumers obtain about a particular product through advertisements, which are generally made by producers who are not bound by an agreement with consumers and are commonly called advertising agencies" (Miru, 2008). Promotional manufacturers are advertising agencies whose job is to design promotional displays for one product. Advertising agencies only make ad designs according to requests from business actors who want to promote their products.

In the practice of relations between producers and consumers, promotion is one of the most widely used marketing instruments and sources of information by business actors.

Promotion includes both commercial (advertising) and community service (Shaddiq et al., 2021). According to Article 1 Number 6 UUPK, "promotion" (Abbas et al., 2023) is an action to introduce a product and attract the attention of consumers to buy the product being offered. Information dissemination about goods and/or services can be done in promotions through various media, whether through mass media, billboards, brochures, or electronic media such as television, radio, social media, and others. Consumers need to be protected because they are considered to have an unequal "position" with business actors. This imbalance concerns the field of education and the bargaining position held by consumers. Consumers are frequently rendered powerless in the face of a stronger position than business actors (Sutedi, 2008).

Protection of a weak consumer position can be started by fulfilling consumer rights in buying and selling a product; by fulfilling consumer rights, there is no loss that results in harm to the consumer's position in the buying and selling process. The principles in advertising and promotion of goods and services are also important, need socialization, and must be understood by consumers as well as business actors. Based on the general principles of the advertising code of ethics drawn up by the Indonesian Advertising Ethics (hereinafter referred to as EPI) regarding guidelines for procedures governing the business practices of advertisers, it is determined that "advertising must be honest and responsible; it does not offend or demean; it does not cause unfair business competition"(Dixon, 2007).

The certainty of consumer protection legal rules in written form has become a trademark, which must be outlined in a statutory regulation. "With the existence of laws and regulations that stipulate consumer rights, more legal certainty can be provided" (Zia & Saleh, 2022). Legal protection for consumers using state intervention to protect consumer rights in the form of legal regulations Law must protect the consumer from his weak bargaining position. This is because one of the characteristics and purposes of the law is to protect the community (Sidharta, 2008). In 1999, Indonesia responded to this consumer protection problem by passing Law No. 8/1999 concerning "Consumer Protection, hereinafter referred to as the Consumer Protection Act (UUPK)". Consumers have an interest in legal protection about the quality and quantity of goods and/or services. The fact that consumers occupy an important position in the continuity of the economy (Rianti, 2007).

The systematics of this research can be explained as follows: First, it will be explained how important information is for consumers to choose the product to be consumed. Then, secondly, it is explained that in marketing activities to attract many consumers, it is not uncommon for business actors to mislead in providing information in the form of promotions. Third, as a result of this misdirection, consumers feel aggrieved because their rights to correct information have been damaged. Fourth, business actors must bear some responsibility as a result of this deceptive promotion.

DISCUSSION

Discussion The issue of liability is related to violations of regulation as well as an obligation that must be carried out based on agreements or legal provisions, as explained in the definition of responsibility, namely "the state of being responsible for an obligation, which includes judgment, skill, ability, and capacity." "The obligation to answer for an act done and to repair or otherwise make restitution for any injury it may have caused" (Tadeus, 2021).

As a result of the violations and defaults committed, it creates an obligation for the

party who commits the violation or default to make repairs or provide compensation to other parties. Grammatically, responsibility can also mean the condition of being obliged to bear everything; if there is something, you may be prosecuted, blamed, sued, and so on. The responsibility of business actors in advertising activities arises as a result of violations of the prohibitions in the UUPK as stipulated in Articles 9, 10, 12, and 13, which relate to various types of prohibitions in offering, promoting, and advertising goods and/or services, as well as the provisions of Article 17 UUPK specifically intended for advertising companies. In addition, violations can also be made of the prohibitions in various laws and regulations, such as the Civil Code, the Criminal Code, Government Regulations (PP), and administrative regulations. Seeing the diversity of arrangements for advertising activities, the liability of business actors can also be classified into several forms of liability, namely civil, criminal, and state administrative liability, according to the type of violation and the articles alleged against the business actor, which can be explained as follows:

2.1 Civil Responsibility for Misleading Promotions

In general, claims for compensation experienced by consumers as a result of using a product, whether in the form of material, physical, or mental losses, can be based on several of the provisions already mentioned, of which "broadly there are only two categories, namely claims for compensation based on default and demands for compensation based on unlawful acts" (Miru, 2008). This is a form of liability that can be civilly sued against a business actor if it is proven to have caused harm to consumers. "Deficiency compensation is obtained as a result of failure to fulfill main obligations or additional obligations in the form of obligations for main achievements or guarantee obligations in the agreement" (Charny, 1990). These forms of default can be in the form of: 1) did not do what he promised to do; 2) carrying out what was promised, but not as promised; 3) He did what he promised but was too late; and 4) Do something that, according to the agreement, you are not allowed to do (Subekti, 2002).

Filing a lawsuit based on default can use the basis of Article 1243 of the Civil Code, which reads: Compensation for costs, losses, and interest due to non-fulfillment of an agreement only becomes required if the debtor, after being declared negligent in fulfilling the agreement, continues to neglect it or if something that must be given or made can only be given or made within the grace period that has been exceeded. The definition in this article states that a person can be said to have committed a breach of contract if he has made a promise to someone but does not fulfill the performance as promised due to negligence. So, to determine when someone has neglected their obligations, look at the contents of the agreement.

If a business actor makes a mistake, the responsibility falls squarely on the shoulders of the business actor in question. To file a lawsuit based on this default, the victim (the consumer who uses the product) must prove that it is true that an agreement has occurred that was born from an agreement between him and the business actor concerned. Then the provisions for unlawful acts are regulated in Article 1365 of the Civil Code, which reads: Any unlawful act that causes harm to another person obligates the person who caused the loss to make amends.

In contrast to claims for compensation based on an agreement born of an agreement (due to default), in the case of "claims for compensation based on unlawful acts," it is not necessary to be preceded by an agreement between producers and consumers so that compensation claims can be made by each party who is harmed, even though there is no relationship between the producer and the consumer agreement (Landes & Posner, 1979). Thus, third parties can also sue for damages. To be able to claim compensation, the loss

must be the result of an unlawful act. This means that to claim compensation, the following elements must be met: 1) The act must be against the law: Unlawful acts are no longer just breaking the law, but these unlawful acts can be in the form of: a) Violating the rights of others; b) Contrary to the legal obligations of the maker; c) In violation of decency; and d) Contrary to the attitude of caution that should be heeded in social interactions with oneself or other people's objects (Maruna & Mann, 2006); 2) There are downsides: Blombergen stated that if we talk about losses, we can think of a concrete and subjective understanding, namely the actual losses suffered by the injured person, where "the concrete situation is taken into account with the subjective circumstances of the person concerned." Apart from that, we can also think objectively, where we completely or partially release ourselves from the concrete situation of the person who is aggrieved and heads in a normal direction (Michelman, 1986). Compensation under the Consumer Protection Act only includes refunds, replacement of goods or services of the same or equivalent value, health care, and/or compensation by the applicable laws and regulations. This means that the compensation adopted in the Consumer Protection Act is subjective. (Schwartz & Silverman, 2005); 3) There is a causal relationship: The teaching of causality is very important for examining the existence of a causal relationship between unlawful acts and the losses incurred so that the perpetrators can be held accountable. The first theory of causality is Von Buri's teaching, which is the "Theory of *Conditio Sine Qua Non*," which means that an absolute requirement for an effect to arise is to be the cause of an effect. This teaching is also called "Equivalent Value Theory." This teaching is too broad, so it is not used in civil or criminal law". (Justice & Meares, 2014); and 4) There is an error: The term "mistake" (*schuld*) is also used in the sense of "negligence" (*onachtzaamheid*) as opposed to "intentionality." Error (*schuld*) encompasses both negligence and intent. Thus, the notion of error includes two things, namely error in a broad sense and error in a narrow sense. mistakes in a broad sense when there is negligence and intentionality. while errors in the narrow sense are only intentional.

If the elements of the unlawful act of the business actor are present, they must be fulfilled and can be proven. Within the scope of UUPK, business actors are responsible for providing compensation for consumer losses due to buying their products. In the event of non-fulfillment of the contract by default or an act against the law, it can be sued for compensation. Determining the amount of compensation is not something that can be easily ascertained because it must be proven. As explained in the previous section, to determine losses due to a default or unlawful act in a transaction, Law No. 8/1999 concerning "Consumer Protection regulates forms of compensation". The form of compensation based on UUPK can be in the form of: first, the return of the down payment; second, the replacement of goods or services of similar or equivalent value; and third, health care and/or the provision of compensation by the provisions of the applicable regulations. In general, the compensation given to or demanded by the party who suffers a loss is usually in the form of money. The amount of fees or money demanded can be determined based on the characteristics of laws and regulations. The law can determine the maximum amount of fees awarded or based on the consideration of a judge's decision by looking at and observing the conditions of the loss arising from the fault or negligence of one of the parties. Articles 19–28 of the UUPK regulate the accountability of business actors. In law, especially private (civil) law, every claim must have a strong basis, and it is this basis that makes a person liable. In basic civil law, there are two responsibilities, namely: 1) Liability on the basis of fault: "Specifically, the responsibility that can be born due to default, the emergence of unlawful acts, and actions that are not careful" and 2) Responsibility on the basis of risk: "Specifically, the responsibility that must be borne as a risk that must be taken by a business actor for his business activities" (Keating, 2001).

Every agreement has a promise that must be fulfilled. A promise is an obligation that must be fulfilled by the party who makes it, and the party who is promised has the right to demand that the promise be fulfilled. Promises create legal ties; in the event that one of the parties does not fulfill the promise, a default or breach of contract occurs, and for this reason, the party demanding fulfillment of the promise can demand compensation. In general, promises and guarantees can be grouped into two categories, namely: 1) *Express Warranty*: That is a promise stated explicitly; and 2) *Implied Warranty*: That is a promise stated implicitly. Then, the implied warranty can be differentiated again:

– *Implied warranty of merchantability*

Entrepreneur guarantees: 1) The goods comply with the description in the agreement in such a way that they can be accepted for general trading; 2) In buying and selling general, quality should be decent (around the middle belt of general); 3) The goods must be suitable for the purpose for which they are used; 4) Items of the same kind in a contract should be the same and in the same form; 5) If the agreement or the nature of the goods requires that they be packaged, they must be carried out neatly and accompanied by information and instructions; 6) The quality and quantity of the goods must be in accordance with the promises and real descriptions given and those on the goods or their packaging; and 7) Other implicit guarantees can originate from the trading habits of certain goods or certain regions or locations, or from the habits of the parties arising from previous transactions.

– *Implied warranty of fitness for a particular purpose*

Here, the buyer clearly expresses his intention to the seller to use a product to achieve the results he wants, and the buyer really believes in the ability of the business actor to choose goods that are suitable for the purposes and objectives that the buyer wants. From the description above, it appears that in order for consumers to be able to obtain compensation for using a defective product and vice versa, the business actors can be held accountable, and it is implied that there is a legal relationship between them. The agreement as we know it has four conditions: agreement, ability, certain things, and also lawful reasons. The first two conditions are subjective conditions, where if an agreement is not fulfilled, it threatens to be cancelled, and the next two conditions are objective conditions; if they cannot be fulfilled, then the agreement is null and void.

In terms of the relationship between business actors and consumers, in theory, an automatic agreement will occur every time there is a transaction, but it is not given too much attention. In the case of buying and selling, every time a transaction occurs, of course all the terms of the agreement have been fulfilled, such as the agreement, skills, certain things (products), and legal reasons. In the case of a misleading promotion that causes consumers to buy a product, but the information they receive is wrong, then the agreement that occurs in the transaction is obtained through fraud. "From the legal point of view of the agreement, incorrect or incomplete information can be categorized as fraud or misdirection, and this can be used as a reason to demand cancellation of the agreement" (Markel, 2005). Article 1321 of the Civil Code, which explains this matter, reads that there is no valid agreement if the agreement is obtained due to oversight, fraud, or coercion.

The obligations of the parties in advertising activities to be held liable civilly can arise based on contractual liability, product liability, or professional liability. The use of the three forms of accountability is tailored to the party who will be held accountable and considers contract availability as a basis for filing claims.

Contractual Liability

Contractual Liability is a civil responsibility on the basis of an agreement or contract between business actors (both goods and services) for losses suffered by consumers as a result of consuming the goods they produce or utilizing the services they provide. Thus, "a distinctive feature of this contractual liability is the existence of a contractual relationship in the form of an agreement or contract as the legal basis governing the relationship between business actors and consumers" (Liverman, 2004). The development of contractual responsibility is strongly influenced by the principle of privity of contract, which states that business actors only have the obligation to protect consumers if a contractual relationship has been established between them and consumers. In addition, business actors cannot be blamed for matters other than what was agreed upon, and consumers may only sue based on a breach of contract. If there is no contractual relationship, then the business actor cannot be held accountable (no privilegium, no liability principle).

Observing contractual relations in marketing activities, of course, can only be found in regulating legal relations between business actors and advertising companies, as well as promotional media. Consumers are not one of the parties directly involved in agency contracts, such as business actors, advertising companies, and promotional media. Therefore, the possibility for consumers to file a lawsuit for default related to misleading promotional information is not possible based on the privity of contract principle.

Several legal experts in Indonesia still see that there is a possibility for consumers to hold parties responsible for advertising activities by filing a lawsuit for default. As stated by AZ Nasution, who considers that promotion or advertising is very closely related to the activity of offering goods and/or services for sale or use by consumers, "In messages advertising goods and/or services, it is not uncommon to expressly state "promises" to provide a prize in the form of other goods or services, discount prices, etc., which will certainly attract consumers" (Kannan, 2001). Statements made in the form of promotions are, of course, made on purpose and have a specific purpose. Such a statement can be interpreted as a statement of will to make an agreement, and if the statement is responded to and agreed upon by interested consumers, an agreement will occur.

The acts of offering to sell goods and/or services constitute a statement of will and the conditions associated with the offer, including civil activities that are the object of regulation in the 3rd book of the Civil Code concerning engagements, especially engagements that arise from agreements or agreements. In accordance with AZ Nasution's opinion, it can be concluded that the act of conveying statements that are untrue, misleading, and deceiving consumers through promotional media has resulted in defects in the elements of the agreement as one of the legal requirements of an agreement as stipulated in Article 1320, Article 1321, 1328, and 1338 of the Civil Code.

The provisions as contained in the articles of the Civil Code can be used as a legal basis for providing protection for consumers, namely by making misdirection of promotional information an action that can cause defects in the elements of the agreement related to the validity of an agreement. With the presence of an element of fraud in the promotional information conveyed to consumers, the agreements obtained by consumers and business actors in conducting transactions occur because of consumer oversight, so this can be used as an excuse for consumers to request cancellation of the agreement in question.

From a consumer protection point of view, the opportunity provided by the Civil Code to request cancellation of agreements containing defects of will is certainly felt to be insufficient, bearing in mind that consumers have, of course, more or less suffered losses as a result of deception by business actors. Therefore, acts of misleading promotional information can be used as a basis for holding business actors, advertising companies, and

promotional media accountable based on defaults (broken promises) or unlawful acts (onrechtmatiggedaad, article 1365 of the Indonesian Civil Code), related to a lawsuit for damages in advertising.

There is a Supreme Court Decision No. 659 K/Pdt.Sus/2012 that can be used as a legal basis for consumers to hold business actors accountable based on contractual liability. From the consideration of the Supreme Court's decision, statements in promotions can be said to be promises of business actors according to the Civil Code, so that consumers can demand accountability of business actors based on defaults (broken promises). As stated in the newspaper regarding the promotion of the Nissan March, "whereas the petitioner decided to buy a Nissan March, one of his considerations was because he was interested in the advertisements for the Nissan March, both in newspapers and online internet media, that the Nissan March's fuel consumption was 18.5 km/liter". Further consideration of the Supreme Court's decision that business actors who advertise or promote products that do not match what was promised in the brochures or advertisements can be said to have committed an "unlawful act" (onrechtmatiggedaad, article 1365 of the Indonesian Civil Code). The assessment that the information obtained by consumers through brochures can be used as evidence to be considered by judges in consumer lawsuits against business actors. The actions of business actors in the form of incorrectly conveying information through promotions, which are detrimental to consumers, can be categorized as "default" because brochures are considered offers and promises that are contractual in nature, so that the contents of brochures are considered agreements in a sale and purchase agreement, even though they are not stated explicitly. The above opinion considers both the promises in the brochure and the promises in the contract. Thus, the actions of business actors who deviate from the promises in the brochures can be considered acts of default by business actors. so that consumers can file a lawsuit against parties involved in advertising activities by using the default lawsuit mechanism.

Productliability

Productliability interpreted as responsibility for losses caused by the use or misuse of a product or related to consumer goods. Product liability was initially applied to product defects caused by errors in the production process. In this case, it is sufficient for the consumer to prove that the product he is consuming is indeed defective and results in a loss. Meanwhile, the presence or absence of negligence or errors in the process of producing goods and/or services is the responsibility of the business actor. It is the responsibility of the business actor to prove the production of goods and/or services (reverse proof system). The next development of this product responsibility concept is to expand the responsibility of the business actor, which is not only limited to the presence of product defects but also includes responsibility for the non-conformance of promises contained in advertisements with the actual conditions of products traded to consumers. The thing behind this development is the thought of placing advertising activities as part of trading activities, which are a continuation of the production process, so that it is appropriate that the promises contained in promotions are adjusted to the conditions of the products produced by business actors.

Proof of this can be seen from the provisions of Article 8 Paragraph 1 of the UUPK, which places production activities in conjunction with trading activities as follows: "*Business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promise stated on the label, etiquette, description, advertisement, or sales promotion of said goods and/or services*".

Broadly speaking, the prohibitions imposed in Article 8 of the UUPK can be divided into two main prohibitions, namely: 1) Prohibition regarding the product itself, which does

not meet the proper requirements and standards for consumer use or use by others; and 2) Prohibition regarding the availability of incorrect and inaccurate information that misleads consumers.

The responsibility of business actors in the context of product responsibility can be contractual (agreement) or based on law (lawsuit based on unlawful acts), but the emphasis on product responsibility is based on law (Baucus & Near, 1991). Product liability is a civil law institution derived from tort liability and combined with absolute responsibility (strict liability), regardless of the offender's guilt. Through the institution of accountability for business actors based on unlawful acts, advertisers and consumers do not need to base their claims regarding the existence of contracts. However, it is enough to prove that there are four elements as determined by Article 1365 of the Civil Code, namely: 1) Illegal act; 2) There is a business actor's mistake; 3) Consumers have suffered losses; and 4) Losses experienced by consumers are the result of unlawful acts committed by business actors.

Of the four consumer obligations, the obligation to prove the wrongdoing of business actors is a relatively difficult obligation for consumers to fulfill. Because, in addition to requiring certain skills, in general, business actors as parties who must provide compensation to consumers will not easily admit mistakes, even though they have actually made them. Technically, in the case of providing misleading promotional information, the business actor is the party that knows best the accuracy of the information conveyed in the promotion. Therefore, the UUPK adheres to the principle of inverted proof by placing business actors as parties who must prove the truth of promotional information. This is confirmed in the provisions of Article 28 UUPK, namely: Proving whether there is an element of error in the claim for compensation as referred to in Article 19, Article 22, and Article 23 is the burden and responsibility of the business actor. The application of the reverse proof principle will certainly greatly assist consumers in holding business actors accountable.

Professional liability

If product liability is more aimed at the business actor's products in the form of goods, then professional responsibility is aimed at the business actor's products in the form of services. According to Komar Kantaatmaja, "professional responsibility" is a legal liability in relation to professional services provided to clients. The legal basis for professional liability to clients can be divided into: 1) Based on contract law; and 2) Based on the law on unlawful acts against third parties.

2.2 Criminal Responsibility of Business Actors

In order to create a deterrent effect for perpetrators of violations of advertising provisions, it is possible to impose criminal sanctions as well as file for civil liability. This is expressly stated in Article 19, paragraph (3), of Law No. 8/1999 concerning Consumer Protection, that the provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of a criminal charge based on further evidence regarding the existence of an element of error. Even though there is a provision for civil compensation in addition to the filing of criminal charges, the civil compensation will still be considered something that can mitigate the punishment of the perpetrators of promotion violations in the criminal investigation process. Meanwhile, the application of criminal law norms in UUPK, along with state administration law norms, civil law, and procedural law, can be seen as a rational effort to tackle various forms of crime.

Business actors, in carrying out their business activities, have duties and obligations to create a business climate that remains healthy and supports the national economy.

Therefore, business actors are held responsible for the implementation of these duties and obligations, namely through the application of legal norms, propriety, and upholding the customs that apply in the business world. The application of criminal law norms in the Consumer Protection Act, together with state administrative law norms, civil law, and procedural law, can be seen as a reasonable effort to deal with various forms of crime.

The application of existing legal norms must be truly precise; for example, in imposing sanctions, "for any violations committed by business actors, legal sanctions are imposed on them, both administrative sanctions and criminal sanctions" (Sinaga & Ferdian, 2020). Any activity by business actors that is contradictory in terms of creating a good and healthy economic climate can be categorized as a crime and subject to sanctions. The imposition of sanctions is important considering that creating a healthy business climate requires seriousness and firmness. For this, sanctions are a tool to return things to their original state when a violation has occurred (rehabilitation), as well as a preventive tool for other business actors so that the same actions do not happen again (Makarov et al., 2005). With sanctions, perpetrators who violate can be given sanctions that aim to create a deterrent effect so that other violations do not happen again. Business actors can be prosecuted for criminal threats as stipulated in Article 61 UUPK, which reads: *Criminal prosecution can be carried out against business actors and/or their management*. The form of criminal liability imposed on business actors can be seen in Article 62 paragraph (1) UUPK, which states that business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a letter b, letter c, letter e, paragraph (2), and Article 18 shall be subject to imprisonment for a maximum of 5 (five) years or a maximum fine of IDR. 2,000,000,000.00 (two billion rupiahs).

Article 62 paragraph (2) UUPK also states that business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and f are sentenced to imprisonment for a maximum of two years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah). Article 63 UUPK regulates additional sanctions imposed on business actors who violate the provisions of the article above, namely: 1) confiscation of certain goods; 2) announcement of the judge's decision; 3) compensation payment; 4) orders to stop certain activities that cause consumer losses; and 5) obligation to withdraw goods from circulation; orf revocation of a business license. For accountability in the field of administration regulated in Article 60 UUPK, namely the payment of compensation of a maximum of IDR 200,000,000 for violations of the provisions in the article: 1) Article 19 paragraphs (2) and (3) UUPK regarding failure to pay compensation; 2) Article 20 of the UUPK regarding advertising that does not meet the requirements; 3) Article 25 UUPK regarding negligence in providing spare parts; and 4) Article 26 UUPK regarding failure to fulfill the promised warranty or guarantee.

The public accountability described above states several aspects of violations that can be subject to sanctions both administratively and criminally. Promotions, where there is a misdirection signal against consumers based on the provisions, can be prosecuted criminally, especially in the administrative field, as in Article 20, which states that the advertising business actor must be responsible for the promotion produced and all the consequences caused by the promotion, as well as the provisions of Article 26, which require the business actor to fulfill the warranty or guarantee contained in the promotion of a product. Thus, public accountability can be imposed on misleading promotions. Opportunities for the imposition of criminal sanctions for violations of advertising provisions are made possible based on the provisions of Article 62, paragraphs (1) and (2), of Law No. 8 of 1999 concerning Consumer Protection, that: 1) Business actors who

violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1), letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.- (two billion rupiahs); and 2) Business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and f, shall be punished with imprisonment for a maximum of 2 years or a maximum fine of IDR 500,000,000 (five hundred million rupiah).

Some promotional violations that can be punished under the provisions of Article 62 of Law No. 8 of 1999 include violations of advertising activities that can be subject to criminal penalties in the first group as stipulated in Article 8, Article 9, Article 10, Article 13 Paragraph (2), Article 17 Paragraph (1) letter a, letter b, letter c, and letter e, and Article 17 Paragraph (2) UUPK. Meanwhile, advertising activities that can be subject to criminal penalties in the second group are as regulated in Article 12, Article 13 Paragraph (1), and Article 17 Paragraph (1), letters d and f, of the UUPK.

All forms of promotional violations as stipulated in the UUPK can be subject to criminal sanctions, in the form of imprisonment or fines. For violations of advertising activities in the first group, a person will be subject to a maximum imprisonment of 5 years or a maximum fine of IDR 2,000,000,000 (two billion rupiahs), while violations of advertising activities in the second group will be subject to a maximum imprisonment of 2 years or a maximum fine of IDR 500,000,000 (five hundred million rupiahs).

The weakness of the formulation of criminal sanctions in Article 62 UUPK is that the criminal sanctions that can be imposed are still alternative in nature, namely by using the formula "or" between the threat of imprisonment and fines, so that it is possible to impose only one criminal sanction against a crime committed by the perpetrator. To further exacerbate the threat of criminal sanctions in Article 62 of the UUPK, it is possible to impose additional criminal sanctions in the UUPK, in the form of: 1) Confiscation of certain goods; 2) announcement of the judge's decision; 3) compensation payment; 4) orders to stop certain activities that cause consumer losses; 5) obligation to withdraw goods from circulation; or 6) Revocation of business license.

The imposition of additional criminal sanctions in the form of compensation payments is a new paradigm in the Consumer Protection Law, which is more oriented to the interests and rights of victims as a substitute for the Criminal Code system, which has no legal orientation towards the interests and rights of victims of criminal acts. When public prosecutors are about to file criminal charges at trial under this new paradigm, they should file additional criminal charges in the form of payment of compensation.

In addition to the criminal sanctions in the UUPK, actors in the advertising business can also be subject to criminal sanctions based on the provisions of the Criminal Code. The imposition of the Criminal Code is made possible based on the Transitional Provisions of Article 64, as well as Article 162 paragraph 3 of Law No. 8 of 1999. Especially in Article 62 paragraph (3) of Law No. 8 of 1999, it was determined: "*For violations that result in serious injury, serious illness, permanent disability, or death, the applicable criminal provisions apply*". Misleading information on the promotion of goods and services can have quite a serious impact on consumers, not only in terms of the number of consumers who are harmed but as a result of misinformation that can endanger the health of consumers and even cause death.

Considering the potential dangers that can arise from providing misleading promotional information to consumers, the imposition of articles in the Criminal Code is not only regarding fraud articles that carry a maximum prison sentence of four (four) years in prison, such as Articles 378, Article 383, Article 386, and Article 390 of the Criminal

Code, but criminal articles with more serious penalties can also be imposed, for example the provisions in Chapter VII of Crimes That Bring Danger to the General Security of Humans or Property, Article 204 of the Indonesian Criminal Code, with the full reading as follows: 1) Anyone who sells, offers to sell, accepts, or distributes goods knowing that the goods are dangerous to a person's life or health and that their nature is dangerous faces a maximum of fifteen years in prison; and 2) If a person dies because of that act, he is guilty of being punished by life imprisonment or temporary imprisonment for a maximum of twenty years.

This article regulates the behavior of a person offering, giving, or distributing something to other people that he knows could endanger the life or health of that person. In fact, he did not notify the person concerned about the dangerous nature of these items, which could threaten the life or health of another person. In addition, offering in Article 204 of the Criminal Code can not only occur when the seller of goods sells the goods in question, but also offers them through advertisements (Gmirin, 2018). A new criminal law is used when other legal instruments are no longer powerless to protect consumers (*ultimum remedium*). Instead, "*the Consumer Protection Act has started a new paradigm*", where criminal law is used together with other legal instruments (*primum remedium*)" (Rahmawati, 2013).

2.3 Accountability in State Administration

Accountability in the state administration, as understood by the public, is generally directed at sanctions in the form of temporary suspension of activities, revocation of business licenses, and so on, as a follow-up to the government's authority in regulating, managing, and controlling various activities in people's lives, including making laws and regulations, granting permits or licenses, planning, and providing subsidies. Therefore, the imposition of administrative sanctions can be found in various laws and regulations that regulate various activities in people's lives.

Utilization of administrative sanctions to hold business actors accountable can also be found in the UUPK, namely as stipulated in Article 60, paragraphs (1) and (2): The Consumer Dispute Settlement Agency can impose administrative sanctions in the form of determining compensation of up to Rp. 200,000,000 (two hundred million rupiah) against business actors who commit violations against or within the framework of: 1) Failure to provide compensation by business actors to consumers, in the form of refunds or replacement of similar goods and/or services, as well as health care or compensation for losses suffered by consumers; 2) Losses occur as a result of advertising production activities carried out by advertising business actors; and 3) Business actors who are unable to provide after-sales guarantee facilities, both in the form of spare parts and their maintenance, as well as providing guarantees or guarantees that have been previously determined, both apply to business actors who trade goods and/or services.

The activity of producing advertisements by advertising business actors (Article 20 UUPK) is one of the activities that can be subject to administrative sanctions by BPSK if the advertisements produced by these business actors violate the provisions of the UUPK or result in causing harm to the community. Unlike the administrative sanctions that are commonly known to the public, the administrative sanctions imposed by BPSK based on Article 60 of the Consumer Protection Act turned out to be in the form of stipulating compensation in the form of a maximum of Rp. 200,000,000 (two hundred million rupiah). This is not only indicated by the figure Rp. 200,000,000 (two hundred million rupiahs), but also by the designation of Article 19 paragraphs (2) and (3), Article 20, Article 25, and Article 26 UUPK. These articles are articles that require responsibility for the payment of

compensation from business actors to consumers as a result of consuming the goods or services produced, as a result of advertising activities, as a result of not providing spare parts or repair facilities, as well as as a result of business actors not fulfilling the guarantees or guarantees agreed upon or promised.

The application of administrative sanctions in the form of imposing compensation on business actors is in line with the new concept that UUPK wants to develop to provide sanctions that not only create a deterrent effect on business actors but can also provide benefits to consumers. This compensation is expected to be able to cover all losses suffered by consumers and all costs and expenses incurred by consumers during the event at BPSK. In the context of developing administrative sanctions regarding advertising activities, it is necessary that, in the formulation of a special law on advertising, new administrative sanctions be applied in the form of an obligation for advertising business actors to make corrective advertising. Through the information in this repair advertisement, advertising businesses can improve the perception of consumers who have experienced misinformation and prevent them from experiencing any future harm or losses. As a comparison, corrective advertising has been used by several countries to protect advertising consumers; for example, in the Northern Territory of Australia Food Act 2005, Section 128, a court may order corrective advertising.

“On finding a person guilty of committing an offence against this act or the regulations, the court may make one or both of the following orders: 1) an order requiring the offender to disclose in a particular manner to the public, to a particular person or to a particular class of persons specified information of a specified class which the offender possesses or to which the offender has access; and 3) an order requiring the offender to publish advertisement at his or her own expense and the manner, at the times and in the terms specified in the order” (Nugroho, 2022).

The United States itself, through the Federal Trade Commission (FTC), as one of the advertising oversight agencies in the United States, has imposed remedial advertising as a form of administrative sanction for violations of advertising provisions. This can be seen in several forms of FTC sanctions, as follows: 1) Withdrawal orders have been approved (consent decrees). It is an order issued by the FTC, and the business actor gives approval to stop the advertisement; 2) Cease-and-desist orders is a legal order that orders business actors to stop activities that violate the law; 3) Compensation for objects (restitution) Consumers get compensation for any damage caused; 4) Additional statements (affirmative disclosures). If the advertisement does not adequately inform the consumer, an additional statement must be issued; and 5) Corrective advertising (Ohlhausen, 2014).

CONCLUSION

The responsibility of business actors regarding misleading promotions has been regulated in UUPK. Consumers can prosecute business actors who promote their products with misleading information in terms of criminal, civil, and administrative law. Considering the benefits that consumers can experience by imposing corrective advertising sanctions, it is fitting that this form of administrative sanction is included as a form of sanction for violations of the advertising provisions of future advertising laws.

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