



INFLUENCERS LIABILITY TOWARDS CONSUMERS FOR PRODUCTS PROVEN TO BE OVERCLAIMED

¹Adhellia Nabilah Hariri Putri, ²Nanda Safira Purwaningrum, ³Retno Sari Dewi, ⁴Erly Pangestuti, ⁵Bambang Slamet Eko S
Universitas Tulungagung

Keywords:

Legal Protection, Liability, Influencers, Consumers, *Overclaim*

***Correspondence Address:**

Email: ¹adhelianabila1208@gmail.com
²nanda.safira067@gmail.com
³r.saridewiunita@gmail.com
⁴sherly8080@gmail.com
⁵bambangtook@gmail.com

Abstract: In the current era of globalization, collaboration between businesses and *influencers* has become a common phenomenon. However, these kind of phenomenon also brings risks such as overclaiming on the promoted products which may cause disappointment, loss of consumer trust, and potential financial losses. Therefore, this study aims to determine how *influencers* are liable towards consumers for promoting overclaimed products. The research method used in this article is normative juridical method with secondary data in the form of laws and regulations, previous research, reference books, and publications. The research results in this article show that an *influencer* who endorses can be categorized as an advertising business actor. *Influencer* as an advertising business actor can be penalized, in the case of promoting overclaimed products *influencers* violate Article 17 Paragraph (1) point a and c UU No.8/99 with a maximum imprisonment of 5 years or a maximum fine of IDR 2 billion.

INTRODUCTION

Indonesia is one of the countries that has shown rapid development in the field of online businesses marketing driven by the use of internet or social media and innovation in digital marketing. Trading activities in electronic media are called *electronic commerce (e-commerce)*. According to the report made by (We Are Social, 2024) internet users in Indonesia have reached 185 million people as of January 2024, this number is equivalent to 66.5% of Indonesia's total population of 278.7 million people at the beginning of this year. This is a decrease of 10.5% compared to the previous year. As for the number of *influencers*, especially on the social media platform Instagram based on followers as of June 2023 according to (Nurhayati, 2023) listed in the following chart:

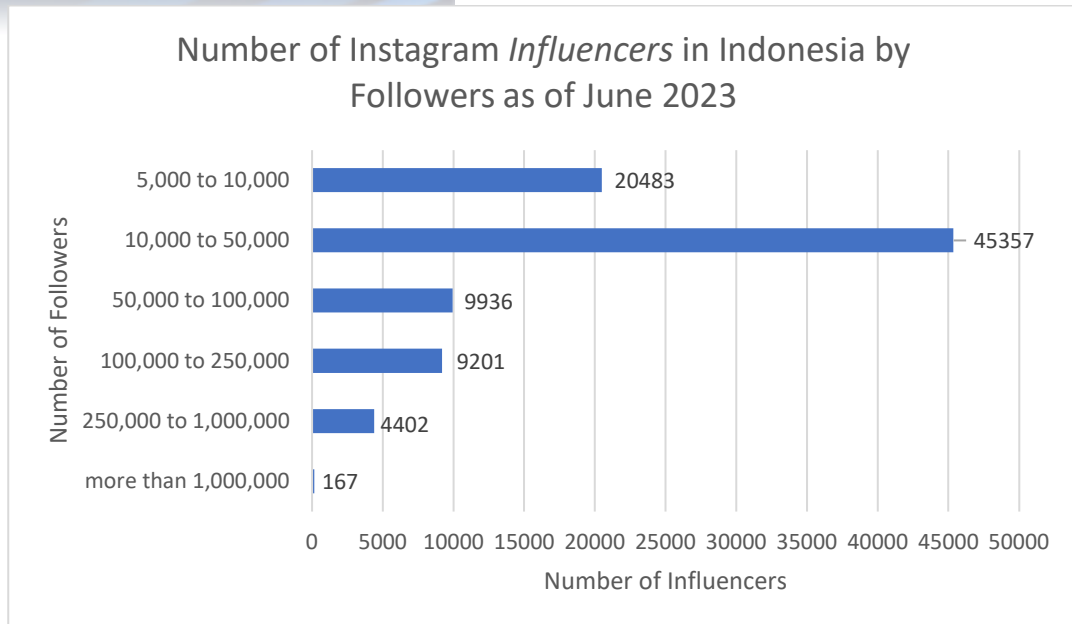


Chart 1.1

Source: (Nurhayati, 2023)

Based on the chart above, the number of *influencers* in Indonesia especially on Instagram as of June 2023 based on the number of followers are: a) 20.483 *influencers* with followers around 5.000 to 10.000; b) 45.357 *influencers* with followers around 10.000 to 50.000; c) 9.936 *influencers* with *followers* around 50.000 to 100.000; d) 9.201 *influencers* with *followers* around 100.000 to 250.000; e) 4.402 *influencers* with *followers* around 250.000 to 1.000.000; and f) 167 *influencers* who have more than 1 million *followers*. So based on this data as of June 2023, there are approximately 89.546 Instagram *influencers* in Indonesia.

In the current era of globalization, collaboration or cooperation between businesses and *influencers* has become an increasingly widespread phenomenon. This is reflected in the significant changes in marketing strategies adopted by many companies, namely moving from conventional methods to more modern methods or approaches that are integrated with social media. In addition, businesses have also realized the great potential of social media marketing strategies by using *influencers* who have the ability to reach millions of followers on social media platforms, making them a bridge between products or services and consumers. However, while there are many positive aspects of digital marketing, there are also negative aspect that need to be considered. One of the main issues that arise is the uncertainty that consumers experience regarding the claims made about the products or services promoted by *influencers*. In such cases, consumers cannot be sure that the product or service they ordered will meet the



expectations created by the *influencer*'s words. This can lead to disappointment, loss of trust in the *influencer* as well as the promoted brand, and potential financial loss.

The fact that is often found in society regarding products promoted by *influencers* is that there are some products or services which do not meet consumer expectations due to misleading and inaccurate product promotion. For example, if an *influencer* promotes an herbal drink product by claiming that by consuming the drink, consumers will be cured of all types of serious diseases. This occurs as a result of fraud committed by the business with the influencer in order to increase sales of the product. In such cases, the business actor may be subjected to criminal sanctions, while the influencer who advertises or promotes a product or service represent the business actor who endorses it. The position of *influencers* in UU No. 8/99 has not specifically regulated, which brings a question regarding their liability when their position in the Consumer Protection Law is not even regulated yet.

The emergence of negligence in promoting goods or services online today creates a gap between the laws and regulations governing how the legal risks of influencers promoting overclaimed products. Therefore, the responsibility of influencers needs to be considered. This is what cause the author to raise the title “*INFLUENCERS LIABILITY TOWARDS CONSUMERS FOR PRODUCTS PROVEN TO BE OVERCLAIMED*”

RESEARCH METHOD

The method used in this article is the normative juridical approach, namely a legal research method by examining library materials or secondary data in the form of laws and regulations, previous research, literature sourced from laws and regulations, reference books, publications, and other legal documents relating to *influencers*, overclaim products, and consumer protection.

RESULTS AND DISCUSSION

The understanding of production that is often circulated in everyday life is limited to activities to produce goods. In technical aspects, production is a process of transforming inputs into outputs, which includes the purpose of producing outputs and their inherent properties. Meanwhile, production in the context of marketing and business includes the process of making goods or services that will be offered to consumers. This process involves several stages, from planning, product development, to mass production. Products are the end result of this process,



there is also the definition of the products itself, namely everything that producers can offer to be noticed, requested, sought, purchased, used or consumed by the market as a fulfillment of the needs or desires of the related market.

Purchase intention is often used to analyze consumer behavior. Before deciding to make a purchase (Latief, 2018) said that consumer purchase intention is a behavior that arises in response to an object that shows consumers' desire to buy. A person's purchase intention is strongly related to feelings, just as consumers feel a need that must be met due to an impulse that can come from within (such as hunger) or outside (such as advertising) which attracts consumers to find more information about the product.

In the era of globalization, many businesses are turning to marketing strategies that are more efficient and responsive to market needs, often utilizing technology and *e-commerce* platforms or social media to reach consumers directly, one of which is through *influencers*. By utilizing the credibility and appeal of *influencers*, businesses can reach a wider audience or consumers and build trust in the products offered.

Influencer is taken from the words *influence* meaning to affect something, meaning that an *influencer* is someone who is influential or someone who influences others. *Influencer* is a figure or someone who is found on social media with a lot of followers and something that's conveyed on social media that can influence the behavior of their followers (Hariyanti & Waripraja, 2018). According to (Anjani & Irwansyah, 2020) *Influencer* is someone who has the ability to influence the purchasing decisions of their target audience through their competence, status, credibility, reputation, and relationship with their audience. Through uploading photos, videos, *electronic word of mouth* (Eworm) and interacting with audiences on social media, influencers are able to have an impact on their followers (Anjani & Irwansyah, 2020). In simple terms, an *influencer* is someone who can influence social media users, be it an artist, vlogger, blogger, youtuber, or other influential person, especially those who are active on social media. In accordance with the above statement, an effective way to promote or marketing in the current era of globalization is to use influencers, who are used as intermediaries by companies in marketing goods or services to their followers who can influence their buying intentions.

Indonesia is a state of law as stated in Article 1 Paragraph (3) UUD 1945 which upholds the rule of law in various aspects of life and one of them is the digital aspects. So from this statement, a conclusion can be drawn that all actions taken must be based on the law. Law becomes a protector for other humans with norms and rules in it. This is in line with the rampant



promotion of a product or service carried out by an influencer. Therefore, there is a need for legal protection for consumers if the product offered to them is proven to be overclaimed.

Overclaim comes from the English words “*over*” which means excessive and “*claim*” which means statement. According to (Pratiwi, 2024) *overclaim* refers to exaggerated claims regarding product benefits, such as in the context of skincare promising bright skin in seven days or eliminating acne overnight even though there is no scientific evidence to support these claims. So, it can be concluded that *overclaim* is a despicable act in the form of an exaggerated statement or a claim for a product.

One example of an *influencer* promoting an unlawful product can be seen in the case of *influencers* named Nella Kharisma and Via Vallen who promoted illegal cosmetics branded Derma Skin Care (DSC). Frans explained that the examination of the artists who promote the product began when the police received public reports of negative effects from Derma Skin Care branded cosmetics. This cosmetic is widely used by the public because it’s endorsed by artists. After an investigation, the police found that the cosmetics did not have a license to distribute and were dangerous.

Responsibility in the legal dictionary can be said as *liability* and *responsibility*, the term *liability* refers to legal responsibility, namely liability due to mistakes made by legal subjects, while the term *responsibility* is closely related to political responsibility (Ridwan, 2006). The concept of legal responsibility is closely related to the concept of legal obligation where a person is considered legally responsible for certain actions or that they bears legal responsibility means that they’re responsible for sanctions if their actions violate the law.

According to (Nur & Prabowo, 2011) the principle of responsibility is a crucial matter in consumer protection law. In the case of consumer rights violations, it is very important to have accuracy in analyzing which party is responsible and the extent to which the responsibility can be borne by the parties involved. The principles of consumer protection are designed to facilitate the determination of the party responsible for the losses suffered by the consumers (Dewi, 2021). These principles also functions to provide a limit to *influencers* in promoting a product given that there are still some *influencers* who are more concerned with sponsorship without considering the liability for the risks from the promotions they made.

In general, legal liability can be divided into two forms, namely civil legal liability and criminal legal liability. Civil liability can be divided into two types, which is based on contract and unlawful tort. Civil liability based on contract can only be enforced in the presence of a



contract that creates rights and obligations. And civil liability based on tort is based on legal relationships, rights and obligations. In Indonesia, the concept of tort or unlawful acts is regulated in Article 1365 of the Civil Code which states that “Every act that violates the law and brings harm to another person, obliges the person who causes the loss through their fault to compensate for the loss, so that an act is said to be a tort and can be held liable to pay compensation it has to fulfill these elements: 1) the act is against the law; 2) there must be a fault; 3) there must be a loss caused by the act; and 4) there is a causal relationship between the act and the loss.

Meanwhile the criminal legal liability is an obligation to pay retaliation that the perpetrator will receive from someone who has been harmed, besides that the liability carried out is not only related to the legal aspects but also involves moral and ethical values that apply in society. Criminal legal liability is intended to determine whether or not a person can be held criminally responsible for the actions they take.

Regarding the liability of the *influencer* in the case of promoting a product that is proven to be overclaimed, it is necessary to explore the *influencer*'s position in the case and whether the *influencer* can be said to be a business actor so that they can be held responsible and penalized by the sanctions contained in the legislation. According to the Head of Complaints and Legal YLKI, Sularsi explained when an *influencer* makes an endorsement with the aim of encouraging consumers to buy a product, it is an advertisement which is a source of information for consumers as well as a medium of communication between consumers and the product owner. Therefore, according to Sularsi, *influencers* who endorse can be categorized as advertising business actors because they work to carry out economic activities, namely in the form of endorse impressions (advertisement) for profit (Oktavira, 2021)

Therefore, *influencers* can be equated as advertising business actors according to UU No. 8/99 using the argumentum per analogiam method. Regarding advertising business actors, UU No. 8/99 on Consumer Protection Article 17 Paragraph (1) regulates that advertising business actors are prohibited from producing advertisements that:

- a. Deceiving consumers regarding the quality, quantity, materials, usefulness, and price of goods and/or service rates as well as the punctuality of receiving goods and/or services;
- b. Deceiving the guarantee/warranty of goods and/or services;
- c. Containing false, incorrect, or inaccurate information about goods and/or services;



- d. Does not contain information about the risks of using goods and/or services;
- e. Exploiting an event and/or a person without the permission of the authorized person or the consent of the related person;
- f. Violating ethics and/or the provisions of laws and regulations regarding advertising.

Business actors who violate the provisions of Article 17 Paragraph (1) point a, b, c, and e above are subjected to a maximum imprisonment of 5 years or a maximum fine of IDR 2 billion. Meanwhile the business actors who violate Article 17 Paragraph (1) point d and f are subjected to a maximum imprisonment of 2 years or a maximum fine of IDR 500 million. Therefore, in the event an *influencer* promotes a product that is proven to be overclaimed they violated the provisions of Article 17 Paragraph (1) point a and c, meaning the influencer is subjected to a maximum imprisonment of 5 years or a maximum fine of IDR 2 billion.

CONCLUSION AND RECOMMENDATION

Influencer is someone who can influence social media users, be it an artist, vlogger, blogger, youtuber, or other influential person, especially those who are active on social media. In accordance with the above statement, an effective way of promotion or marketing for the current era of globalization is to use *influencers*, who are used as a bridge by companies in marketing goods or services to their *followers* who can influence their buying intentions. However, there are problems arising from the use of *influencers* as a marketing strategy, namely the rampant fact that *influencers* promote products that are proven to be *overclaimed*. *Overclaim* comes from the English word “*over*” which means excessive and “*claim*” which means statement. According to (Pratiwi, 2024) *overclaim* refers to exaggerated claims regarding product benefits.

Regarding the liability of the *influencer* in the case that they promotes a product that is proven to be *overclaimed*, it is necessary to explore what is the *influencer*'s position in the case and whether the influencer can be said to be a business actor so that they can be held responsible and penalized by the sanctions contained in the legislation. The Consumer Protection Law does not explicitly regulate the position of *influencers*, but according to Sularsi, *influencers* who *endorse* products can be categorized as advertising business actors because they work in the form of economic activities, namely in the form of *endorse* impressions (advertisement) for profit. Article 17 Paragraph (1) of Consumer Protection Law regulates things that are prohibiting advertising business actors to produce advertisements that are misleading, incorrect,



or inaccurate. In the event that an *influencer* promotes *overclaimed* products they violated Article 17 Paragraph (1) point a and c meaning they will be subjected to a maximum imprisonment of 5 years or a maximum fine of IDR 2 billion.

Influencers as advertising business actors who promote products to consumer can be held accountable for the efforts made in the trade. In both online and offline sales promoted by the *influencers* should be able to provide clear and correct information related to the products that have been promoted. In the opinion of the authors, there are several suggestions that can be considered by the government to improve consumer protection, namely the Consumer Protection Law needs to be amended to clearly regulate the position of *influencers*, this includes establishing the legal responsibility of *influencers* in the event that the products that they promote are against the law and establishing strict sanctions for *influencers* who are proven to violate the law to provide a deterrent effect and protect consumers from misleading information.

REFERENCES

- Anjani, S., & Irwansyah, I. (2020). Peranan *Influencer* Dalam Mengkomunikasikan Pesan Di Media Sosial Instagram [*the Role of Social Media Influencers in Communicating Messages Using Instagram*]. *Polyglot: Jurnal Ilmiah*, 16(2), 203. <https://doi.org/10.19166/pji.v16i2.1929>
- Dewi, R. S. (2021). Point of View Research Management Juridical Study of Responsible of Business Actors if Consumers Experience Losses. *Point of View Research Management*, 2(1), 47–52. <https://journal.accountingpointofview.id/index.php/povrema>
- Hariyanti, N. T., & Waripraja, A. (2018). Pengaruh *Influencer* Marketing Sebagai Strategi Pemasaran Digital Era Moderen. *Jurnal Manajemen dan Inovasi (MANOVA)*, 1(2). <https://doi.org/10.15642/manova.v1i2.350>
- Latief, A. (2018). Analisis Pengaruh Produk, Harga, Lokasi dan Promosi terhadap Minat Beli Konsumen pada Warung Wedang Jahe (Studi Kasus Warung Sido Mampir di Kota Langsa). *Jurnal Manajemen dan Keuangan*, 7(1), 90–99. <https://doi.org/10.33059/jmk.v7i1.756>
- Nur, Y. H., & Prabowo, D. W. (2011). Penerapan Prinsip Tanggung Jawab Mutlak (Strict Liability) dalam Rangka Perlindungan Konsumen. *Buletin Ilmiah Litbang Perdagangan*, 5(2), 177–195.
- Nurhayati, H. (2023). *Number of Instagram Influencers in Indonesia as of June 2023, by follower count*. statista.com. <https://www.statista.com/statistics/1377731/indonesia-number-of-instagram-influencers-by-followers-count/>
- Oktavira, B. A. (2021). *Risiko Hukum Artis yang Meng-endorse Kosmetik Illegal*. hukumonline.com. <https://www.hukumonline.com/klinik/a/risiko-hukum-artis-yang-meng-iendorse-i-kosmetik-ilegal-lt5c90127000d5d/>



- Pratiwi, A. (2024). *Overclaim dan False Claim: Pentingnya Kritis terhadap Promosi Digital*. kumparan.com. <https://kumparan.com/annepratiwi-sasingunand/overclaim-dan-false-claim-pentingnya-kritis-terhadap-promosi-digital-23i3N5hRgBm/full>
- Ridwan, H. R. (2006). *Hukum Administrasi Negara*. Jakarta: RajaGrafindo Persada. https://books.google.co.id/books/about/Hukum_administrasi_negara.html?hl=id&id=6ohGAAAACAAJ&redir_esc=y
- We Are Social. (2024). *Digital 2024: Indonesia*. Datareportal.com. <https://datareportal.com/reports/digital-2024-indonesia>