

Analysis of the Criminal Liability of Influencers from the Perspective of Criminal Law

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Abstract

The development of information and communication technology has transformed product marketing from conventional media to digital marketing through social media platforms. In this context, influencers play a significant role in promoting products to the public. However, cases have emerged where influencers promote illegal products or products without proper distribution permits, potentially causing harm to consumers. The issues addressed in this study concern the legal regulation of product promotion through social media in Indonesia and the form of criminal liability of influencers who promote illegal products. This research employs a normative legal research method using statutory and conceptual approaches. Legal materials were collected through library research and analyzed qualitatively. The results show that product promotion through social media is subject to several legal provisions, including the Law on Electronic Information and Transactions, the Consumer Protection Law, and regulations concerning Electronic Commerce. Influencers may be held criminally liable if their promotional activities fulfill the elements of a criminal offense, particularly when there is an unlawful act, fault in the form of intent or negligence, and involvement in disseminating misleading information or facilitating the circulation of illegal products, which may be linked to the concept of participation under Articles 55 and 56 of the Criminal Code

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1. INTRODUCTION

The development of information and communication technology has brought significant changes to society, particularly in the fields of trade and product marketing. Social media is no longer used solely as a means of communication, but has also become a highly effective marketing tool for business actors. Platforms such as Instagram, TikTok, and YouTube enable product promotion to be carried out widely and rapidly to the public. In the practice of digital marketing, the phenomenon of influencers has emerged, referring to individuals who have influence on social media and are capable of affecting the decisions or behavior of their followers. Influencers often collaborate with business actors to promote products through digital content such as videos, photos, and product reviews. This marketing strategy is commonly known as endorsement or influencer marketing.

However, these developments have also given rise to various legal issues. One common problem is the promotion of products that do not have proper distribution permits or that violate legal regulations, such as unlicensed cosmetics, illegal drugs, unregistered

supplements, illegal investments, and products that mislead consumers. In some cases, influencers continue to promote such products without first verifying their legality.

Promoting illegal products can cause harm to the public as consumers. Consumers may suffer financial losses, health risks, or safety issues as a result of using products that do not meet legal standards. Therefore, a key question arises as to whether influencers can be held criminally liable when promoting products that violate the law.

In the Indonesian criminal law system, a person may be held criminally liable if the elements of an unlawful act, fault (*mens rea*), and the capacity to be held responsible are fulfilled. Provisions regarding parties who participate in or assist in the commission of a criminal offense are regulated in the Indonesian Criminal Code, particularly Articles 55 and 56, which govern complicity in criminal acts.

In addition, within the context of digital transactions and the dissemination of information on social media, provisions regarding the prohibition of misleading information are regulated under the Law on Electronic Information and Transactions. Article 28 paragraph (1) of the law prohibits any person from spreading misleading information that may cause harm to consumers in electronic transactions.

On the other hand, consumer protection is also regulated under the Consumer Protection Law, which prohibits business actors from providing false or misleading information regarding goods or services being marketed. Although influencers are not always directly classified as business actors, in digital marketing practices they often act as parties who assist in promoting products to the public. Legal issues arise when influencers promote products that turn out to be illegal or do not comply with legal requirements. In such circumstances, it is necessary to analyze whether influencers can be considered as parties who participate in committing a criminal offense, assist in a criminal act, or merely act as parties conveying promotional information.

This issue has also attracted attention in several previous studies. Research conducted by Leny Rosdiana on the liability of Instagram influencers (*selebgram*) in endorsing illegal cosmetic products shows that influencers can be held legally responsible if they intentionally promote illegal products. Such actions may even be linked to criminal provisions, such as Article 204 of the Indonesian Criminal Code and Article 382 bis of the Indonesian Criminal Code, particularly if the promotion causes harm or endangers consumers.

Another study conducted by Yulfin Tandi Buak on promotional services by influencers that deviate from the provisions of the Consumer Protection Law states that influencers can be held legally liable if the promotions they carry out contain misleading information or cause harm to consumers. The study explains that influencers may be subject to sanctions under Articles 9 and 17 of the Consumer Protection Law, as well as provisions under the Law on Electronic Information and Transactions, if there is an element of fault or negligence in the promotion they conduct.

In addition, research conducted by Sabila Rusydina on influencer liability in advertising illegal skincare products emphasizes that influencers hold an important position in the process of conveying information to consumers. Therefore, clear limitations of responsibility are necessary in promotional activities on social media. The study indicates that influencers can be held accountable if they are proven to have participated in disseminating information about illegal products that may harm consumers. Other studies have also highlighted aspects of consumer legal protection against illegal products promoted by influencers.

Research conducted by Ismi Azizah and her colleagues concludes that influencers are not only potentially subject to civil liability, but may also be held criminally liable if they

are proven to have promoted illegal products or disseminated misleading information to consumers through social media.

Based on these various studies, it can be understood that product promotion through influencers on social media carries complex legal implications, especially when the promoted products violate applicable laws and regulations. Legal issues arise when influencers promote products that turn out to be illegal or do not comply with legal requirements. In such circumstances, it is necessary to analyze whether influencers can be considered as parties who participate in committing a criminal offense, assist in a criminal act, or merely act as parties conveying promotional information.

Although several previous studies have examined the legal liability of influencers in promoting products on social media, most of them focus more on consumer protection aspects or civil liability. Therefore, this research differs from and offers an advantage over previous studies by emphasizing an **ANALYSIS OF THE CRIMINAL LIABILITY OF INFLUENCERS FROM THE PERSPECTIVE OF CRIMINAL LAW**, particularly by examining the possibility of influencer involvement in criminal acts through the concept of participation (*deelneming*) in criminal law, such as co-perpetration (*medepleger*), aiding and abetting (*medeplichtige*), or other forms of involvement.

Thus, this research is expected to provide a more comprehensive analysis regarding the limits of criminal liability of influencers in promoting illegal products on social media, as well as contribute to the development of criminal law studies related to the phenomenon of digital marketing.

Based on this background, the research problems can be formulated as follows: how is the legal regulation of product promotion through social media within the Indonesian legal system, and what forms of criminal liability can be imposed on influencers who promote illegal products.

2. METHOD

This research employs a normative legal research method, which aims to examine legal norms and statutory regulations related to the criminal liability of influencers in promoting products through social media, particularly when the promoted products are illegal or do not comply with applicable legal provisions. This research uses a conceptual approach, a statutory approach, and a comparative approach. The conceptual approach is used to analyze legal concepts related to criminal liability, participation in criminal acts, and the position of influencers in digital promotional activities. The statutory approach is carried out by examining various relevant legal provisions, such as the Indonesian Criminal Code, the Consumer Protection Law, and the Law on Electronic Information and Transactions, along with other related regulations, in order to understand the legal framework governing product promotion through social media. The collection of legal materials is conducted through library research by examining primary, secondary, and tertiary legal materials, which are then analyzed qualitatively to obtain conclusions regarding the forms of criminal liability of influencers who promote illegal products.

3. RESULT AND DISCUSSION

3.1 Legal Regulation of Product Promotion Through Social Media in Indonesia

3.1.1 The Development of Product Promotion in the Digital Era

The development of information and communication technology has brought significant changes to various aspects of society, including in the field of product marketing. Previously, product promotion was largely carried out through conventional media such as television, radio, and print media.

However, in the current digital era, promotional activities have increasingly

shifted to digital media that utilize internet networks. This transformation is influenced by the growing use of the internet and the development of various digital platforms that enable the rapid and widespread dissemination of information to the public.

Social media has become one of the most effective tools in marketing activities, as it is capable of reaching consumers in a short time while also allowing direct interaction between business actors and consumers. Various social media platforms such as Instagram, TikTok, and YouTube are widely used by business actors as promotional media to introduce products and services to the public. Through social media, product promotion can be carried out in various forms of digital content, such as images, videos, reviews, and live streaming, which are able to attract consumer attention in a more personal and interactive manner compared to conventional promotional methods.

In the practice of digital marketing, a phenomenon known as influencers has emerged, referring to individuals who have significant influence over their followers on social media. Influencers generally have a large number of followers and a high level of engagement with their audience, so that the opinions, recommendations, and reviews they share are often trusted by their followers. This trust enables influencers to shape consumer preferences and influence purchasing decisions when selecting or buying a product.

This marketing strategy that leverages the role of influencers is known as influencer marketing or endorsement. In this strategy, business actors collaborate with influencers to promote products through various forms of digital content such as photos, videos, reviews, and product testimonials uploaded on the influencers' social media accounts. Through this approach, product promotion functions not only as a means of providing information, but also as a persuasive tool capable of building brand image and consumer trust in the promoted products.

However, the development of promotional practices through influencers has also given rise to various legal issues. One common problem occurs when influencers promote products that do not comply with applicable legal requirements, such as products without distribution permits, products that are not registered with authorized institutions, or products containing misleading information for consumers. This situation has the potential to cause harm to consumers who rely on the information conveyed by influencers in such promotional content.

In addition, questions arise regarding the extent of the legal responsibility of influencers in these promotional activities, especially when the promoted products are proven to be illegal or in violation of the law. In practice, influencers often act as parties who convey promotional information to the public, while at the same time they receive economic benefits from endorsement activities. Therefore, it is important to conduct a deeper analysis of the position of influencers in product promotion activities on social media, as well as the possibility of legal liability, particularly criminal liability, when influencers promote illegal products that may harm consumers.

3.1.2 Regulation of Product Promotion in the Indonesian Legal System

Product promotion activities through social media are essentially part of electronic commerce. Along with the development of digital technology and the increasing use of the internet in economic activities, various forms of

transactions and product promotions are now conducted through digital platforms. Therefore, promotional activities on social media cannot be separated from the legal framework governing electronic commerce in Indonesia. In this context, product promotion through social media must comply with various statutory provisions regulating electronic transactions, consumer protection, and the dissemination of information to the public.

One of the regulations governing activities in the digital space is Law Number 11 of 2008 on Electronic Information and Transactions, as amended by Law Number 19 of 2016. This law regulates various activities carried out through electronic systems, including the dissemination of information in electronic transactions that may affect public interests. Article 28 paragraph (1) of the law stipulates that any person is prohibited from intentionally and without authority disseminating misleading information that results in consumer losses in electronic transactions. This provision serves as an important legal basis in assessing whether product promotion delivered through social media can be categorized as misleading information that has the potential to harm consumers.

In addition to the Law on Electronic Information and Transactions, product marketing activities are also regulated under Law Number 8 of 1999 on Consumer Protection. This law aims to protect consumers from unfair or harmful trade practices. Article 9 paragraph (1) of the Consumer Protection Law stipulates that business actors are prohibited from offering, promoting, or advertising goods or services in a misleading manner, as if such goods or services possess certain qualities, benefits, or characteristics that they do not actually have. Furthermore, Article 10 of the Consumer Protection Law also emphasizes that business actors are prohibited from offering or promoting goods and/or services in a manner that misleads consumers regarding the price, benefits, or condition of the goods or services being marketed.

In addition to these laws, regulations concerning electronic commerce can also be found in Government Regulation Number 80 of 2019 on Trade Through Electronic Systems. This regulation stipulates that business actors engaged in electronic commerce are required to provide complete and accurate information regarding the goods or services being traded in order to prevent consumer harm. This provision highlights that transparency of information is a fundamental principle in digital trade activities, including product promotion through social media.

Although influencers are not always directly classified as business actors, in digital marketing practices they often act as parties who assist in promoting products to the public through digital content created and disseminated to their followers. The role of influencers as conveyors of promotional information gives them significant influence over consumer purchasing decisions. Therefore, influencers inherently bear both moral and legal responsibilities to provide accurate, clear, and non-misleading information regarding the products they promote. If influencers promote products that turn out to be illegal or provide false information to consumers, such actions may give rise to legal liability, including the possibility of criminal liability if the elements of a criminal offense, as stipulated under applicable laws and regulations, are fulfilled.

3.1.3 Prohibition of Disseminating Misleading Information in Product Promotion

In product promotion activities, the delivery of accurate, honest, and non-misleading information is essential, as such information serves as the basis for consumers in deciding whether to purchase or use a product. False or misleading information can cause harm to consumers, as it may influence their decisions in a non-objective manner and potentially endanger their health, safety, and economic interests. Therefore, the law establishes clear limitations on the dissemination of inaccurate information in trade activities, including product promotion through digital media.

The prohibition against disseminating misleading information in electronic transactions is regulated under Law Number 11 of 2008 on Electronic Information and Transactions, as amended by Law Number 19 of 2016. Article 28 paragraph (1) of the law provides that any person is prohibited from intentionally and without authority disseminating misleading information that may result in consumer losses in electronic transactions. This provision indicates that the dissemination of information through digital media, including social media, must be carried out responsibly and must not contain elements of deception or manipulation that could harm the public.

In the context of product promotion by influencers on social media, misleading information can take various forms. For example, it may involve making claims about product benefits that do not reflect actual facts, providing false or exaggerated testimonials regarding the quality or effectiveness of a product, promoting products that do not have distribution permits from authorized authorities, or concealing important information about risks, side effects, or limitations of the promoted product. Such actions can create misleading perceptions among consumers, causing them to make purchasing decisions based on inaccurate or false information.

In addition to being regulated under the Law on Electronic Information and Transactions, the prohibition against disseminating misleading information is also governed by Law Number 8 of 1999 on Consumer Protection. Article 9 paragraph (1) of this law stipulates that business actors are prohibited from offering, promoting, or advertising goods and/or services in a false or misleading manner, or as if such goods possess certain qualities or benefits that they do not actually have. This provision emphasizes that all forms of promotion must be conducted honestly and transparently to prevent harm to consumers.

If the dissemination of misleading information is carried out through social media and results in consumer losses, the parties involved in such promotional activities may be held legally liable in accordance with applicable laws and regulations. In this context, not only business actors as producers or sellers, but also parties who assist in promoting the products, including influencers, may be held accountable if they are proven to have participated in spreading misleading information to the public. Therefore, it is important to understand the limits of influencer liability in product promotion activities on social media, so that digital marketing practices can be carried out responsibly and without causing harm to consumers.

3.2 Criminal Liability of Influencers Promoting Illegal Products

3.2.1 The Concept of Criminal Liability in Criminal Law

Criminal liability is a concept in criminal law which explains that a person may be held accountable for a criminal act they have committed if the act fulfills certain elements determined by law. In criminal law, there is a principle

known as *geen straf zonder schuld*, which means there is no punishment without fault. This principle emphasizes that a person cannot be subjected to criminal punishment if there is no element of fault on their part. Therefore, the imposition of punishment is not only based on the existence of an unlawful act, but it must also be proven that the perpetrator has fault in committing the act.

In criminal law doctrine, a person can only be held criminally liable if several essential elements are fulfilled, namely the existence of an unlawful act, the presence of fault on the part of the perpetrator, the capacity of the perpetrator to be held responsible, and the absence of justifying or excusing grounds. The element of an unlawful act indicates that the conduct is contrary to applicable legal provisions. The element of fault relates to the existence of intent (*dolus*) or negligence (*culpa*) on the part of the perpetrator in committing the act. Meanwhile, the capacity to be held responsible concerns the condition of the perpetrator, who is legally considered capable of understanding their actions and the consequences thereof. In addition, criminal liability cannot be imposed if there are justifying or excusing grounds as recognized in criminal law, such as a state of necessity or self-defense.

The concept of criminal liability forms part of the Indonesian criminal law system, which is primarily derived from the Indonesian Criminal Code. Several provisions related to criminal liability can be found in various articles of the Code, including Article 44, which regulates the capacity of a person to be held responsible, as well as Articles 48, 49, 50, and 51, which govern justifying and excusing grounds that may eliminate criminal liability. In addition, the Criminal Code also regulates parties who may be held liable in a criminal offense through the doctrine of participation, as stipulated in Articles 55 and 56, which provide that not only the principal offender may be punished, but also those who participate in or assist in the commission of a criminal act.

In the context of promoting illegal products through social media, influencers may be held criminally liable if it can be proven that they have committed an unlawful act and possess the element of fault in promoting such products. For instance, if an influencer intentionally promotes a product known to lack proper distribution permits, provides false information regarding the product's benefits, or disseminates misleading information to consumers, such conduct may give rise to criminal liability. These actions may be linked to Article 28 paragraph (1) of the Law on Electronic Information and Transactions, as amended, which prohibits the dissemination of misleading information that harms consumers in electronic transactions, as well as provisions under the Consumer Protection Law that prohibit misleading promotions or advertisements. If the elements of the criminal offense are fulfilled, the influencer may be held criminally liable in accordance with applicable legal provisions.

3.2.2 Participation in Criminal Acts by Influencers

In criminal law, a criminal offense is not always committed by a single individual, but may involve several parties who have different roles in the occurrence of the offense. In practice, there is a possibility that a criminal act is carried out jointly by multiple persons, either as principal perpetrators or as parties who assist in the commission of the crime. Therefore, criminal law recognizes the concept of participation in criminal acts, which governs the involvement of more than one person in a criminal event.

The concept of participation is regulated in the Indonesian Criminal Code, particularly in Articles 55 and 56. Article 55 paragraph (1) provides that those who may be punished as perpetrators of a criminal offense include persons who commit the act, those who order another to commit it, and those who participate in committing the act. This provision indicates that not only the principal offender who directly commits the crime can be held criminally liable, but also other parties who play a role in the occurrence of the offense. In criminal law doctrine, parties who jointly commit a criminal act are referred to as *medepleger*, namely individuals who act together with others in carrying out a criminal offense.

Furthermore, Article 56 regulates parties who assist in the commission of a criminal offense, known as *medeplichtige*. This article explains that individuals who intentionally provide assistance at the time the crime is committed, or who provide opportunities, means, or information to facilitate the crime, may be held criminally liable as accomplices. Thus, parties who do not directly commit the criminal act may still be held accountable if it is proven that they contributed to the occurrence of the offense.

In the context of promoting illegal products through social media, the concept of participation becomes relevant in analyzing the position of influencers in promotional activities. If an influencer knowingly promotes products that do not have proper distribution permits or that violate applicable legal provisions, such promotion may contribute to the wider circulation of illegal products in society. Under such circumstances, influencers may potentially be categorized either as participants in committing a criminal offense or as parties who assist in its commission, as regulated under Articles 55 and 56 of the Indonesian Criminal Code. Therefore, it is important to further examine the extent to which the role of influencers in product promotion on social media may give rise to criminal liability, particularly when such promotion is linked to the distribution of illegal products that harm consumers.

3.2.3 Elements of Intent and Negligence in the Promotion of Illegal Products

In determining the criminal liability of influencers, the element of fault is a crucial factor in criminal law. Fault serves as the basis for assessing whether a person can be held accountable for their actions. In criminal law doctrine, there is a principle known as *geen straf zonder schuld*, which means that there is no punishment without fault. This principle emphasizes that a person may only be subjected to criminal sanctions if it is proven that they possess fault in committing an unlawful act.

Fault in criminal law generally takes the form of intent (*dolus*) or negligence (*culpa*). Intent occurs when a person knowingly and willingly commits an act and understands the consequences of that act. In the context of promoting illegal products, intent may be established when an influencer is aware that the product being promoted is illegal, for example lacking proper distribution permits from authorized authorities, yet still consciously promotes the product to the public through social media. If such actions result in harm to consumers, the influencer may be held criminally liable, as they have intentionally participated in disseminating information about a product that violates legal provisions.

Meanwhile, fault in the form of negligence (*culpa*) occurs when a person fails to exercise proper care in carrying out an act, resulting in harmful consequences. In the context of promotional activities by influencers, negligence

may arise when an influencer does not conduct prior checks or verification regarding the legality of the product being promoted, such as ensuring whether the product has distribution permits from authorized authorities or whether the information regarding its benefits is accurate and accountable. In fact, as individuals who have influence over the public and a large number of followers on social media, influencers are expected to exercise a higher level of caution in conveying information about products to the public.

The legal basis concerning the element of fault and the capacity to be held responsible in criminal law can be found in the Indonesian Criminal Code, particularly Article 44, which relates to a person's capacity for responsibility. In addition, in the context of product promotion through electronic media, provisions regarding the dissemination of misleading information are regulated under Article 28 paragraph (1) of the Law on Electronic Information and Transactions, as amended, which prohibits any person from intentionally spreading misleading information that may cause harm to consumers in electronic transactions. Furthermore, the Consumer Protection Law also prohibits business actors from promoting goods or services with false or misleading information, as stipulated in Articles 9 and 10.

Thus, if it can be proven that an influencer has acted with intent or negligence in promoting illegal products through social media, the influencer may potentially be held criminally liable in accordance with applicable legal provisions. Therefore, it is important to further examine the limits of fault and responsibility of influencers in product promotion activities on social media to ensure that digital marketing practices do not cause harm to consumers.

3.2.4 Analysis of Influencer Liability from a Consumer Protection Perspective

In digital marketing activities, influencers are often viewed as parties who provide recommendations or assessments of a product to their followers on social media. These recommendations have a significant influence on consumer behavior, as influencers are generally perceived as trusted figures by their audience. Therefore, promotional content delivered by influencers, whether in the form of reviews, testimonials, or other types of endorsements, can affect consumers' decisions to purchase and use the promoted products.

If the product promoted by an influencer turns out to be illegal or does not comply with applicable legal requirements, this situation may potentially cause harm to consumers, both financially and in terms of health and safety. Consumers who rely on influencer recommendations may purchase or use such products without being aware that they lack proper distribution permits, do not meet safety standards, or contain inaccurate information regarding their benefits.

From a consumer protection perspective, the promotion of illegal products by influencers can be categorized as the dissemination of misleading information to consumers. This is in line with the provisions of Article 28 paragraph (1) of the Law on Electronic Information and Transactions, as amended, which prohibits any person from spreading misleading information that may result in consumer losses in electronic transactions. In addition, the Consumer Protection Law stipulates that business actors are prohibited from promoting or advertising goods and/or services in a false or misleading manner, as regulated in Articles 9 and 10. These provisions indicate that every party involved in conveying information about a product to the public bears responsibility to ensure that the information provided does not harm consumers.

In this context, influencers who participate in promoting a product to the public may be held legally liable if it is proven that they played a role in disseminating misleading information or in facilitating the distribution of illegal products. However, the determination of criminal liability cannot be made automatically and must take into account various relevant factors. These include the level of the influencer's knowledge regarding the legality of the product, the nature of the relationship between the influencer and the business actor producing or selling the product, and the extent to which the influencer's promotion contributed to consumer harm. By considering these factors, the imposition of criminal liability on influencers can be carried out in a more proportional manner and in accordance with the principles of justice in criminal law.

4. CONCLUSION

The development of information and communication technology has driven a shift in product marketing patterns from conventional media to digital marketing that utilizes social media as a promotional tool. In practice, influencers play an important role in promotional activities, as they are able to influence consumer preferences and decisions through reviews, recommendations, and endorsements delivered to their followers. However, product promotion through social media must still comply with applicable legal provisions in Indonesia, including Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016, Law Number 8 of 1999 on Consumer Protection, and Government Regulation Number 80 of 2019 on Trade Through Electronic Systems. These regulations emphasize that every party conveying information about a product to the public is required to provide information that is accurate, clear, and not misleading in order to prevent harm to consumers. Furthermore, influencers who promote illegal products may potentially be held criminally liable if their actions fulfill the elements of a criminal offense as regulated in criminal law, particularly where there is an unlawful act, fault in the form of intent or negligence, capacity to be held responsible, and the absence of justifying or excusing grounds. In this context, influencers may be regarded as parties who participate in or assist in the commission of a criminal offense, as regulated under Articles 55 and 56 of the Indonesian Criminal Code, especially when their promotional activities contribute to the dissemination of misleading information or the circulation of illegal products in society. Nevertheless, the determination of criminal liability for influencers must take into account various factors, such as the level of the influencer's knowledge regarding the legality of the promoted product, the nature of their cooperation with business actors, and the extent to which the promotion has caused harm to consumers.

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