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Consumer Protection of Dissemination of Advertisements Which is not According to Business Persons Based on the Responsibility Principles Absolute (Strict Liability)

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Abstract

This paper discusses the distribution of unsuitable advertisements by business actors based on the principle of absolute liability. The research method is a normative legal research study of the principle of law, researchers collect data consisting of primary, secondary, and tertiary data. The data collection technique is a literature study. Data analysis was carried out qualitatively and concluding the author using deductive thinking methods. This study concludes that consumer protection against the distribution of advertisements that are not by the brochure on housing advertisements can be done through legislation/regulation that is by providing legal rules that will ensure that consumers can receive legal protection and through consumer supervision from the government, the public, and by non-governmental consumer protection institutions. As well as legal protection given to consumers when a dispute occurs between housing businesses and consumers due to a lawsuit from consumers who feel disadvantaged can be passed through the judicial body by filing a lawsuit to the judiciary in the consumer's place of residence or through non-justice, namely through the Consumer Dispute Resolution Agency (BPSK). In the future, business actors must be more responsible for the accuracy of the correct information included in advertising messages and are responsible for the suitability of advertising messages distributed with the goods/services sold.

INTRODUCTION

No ad is purely informative and no ad is solely persuasive. In comparison, advertisements in the service sector, such as insurance and tourism, have a dominant informative element, while advertisements with many brands, such as advertisements for clothing and food, have a dominant persuasive element.¹ Producers must fulfill their obligations to guarantee consumer rights. The essence of advertisement for consumer protection is a promise from the parties who announce it; therefore advertising in all its forms

¹ Niken Tri Hapsari. *Seluk Beluk Promosi & Bisnis: Cerdas Beriklan untuk Usaha Kecil & Menengah*. (Yogyakarta: A+ Plus Books, 2010), 264-265.

binds these parties with the legal consequences.² Article 9 Number (1) of Law Number 8 the Year 1999 concerning Consumer Protection, hereinafter referred to as UUPK, business actors are prohibited from offering, producing, advertising goods and/or services incorrectly and/or as if:

1. The said goods have met and/or already had discounts, special prices, certain quality standards, certain styles or modes, certain characteristics, history, or certain uses;
2. The goods are in good condition and/or new;
3. The said goods and/or services have obtained and/or had sponsorship, approval, certain equipment, certain benefits, work characteristics, or certain accessories;
4. The said goods and/or services are made by a company that has a sponsor, agreement, or affiliation;
5. The goods and/or services are available;
6. The goods do not contain hidden defects;
7. The goods are completeness of certain goods;
8. The goods come from certain areas;
9. Directly or indirectly degrading other goods and/or services;
10. Using excessive words, such as safe, harmless, does not contain risks or side effects, there is a complete description;
11. Offer something that contains an uncertain promise.

Article 17 UUPK of advertising business actors is prohibited from producing advertisements which:

1. Deceiving consumers about the quality, quantity, material, use of the price of goods and/or service tariffs and the timeliness of receiving goods and/or services;
2. Fraud guarantees or guarantees of goods or services;
3. Contains false, wrong, or inaccurate information regarding goods and or services;
4. Does not contain information about the risks of using goods or services;
5. Exporting and/or someone without the permission of the authorities without the consent concerned;

² Frank Jefkins, *Op.Cit.* 26.

6. Violating the ethics and/or provisions of the legislation regarding advertising.

Advertising allows the public (consumers) to find out information about an item or service that is needed or used. This information includes product quality, safety, assets regarding various requirements and/or how to obtain them, product warranties or guarantees, spare parts supplies, the availability of after-sales services, and others related to it. Through advertising, entrepreneurs try to arouse consumer interest so that sales promoted in advertisements can increase.³ The case of the Beringin Setia Jaya housing brochure advertising violated the provisions, namely deceived consumers regarding the quality, quantity, materials, usefulness of the price of goods and or service rates as well as the timeliness of receiving goods and or services, containing false, wrong or inaccurate information regarding goods and or services and violates ethics and/or the provisions of laws and regulations regarding advertising. This case has violated the provisions stated in Article 17 Number (1) and Number (3). The advertisements in circulation should not contain elements of deceiving consumers regarding the quality, quantity, materials, usefulness of the price of goods and or service rates as well as the timeliness of receiving goods and or services and advertisements are prohibited from containing false, wrong, or inaccurate information regarding goods and or services;

Information obtained from Mr. Azrial who is the former chairman of the Pekanbaru City Consumer Dispute Resolution Agency, that the case of advertising that misleads consumers has occurred in Pekanbaru City, one of which is the case of distributing brochures in which brochures containing the condition of the house property advertised do not match the reality on the ground or should be, one of them as promised in the advertisement that there will be a garden in the housing complex. However, the reality obtained by consumers is not as promised by business actors in the brochure advertisement. Then consumers report that this is not by what is advertised and can harm consumers who do not know the true situation of the advertising results.

A brochure for Green Hill Resort City Housing which is located at Jl. Pasir Putih-Pandau Jaya Kampar, Pekanbaru City, from the picture above we can see that the advertised house is very good, complete with facilities such as (Waterpark Mermaid, 6 playgrounds, 24-

³ Abdul Munif. "Penegakkan Hukum Pidana Terhadap Iklan Yang Menyesatkan Di Wilayah Hukum Pengadilan Negeri Samarinda". *Jurnal Ilmu Hukum Fakultas Hukum Universitas Samarinda* 28, no. 1 (2013): 72.

hour security, City Walk, Mosque), neat and clean environment, the luxury of his house as if it were everyone's (consumers) dream house.

While what is listed in the brochure is not by the reality, the fact is that the house in Green Hill Resort City is not as beautiful as the one drawn, not as neat as the picture, the facilities are incomplete as described, so the Green Hill Resort City Housing brochure is a housing advertising brochure that is misleading consumers. Based on the description above, it is clear that consumers' rights have been violated by offering a product in the form of advertisements or brochures that contain uncertain promises as happened in the case of containing uncertain promises in the Green Hill Resort Citym Housing Brochure Advertising Brochure, other than that companies are not responsible by absolute responsibility or strict liability is used to ensnare business actors in marketing their products. From the background description of the problem, the researcher intends to research with the formulation of the problem how is consumer protection against the distribution of advertisements that are not by the brochure on Green Hill Resort City residential advertisements on Jalan Pasir Putih-Pandau Jaya Kampar?

This type of research used by the author is normative legal research, which is also called doctrinal legal research. Research that discusses this legal principle the writer uses because it is related to the dissemination of inappropriate advertisements by business actors based on the Civil Code, Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, Law Number 40 of 1999 concerning the Press, Law Number 32 the Year 2002 concerning Broadcasting and Law Number 1 the Year 2011 Concerning Housing and Settlement Areas and are guided by the principle of absolute responsibility (strict liability) and are guided by. Data sources are primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique is the literature review. Data analysis, which is obtained from the literature, is presented in the form of logical and systematic descriptions that link existing facts with various applicable regulations which are qualitative data.⁴

⁴ Iskandar. *Metode Penelitian Pendidikan dan Sosial (Kuantitatif dan Kualitatif)*. (Jakarta: Gaung Persada Press, 2008), 219.

CONSUMER PROTECTION AGAINST INAPPROPRIATE HOUSING ADVERTISEMENTS BASED ON LAW NUMBER 8 THE YEAR 1999 CONCERNING CONSUMER PROTECTION

Consumer protection against misleading advertisements as referred to in this paper is regarding the position of consumers legally, in matters relating to advertising activities carried out by mass media actors based on the rights and obligations of both parties by taking into account the provisions concerning advertising and analyzing it based on the Law Number 8 of 1999 concerning Consumer Protection. Advertising or advertising can be interpreted as a message that offers a product aimed at the public through media. However, the definition of advertising as referred to in this paper is focused on advertisements that mislead consumers, namely an advertisement that results in wrong and wrong views or thoughts of consumers regarding the advertised product so that in the end it is detrimental to the interests of the consumers themselves. In the advertising code of ethics, what is meant by advertising efforts are the following terms:⁵

1. Advertisers are companies that order advertisements to promote, market, and/or offer the products they distribute.
2. An advertising company is a company or agency whose line of business is designing or making advertisements for subscribers.

Efforts to protect consumers must first be done through the law. Legal regulations must be created to protect consumers and the responsibility of business actors or producers. Based on the aforementioned considerations, it is necessary to have a set of laws and regulations to protect the interests of consumers and business actors to create a healthy economy. Juridically, legal relations and/or problems between advertising business actors, namely advertisers, advertising companies, and mass media occur through an agreement that is regulated and is still valid as stated in Book III of the Civil Code. The advertising code of ethics emphasizes that advertising must be honest, responsible, and not contrary to applicable law. Every ad that is served must be imbued with a sense of fair competition.⁶

Consumer rights are stated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection, namely:

- a. The right to comfort, security, and safety in consuming goods and/or services;

⁵ Jenkins Frank. *Periklanan*. (Jakarta: Erlangga, 2000) 12.

⁶ Nila Trisna. "Pertanggungjawaban Hukum Pelaku Usaha Atas Iklan yang Menyesatkan ditinjau dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen". *Jurnal Ius Civile* 2, no. 2 (2018): 98.

- b. The right to choose goods and/or services and get the goods and/or services by the value and conditions as well as the promised guarantee;
- c. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services.
- d. The right to have their opinions and complaints heard about the goods and services used;
- e. The right to obtain advocacy, protection, and proper consumer protection dispute resolution efforts;
- f. The right to receive consumer guidance and education;
- g. The right to be treated or served correctly and honestly and not to discriminate;
- h. The right to receive compensation, compensation and/or replacement, if and/or services received are not by the agreement or not as it should be;
- i. The rights are regulated in the provisions of other laws and regulations.

Consumer rights, as described above, basically must be upheld. One of the factors to uphold consumer rights is the effort to foster attitudes and behavior of consumers themselves so that they become responsible consumers, namely consumers who are aware of their rights as consumers. Whereas the activities of consumers in increasing the goods and or services they need are generally controlled by civil law, therefore the role of civil law has a very large role in upholding consumer rights in consumer protection law.

The obligations of business actors as in the provisions of Article 7 letter b of Law Number 8 the Year 1999 concerning Consumer Protection are: to provide true, clear, and honest information regarding the condition and guarantee of goods and/or services and to provide an explanation of the use, repair, and maintenance. Then according to the Indonesian Code of Procedure and Advertising Procedures, the general principles of advertising must include:

- 1) Ads must be honest, responsible, and not contrary to applicable law.
- 2) Advertisements must not offend and demean the dignity of the state, religion, cultural customs, law, and class.
- 3) Advertising must be animated by the principle of fair competition.

Honest business actors always provide correct information to consumers. Advertising activities require business actors to promote their goods honestly and factually because honesty is sufficient for a businessman. Business people are expected to meet the needs of

society as well as possible and not be detrimental to society.⁷ Advertisers must be responsible for the products and/or services offered so that the responsibility is in the form of product and professional liability.⁸

CONSUMER PROTECTION AGAINST INAPPROPRIATE HOUSING ADVERTISEMENTS BASED ON LAW NUMBER 1 THE YEAR 2011 CONCERNING HOUSING AND SETTLEMENT AREAS

Law Number 1 of 2011 concerning Housing and Settlement Areas also affirms the right of citizens to adequate housing, namely in article 5 paragraph (1); "Every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious and orderly environment." One of the ideals of the Indonesian nation's struggle is the creation of a just and prosperous society based on Pancasila and the 1945 Constitution. In line with the national development goal, it is to create physical and spiritual welfare for all Indonesian people in a just and equitable manner. One of the main elements of people's welfare is the fulfillment of housing needs, which are the basic needs of every Indonesian citizen and his family, according to his dignity as a human being. The housing development is one of the important things in the regional development strategy, which involves broad aspects of the population sector, and is closely related to economic development and social life in the context of strengthening national resilience.

In this regard, Article 3 of Law Number 1 of 2011 concerning Housing and Settlements states that Housing and Settlement Areas are organized for:

- a. Providing legal certainty in the implementation of housing and settlement areas;
- b. Supporting the arrangement and development of the area as well as the proportional distribution of the population through the growth of the residential environment and residential areas by the spatial layout to achieve a balance of interests, especially for MBR;
- c. Increasing the use and utilization of natural resources for housing development regularly;

⁷ Bambang Eko Turisno. "Perlindungan Konsumen dalam Iklan Obat". *Jurnal Masalah-Masalah Hukum FH UNDIP* 41, no. 1 (2012): 27.

⁸ Rizky Novyan Putra. "Perlindungan Hukum Bagi Pihak Konsumen Dari Tampilan Iklan Suatu Produk Yang Menyesatkan Dan Mengelabui". *Business Law Community Faculty Of Law Islamic University Of Indonesia, Business Law Review* 1, no. 2 (2017): 25.

- d. Paying attention to the preservation of environmental functions, both in urban and rural areas;
- e. Empowering stakeholders in housing development and residential areas;
- f. Supporting development in the economic, social, and cultural fields; and

Thus the target of housing and settlement development is to create an environment and human living space by the essential needs of life, namely to fulfill the needs for security, protection, tranquility, self-development, health, and beauty as well as other needs in the preservation of human life. Law Number 1 of 2011 concerning Housing and Settlements also Article 18 District/city governments in carrying out guidance have the authority to:

1. compile and provide a database of housing and settlement areas at the district/city level;
2. compiling and perfecting the legislation on housing and settlement areas at the regency/city level together with the DPRD;
3. empowering stakeholders in the housing and settlement areas sector at the regency/city level;
4. carry out synchronization and dissemination of statutory regulations as well as policies and strategies for the implementation of housing and settlement areas at the district/city level;
5. Reserving or providing land for housing and settlement development for MBR;
6. providing infrastructure and means of housing development for MBR at the district/city level;
7. facilitate cooperation at the district/city level between district/city governments and legal entities in the administration of housing and settlement areas;
8. determine the location of housing and settlements as slums and slums at the district/city level; and
9. facilitate the improvement of the quality of slum housing and slum settlements at the district/city level.

Besides that, the government, through related institutions, is trying to produce various laws concerning consumer protection and provisions relating to public housing. Article 1 point 7 of Law Number 1 of 2011 concerning Housing and Settlement Areas states that a house is a building that functions as a place to live that is suitable for habitation, a means of fostering family, a reflection of the dignity of its inhabitants, as well as assets for its

owner. Further explanation of this article confirms that the house or housing in addition to functioning as a residential or residential environment to develop the life and livelihood of the family housing is also a place to carry out community activities in a limited scope. In Article 24 House planning and design is carried out for:

- a. creating a livable house;
- b. support efforts to meet housing needs by the community and government; and
- c. improve the structure of buildings and a structured environment.

Article 25 Home planning and design are carried out by any person who has expertise in the field of house planning and design by the provisions of the statutory regulations. Based on the provisions above, it is clear that problems regarding the improvement of the housing environment are the responsibility of the developer. For this reason, as long as the management of the housing environment has not been handed over to the local government, the developer can be held accountable for the management of the housing environment. If a developer is negligent in improving the housing environment it has built, according to Article 151 of Law Number 1 of 2011 concerning Housing and Settlement Areas, it can be prosecuted both criminal and civil.

CONSUMER PROTECTION AGAINST HOUSING ADVERTISEMENTS THAT ARE NOT APPROPRIATE BASED ON THE PRINCIPLE OF ABSOLUTE RESPONSIBILITY (STRICT LIABILITY)

Legal protection is a protection for legal subjects by the rules of law in force, either preventive (prevention) or repressive (coercion), either in writing or not in writing to carry out or enforce the law. Legal protection includes 2 things, namely:⁹

- a. Preventive Legal Protection, namely a form of legal protection in which the people are allowed to submit objections or opinions before a government decision takes a definitive form;
- b. Repressive Legal Protection, namely a form of legal protection which is more aimed at resolving disputes.

The consumer protection law is motivated by consumers and business actors who are practically unbalanced. The position of business people who offer, sell, and promote their products makes them stronger than consumers. This can happen, it can be supported by the

⁹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: PT. Bina Ilmu, 1987) 89.

need for information during the pre-transaction stage, the lack of choice for other products, limited knowledge, confusing product promotion, and the ability to educate consumers to digest billboard sentences and other causes the position of consumers towards the perpetrator. business is getting weaker. Consumer protection against the distribution of advertisements that are not by the brochures in housing advertisements can be done through legislation/regulations, namely by providing legal rules that will ensure that consumers can receive legal protection and through consumer supervision from the government, society, and consumer protection agencies. nongovernmental. As well as the legal protection provided to consumers when there is a dispute between the housing business actor and the consumer due to a lawsuit from consumers who feel they have been harmed can be passed through the judiciary by filing a lawsuit with the judiciary at the consumer's place of residence or through non-judiciary, namely through the Consumer Dispute Resolution Agency (BPSK).¹⁰

Preventive protection of consumer law can be carried out by guiding consumers so that consumers are not trapped in losses due to unbalanced bargaining positions. YLKI accommodates the aspirations of consumer associations in Indonesia, to be able to guide residential consumers who will conduct transactions in the housing sector. YLKI can provide counseling regarding the prudence and accuracy of consumers in making agreements with developers both at the pre-contractual, contractual and post-contractual stages. In addition to the consumer coaching role above, YLKI also has a role in socializing the efforts consumers can make when facing disputes. Often consumers experience ignorance about their rights that can be done if there is a loss due to the actions of the developer/business actor. As a result of not fulfilling promises in advertisements, which results in losses, consumers have the right to settle the dispute.

CONCLUSION

Consumer protection against the distribution of advertisements that are not by the brochures in housing advertisements can be done through legislation/regulations, namely by providing legal rules that will ensure that consumers can receive legal protection and through consumer supervision from the government, society, and consumer protection agencies. nongovernmental. As well as the legal protection provided to consumers when there is a

¹⁰ N.H.T. Siahaan. *Hukum Konsumen: Perlindungan Konsumen dan Tanggung Jawab Produk* (Jakarta: Panta Rei, 2005), 36.

dispute between the housing business actor and the consumer due to a lawsuit from consumers who feel they have been harmed can be passed through the judiciary by filing a lawsuit with the judiciary at the consumer's place of residence or through non-judiciary, namely through the Consumer Dispute Resolution Agency (BPSK).

BIBLIOGRAPHY

- Eko, Bambang Turisno. “Perlindungan Konsumen dalam Iklan Obat”. *Jurnal Masalah-Masalah Hukum FH UNDIP* 41, No. 1 (2012): 27.
- Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: PT. Bina Ilmu, 1987.
- Iskandar. *Metode Penelitian Pendidikan dan Sosial (Kuantitatif dan Kualitatif)*. Jakarta: Gaung Persada Press, 2008.
- Jefkins, Frank. *Periklanan*. Jakarta: Erlangga, 2000.
- Munif, Abdul. “Penegakkan Hukum Pidana Terhadap Iklan Yang Menyesatkan Di Wilayah Hukum Pengadilan Negeri Samarinda”. *Jurnal Ilmu Hukum Fakultas Hukum Universitas Samarinda* 28 No. 1 (2013): 72
- Niken Tri Hapsari. *Seluk Beluk Promosi & Bisnis: Cerdas Beriklan untuk Usaha Kecil & Menengah*. Yogyakarta: A+ Plus Books, 2010.
- Novyan, Rizky Putra. “Perlindungan Hukum Bagi Pihak Konsumen Dari Tampilan Iklan Suatu Produk Yang Menyesatkan Dan Mengelabui”. *Business Law Community Faculty Of Law Islamic University Of Indonesia, Business Law Review* 1 No. 2 (2017): 25.
- Siahaan, N.H.T. *Hukum Konsumen: Perlindungan Konsumen dan Tanggung Jawab Produk*, Jakarta: Panta Rei, 2005.
- Trisna, Nila. “Pertanggungjawaban Hukum Pelaku Usaha Atas Iklan Yang Menyesatkan Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen”. *Jurnal Ius Civile* 2, No. 2 (2018): 98.
- Undang-Undang Nomor 32 Tahun 2002 tentang Penyiaran
- Undang-Undang Nomor 40 Tahun 1999 tentang Pers.
- Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

