



Responsibility of Business Players’ for Consumer Losses Caused by Misleading Promotions

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Abstract. The purpose of this study is to analyze how the responsibility of business actors is affected when there are losses experienced by consumers who consume their products because they are attracted to the promotion of these products. This research is descriptive in nature, and to analyze the objectives of this research, this research method uses normative juridical research methods, using a statutory approach obtained through literature and document studies. Legal responsibility must have a basis, namely things that give rise to legal rights for a person to sue other people as well as things that give birth to other people’s legal obligations to provide accountability, as well as business actors who provide misleading information in marketing their products who can be held responsible for losses. Suffered by consumers because of the promotion.

Keywords: Consumer · Accountability of Business Actors · Misleading Promotion

1 Introduction

The right to information is a very important right for consumers because inadequate information conveyed to consumers can also be a form of product defect, which is known as instruction defects or defects 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.

The 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 key word in the conception of human rights for future development” [1].

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 usually called advertising agencies [2]. Promotional manufacturers are advertising agencies whose job it 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. Commercial (advertising) and community service are both forms of promotion.

According to Article 1 Number 6 UUPK, "promotion" 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. 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. According to the general principles of the Indonesian Advertising Ethics (hereinafter referred to as EPI) advertising code of ethics regarding guidelines for procedures governing the business practices of advertisers, "advertising must be honest and responsible; does not offend or demean; does not cause unfair business competition".

The certainty of consumer protection legal rules in written form has become a trademark, which must be set forth in a statutory regulation. "With the existence of laws and regulations that stipulate consumer rights, more legal certainty can be provided".

Legal protection for consumers by means of state intervention to protect consumer rights in the form of legal regulations. Law must protect the consumer from his weak bargaining position. This is due to the fact that one of the characteristics and purposes of law is to protect the community.

In 1999, Indonesia responded to this consumer protection problem by passing Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Act (UUPK).

Consumers have an interest in legal protection in relation to the quality and quantity of goods and/or services. The fact that consumers occupy an important position in the continuity of the economy.

Several previous studies, including research conducted by Ahmadi Miru, examined the legal principles contained in Law No. 8 of 1999 concerning consumer protection by comparing consumer protection laws in other countries, such as America, Britain, the Netherlands, and other European countries.

This research examines the principles of rights and obligations of consumers and business actors, standard clauses, responsibilities of business actors, prohibited acts, consumer protection in self-help communities, and consumer dispute resolution.

This research does not discuss legal protection for consumers in Indonesia against misleading promotions. However, this research provides an overview of the legal principles in Indonesia and comparisons with other countries regarding consumer protection.

Then the research conducted by Sudjana examined the responsibility of business actors for displaying commercial advertisements that misled consumers. Conducts research with the title "The responsibility of business actors for displaying commercial advertisements that mislead consumers," in which this journal discusses matters that are the responsibility of business actors in marketing products through advertising, as well as the need for detailed separation of business actors consisting of business actors, advertising agencies, and advertising media in displaying an advertisement, as well as rules limiting the responsibilities of the three parties in the process of making the advertisement.

In this study, the authors support and strengthen the opinions of researchers who have previously described the need to provide legal protection for consumers against misleading promotions. The author limits this study to the responsibility of business actors in terms of misleading promotions, which examines legal issues for consumers regarding misleading promotions that legally cause consumers to be in a weak bargaining position and cause losses due to misleading promotions.

2 Research Methods

As a result, the choice of the theme of the problem to be investigated in research whose object is law implies that the type of research used is normative juridical research, which is focused on examining legal principles or norms in positive law. All existing legal materials are carried out by selecting, selecting, inventorying, and clarifying using a card and computerized system. Legal materials that are relevant to the subject matter under study are then presented and systematized according to the study.

3 Discussion

3.1 The Principle of Responsibility

Promotional description is not only a means for the interests of business actors to market their products, but it also contains the interests of consumers to obtain honest, objective, and non-misleading information, so that consumers can make optimal use of their limited financial resources.

Until now, there has been no law that specifically regulates promotion. However, there are several laws in which there are provisions concerning promotions. Among them is UUPK. According to Article I of the UUPK, promotion is the act of introducing or disseminating information about goods and/or services that will or are being traded.

Business actors who cannot fulfill the rights of consumers can be held accountable. The principle of responsibility is very important in consumer protection. In every protection issue, extreme caution is required to determine who should bear the burden of responsibility and how much responsibility must be carried out. In general, there are several principles of responsibility in consumer protection law, namely:

3.1.1 Principle of Responsibility Based on Fault/negligence

“The principle of responsibility based on negligence is the principle of responsibility that is subjective, namely, a responsibility that is determined by the behavior of the producer”. This theory explains that mistakes or negligence committed by business actors resulting in losses suffered by consumers are a determining factor in the existence of consumer rights to sue business actors for compensation. Negligence can be used as the basis for a lawsuit if it fulfills the following conditions:

- 1) A behavior that causes harm is not in accordance with normal precautions;
- 2) What must be proven is that the defendant was negligent in his obligation to take care of the plaintiff;
- 3) The behavior is a real (proximate) cause of the losses that arise¹.

The error referred to in this principle is an act that is considered unlawful, Article 1365 of the Civil Code which is commonly referred to as an unlawful act requires the fulfillment of four main elements, namely:

- 1) “The existence of an act means doing (actively) or not doing (passively) so that the act is against the law”. A promotion carried out by a business actor is a source of information for consumers to determine their choice of a product, and business actors are required to provide complete information when carrying out promotions. Business actors who commit acts of deception or do not provide complete information can be said to have fulfilled the first unlawful act.
- 2) “An error is either intentional or careless. Deliberation shows the intent or intention of the business actor to cause certain consequences” Mistakes made by business actors in their product marketing efforts, in this case promotion, will almost certainly result in a different interpretation of the promotion by consumers, so that the message to be conveyed cannot be accepted.
- 3) “The losses suffered are losses in the form of elements of losses, costs, and interest” Misdirection caused by incorrect promotions can certainly harm consumers both materially and emotionally, because what is displayed in a promotion will be different from the product received, so consumers feel disadvantaged.
- 4) “The existence of a causal relationship between the error and the intended loss is that the victim’s loss arises because of an unlawful act committed by the perpetrator”. Consumers who buy a product must have considered it beforehand, and one of the considerations is the information obtained from the promotion about the product. Of course, if the promotion is not in accordance with the actual situation, it will have a negative impact on consumers.

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From the explanation above, business actors, especially in terms of misleading promotions, must be responsible for the mistakes they make because the mistakes result in losses for consumers.

3.1.2 Principle of Presumption to Always Be Responsible

“This principle states that the defendant is always considered responsible (presumption of liability principle) until he can prove he is innocent. So, the burden of proof is on the defendant”. This means that in the event that a consumer files a lawsuit against a business actor because he is deemed to have taken an action that resulted in a loss, the business actor must be able to prove that the claim is not true.

The rationale for this “reverse proof” theory is that a person is considered guilty until the person concerned can prove otherwise. This is certainly contrary to the legal principle of the presumption of innocence, as it is commonly known in law. However, if it is applied in the case of consumers, it will be seen that this principle is quite relevant. If this theory is used, then it is the business actor who is being sued who is obliged to prove the mistake. The defendant must present evidence of his innocence. Of course, consumers’ rights do not necessarily mean they can file a lawsuit at will.

3.1.3 The Presumption Principle is not Always Responsible

“This principle is the opposite of the presumption to always be responsible, where the defendant is always considered irresponsible until it is proven that he is guilty” This principle is known within a very limited scope of consumer transactions, and such limitations are usually justified by common sense.

The application of this principle is most often found in the law of transport. In the law of transport, consumers or passengers who lose or damage goods in hand luggage are the responsibility of the passengers or consumers themselves, so that business actors cannot be held responsible.

However, this principle is no longer applied absolutely. “This means that hand luggage can still be held responsible as long as evidence of the fault of the carrier (a business actor) can be shown. The party charged with proving the mistake lies with the passenger”.

3.1.4 The Principle of Absolute Responsibility

In general, the legal relationship between business actors and consumers is a continuous one. The legal relationship between producers and consumers exists because both want and have a fairly high level of dependence. This relationship occurs from the processes of production, distribution, marketing, and supply through to the consequences of consuming the product.

related to the weak position of the plaintiff consumer in terms of proving the fault or negligence of the defendant’s business actors because they do not have satisfactory knowledge and facilities for this. In its development, courts in the United States have taken another way to hold business actors accountable, namely by using the principle of absolute liability (strict liability).

“In consumer protection law, the principle of absolute responsibility is commonly used to “ensnare” business actors, particularly goods producers, who market products

that are harmful to consumers” “The principle of responsibility is known as product liability”. According to this principle, producers are obliged to be responsible for losses suffered by consumers due to the use of marketed products.

Product liability lawsuits can be filed based on three things, namely:

- 1) Violating the guarantee (breach of warranty); for example, the benefits that arise are not in accordance with the promises stated on the product packaging;
- 2) There is an element of negligence, namely, the manufacturer's failure to comply with the standards for making good products;
- 3) Apply absolute responsibility (strict liability)

Manufacturers are responsible for misleading promotions because misleading promotions definitely violate guarantees because guarantees are one of the meanings of promotions. Besides that, there is certainly an element of negligence in every promotion that does not provide correct information to consumers.

“Giving protection to consumers does not mean putting producers in a difficult position a priori, but merely giving consumers what they are entitled to without reducing the interests of producers”

Responsibility for promotional materials must be shared, meaning that those who produce, distribute, and receive them (business actors, advertising companies, and advertising media) are all held responsible. Because if only those who make or distribute it are held responsible, it is not fair.

Business actors who are not product owners in the context of promotion can also be held accountable; if in this case it is an advertising business actor or advertising agency that has the obligation to design promotions to be displayed, the advertising agency can also be held responsible for the emergence of misleading promotions if, in an agreement with business actors, it can be known or suspected that the information given on a product is misleading information, in this case lying, exaggerating, or covering up the deficiencies of the product, but the advertising business actor still makes the promotion. Then the service provider who disseminates the promotion can also bear the same responsibility if there is an act that violates statutory provisions, for example, broadcasting a promotion that is not in accordance with the proper broadcast time.

In terms of the responsibility of business actors, it is necessary to look at whether there has been any loss suffered by consumers as a result of the use, utilization, and consumption of products produced by certain business actors. The responsibility of business actors for misleading promotions is contained in the Consumer Protection Act, which contains structured material as follows:

- 1) Product liability is the direct civil responsibility of business actors for losses suffered as a result of consuming the products they produce.
- 2) Professional liability is a civil liability based on direct civil responsibility based on a contractual agreement between the business actor providing the service and the consumer for losses incurred as a result of using the services they provide.
- 3) Contractual liability is a civil liability based on an agreement from a business actor for the goods and services they produce as well as losses suffered by consumers as a result of consuming the goods or using the services they provide.

- 4) Criminal liability is the criminal responsibility of business actors for disturbing the safety and security of consumers

Each marketing component, which consists of; Business actors, advertising companies and advertising media have responsibilities according to their respective roles and levels of involvement in the creation and dissemination of promotional messages:

- 1) Business actors are responsible for the accuracy of the information about the product provided to the advertising company. Giving directions, as well as limitations and input on advertising messages, to ensure that there is no overpromise (overclaim) on the true capabilities of the product.
- 2) Advertising business actors should be responsible for the accuracy of the elements of persuasion that are included in advertising messages, through sorting and selecting the information provided by business actors as well as in efforts to explore and utilize their creativity.
- 3) The media is responsible for the compatibility between the advertising messages it broadcasts and the socio-cultural values of its target audience profile².

So in general, the responsibility for misleading promotions is the responsibility of all parties involved in making the promotion, including product owners, advertising business actors, and promotional media. Regarding the form of responsibility, it can be in the form of product liability, professional liability, or both, depending on the weight and extent to which the business actor is involved in making the advertisement.

The process of creating a promotion, either through print or electronic media, generally comes from business actors (manufacturers, distributors, suppliers, and retailers). Then advertising companies and/or advertising media, with the approval of business actors, creatively translate the initiative into advertising language to be broadcast or published in the media as product information for broad consumers. Liability issues arise in terms of:

- 1) Product information presented in a promotion does not match the actual reality.
- 2) Concerning the creativity of advertising business actors and or promotional media, it turns out that it is contrary to the ethical principles of advertising.

In point 1 above, the party who should be responsible is the product owner because it concerns the product promised to consumers through promotion. Consumers can hold businesses accountable based on product liability.

In contrast, in point 2, those who are responsible are the product owners as well as the advertising and/or media business actors. Companies and promotional media cannot simply refuse responsibility under the pretext that “we only make and broadcast promotions; the material is the responsibility of the business actor.” The three business actors can be held jointly and severally accountable if the promotions shown mislead consumers, bearing in mind that in this event, the perpetrators were not just one person or one party.

Businesses that promote their products in print or electronic media must have good intentions and fulfill their promises. If the consumer then buys a product promoted by

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the business actor that is not in accordance with the contents of the truth presented in the promotion, then the business actor is not carrying out the performance properly.

3.2 Determination of Business Actors' Responsibilities

Producing a promotion requires the participation of several parties, starting with business actors, advertising companies, and the media, where each party can contribute to the process of making it and broadcasting it in the mass media. Therefore, it is important to determine which party is most responsible for submitting misleading promotional information. "Careful analysis is needed in analyzing who should be responsible and how far responsibility can be assigned to related parties, because this relates to the important principles of responsibility in consumer protection law".

Some general provisions that apply in Indonesia, for example the law of agreement contained in the Civil Code, have a tendency to limit the responsibility of the violator of consumer rights, so that the issue of determining this responsibility must be carried out case by case, depending on the respective roles. Each party in the process of making and installing the promotion, as well as how BPSK or judges in court place the burden of responsibility on the business actor whose case is before them.

The following description can be used to determine the accountability of business actors:

- a. Business actors. If a promotion is at the request of a business actor, both in terms of form and content, so that the advertising agency and the media that advertise it are only passive in the sense that they only make it in its entirety according to the request of the business actor, then in this case the person fully responsible is the business actor concerned.
- b. Advertising agencies, in this case, business actors and the media, are passive, while advertising agencies that design forms, including content, are responsible for the advertising agency concerned. Also,
- c. media: if, in advertising a product, the business actor and advertising agency have determined the form and content of the promotion, but changes occur in the distribution, where after broadcasting or distributing it, it differs from the actual one, then the responsible advertising media is concerned.

The responsibility of the parties is determined based on their active role as sources of information in the process of making the promotion. If the source of information comes from the business actor as the producer of the product, then the responsibility will be borne by the business actor for misleading the promotional information. Meanwhile, if the source of information originates from an advertising company and is made without the knowledge or approval of the business actor, the responsibility for such misleading promotional information shall be borne by the advertising company. In addition, if the source of the information contained in the promotion differs from the original information due to an error in the advertising medium, then the responsibility for such misleading information lies with the advertising medium.

The most prominent role of the various parties involved in advertising activities is on the producer/business actor side, where business actors have the desire to make advertising a medium to introduce their products to consumers. Furthermore, because

business actors are the primary source of information in promotional messages, promotional messages produced by advertising firms must always refer to and have the approval of business actors who pay costs and fees to make these promotions. As long as the advertising company works in accordance with the directions and instructions of the business actor, then the burden of responsibility rests on the shoulders of the business actor.

In the end, it is the role of the BPSK or the judge's appraisal at court that will determine the burden of responsibility for each party regarding the delivery of misleading promotional information by looking at which company's initials or signatures are contained in the final draft of the promotion, which is then broadcast through the mass media or print media. The party that affixes the signature is considered the business actor who is most responsible for the misleading promotional information.

3.3 Responsibilities of Business Actors

Accountability is a problem that has a relationship with the occurrence of rules that are violated, and there are also obligations that must be implemented according to provisions or agreements, as explained in a definition of responsibility, which reads "the state of being answerable for an obligation, and 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".

Violations or defaults that result in losses for the legally disadvantaged party will create an obligation that must be carried out by the violating party; in this case, the obligation is in the form of either correcting what happened so that the loss can be eliminated or also replacing what was lost by the other party.

Responsibility can also mean the situation of having to bear everything; if anything, it can be sued, accused, blamed, 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 occur in actions that are prohibited by various laws and regulations, such as the Civil Code, the Criminal Code, Government Regulations (PP), and administrative regulations.

Parties who participate in the production activities of a promotion may be held liable in the civil realm for contractual liability, product liability, and professional responsibility. The use of (3) the three types of responsibility must consider suitability with the party who will be responsible, in this case the entrepreneur, as well as whether or not there is an agreement to become a reference in suing.

3.3.1 Contractual Liability

Contractual liability is a form of liability in civil law that makes the agreement a reference for whether or not there is an error, which then causes the consumer to suffer losses as a result of using the goods or also utilizing the services offered. Therefore, "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". The principle of contract privity has a significant impact on the development of contractual responsibilities because it states that the obligation to provide protection to consumers by business actors only arises if there is a contractual bond between the two parties. Apart from that, consumers cannot blame business actors for something that is not in the agreement, and consumers can only file lawsuits based on default. If, in practice, the agreement that forms the basis of the lawsuit does not exist, then the business actor who should be responsible for consumer losses cannot be sued (no privilegium, no liability principle).

The engagement relationship regulated in a product's marketing activities, in this case promotion, can only be viewed in terms of regulating interactions between business actors, advertising agencies, and the media. The public or consumers are not parties that have a direct attachment to these parties, namely business actors, advertising agencies, and also the media. So from this brief analysis with reference to the principle of the privity of contract, it can be concluded that it is very difficult and almost impossible for consumers who feel aggrieved by misleading promotions to file a lawsuit based on the claim of default.

However, it's not that no one has said the same as the analysis above; there are several legal experts who still find loopholes for consumers to use in terms of filing and holding responsibility for the parties involved in marketing a product based on default. AZ Nasution, for example, considers that promotion has a close relationship with marketing, which offers products to the public. "In advertising messages for goods and/or services, it is not uncommon to expressly state a "promise" to provide a gift in the form of other goods or services, discount prices, etc., which will certainly attract consumers".

Of course, the inclusion of promises in a promotion is not accidental; of course there is a purpose for including this. Then, if we look further, the promises offered in each promotion certainly present a tendency to offer a deal, which, of course, the interest that is present in the consumer makes the consumer agree to these promises, which in the end, of course, leads to agreement.

Activities carried out, such as offering a product to consumers with the intention of selling it, are included in the statement of a will, as are several conditions attached to the offer, including civil activities, which are the subject of regulation in Book 3 (three) of the Civil Code. Regarding engagements, particularly engagements arising 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 norms written in the Civil Code should be used as a legal basis for the state to provide protection for the community in terms of business interactions as consumers.

The provisions as contained in the articles of the Civil Code can be used as a legal basis in providing protection for consumers. The protection referred to by the author is placing acts that provide incorrect information in the promotion of a product into

acts that are categorized as something that disturbs or injures and causes a disability in reaching an agreement as a condition for the validity of an agreement. In the presence of something that is categorized as fraud in promotions, it can be said that an agreement that occurs between the parties, namely the entrepreneur and the consumer, is an agreement reached with the consumer's mistake, and in civil law, this can be something that makes the agreement something that can be asked to be canceled.

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 Business actors in this case carry out marketing actions in the form of promotions that are not in accordance with the product conditions and then result in losses for consumers; this can be considered a breach of promise because promotions seen by consumers can be considered offers to make agreements with the contents of promises. Therefore, a promotion is seen as an agreement, even if it is not expressly stated.

The view as described above is the view that puts the promise in the promotion on the same footing as the clause contained in the contract. Therefore, if there is an action by a business actor that is not in accordance with what he has promised in the promotion, this can be equated with a default committed by the business actor. so that consumers can file a lawsuit against parties involved in advertising activities by using the default lawsuit mechanism.

3.3.2 Product Liability

Product liability means that losses caused by a product can be held accountable. Product liability was originally applied to defects in a product caused by errors during production. In such cases, the party harmed by a product, in this case the consumer, only has to prove that the natural loss was caused by using the product.

The problem regarding whether an error occurred in the production process or whether an error occurred in the production of a production is something that is the responsibility of the business actor to carry out the proof because the proof system used is a reverse proof system.

The concept of product responsibility then shifts or expands in its development by requiring business actors to be responsible not only for product defects but also for the nonconformity between the statements made in the promotion and the truth of the actual product condition. This development was triggered by the idea of placing marketing activities in a position that becomes part of the industry and becomes an advanced stage of the production process. From that idea, it is understood that every statement issued in the promotion of a product must be adjusted to the actual product conditions and be considered a promise, for which a person can be held accountable if there is a violation.

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:

- a) Prohibition regarding the product itself, which does not meet the proper requirements and standards for consumer use or use by others.
- b) 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 law³.

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 obligations attached to consumers, proving that a business actor has made a mistake resulting in a loss is an obligation that is quite difficult for the consumer to fulfill. This is due to the fact that proving it requires specific expertise; additionally, a business actor whose position is the payer of compensation will, of course, find it difficult in the process to admit that the wrong being accused is the mistake he made, even if it is true. In practice, the business actor, as the owner of the product being promoted, is of course the party who understands best if there is an inaccuracy between the contents of the promotion and the actual state of the product. For this reason, the principle of

inverted proof is adhered to by UUPK, in which business actors are positioned as parties who have the burden of proving the truth of information disseminated through promotion. 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.

3.3.3 Professional Liability

Product liability will be more visible in products that fall into the category of goods, but in products that are of the service type, professional responsibility will be more visible and demonstrated. 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:

- a) Based on contract law;
- b) Based on the law on unlawful acts against third parties

Aulia Muthiah said, “The three business actors related to advertising will determine who is at fault for consumer losses; to determine who is responsible, one must first look at the mistakes of the business actors, advertising companies, or the media”.

Every business actor who plays a role in the production of a promotion can be held accountable for misleading promotions given to the public that are the result of their negligence. So by ignoring the dichotomy between product business actors and advertising agencies, advertising business actors (advertising agencies) should also be subject to the same responsibility as product business actors.

The general public does not know that promotion is also a product, because the public only knows that a product is something that has a form; even if it is a service, the service is personal and not consumed massively.

Mardian Wibowo gave his views on this matter, namely, “In simple terms, advertising business actors are equated with ordinary business actors because they have the same characteristics, namely, as producers.” Ordinary business actors are product producers, while advertising business actors are advertisement producers.

Legal responsibility must have a basis, namely things that give rise to legal rights for a person to sue another person as well as things that give birth to other people’s legal obligations to provide accountability. Responsibility is the subject of accountability, and accountability is the subject of obligation, which means that a person must be responsible for actions that are against the law and cause harm to other parties. So each party who plays a role in a promotion has their respective responsibilities in accordance with the obligations assigned according to their position.

Promotions that contain deception because there is wrong information in them also affect the engagement that occurs between business actors and consumers. Based on the *Pacta Sunt Servanda* principle, it is said that the agreement applies as law for the parties, but for the agreement to take effect, it must fulfill the conditions, which include an agreement obtained without any deception. Misleading promotion is, of course, a deception perpetrated by business actors, so an agreement made by deception according to law can be canceled.

Conclusion

Legal responsibility must have a basis, namely things that give rise to legal rights for a person to sue another person as well as things that give birth to other people’s legal obligations to provide accountability. Responsibility is the subject of accountability, and accountability is the subject of obligation, which means that a person must be responsible for actions that are against the law and cause harm to other parties. So each party who plays a role in a promotion has their respective responsibilities in accordance with the obligations assigned according to their position.

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