



# Ethical and Legal Review of Doctors Advertising and Joining Multi Level Marketing of Health Products

Talitha Apta Nitisara<sup>1</sup>

<sup>1</sup> Universitas Jenderal Soedirman, Purwokerto, Indonesia  
apta.nitisara@mhs.unsoed.ac.id

**Abstract.** The development of a holistic healthy paradigm has led to the proliferation of products that claim health or fitness benefits. The strategy of selling products by involving doctors in advertising or marketing through multi-level marketing (MLM) has become a common phenomenon. Doctors are considered as potential agents because they are trusted by the public to recommend health products, but this can lead to conflicts of interest. This condition raises problems that will be discussed in this study, namely first, how is the ethical and legal review on the phenomenon of doctors advertising and being active in MLM health products; second, what conditions are considered not violating ethics and law regarding doctors advertising and being active in MLM. This research uses a normative approach, descriptive analysis specifications. The research data source used is secondary data collected through literature study which is analyzed qualitatively. The results of this study indicate that the phenomenon of doctors advertising and being active in MLM health products is closely related to violations of Indonesian Medical Code Of Ethics 2012 articles 3, 4, and 6 as well as the Indonesian Minister of Health Regulation No.1787 of 2010 concerning Advertising and Publication of Health Services. Conditions that are considered not violating ethics and law regarding doctors advertising and being active in MLM are when a doctor does not practice in medical services or has an inactive registration certificate, does not display the title of doctor, and does not market products that claim health effects.

**Keywords:** Ethics, Law, Doctor, Advertisement, Multi-level Marketing.

## 1. Introduction

Advertising is defined as a news order to encourage and/or persuade the general public to be interested in the goods and services offered.[1] Advertising is a form of marketing that essentially functions as a persuader of potential consumers to make purchases and as a reminder of the advantages of a product for consumers to remain loyal to the product. Advertisements can now be distributed in a variety of media, including print media, television, radio, and the latest is online through social sites that are widely used by the public. In addition to advertising as a form of marketing output, there is a system that is currently rife in the business world, namely Multi Level Marketing (MLM).

© The Author(s) 2023

A. A. Nassihudin et al. (eds.), *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoL GaS 2023)*, Advances in Social Science, Education and Humanities Research 805,  
[https://doi.org/10.2991/978-2-38476-164-7\\_49](https://doi.org/10.2991/978-2-38476-164-7_49)

Advertising activities in general and the MLM business in particular have extended to doctors. Products sold by doctors are usually products that claim health benefits, cures for certain diseases, anti-aging, and beauty claims. The doctor profession in business is seen to have its own added value considering that doctors are figures who have special honor and trust from the community to provide advice on health and healing of their illnesses.

MLM advertising and business activities involving doctors often generate controversy that raises ethical and legal dilemmas. On the one hand, the public has the right to obtain information about the existence and competence of doctors, as well as about reliable medical services to prevent misleading health information or those that do not have a strong evidence-based-medicine. In this context, information dissemination has an important role if it is carried out in accordance with the rules and principles of medical ethics. On the other hand, although doctors are medical service providers, their main purpose is to help, and not like other types of service providers. Therefore, the motivation for working in medicine should not be a business competition to achieve maximum profit. Doctors actively promoting a product can also potentially exploit the patient's trust in the medical profession for the doctor's personal interests. This is clearly contrary to the noble values of medical ethics.[2]

Therefore, it is important to discuss and review the phenomenon of doctors advertising and being active in multi-level marketing from an ethical and legal perspective. This discussion will be limited to matters regarding the involvement and initiative of individual doctors who are implicitly marketing a product that claims Health benefits and does not address the limitations of healthcare facilities and other cases of advertising.

## 2. Problems

The problem formulation in this article is as follows.

- a. How is the ethical and legal review on the phenomenon of doctors advertising and being active in multi level marketing (MLM) health products?
- b. What conditions are considered not violating ethics and laws regarding doctors advertising and being active in multi level marketing (MLM)?

## 3. Method

The research methods used in this article are as follows.

- a. Approach Method

The method of legal research conducted is a *normative legal approach*, which is a way of researching in legal research conducted on library materials or secondary data, using deductive thinking methods, as well as coherent truth, which is focused on examining the application of rules or norms in positive

law, as a consideration that the starting point of research is analysis of legal principles in laws and provisions in laws and regulations.

b. Research Specifications

The specification used is descriptive analysis. This research describes the state of the object or problem to be studied obtained such as observation results, interview results, document analysis, field notes, which are not poured in the form and numbers. Descriptive analysis is a method that serves to describe or give an overview of the object under study through the data or samples that have been collected as is without analyzing and making conclusions that apply to the public.

c. Data Source

The data sources in this research are secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials used in this research are the 2012 Indonesian Medical Code of Ethics and Regulation of the Indonesian Minister of Health No.1787 of 2010 concerning Health Service Advertisement and Publication. Secondary legal materials are sourced from literature, doctrine and scientific references relevant to this research, and tertiary legal materials used in the form of dictionaries.

d. Data Collection Methods

Secondary data in this research is obtained by literature study of laws and regulations, literature books, documents or archives related to research problems.

e. Data Analysis

The data obtained is then analyzed qualitatively, namely by formulating in the form of words or sentences in an effort to classify data, sorting it into manageable units by searching and finding links to research problems. Qualitative analysis is presented by describing the data that has been analyzed based on the suitability of the problems in this study, then processed into descriptions to be able to draw conclusions as the end of writing this research.

## 4. Discussion

### 4.1. Ethical and Legal Review of the Phenomenon of Doctors Advertising and Active in Multi Level Marketing (MLM) of Health Products

The increasing appeal of marketing and advertising supports the phenomenon of global consumption, which is also one of the factors causing the emergence of various strategies to improve marketing. In order to fulfill marketing needs, reputation enhancement, self-promotion efforts in the form of advertisements have emerged.

This includes the development of multilevel marketing business systems that promise extensive marketing development with large compensation rewards.

Advertising is a medium to promote and introduce goods or services to be introduced and offered to the public.[3] In addition, shaping the image and increasing popularity is one of the other goals in advertising. Multi-level Marketing or MLM for short is a modern marketing system through a permanently built distribution network by positioning the company's customers as well as marketing personnel. In other words, it can be stated that MLM is multi-level marketing through a network of distributors built by making consumers as marketers.[4]

Marketing efforts in the form of advertising and MLM business systems have penetrated many sectors, one of which is the health sector. Doctors are potential agents to offer certain health products to patients. Along with the increasing popularity of doctors, various career offers such as brand ambassadors, advertising stars, event organizers and other jobs in the entertainment world have emerged. We can find on television both domestic and foreign television stations, many doctors who then provide clinical testimonials for a product or become advertising stars or brand ambassadors of various products with health and beauty claims.[5]

The presence of a doctor in a product advertisement is often interpreted as the doctor's partiality for the related health and beauty product. This can then lead to an opinion in the community that the product is recommended by a doctor with the perception that the product has proven clinical benefits. In fact, the doctor does not necessarily play a role in proving the clinical benefits of the product.

According to a publication by the National Council Against Health Fraud (NCAHF), some MLMs claim that the products they market are effective in preventing and curing diseases, while a few others claim to make consumers feel better, look better, and even have more energy in their activities. However, upon further investigation, almost all MLM companies' products are based on research that is either not properly designed or not relevant to the claims being made. Some companies even claim the benefits of their products based on consumer testimonials, without clear supporting literature.[6] In these cases, doctors seem to be recommending products to patients that have no clear accountability and even risk injuring the patient. This condition can be a public deception because the recommendation given is not solely for the good of the patient but for business profit. The potential for public misunderstanding then invites an ethical and legal review. Ethics are the guiding principles that guide human-human and human-environment interactions and their behavior to maintain harmony in society.[7] The discipline holds human society together and keeps society functioning.[8] Proper adherence to ethics is essential in marketing for peace and harmony in society. Adherence to ethics becomes especially important when human health issues are involved. It has been observed that marketing of Health products has a negative impact on patients and physicians.[9]

Generally a materialistic approach leads to overly selfishness and violation of the rights of fellow human beings. In the medical profession, materialism endangers the lives of many patients as it recommends products that only have benefits for the

doctor without thinking about the patient's side. Based on Fazle Malik's research in 2020, respondents mentioned that doctors' involvement in marketing health products leads to doctors' materialism which results in unnecessary prescriptions, doctors perform medical services under the influence of companies from marketed products, humanity towards patients is less valuable than material considerations, commercial goals are more dominant than social goals, and incidents of doctors being bribed to prescribe or recommend drugs.[10] Another study mentioned that while pursuing maximum profits, they often resort to unethical strategies such as bribing doctors, offering free trips abroad and even sharing profits. As a result, they prescribe drugs to patients unnecessarily to fulfill commitments to medical representatives.[11]

Given that one of the main principles of doctors is not to exploit the trust of patients to increase income. If a doctor decides to sell products that can support the patient's needs, then several criteria such as urgency and relevance to the patient's condition need to be considered. In addition, doctors must also ensure that the products they sell are scientifically proven to be effective in providing health benefits or healing for patients.

This is regulated in the Indonesian Medical Code Of Ethics (Kode etik Kedokteran Indonesia/KODEKI) 2012 in article 3 concerning professional independence in the scope of the article point (2) point c which states that every doctor is prohibited from committing acts "...which result in the loss of professional freedom and independence,"[12] one of which is by involving himself, either directly or indirectly, in all forms of activities aimed at promoting or advertising goods, and / or services for the benefit and benefit of his personal, peer, or other groups.

This prohibition of advertising is reaffirmed in KODEKI 2012 article 4 on self-praise which reads that "Every doctor must avoid acts that are self-praising." Every doctor must maintain professionalism in informing the facts of health services. Doctors must ensure that any information submitted is factual and avoid all intentions and efforts to show greatness by promising healing through recommended and even prescribed products.

In 1999, the American Medical Association issued guidelines emphasizing that doctors are not allowed to force patients to buy health products or recruit patients in marketing efforts that provide benefits to the doctor, unless the patient wishes so.[13] Currently, there are no specific written guidelines governing doctor advertising and MLM business related to health products in Indonesia. However, the guideline that a doctor should stay away from conflict of interest issues has been stated very clearly in KODEKI article 3 and its explanation.

In the Indonesian Code of Medical Ethics itself, the phrase MLM is clearly mentioned in the explanation of article 6 point 6, which reads "Every doctor is prohibited from announcing, advocating the application of goods/products and health/health-related services marketed by multi-level marketing (MLM)." It is clearly stated that a doctor must avoid the MLM business, especially in products that have health and beauty claims MLM product promotion efforts are generally through various means, one of which is by using social media. Doctors must also be aware that their social media accounts are their identity and will be perceived by the public

by also associating the doctor's profession with the personal identity. Therefore, doctors are prohibited from using their social media accounts to promote a product that does not have a scientific basis for medicine, including MLM products.

The context of doctors being involved in advertising and MLM is confirmed in the MKEK fatwa that Indonesian doctors and professional organizations of Indonesian doctors are prohibited from appearing in advertisements that openly promote products that have claims to cure diseases, health, beauty, or fitness in any media.

The laws and regulations that serve as the legal basis for doctors to advertise refer to the Regulation of the Minister of Health of the Republic of Indonesia No.1787 of 2010 concerning Advertisement and Publication of Health Services article 3 paragraph (2) states "The implementation of advertisements and / or publications as referred to in paragraph (1) must be in accordance with the ethics of advertisements and / or publications regulated in the Indonesian hospital code of ethics, the code of ethics of each health worker, the advertising code of ethics, and the provisions of laws and regulations".

Regarding doctors who advertise and do MLM business for products that claim health benefits, Regulation of the Minister of Health of the Republic of Indonesia No.1787 of 2010 concerning Advertising and Publication of Health Services Article 5 regulates the properties of advertisements and/or publications of health services. Point (f) states that it is not allowed to publicize new or non-conventional methods, drugs, devices and/or health service technologies that have not been accepted in the medical and/or health community because their benefits and safety according to their respective provisions are still doubtful or unproven. Then points (i) to (k) complement the rules prohibiting advertising drugs, food supplements, or medical devices that do not have a distribution license or do not meet safety quality standards, advertising formula milk and addictive substances, and advertising hard drugs, psychotropic drugs, and drugs except in magazines or medical scientific forums. In addition, point (n) emphasizes the prohibition of giving testimonials in the form of advertisements or publications in the mass media and using academic titles and/or professional designations in the field of Health. Article 8 paragraph (1) explains that health workers are prohibited from advertising or modeling drugs, medical devices, health supplies, and health service facilities except in public service advertisements

If Health service facilities and / or Health workers in this case including a doctor do not follow these rules, then the Minister and / or head of the agency that organizes regional government affairs in the field of Health can take administrative action. The administrative action is in accordance with article 14 paragraph (4) in the form of:

- a. Revocation of operational license/practice license/work license/professional license for a maximum period of 1 (one) year;
- b. Revocation of operational license / license to practice / work license / professional license forever; and

- c. In addition to administrative actions, a violating doctor may be subject to sanctions set by the professional ethics honor council, professional discipline council, and/or Indonesian hospital ethics honor council.

#### **4.2. Conditions That Are Considered Not Violating Ethics and Law Regarding Doctors Advertising and Being Active in Multi-Level Marketing (MLM) Of Health Products**

The prohibition of advertising can be excluded in cases where the doctor concerned does not have an active registration certificate (not practicing) or the advertised product does not have health, fitness, and beauty claims provided that the content does not show medical titles or attributes at all. The use of medical titles and attributes is not allowed due to the public's lack of understanding about whether a doctor's registration certificate is active or not, so this is expected to help the public in distinguishing doctors with active and inactive registration certificates.[5]

The decision letter of the medical ethics honor council No. 022/PB/K.MKEK/07/2020 concerning the ethical fatma of doctors advertising and selling multilevel marketing states that the prohibition of doctors appearing in advertisements promoting health products is exempted for doctors who have declared themselves to the public to have left the medical profession, canceled the medical oath they have sworn, and are willing to be deprived of their professional title as a doctor.

Based on the Minister of Health Regulation No.1787/2010 on Advertisement and Publication of Health Services Article 8, health workers are prohibited from advertising or modeling advertisements for drugs, medical devices, health supplies, and health service facilities except in public service advertisements. Health workers can publish health services and health research in health magazines or scientific forums for the professional environment.

## **5. Conclusion**

The phenomenon of doctors advertising and being active in multi-level marketing (MLM) of health products raises ethical and legal reviews because this behavior has the potential to be a violation of KODEKI 2012 articles 3 and 4 and the Regulation of the Indonesian Minister of Health No.1787 of 2010 concerning Advertising and Publication of Health Services. Conditions that are considered not violating ethics regarding doctors advertising and being active in multi-level marketing (MLM) are when a doctor has an inactive registration certificate (not practicing), does not display a doctor's title, has declared himself out of the medical profession, canceled the medical oath that has been sworn, and is not marketing products that claim health effects.

Doctors should avoid advertising behavior and getting involved in MLM that markets health products without evidence based because it violates ethics and the law. Doctors should limit their activities in the world of advertising and MLM to conditions that are ethically and legally permissible, and the Indonesian Medical

Ethics Honor Council can be more active in educating and fostering the application of medical ethics.

## References

- [1] “Kamus Besar Bahasa Indonesia (KBBI).”
- [2] P. Prawiroharjo and P. D. I. Meilia, “Dokter Beriklan: Sebuah Tinjauan Menurut Kode Etik Kedokteran Indonesia (KODEKI) Tahun 2012,” *J. Etika Kedokt. Indones.*, vol. 1, no. 1, pp. 13–17, Oct. 2017, doi: 10.26880/jeki.v1i1.4.
- [3] A. A. N. G. Wiratdika, I. N. P. Budiarta, and N. M. P. Ujianti, “Perlindungan Hukum Bagi Konsumen Atas Produk Yang Melanggar Etika Periklanan,” *J. Analog. Huk.*, vol. 3, no. 3, pp. 393–397, 2021, doi: <https://doi.org/10.22225/ah.3.3.2021.393-397>.
- [4] A. Marimin, A. H. Romdhoni, and T. N. Fitria, “Bisnis Multi Level Marketing (MLM) dalam Pandangan Islam,” *J. Ilm. Ekon. Islam*, vol. 2, no. 02, pp. 105–117, Jul. 2016, doi: 10.29040/jiei.v2i02.47.
- [5] P. Prawiroharjo, M. Baharuddin, and Y. Permana, “Dokter Aktif di Multi Level Marketing (MLM) dengan Produk yang Mengklaim Manfaat Kesehatan atau Penyembuhan, Bolehkah?,” *J. Etika Kedokt. Indones.*, vol. 2, no. 2, pp. 41–44, Jun. 2018, doi: 10.26880/jeki.v2i2.14.
- [6] The National Council Against Health Fraud (NCAHF), “NCAHF Position Paper on Multilevel Marketing of Health Products,” *The National Council Against Health Fraud (NCAHF)*, 2003.
- [7] A. B. Carroll, J. Brown, and A. K. Buchholtz, *Business & Society: Ethics, Sustainability & Stakeholder Management*. Cengage Learning, 2017.
- [8] A. Singhapakdi, K. L. Kraft, S. J. Vitell, and K. C. Rallapalli, “The Perceived Importance of Ethics and Social Responsibility on Organizational Effectiveness: A Survey of Marketers,” *J. Acad. Mark. Sci.*, vol. 23, no. 1, pp. 49–56, Dec. 1994, doi: 10.1177/0092070395231006.
- [9] M.-M. Chren, “Doctors, Drug Companies, and Gifts,” *JAMA J. Am. Med. Assoc.*, vol. 262, no. 24, pp. 3448–3451, Dec. 1989, doi: 10.1001/jama.1989.03430240084035.
- [10] F. Malik, M. Junaid, and I. Sharif, “Exploring the Role of Pharmaceutical Marketing on Physician Ethical Behaviors: A Grounded Theory Study,” *City Univ. Res. J.*, vol. 9, no. 2, pp. 245–263, 2020.
- [11] C. S. Landefeld and M. A. Steinman, “The Neurontin Legacy — Marketing through Misinformation and Manipulation,” *N. Engl. J. Med.*, vol. 360, no. 2, pp. 103–106, Jan. 2009, doi: 10.1056/NEJMp0808659.
- [12] Pengurus Besar Ikatan Dokter Indonesia, *Kode Etik Kedokteran Indonesia*. Jakarta, 2012.
- [13] “AMA Code of Medical Ethics’ Opinions on the Sale and Dispensing of Health-Related Products,” *AMA J. Ethics*, vol. 12, no. 12, pp. 925–927, Dec. 2010, doi: 10.1001/virtualmentor.2010.12.12.coet1-1012.



**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

