

Ideal Regulation on Endorser Responsibility for Consumer Losses from Promotional Actions by Endorsers

Lailatul Mufidah¹⁾, Afifah Kusumadara²⁾ & Yenny Eta Widyanti³⁾

¹⁾ Faculty of Law, Universitas Brawijaya, Indonesia, E-mail: lmufidah13@gmail.com

²⁾ Faculty of Law, Universitas Brawijaya, Indonesia

³⁾ Faculty of Law, Universitas Brawijaya, Indonesia

Abstract. *Advertising strategies through social media are increasingly being chosen by business actors to market their goods and/or services. The existence of advertising strategies through social media has given birth to a new term known as endorsers. The rapid development in the world of advertising is not balanced by the development of laws in the legislation in Indonesia which is specifically regulated through Law Number 8 of 1999 concerning Consumer Protection. The purpose of this study is to find out the ideal regulation of endorser liability for consumer losses due to promotional actions carried out by endorsers. The research method used in this study is normative legal research with a conceptual approach, a statutory approach, and a comparative approach with the Code of Federal Regulations (CFR) Part 255 on Guides Concerning the Use of Endorsements and Testimonials in Advertising. The results of this study are the urgency for legislation in Indonesia to regulate endorsers in detail and explicitly so that endorsers can be held accountable for promotional actions carried out by them.*

Keywords: *Endorser Responsibility; Consumer Losses; Social Media; Legal Regulation; Promotional Actions.*

1. Introduction

The rapid development of technology has brought many changes in various areas of people's lives. There are many sectors that have been affected by the presence of technology, including in the field of marketing. In today's era of technological development, the marketing sector has undergone a significant transformation from conventional methods to digital-based strategies. This phenomenon has given birth to endorsers as individuals who have significant influence on social media as one of the most effective tools in digital marketing strategies (Andika et al., 2024). In the context of Indonesia itself, social media has entered people's daily lives. In 2020, the number of YouTube users reached 88% (eighty-eight percent) of the total population of Indonesia, 84% (eighty-four percent) of WhatsApp users, 79% (seventy-nine percent) of Instagram users, and 79% (seventy-nine percent) of Facebook users (Junawan & Laugu, 2024). This further strengthens the digital marketing strategy as one of the most effective

strategies to reach the wider community so quickly, especially in Indonesia. The results of YouGov's research on the influence of digital influencers (in this case endorsers are included in the influencer category) also show that 94% of respondents said that endorsers have an influence on their purchasing decisions from endorsements made by endorsers (Vero, 2024). Similarly, a study conducted in the United States by Influencer Marketing Hub (2023) revealed that 61% of consumers trust influencer recommendations, often more than traditional brand advertisements. Furthermore, research by the Digital Marketing Institute (DMI, 2022) found that 49% of American consumers depend on influencer recommendations when making purchase decisions, especially among Millennials and Gen Z.

The phenomenon of the birth of endorsers as parties who have influence in shaping opinions, decisions, and purchasing decisions of the community has had an impact on many sectors such as the fashion industry, e-commerce, and even politics (Fadillah & Wibowo, 2022; Vero, 2024; Permata & Nadia, 2024). Unfortunately, the adage that states that the law always lags behind the development of society (*het recht hinkt achter de feiten aan*), is currently happening in Indonesia. In the context of digital marketing, one of the laws that regulates promotional activities in Indonesia is Law Number 8 of 1999 concerning Consumer Protection. Article 20 of the Consumer Protection Law states that Advertising Business Actors are responsible for the advertisements they produce and all consequences caused by the advertisements, so that Advertising Business Actors are responsible for the advertisements they produce and the consequences caused by the advertisements. However, an endorser cannot be categorized as an advertising business actor because the endorser is not the party that produces the goods so that he cannot be held accountable in the context of the Law on Consumer Protection if something happens that can harm consumers in promotions carried out through his social media (Anjarningtyas, 2022; Franke et al., 2023; Prastyanti & Srisuk, 2025). The incompleteness of the norms in Article 20 of the Law on Consumer Protection has an impact on the parameters of responsibility for the impacts caused by advertising. Therefore, the limitation of responsibility that is only imposed on business actors means that an endorser cannot be held responsible for the advertisements they promote.

Given that the influence of endorsers is so great in people's purchasing decisions, until now there have been no regulations that strictly regulate the limitations and responsibilities that must be fulfilled by endorsers. This has given rise to various phenomena of endorsers carrying out promotional activities that can harm consumers, such as endorsements carried out for illegal investment products, online gambling, and most recently illegal cosmetic products that are dangerous to the community (Amaliasari & Yogantara, 2021; Paranna & Andersen, 2022). At the end of 2018, several artists who were also endorsers, such as VV, NK, and NR, were involved in an endorsement case for an illegal skincare product, namely DS. Through VV's confession, he admitted that he did not know that the skincare being promoted was illegal skincare. DS is known to be a skincare product owned by a business actor named Karina Indah Lestari. Based on Decision Number: 1555/Pid.Sus/2019/PN Sby, it is known that VV was a witness in the trial of this case and provided information during the trial that VV received a salary of IDR 7,000,000 (seven million Rupiah) to endorse the DS product. VV admitted that he only did one photo shoot for the DS product and after it was finished, he sent the results of the photo shoot to the DS endorsement team, and DS sent a caption which would later be written by VV in his upload via his personal Instagram account. VV testified in the trial that to become an endorser for the advertised product, there was no written

contract or agreement. VV also admitted that he did not know and did not check the label on the DS product packaging to see whether the product had a distribution permit from BPOM or not.

The phenomenon of digital marketing through the use of endorsers does not only occur in Indonesia but is a global phenomenon (Safrin & Simanjorang, 2023; Ningrum & Ahmadi, 2024). When compared to Indonesia, other countries are quite advanced and adaptive in regulating regulations regarding the emergence of this new phenomenon in the marketing industry. The United States, for example, has regulated in more detail the obligations and limitations that must be met by an endorser to avoid practices that are detrimental to consumers due to the increasing influence of the Endorser. Through the ratification of the FTC Act contained in the FTC 16 CFR Part 255 Guides Concerning the Use of Endorsement and Testimonial in Advertising (FTC Guides of Endorser) which is continuously updated with greater emphasis on stricter enforcement of violations by advertisers, including the threat of fines and legal action for those who do not disclose material relationships properly (FTC, 2009). Through institutions such as the Federal Trade Commission (FTC), America has issued the Code of Federal Regulations (CFR) which regulates in more detail and specifically the use of endorsers and influencers in product promotions carried out by business actors. For example, the FTC requires transparent disclosure of sponsorship relationships in promotional content carried out by influencers and endorsers to ensure there is no bias and more accurate information for consumers (Mubarikah, 2021; De Ciccio et al., 2021; Antoniou, 2021).

In Indonesia, although there are already relevant regulations such as in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions and the Law on Consumer Protection, regulations regarding endorsers are still not explicitly and in detail regulated in the legal regulatory system in Indonesia, while in the United States it has been detailed and explicitly regulated regarding endorsers along with the procedures for implementing endorsements and the responsibilities of endorsers. Therefore, it is important to see how the ideal regulations regarding the existence of endorsers are in the dynamics of digital marketing to protect consumers. This is done by looking at a comparison of regulations regarding endorsers in digital marketing to help evaluate weaknesses or opportunities for legal development in the Indonesian regulatory system. The selection of the FTC and the United States regulations themselves is based on best practices where the United States is one of the countries with detailed and fairly advanced endorser regulations (Carpenter & Bonin, 2020; González-Díaz & Quintas-Froufe, 2024; Elsaman, 2024). On the other hand, the characteristics of the United States as a democratic country with the largest digital economy market are quite relevant to Indonesia as the largest market in Southeast Asia with a digital economy that also continues to grow (Miller & Vaccari, 2020; Acs et al., 2021; Dudhat & Agarwal, 2023). By comparing, Indonesia can learn from the successes and challenges faced by America in regulating endorsers.

This article tries to explore the research question, what are the criteria for Endorsers who can be called Business Actors in Law Number 8 of 1999 concerning Consumer Protection and 16 Code of Federal Regulations (CFR) Part 255 concerning guidelines for the use of endorsements and testimonials in advertising? And what is the ideal regulation of endorser liability for consumer losses due to promotional actions carried out by endorsers. The topic of the phenomenon of endorser regulation in Indonesia is basically not new. There have been several previous studies that have tried to look at this

problem. Unfortunately, several previous studies have focused more on how endorsers influence advertising effectiveness, the legal standing of endorsers in advertising regulations, and the responsibilities and legal standing in consumer protection regulations (Anjarningtyas, 2022; Andika et al., 2024). There are still few who try to see how Indonesia adapts to regulating endorsers when compared to developed countries with the same characteristics that regulate this phenomenon. Therefore, through this research, it is hoped that it can contribute to seeing the development and construction of laws that can be carried out by Indonesia to regulate endorsers in order to provide better protection to consumers.

2. Research Methods

This article will use a normative legal research method based on literature review and analysis of secondary legal materials (Rizkia & Fardiansyah, 2023). In order to gain a comprehensive understanding, this study will adopt three approaches, namely the conceptual approach, the statute approach, and the comparative approach. The conceptual approach is used to explore and analyze basic concepts related to consumer protection, especially in the context of endorsement and testimonial practices in digital advertising. Through this approach, researchers will examine the legal theory of consumer protection as well as the principles of business ethics and the responsibilities of business actors towards consumers. The statute approach will focus on the analysis of relevant national laws and regulations, especially Law Number 8 of 1999 concerning Consumer Protection, and its implementing regulations. The aim is to examine the extent to which Indonesian positive law provides protection for consumers from potentially misleading endorsement or testimonial practices. As a complement, a comparative approach is used to compare the regulations in force in Indonesia with the laws applied in the United States, especially 16 Code of Federal Regulations (CFR) Part 255 concerning Guidelines for the Use of Endorsements and Testimonials in Advertising. With this approach, researchers want to see how other legal systems, in this case US federal law, regulate endorsement practices in more detail and strictly, and whether there are best practices that can be used as references in improving consumer protection legal policies in Indonesia. The results of this comparison are expected to contribute to strengthening national regulations that are adaptive to digital developments and more optimal consumer protection.

3. Results and Discussion

3.1. Endorser Criteria that can be referred to as Business Actors in Law Number 8 of 1999 concerning Consumer Protection

Massive technological developments have encouraged various parties to study and develop technology to maximize its benefits. One group that actively utilizes technological advances is business actors, who leverage digital platforms to disseminate promotional information about products or services. These promotions are often conducted through personal social media accounts or by using endorsements. Endorsements involve a public figure or influencer—commonly referred to as an endorser—who acts as a spokesperson to recommend and advertise a product (Sonwalkar, 2011; Schouten et al. 2021; Moodley & Machela, 2022; Zeitoun et al., 2022). Through this strategy, businesses aim to increase consumer purchasing interest.

However, the growing use of endorsements raises regulatory challenges in Indonesia. Although promotional activities using digital platforms are increasing rapidly, the implementation of ideal regulations to oversee such practices remains constrained. Supervisory institutions such as the Food and Drug Supervisory Agency (BPOM) and the Business Competition Supervisory Commission (KPPU) face limitations in capacity, including limited human resources, digital monitoring infrastructure, and jurisdictional overlaps. These limitations hinder effective enforcement, especially in monitoring the authenticity of claims made by endorsers or ensuring compliance with consumer protection laws. As a result, despite the potential of endorsements to influence consumer behavior, regulatory frameworks often lag behind the fast pace of digital marketing practices.

Article 1 number (6) of the Law on Consumer Protection defines promotion as an activity of introducing or disseminating information about a product and/or to attract consumer purchasing power for goods and/or services. In the Law on Consumer Protection, there are 2 legal subjects, namely business actors and consumers. Business actors can carry out promotional activities to increase consumer purchasing interest. However, in the Law on Consumer Protection, there are terms other than business actors and consumers, namely advertising business actors, discussions regarding advertising business actors include Articles 17 and 20. Considering that advertising business actors do not have their own definition in Article 1 of the Law on Consumer Protection, advertising business actors still refer to the definition of business actors in Article 1 of the Law on Consumer Protection.

Article 1 number (3) of the Law on Consumer Protection defines that business actor activities are carried out through a business activity implementation agreement so that the basis needed is an agreement. Therefore, in relation to whether an endorser can be categorized as a business actor or not, the endorser is part of the business actor in the event of an agreement between the business actor and the endorser. Article 1313 of the Civil Code defines an agreement as an act in which one or more people bind themselves to one or more people. An agreement is an event in which one or more people promise another person to do something so that from that event a contract arises (O'Sullivan, 2020; Widiyowati, 2022; Pollock & Wald, 2024). However, according to Subekti (2005), in order to fulfill the purpose of legal certainty, an agreement should be made in writing so that it has legal force.

The legal relationship between the endorser and the business actor can actually be seen through the agreement or contract agreed between the endorser and the business actor. In the case of VV and NK, based on Decision Number: 1555/Pid.Sus/2019/PN Sby, both VV and NK admitted that the endorsement carried out with the business actor DS was not based on a written agreement in black and white, but rather through an agreement via Instagram direct message. Through the direct message, VV and NK carried out promotions according to the request of the business actor DS, both for captions or promotional information and content to be uploaded. Apart from the DS case, the researcher examined the form of other agreements or contracts to determine the legal relationship and limits of responsibility between the business actor and the endorser, namely through the Confirmation Letter of Cooperation held by one of the skincare business actors with an endorser with the TikTok account @hikmaarifah on March 6, 2024. Through the Confirmation Letter of Cooperation, it can be seen that the form of the agreement is a cooperation agreement where the endorser will receive the agreed

amount of payment if the endorser carries out his/her responsibility to carry out promotional activities carried out by posting content through the endorser's TikTok platform, which is the result of the agreed content. Before the posting process is carried out, a review will be carried out first by the business actor and the business actor will provide direction, storyline, and/or content draft to the business actor. If you look at the responsibilities of the endorser which are limited to the implementation of promotions as determined by the business actor, it can be seen that the legal relationship between the business actor and the endorser is the endorser as a worker employed by the business actor for a certain time in accordance with the agreement between the endorser and the business actor. If so, then through Law Number 8 of 1999 concerning Consumer Protection which is currently in effect, the endorser cannot be held directly responsible. This is also in line with the DS case involving VV and NK, where even though there was negligence from the endorser because they did not first check the product to be advertised, because VV and NK carried out the promotion according to the direction and request of the business actor, the responsibility lies with the business actor and not the worker.

The legal relationship between the business actor and the endorser is based on an agreement so that rights and obligations arise for each party (Atmoko, 2022; Sitompul, 2023; Manhal, 2023). In the case of VV and NK as explained above, through Decision Number 1555 / Pid.Sus / 2019 / PN.Sby it can be seen that there was no special written agreement regarding the endorsement agreement but only based on direct messages via Instagram. Based on Article 1320 of the Civil Code, there are valid conditions for an agreement, namely agreement, ability to act, a certain thing and a lawful cause. Therefore, in the case of an agreement made through a social media platform, such as Instagram, and the agreement has met the requirements for a valid agreement, it can be said that there is an agreement as a basis for carrying out business activities. Based on Decision Number 1555/Pid.Sus/2019/PN.Sby, VV and NK, who are endorsers, have an obligation to promote DS products, where the content of the promotion is first sent and approved by the DS team and the caption used by the endorser is based on information from the DS team. However, through the a quo decision, VV and NK informed that they did not know and did not check the label on the packaging listed on the DS cosmetic product. Endorsers can be part of business actors if there is an agreement between the two, from which the legal relationship that occurs can be known (Latorre, 2020). Endorsers receive wages from business actors if the endorser has completed his obligations in accordance with the agreement between them, where the legal relationship that occurs is the endorser as a worker of the business actor.

3.2. Endorser Criteria that can be referred to as Business Actors in 16 Code of Federal Regulations (CFR) Part 255 on Guides Concerning the Use of Endorsements and Testimonials in Advertising

Referring to the FTC Guides of Endorser Part 255point b explains that an endorser is an individual, group, or organization that expresses an opinion, belief, or personal experience regarding a product or service. Activities carried out by endorsers through statements that can be considered by consumers as views or opinions representing the endorser, either explicitly or implicitly, are referred to as endorsement activities. Referring to section 255.5 of the FTC Guides of Endorser, the regulation clearly states that in carrying out an endorsement, an endorser must make a statement or disclosure explicitly in a place that is easily seen by consumers regarding the material relationship

between the endorser and the business actor according to. If the promotion is carried out in digital format, the endorser is required to use hashtags such as #ad or #sponsored to indicate that the content is promotional in nature to avoid misleading the opinion conveyed by the endorser to consumers. In addition, in providing testimonials or reviews, endorsers must have direct experience with the advertised product or service as stated in section 255.2 b of the FTC Guides of Endorser. Therefore, if the endorser's experience is not generally applicable, the endorser must provide a clarification statement (disclaimer). Likewise, if the endorser provides a testimonial based on expertise (expert endorsement), the claim must be supported by scientific evidence or relevant data. Therefore, an endorser must actually use the product and based on personal experience and not only based on the brief provided by the business actor alone.

This is very different from the Law on Consumer Protection and the practice of endorsement transactions carried out by endorsers in Indonesia. In the case of VV, for example, in the media and promotional posts, he did not provide explicit information that VV was paid by the business actor as the product owner to promote the product that had been given (Surabaya, 2019). Or in other words, there was no disclosure of the material relationship between VV and the business actor, because it was not required by the Law on Consumer Protection in Indonesia. Likewise in the endorsement practice carried out by the endorser @hikmaarifah through her personal TikTok account, where the brief and testimonials as a whole are compiled based on the direction of the business actor. Based on the explanation above, the current situation has potential space where consumers can be harmed because the results of the testimonials can be dishonest and not in accordance with the personal experience of the endorser himself on the products used, to the lack of caution from the endorser to conduct a thorough check on the products to be promoted. Unfortunately, in current Indonesian regulations, this is not regulated as an effort to protect consumers from misperceptions of promotions carried out by endorsers paid by business actors. Therefore, in the case of an endorser acting based on the direction of the business actor, the endorser cannot be sanctioned and can be free from responsibility so that sanctions and responsibilities are given to the business actor as the owner of the goods and/or services. On the other hand, in regulations in the United States, the FTC can take legal action against endorsers who violate established guidelines, including imposing fines or orders to stop the practice. Therefore, sanctions and accountability can be given not only to business actors but also to endorsers who fail to comply with the guidelines set out in the CFR.

3.3. The Ideal Arrangement for Endorser Liability For Consumer Losses Resulting From Promotional Actions Carried Out By The Endorser

The increasingly massive digital promotional activities carried out by endorsers must receive more attention from the government. The absence of laws and regulations in Indonesia that explicitly and in detail regulate endorsers can cause endorsers to only focus on the personal benefits they get without first thinking about and not being careful about the impact of the promotions they do. In the background above, the researcher has explained one example of a case involving VV and NK as endorsers where according to their confessions, each of VV and NK did not check the licensing of the products they were promoting first or ask the business actors of the products. This can be dangerous for consumers, considering that the promotion is carried out by endorsers who have followers on social media and the promotional content they do can be seen by anyone who has similar social media. Referring to Law Number 8 of 1999 concerning Consumer

Protection, the burden of responsibility for consumer losses lies with the Business Actor. This is because the endorser is part of the business actor in the event of an employment agreement so that the endorser is classified as a worker of the business actor who receives wages with certain conditions and time according to the agreement between the business actor and the endorser. The absence of explicit regulations regarding the role and responsibilities of the endorser explicitly in the a quo law in the context of advertising or promotion can be a loophole that can cause the fulfillment of consumer protection not to be achieved properly (Masrukhin, 2023; Puspita, 2023; Tatawiranta, 2023). The absence of such explicit regulations can open a gap for endorsers to be careless in carrying out the promotions they do and only focus on the benefits they will get from the promotion. The urgency of the endorser regulation in Law Number 8 of 1999 concerning Consumer Protection is needed to achieve the objectives as stated in Article 3 of the a quo law. The formation of ideal regulations to regulate the responsibilities of endorsers in Indonesia can adopt the regulations in force in the United States which have been regulated by the Federal Trade Commission and regulate endorsers explicitly and in detail through the FTC Guides of Endorser. The FTC has updated the FTC Guides of Endorser on July 26, 2023, where through the a quo regulation there are provisions regarding guidelines for endorsers in conducting their promotions.

The Guide for Endorsements and Testimonials regulated in section 255.1, namely regarding Endorsements Must Be Honest and Not Misleading and Disclosure of Employment Relationships. Endorsers must provide testimonials that truly reflect their experience with the product or service being promoted. If an endorser claims that they use a particular product, then the endorser must actually use it. If they do not use the product or do not have relevant personal experience, the claims made can be considered misleading. Endorsers who receive compensation (such as money, free products, or other forms of payment) to promote a product or service must disclose the relationship clearly and openly. This disclosure must be made in a way that is easily understood by the audience, for example by stating that they are doing a "collaboration" or "paid for promotion." If the endorser does not disclose the existence of the relationship, then it can be considered a deceptive practice or a violation of the FTC (FTC, 2023).

Endorsements and Unproven Products are regulated in sections 255.0 and 255.2 which regulate Misleading Products and Misleading Claims. Misleading Products, if an endorser promotes a product with unproven claims, for example, health or beauty claims that have no scientific basis, the endorser is liable if the claim is proven to be misleading or false. The FTC can issue sanctions against businesses and endorsers who are involved in unproven claims or claims that could harm consumers. Misleading Claims, if the product or service being promoted has misleading or unrealistic claims, for example, losing weight without dieting or exercise, the endorser can be sanctioned or fined by the FTC if they are involved in spreading the claim. Endorsers can be sanctioned by the FTC if the endorser is involved in spreading misleading or unrealistic claims, even if the endorser is not directly involved in making the claim. Section 255.1(b) and Section 255.2 state that endorsers can be liable for misleading claims they make, even if the claims come from an advertiser.

The FTC recommends that endorsers use hashtags such as #ad or #sponsored in their posts to let their followers know that it is a paid promotion. Using these hashtags also helps avoid claims that the ad is dishonest or misleading. The FTC also holds that both endorsers and advertisers (the company or brand that produces the product) are jointly

liable for misleading or false advertising. For example, if a brand or company makes a false claim and an endorser spreads the claim, both the advertiser and the endorser could face sanctions, with the endorser being fined or ordered to stop using the false claim. The advertiser could also face legal action or be ordered to withdraw the product from the market. One example of a case involving the FTC with endorsers was S and LL, where LL was involved in an advertising campaign claiming that S's product could cause rapid and effective weight loss without diet or exercise. In the campaign, he provided testimonials about the product's success, which the FTC ultimately found to be misleading. The product lacked scientific evidence to support its claims, which led the FTC to take legal action against the advertiser and endorser. In 2015, the FTC fined LL for its role as an endorser of a product whose claims were found to be unsubstantiated. In this case, the FTC asserted that endorsers must ensure that the claims they endorse are supported by valid evidence. LL was fined \$100,000 as part of this settlement. Sanctions against endorsers in the United States for violations of the promotion of products or services are regulated by the Federal Trade Commission (FTC). The responsibilities and penalties for endorsers who violate these provisions can be found in the Federal Trade Act.

The FTCA (15 U.S.C. § 41 et seq.) is the primary law that gives the FTC the authority to police unfair or misleading trade practices, including advertising and promotions. The FTC has the power to sanction endorsers who engage in misleading or dishonest advertising or promotions. Under the FTCA, sanctions that can be imposed include Cease and Desist Orders, where the FTC can order an endorser or advertiser to stop misleading advertising or promotions; Fines and Financial Penalties, where the FTC can impose fines on violators. These fines can be as high as \$43,792 per violation (this figure is subject to inflation). These fines can also be imposed on endorsers who engage in false or misleading promotions; and Court Actions, where the FTC can file lawsuits in federal court to force endorsers or advertisers to stop unlawful practices and pay damages or fines. The FTC's sanctions are implemented by first warning or notification if minor violations are found, especially those related to failure to adequately disclose financial relationships. If the violation is not stopped or corrected, the FTC can proceed with legal action, including prosecution and fines.

The sanctions provisions against endorsers in the Federal Trade Commission Act (FTCA) are regulated in several articles, including Article 13 and Article 19. Article 13 entitled Injunctions gives the FTC the authority to issue an injunction against business actors or endorsers who engage in unfair or misleading practices. If an endorser engages in a promotion that violates the provisions of Section 5, the FTC can file an order to stop the activity. Specifically, Section 13(a) gives the FTC the authority to file a lawsuit in federal court to request the implementation of an immediate cease and desist order and renewal. Meanwhile, Article 19 entitled "Penalties" gives the FTC the authority to impose financial sanctions on parties who violate the provisions of the FTCA, including endorsers who engage in misleading advertising or who do not comply with disclosure obligations. Section 19(b) states that violations of the FTC rules are subject to fines, which can be as much as \$43,792 per violation, and the amounts are subject to inflation.

In 1980, the FTC issued 16 Code of Federal Regulations (CFR) Part 255, Guidelines for the Use of Endorsements and Testimonials in Advertising to address endorsements by consumers, experts, organizations, and celebrities, as well as disclosure of material relationships between advertisers and endorsers (FTC, 2005). The FTC states that, in addition to protecting consumers from deceptive practices, 16 Code of Federal

Regulations (CFR) Part 255, Guidelines for the Use of Endorsements and Testimonials in Advertising is intended to provide guidance to businesses and others to ensure that advertising using endorsements or testimonials complies with the requirements of the FTC Act (Register, 2024). 16 Code of Federal Regulations (CFR) Part 255 Guidelines for the Use of Endorsements and Testimonials in Advertising was revised again in 2009 and has remained unchanged for fourteen years despite public criticism of the guidelines' vague standards and perceived failure to adapt to the broader influencer endorsement medium (Kupfer, 2024). The FTC has openly acknowledged that 16 Code of Federal Regulations (CFR) Part 255 lacks clarity in the guidelines in establishing clear standards for influencer endorsement disclosure (FCT, 2023). Regulations that lack clear standards can undermine deterrence. Deterrence in regulation relies on three key factors: transparency, predictability, and consistent enforcement (Nagin, 2013). Without these three elements, regulations are ineffective in preventing violations.

Through the 16 Code of Federal Regulations (CFR) Part 255 which was updated in 2023, the FTC has introduced several changes in the revision of the a quo regulation, but still leaves ambiguity in the definition and disclosure requirements. Some shortcomings in the 16 Code of Federal Regulations (CFR) Part 255 are that it does not require influencers to disclose the amount of compensation in endorsements, sets vague rules that are difficult for companies and influencers to understand, and does not apply these guidelines consistently (Kupfer, 2023). In comparison to the 16 Code of Federal Regulations (CFR) Part 255, the Security Exchange Commission (SEC) has implemented a stricter and clearer approach in its regulations, especially regarding the disclosure of compensation in stock or securities promotions (U.S. Securities and Exchange Commission, 2000). The SEC uses the principle of strict liability, which means that individuals who fail to comply with the regulations can be subject to sanctions, even if they did not intend to mislead. Currently, Section 17(b) of the Securities Act of 1933 SEC has been updated to include regulations regarding the promotion of Initial Coin Offerings (ICOs) (Securities and Exchange Commission, 2017). The SEC explicitly states that any celebrity or other individual who promotes a virtual token or coin that is categorized as a security must disclose the nature, scope, and amount of compensation received in exchange for such promotion.

4. Conclusion

In the Consumer Protection Law in Indonesia, the role of endorsers is not explicitly regulated. However, implicitly, endorsers can be categorized as business actors if there is an agreement between the endorser and the business actor. This refers to Article 1 which defines a business actor as any individual or business entity that carries out business activities in various economic fields, either alone or together through an agreement. Therefore, the existence of an agreement is an important basis for knowing the legal relationship between the business actor and the endorser, which is referred to as an endorsement agreement. Endorsers receive compensation if they have carried out their obligations according to the agreement, so this legal relationship places the endorser as an employee of the business actor.

Unlike Indonesia, the United States through the Federal Trade Commission (FTC) strictly regulates endorsers and their responsibilities. The FTC can impose sanctions on endorsers who violate the guidelines, including fines and orders to stop practicing. The FTC Guides of Endorsers stipulate that endorsements must reflect the honest opinions,

experiences, or beliefs of the endorser, and the endorser must actually use the advertised product. In addition, advertisers are responsible for false statements or failure to disclose material relationships between endorsers and advertisers. Endorsers can also be held accountable for their statements. However, the FTC Guides do not yet require disclosure of the amount of compensation. Therefore, Indonesian regulations can adopt and improve the FTC guidelines by adding the principle of strict liability and the obligation to disclose compensation as regulated by the SEC in the ICO, so that consumers can more transparently assess the promotions they receive.

5. References

Book:

O'Sullivan, J. (2020). *O'Sullivan & Hilliard's The law of contract*. Oxford University Press.

Pollock, F., & Wald, G. H. (2024). *Principles of Contract at Law and in Equity*. BoD—Books on Demand.

Rizkia, N. D., & Fardiansyah, H. (2023). *Metode penelitian hukum (normatif dan empiris)*. Bandung: CV Widina Media Utama.

Subekti, R. (2005). *Hukum Perjanjian Cet. 21*. Jakarta: Internusa.

Converence:

Digital Marketing Institute (DMI). (2022). *The Impact of Influencer Marketing*. Retrieved June 20, 2025 from <https://digitalmarketinginstitute.com>.

FTC. (2009). FTC publishes final guides governing endorsements, Testimonials. Available at: <https://www.ftc.gov/news-events/news/press-releases/2009/10/ftc-publishes-final-guides-governing-endorsements-testimonials>.

FTC. (2023). 16 CFR Part 255: guides concerning the use of endorsements and testimonials in advertising. Available at: <https://www.ftc.gov/legal-library/browse/federal-register-notices/16-cfr-part-255-guides-concerning-use-endorsements-testimonials-advertising>.

Influencer Marketing Hub. (2023). *Influencer Marketing Benchmark Report 2023*. Retrieved May 24, 2025 from <https://influencermarketinghub.com/influencer-marketing-benchmark-report/>.

Register, Federal. (2024). Guides concerning the use of endorsements and testimonials in advertising. Availabel at: <https://www.federalregister.gov/documents/2020/02/21/2020-03447/guides-concerning-the-use-of-endorsements-and-testimonials-in-advertising>.

Surabaya, Pengadilan Negeri. (2019). Sistem Informasi Penelusuran Perkara, perkara Putusan Nomor 1555/Pid.Sus/2019/PN.Sby. Availabe at: https://sipp.pn-surabayakota.go.id/index.php/list_perkara.

U.S. Securities and Exchange Commission. (2000). Selective disclosure and insider trading (Release No. 33-7881). <https://www.sec.gov/files/rules/final/33-7881.htm>.

Vero. (2024). The impact of Indonesia influencer. Available at: https://vero--asean-com.translate.goog/whitepaper/the-impact-of-indonesian-influencers/?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc,%20diakses%20pada%2014%20Januari%202025.

PhD diss:

Masrukhin, M. (2023). *Rekonstruksi Regulasi Tanggung Jawab Pelaku Usaha Dalam Rangka Mewujudkan Perlindungan Konsumen Yang Berbasis Nilai Keadilan* (Doctoral dissertation, Semarang: Universitas Islam Sultan Agung).

Puspita, S. Z. (2023). *Tanggung Jawab Pelaku Usaha Terhadap Konsumen Atas Ketidakjelasan Label dan Iklan Daring Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen* (Doctoral dissertation, Semarang: Universitas Islam Sultan Agung Semarang).

Tatawiranta, B. (2023). *Tanggung Jawab Hukum Terhadap Konsumen Pada Iklan Pengembang Perumahan Berdasarkan Undang-Undang Perlindungan Konsumen* (Doctoral dissertation, Jakarta: Universitas Kristen Indonesia).

Journal:

Acs, Z. J., Song, A. K., Szerb, L., Audretsch, D. B., & Komlósi, É. (2021). The evolution of the global digital platform economy: 1971–2021. *Small Business Economics*, 57, 1629-1659.

Amaliasari, R., & Pande Yogantara, S. (2021). Kedudukan hukum influencer dalam iklan produk kosmetika menyesatkan. *Jurnal Ilmiah Fakultas Hukum Universitas Udayana*.

Andika, A. D. P., Lestari, E. I. P., & Wiliam, A. (2024). Analyzing the role of influencers in digital marketing strategy: A case study in the online fashion industry. *Ilomata International Journal of Social Science*, 5(2), 444-459.

Anjarningtyas, M. C. (2022). Tanggung jawab endorser atas kerugian konsumen akibat penggunaan produk endorsement. *Dinamika*, 28(4), 3688-3701.

Antoniou, A. (2021). Advertising regulation and transparency in influencers' endorsements on social media. *Communications Law-Journal of Computer, Media and Telecommunications Law*, 26(4), 190-207.

Atmoko, D. (2022). Endorsement Agreements On Instagram Social Media Related To Article 7 Of Law Number 8 Of 1999 Concerning Consumer Protection. *JILPR Journal Indonesia Law and Policy Review*, 3(3), 116-122.

- Carpenter, C. C., & Bonin, M. I. (2020). To win friends and influence people: Regulation and enforcement of influencer marketing after ten years of the endorsement guides. *Vand. J. Ent. & Tech. L.*, 23, 253.
- De Cicco, R., Iacobucci, S., & Pagliaro, S. (2021). The effect of influencer–product fit on advertising recognition and the role of an enhanced disclosure in increasing sponsorship transparency. *International Journal of Advertising*, 40(5), 733-759.
- Dudhat, A., & Agarwal, V. (2023). Indonesia's digital economy's development. *IAIC Transactions on Sustainable Digital Innovation (ITSDI)*, 4(2), 109-118.
- Elsaman, R. (2024). Franchising Law in the United States Between Theory and Practice: Heads Up for Foreign Investors. *Touro Law Review*, 31(1), 24-05.
- Fadillah, D., & Wibowo, A. A. (2022). The fall of public relation officer and the rise of influencer in the Indonesian government. *Profetik: Jurnal Komunikasi*, 15(1), 19-33.
- Franke, C., Groeppel-Klein, A., & Müller, K. (2023). Consumers' responses to virtual influencers as advertising endorsers: novel and effective or uncanny and deceiving?. *Journal of Advertising*, 52(4), 523-539.
- González-Díaz, C., & Quintas-Froufe, N. (2024). Regulating influencers' commercial communication: No legislation, hardly any self-regulation and policy recommendations. *Policy & Internet*.
- Junawan, H., & Laugu, N. (2020). Eksistensi media sosial, youtube, instagram dan whatsapp ditengah pandemi covid-19 dikalangan masyarakat virtual Indonesia. *Baitul'Ulum: Jurnal Ilmu Perpustakaan dan Informasi*, 41-57.
- Kupfer, R. (2024). How often do you think about the roman empire? Clarifying and codifying the FTC's Endorsement Guides' influencer disclosure guidelines. *California Western Law Review*, 61(1), 7.
- Latorre, A. F. L. (2020). In defence of direct obligations for businesses under international human rights law. *Business and Human Rights Journal*, 5(1), 56-83.
- Manhal, A. H. (2023). Moral clauses in contracts: an Iraqi law perspective. *Revista de Gestão Social e Ambiental*, 17(4), e03448-e03448.
- Miller, M. L., & Vaccari, C. (2020). Digital threats to democracy: Comparative lessons and possible remedies. *The International Journal of Press/Politics*, 25(3), 333-356.
- Moodley, M., & Machela, T. (2022). The impact of influencer marketing and celebrity endorsements on consumer behaviour within the South African context. *The Retail and Marketing Review*, 18(2), 74-93.
- Mubarikah, N. A. (2021). Kewajiban endorser atas pengajuan suatu produk pada media sosial menurut peraturan perundang-undangan di Indonesia dalam perbandingan dengan Amerika Serikat, Inggris dan India. " *Dharmasisya*" *Jurnal Program Magister Hukum FHUI*, 1(1), 13.
- Nagin, D. S. (2013). Deterrence in the twenty-first century. *Crime and justice*, 42(1), 199-263.

- Ningrum, A. W., & Ahmadi, M. A. (2024). Pengaruh celebrity endorsements terhadap purchase decisions generasi milenial. *Jurnal Media Akademik (JMA)*, 2(12).
- Paranna, T. N. S., & Andersen, C. (2022). Legal liability of influencers or affiliates for stock pumping activities and promoting trading in the form of binary options. *Daengku: Journal of Humanities and Social Sciences Innovation*, 2(6), 816-822.
- Permata, F. A., & Nadia, S. (2024). Online advertising and digital marketing law: how influencers can impact the e-commerce market and its legal implications in Indonesia. *Notaire*, 2(2).
- Prastyanti, R. A., & Srisuk, P. (2025). Achieving Sustainable Consumer Protection in the Era of Social Media. *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3(1), 121-146.
- Safrin, F., & Simanjorang, F. (2023). Optimizing the use of E-commerce as a marketing medium for online shop businesses in the city of Medan. *Research Horizon*, 3(3), 235-248.
- Schouten, A. P., Janssen, L., & Verspaget, M. (2021). Celebrity vs. Influencer endorsements in advertising: the role of identification, credibility, and Product-Endorser fit. In *Leveraged marketing communications* (pp. 208-231). Routledge.
- Securities and Exchange Commission. (2017). SEC Statement Urging Caution around Celebrity Backed ICOs. *public statement*, 1.
- Sitompul, A. (2023). Transfer Of Billing Rights To Third Parties In The Banking System. *Legalpreneur Journal*, 1(2), 71-80.
- Sonwalkar, J., Kapse, M., & Pathak, A. (2011). Celebrity Impact-A Model of Celebrity Endorsement. *Journal of Marketing & Communication*, 2(1).
- Widijowati, D. (2022). Unveiling the legal landscape: a comprehensive study on motor vehicle insurance in accordance with the commercial law code. *Research Horizon*, 2(6), 607-614.
- Zeitoun, V., Michel, G., & Fleck, N. (2020). When brands use CEOs and employees as spokespersons: A framework for understanding internal endorsement. *Qualitative Market Research: An International Journal*, 23(2), 241-264.

Regulations:

Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions.

Law No. 8 of 1999 concerning Consumer Protection.