

73_-Law-Enforcement-Against-the-Practice-of-Advertising-Fraud-in-Indonesia

By Joko Sumaryanto

Law Enforcement Against the Practice of Advertising Fraud in Indonesia: A Review from the Aspect of Indonesian Criminal Law

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Abstract

Advertising is used as a common marketing strategy by various companies and individuals to promote their products or services to potential consumers. However, it is not uncommon for advertising to contain illegal and fraudulent activities that can cause harm to users through misdirection. In the act of advertising fraud, it is necessary to analyze the application of articles in the Criminal Code (KUHP) which regulates the concept of concursus in criminal law. The purpose of this study is to explain, identify and analyze the applicable legal framework, penalties imposed and law enforcement against advertising fraud in terms of criminal aspects. This research uses a normative juridical method by using a statutory approach (*state approach*), case approach (*case approach*), comparative approach (*comparative approach*), conceptual approach (*conceptual approach*). Based on the results of the research, advertising that deceives and harms consumers is an illegal act known as fraud and can be subject to the provisions in Article 378 of the Criminal Code. Article 379 of the Criminal Code stipulates that if as a result of the fraudulent act, a person suffers a loss, then the perpetrator of fraud may be subject to a more severe punishment. The provisions in the Criminal Code are used to protect the public from acts of fraud, and are expected to reduce the incentives of individuals, groups or other parties to commit fraud and provide a deterrent effect for the perpetrators.

Keywords: Fraud, Advertising, Criminal Law

Introduction

Advertising is used as a common marketing strategy by various companies and individuals to promote their products or services to potential consumers. Advertising is the main means of profit income from the communication process which has the power as a marketing tool and helps sell goods, provide services, and ideas through certain channels in the form of persuasive information (Alo Liliweri, 1992). This strategy is based on the concept that by publishing advertisements, it will attract audiences to be more familiar with the products offered so as to expand market reach, increase sales opportunities and increase profits. Advertising

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organizers will try to convey interesting, ¹⁷ative and persuasive messages to be addressed to the audience. Advertisements can be published through various media, such as television, radio, print media, online advertising, and social media platforms.

One of the main objectives of advertising is to increase brand awareness about the advertised product or service. Consumers who have recognized a product, will tend to choose it when faced with various products of the same type. In addition to these benefits, advertising can influence consumer preferences in choosing a product through presenting the benefits and advantages of the product in an attractive way. The message conveyed in the advertisement and the right target can increase the success of the advertising program. This can be done by conducting market analysis and determining data identification of the target market that is most suitable for the product being marketed. In the scope of business, advertising is one of the biggest sources of income for the media, because advertisers will pay to place their advertisements in the media (Junaedi, 2022).

In conducting advertising, ethics and regulations must be considered, and must present correct and accurate data and information to prospective buyers (Janus Sidabalok, 2006). However, it is not uncommon for advertising to contain illegal and fraudulent activities that can cause harm to users through misdirection. Fraudulent practices through advertising can be pursued in various ways, such as disclosing things that are not true (*false statements*), using subjective opinions that are excessive signs of facts (*peffery*), and misleading things (*mislead statements*). Misleading statements can be in the form of deceptive pricing or deceptive promotion. The emergence of the advertising industry has raised public concerns regarding the element of dishonesty and deceit in business.

Based on the criminological theory of routine activity, advertising fraud occurs when three main elements are motivated actors, unprotected targets, and the absence of supervisors (Williams et al., 2019). In the context of advertising, actors motivated to deceive take advantage of loopholes in regulatory oversight, while consumers are often vulnerable targets due to a lack of protection from misleading advertising. For example, deceptive statements or inappropriate pricing can be a tool for actors to manipulate under-protected consumers. These abuses not only harm consumers, but also create a less transparent business environment, reinforcing public concerns about the integrity of honest and ethical businesses.

Indonesia as a country that applies the principle of the rule of law by placing law at the center of all state activities as an effort ³⁰ create justice, legal clarity, order and legal obedience. Law is a binding guideline for the entire community in carrying out activities ⁴¹ in society, nation and state (Marojahan ²⁰ Panjaitan, 2023). The practice of law enforcement in Indonesia is carried out ⁴² based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and in accordance with applicable regulations. In addressing advertising fraud in Indonesia, law enforcement is indispensable. Users and providers of advertising services must comply with applicable laws and regulations. This is not only to protect consumers from fraud,

but will also maintain the integrity of advertising providers as a business communication tool. Provisions relating to advertising are contained in Law No. 8 of 1999 on Consumer Protection (UUPK), Law No. 32 of 2002 on Broadcasting, and other regulations.

In the act of advertising fraud, it is necessary to analyze the application of articles in the Criminal Code (KUHP) which regulates the concept of concursus in criminal law. The purpose of this study is to explain, identify and analyze the applicable legal framework, penalties imposed and law enforcement against advertising fraud in terms of criminal aspects. Thus, this research is expected to provide a clearer view of criminal law enforcement in overcoming advertising fraud that occurs in Indonesia.

Research Methods

This research uses a normative juridical legal approach, namely research based on existing legal rules and seeing the reality that occurs, an approach that seeks to synchronize the provisions of the applicable law in legal protection against norms or other legal regulations with relation to the application of these legal regulations in practice in the field (Burhan Asofa, 2001). The juridical approach is an approach that refers to the applicable laws and regulations. While normative, namely conducting an analytical review based on regulations and literature related to the issue of criminal law enforcement against advertising fraud in Indonesia. The research specification used in this research is descriptive analytical, namely describing or describing the state of the object under study and the factors that influence the data obtained to be compiled and analyzed and making conclusions that apply to the public (Sugiyono, 2010). The type of data used by the author in this legal writing is secondary data. Secondary data is data obtained from various existing sources and obtained through literature studies (Sugiyono, 2010). Secondary data in this research includes primary legal materials, namely laws and regulations, secondary legal sources such as scientific articles, international journals and tertiary legal sources such as Indonesian dictionaries and legal dictionaries. By using the descriptive analysis method, this research is presented qualitatively, providing an explanation of the problem through a description of data based on laws and regulations, legal theories and the practice of implementing positive law and ending in conclusions that are specific and described in quality in sentences that are organized, sequential, logical, non-overlapping, and effective, so as to facilitate interpretation or interpretation of data and understanding of the results of the analysis (Muhammad, 2004).

Discussion

Advertising is a type of information used by business owners and manufacturers to present their products to the public and influence consumers' propensity to use or consume them (Muru, 2011). Wright says that the process of communicating ideas through persuasive information is known as

advertising, and it is a powerful marketing tool that can be used to sell products, services, and ideas (Liliweri, 1992). Advertising is essentially an initiative from advertisers (manufacturers, distributors, suppliers and retailers), either through print or electronic media. Upon approval from the advertiser, the advertising and/or media company then creatively translates the initiative into advertising language to be broadcast or published in the media as product information for a larger consumer base.

Advertisements have similar functions and objectives, ¹³ rely to advertise products in order to persuade people to buy or use them. One of the rights of consumers is to obtain information that is true, real, honest and in accordance with reality from advertisements (Sidabalok, 2006). Indonesia's advertising business plays a role in the implementation of development, so it needs to be fostered, directed and utilized as a national asset.

There are many laws governing advertising that serve as a foundation of morality in terms of the use of advertising to promote products and/or services. Law No. 8/1999 ¹⁸ Consumer Protection and Indonesian Advertising Manners and Procedures, Law No. 32/2002 on Broadcasting, Law No. 40/1999 on the Press, and Government Regulation No. 69/1999 on Food Labels and Advertisements are among them.

In the development of the advertising world, advertisements do not always provide correct information about a product. Law No. 8/1999 contains regulations that prohibit business actors from committing a number of prohibited acts, one of which is offering and promoting goods and ⁵ services in a misleading or incorrect manner so as to harm consumers. Article 28 paragraph (1) Jo Article 45A paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and ¹ Transactions (ITE Law) states that:

"Any person who intentionally and without right disseminates false and misleading news that results in consumer harm in Electronic transactions as referred to in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah)."

Deceptive advertising ¹⁴ that harms consumer ³⁵ an act that violates criminal law, especially fraud. In addition to using Law No. 8 of 1999, the elements of criminal law contained in Article 378 of the Criminal Code can also be applied in law enforcement efforts related to deceptive and harmful advertising to consumers, ² advertising fraud, namely:

"Any person who, with intent to unlawfully benefit himself or another, either by assuming a false name or a false condition, either by artifice and deceit, or by means of falsehood, induces someone to give something, to incur a debt or to extinguish a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of 4 (four) years."

Consumer protection in criminal law review occurs in the event that a person is or has become a victim, either in terms of physical or material loss (Achmad Ali, 2008), as well as in the event of death or injury to a person (Erna Rusdiana, 2010). According to Article 382bis, deceptive advertising may constitute unfair or fraudulent business competition. In reality, however, business actors can only be held liable for fraud-not unfair business competition-because it is the element of fraud that is deemed to be mostly fulfilled (Hetrik, 1996).

Deceptive and harmful advertisements fall under one of the following categories: (Miru, 2011).

- a) *12* *Bait Advertising*, is an advertisement that makes an offer but is dishonest because the advertiser has no intention of selling the item. It attempts to persuade viewers to buy another product that is usually more expensive than the advertised product to benefit the advertiser.
- b) *Blind Advertising*, is defined as an advertisement that persuades consumers to interact with the advertiser, without revealing the identity of the advertiser or the primary purpose of selling a product or service.
- c) *False Advertising*, if the advertisement gives a false impression of reality in an attempt to persuade viewers to buy the advertised goods, even though it will harm them and is the result of dishonest or fraudulent behavior.

All parties involved in the production of advertisements, including advertisers, advertising companies, and advertising media, are liable for advertisements that may harm consumers. Depending on the extent of the business's involvement in the production of the advertisement, the liability may take the form of professional liability, *product liability*, or both (Yusuf, 2000). Product liability refers to the legal obligation of advertisers or product manufacturers to compensate consumers for any losses they may have incurred.

In the realm of law, responsibility is intended as an attachment to legal provisions. The most crucial business responsibility is related to the liability of advertising businesses (Rachman Gede Geya Aditya & *27* Gusti Ayu Puspawati, 2013). The elucidation of Article 12 of the Press Law in Law No. 40/1999 on the Press states that the person in charge is the person responsible for editorial and business reporting. Rules governing the types of prohibited advertisements are outlined in Law No. 8/1999 on Consumer Protection, but advertising companies that ignore these rules risk facing penalties under Articles 60 and *40* 62 of the Consumer *37* Protection Law, which provide for criminal and administrative penalties. Article 63 of the Consumer Protection Law outlines *7* additional penalties that can be imposed on businesses. These penalties include confiscation of certain goods, announcement of a judge's decision, payment of compensation, an order to cease certain activities that harm consumers, the requirement to withdraw goods from

circulation, or revocation of a business license (Fathanudin, 2015). Deceptive advertisements that harm consumers may be subject to administrative sanctions as an *ultimum remedium* and criminal witnesses in accordance with the provisions stipulated in the Criminal Code (Sofyan & Asis, 2014).

Advertising and advertising fraud that can harm consumers can be considered a criminal offense of fraud. The Criminal Code regulates various acts of fraud that include acts that have elements of the use of deception to obtain unlawful gain or mislead other parties. In the context of advertising fraud, Article 378 of the Criminal Code classifies an act of fraud as a person's attempt to deceive another person by deceit or concealing information that should be notified.

Article 379 of the Criminal Code stipulates that if as a result of the fraudulent act, a person suffers a loss, then the perpetrator of fraud may be subject to a more severe punishment. This provision can be applied in advertising fraud, where advertisements containing fraudulent elements are posted which may result in losses to consumers or other parties. This can be legally accountable in accordance with Article 379 of the Criminal Code, with heavy penalties as a consequence of the loss caused by the action. These penalties and sanctions can be in the form of fines or imprisonment, depending on the level of offense committed and the amount of loss incurred.

The provisions of Articles 378 and 379 of the Indonesian Criminal Code serve as legal instruments designed to protect the public from acts of fraud, including fraud in advertising. Article 378 regulates acts of fraud in general, while Article 379 provides more severe sanctions if the act of fraud causes harm to others. With this provision, it is expected to reduce the incentive for individuals, groups, or other parties to commit fraud. In addition, this provision also aims to provide remedies and justice for victims of fraud, as well as create a deterrent effect for potential perpetrators of fraud.

In comparison, in the United States, the Federal Trade Commission (FTC) uses a similar approach in dealing with advertising fraud (Millstein, 1964). The FTC has the authority to enforce laws against deceptive advertising practices through the Federal Trade Commission Act, which provides protection to consumers and sanctions fraudsters. As with the Criminal Code, the US law aims to protect the public from fraudulent practices and create a deterrent effect through sanctions that can include injunctions to stop deceptive advertising, significant fines, as well as prison sentences for perpetrators.

While the enforcement approach in the United States has demonstrated its effectiveness through the Federal Trade Commission (FTC), Indonesia still faces a number of barriers in enforcing laws against advertising fraud. These challenges stem not only from regulatory aspects, but also from social conditions and technological limitations. A discussion of the enforcement gap in the Indonesian context can be seen through several key barriers, ranging from low public legal awareness to jurisdictional complexity in the digital age. The low level of education and understanding of the law, as shown by the data that only 6.68% of the

population has a college education, is one of the factors why many victims are unaware of their rights (Larasati, 2024). As a result, the reporting rate of ad fraud is very low, even though such fraud is rampant. In addition, the public's lack of proactive mindset in prosecuting fraud perpetrators also worsens the situation, which ultimately hinders the effectiveness of law enforcement.

In addition to the public awareness aspect, the article also highlights technical barriers, including the lack of adequate resources in law enforcement agencies and jurisdictional challenges in dealing with fraud occurring on digital platforms. These barriers are exacerbated by limited technology and the low capacity of law enforcement agencies to deal with misleading advertisements online (Egan, 2022). To address these issues, increased public education as well as investment in technology and training for law enforcement officers are needed. International cooperation is also key in cracking down on cross-border fraud, so these measures can strengthen more effective law enforcement efforts in the future.

To overcome these obstacles, there is a need for deeper legal reforms and more effective regulatory oversight. Legal reforms may include adjustments to laws that are more relevant to the development of digital technology, especially in cracking down on cross-border online advertising fraud (Serzo, 2021). In addition, increased cooperation between law enforcement agencies and strengthened sanctions for ad fraud perpetrators are also needed to create a stronger deterrent effect.

On the other hand, increasing consumer education programs is also very important so that people are more aware of their rights and are able to recognize the signs of ad fraud. This education program can be done through various media, including campaigns in schools, social media, and public information platforms. With increased awareness, consumers can be more proactive in reporting fraudulent practices, which can help law enforcers handle ad fraud cases more effectively.

Conclusion

Advertising plays an important role as a source of information for consumers and a promotional tool for entrepreneurs, but not all advertisements convey accurate information about the products being marketed. Advertising that is misleading and detrimental to consumers is included in the crime of fraud that can be sanctioned under Articles 378 and 379 of the Criminal Code, which aims to protect consumers and provide a deterrent effect to the perpetrators. However, law enforcement against advertising fraud faces obstacles, such as low public awareness of their rights as consumers, lack of law enforcement resources, and legal loopholes in digital advertising regulations. To overcome this, increased education and legal literacy for the public, stricter regulatory oversight in digital media, and legal reforms that harmonize advertising regulations with technological developments and cross-border transactions are needed.

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