

Developing Ethical Marketing for Indonesian Micro, Small and Medium Enterprises (MSME) By Cyber Law Enforcement

Rianti Ardana Reswari¹, Ya Rakha Muyassar², Hardi Dominikus Bancin³,
Cesy Lola Kariza⁴

{riantiardana@upb.ac.id¹, yarakhamuyassar@upb.ac.id², hdbancin14@upb.ac.id³,
cesy.kariza@upb.ac.id⁴}

Universitas Panca Bhakti

Abstract. Understanding cyber law is essential for companies due to rapid technological advancements. The internet and social media offer innovative tools but also pose challenges. Cybercrime, a consequence of this progress, is on the rise. In a competitive market, ethical behavior is crucial, especially in marketing strategies aimed at engaging consumers. However, e-commerce and social media are rife with counterfeit products and false advertising, contributing to commercial fraud. Existing Indonesian laws mainly focus on consumer protection. This research paper explores the need for cyber law enforcement to ensure ethical business practices. Using normative research methods, it reviews legal materials and literature on the topic. Governments should implement cyber security measures to uphold ethical standards and protect both consumers and companies effectively.

Keywords: Cyber Law; Ethical Marketing; MSME; Commercial Fraud; Consumer

1 Introduction

Digital transformation is essential component to gaining competitive advantage in global economy. The disruptive phenomenon has emerged in the society ranging from smartphone, social media, big data and artificial intelligence which reshaping the economy whereas optimization of technology driving the growth of e-commerce business model in the global retail market. Indonesian Micro, Small and Medium Enterprise (MSME) functioned as the main pillar economic sector has to be integrated in digital platform to fulfill market demand because of the shifting of consumer behavior in modern era. Marketing is classified as a strategic decision for MSME in promotion approach lead to public acceptance in certain products.[1] It is observed that technological development has brought new risk and difficulties that can affect a company's bottom line. Consumers are exposed to new forms of unfair trade and unethical business. In addition, business need to be protected from consumer fraud in online purchasing. Mass adoption of internet has added tendency of cybercrime threats. The ability of marketing ability from internet shopping to perform misleading tactics to consumer is classified to be unethical. Advertisement is marketing tools in spreading information from MSME to introduce the products for consumer to influence buying decision. A limited consumer protection due to novelty from false advertising in cyberspace is leading

to consumer inconvenience. Vulnerability to commercial fraud is shown from national survey conducted by which implied 66% of respondent with total of 1,132 people had been victim from social media, chat apps, website and email.[2] The major issue in misleading advertising in e-commerce is that impresses the benefit of a product promotion in an exaggerated manner which display statements that do not correspond to reality to build persuasive interpretations for consumer.

Due to inadequate preparation of information security between developing and developed country it resulted a significant difference of frequency on cybercriminal law cases. A lack of understanding in investigating complex technology network is influencing the cyber policy enforcement among countries of the world. The loopholes of Indonesian legal system against cybercrime is concerning for business that needs to be reviewed. Common legal challenge in capitalizing digital landscape into business are involving in cybersecurity issue such as identity theft, intellectual property and privacy. Another legal issue related in cyberspace is the sale or provision of counterfeit goods in e-commerce such as Shopee and Tokopedia that potentially harms to consumer.[3] Lack of clarity regarding the return policy provided by a seller's jurisdiction is linked to enforcement of consumer protection right in cyberspace. Counterfeiting is unlawful act which jeopardizing business performance. Indonesia is huge market for counterfeiters by labeling fake products with foreign trademarks with cheaper price presumed to attracts large number of domestic consumers. Counterfeiting dilemma for Indonesian MSME in online business dealing with illegal product which is not verified from authorities such in extreme case involving fake ethical medicine that endanger health even cause death. Unethical marketing performed by social media frauds by creating fake online shopping websites which display attractive products with the lowest price is common commercial fraud practice in cyberspace. Fall victim of commercial fraud experience either downgrading quality or unreceived product. It is noted the viewpoint of commercial fraud and false advertising case from MSME is added to develop a strong cyberlaw legislation in Indonesia.[4]

Cybercrime

Cybercrime is form of criminality act committed through internet usage. On legal aspect, Indonesia has regulated Electronic Information and Transaction (EIT) Law to supervise a wide range of aspects of electronic commerce in trading activity comprised of purchasing and selling with the objective to improve public welfare. Electronic system functioned as differentiator between trade through modern trade and conventional trade. Article 1 point 5 of the EIT Law states that an electronic system is a series of electronic devices and procedures that function to prepare, collect, transmit and/or disseminate electronic information. Prior to EIT Law enforcement in prosecuting cybercrime the courts used the Criminal Code and Consumer Protection Law to regulate criminal case from cyberspace. Article 378 of the Criminal Code can be imposed for fraud by ostensibly offering and selling a product by placing an advertisement on one of the websites however the there's no existence of the product. Cybercriminals is taking advantage of technological development to cover personal identity and considerable evidence to trace the crime. Broad range of cybercrime that obscures the personal identity have low risk of getting arrested by authorities in which maximizing organized cybercrime practice. Different types of cybercrimes against individuals, organization and society is divided into cyber terrorism, cyber warfare, cyber espionage, child pornography, cyberbullying, phishing, denial-of-service attack, SQL injection attack and futuristic in cyberattacks. Common form of cybercrimes faced by consumer is commercial

fraud, financial loss, privacy breach. Deception on the Internet as cybercrimes have reduced the value of consumer trust to repurchase in online transaction as marketing channels.[5]

Commercial Fraud

Online exposure enables private, individuals, business or governmental organizations to be visible and become attractive fraudulent target from cyber-related crimes. Commercial fraud is charged in as criminal case regulated in Article 378 of the Criminal Code and Article 28 Paragraph 1 of EIT Law. It involved misuse of information technology which is untrue and unethical that conflicted with social policy which leads to consumer losses as the result of irresponsible behavior of business actor.[6] Online commercial frauds composed of non-conforming products, fictitious identity and fraudulent discounted price. Criminal acts related to fraudulent discounted price and fictitious online business that resulted consumer financial losses can refer to Article 45A Paragraph 1 of EIT Law that implied imprisonment and monetary fines as punishment for perpetrator.[7] The potential problems associated with online business practice must be taken against fraud that had significant impact on the company's reputation. There's limitation of regulating a commercial fraud which has non-conforming and counterfeit product in Indonesia. Fraudulent e-commerce trading counterfeit product that damage company reputation. Traditionally, consumer use personal blacklist to block the fraudulent online business.

False Advertising

Social media is gaining massive popularity in marketing platform. The selection of marketing platform is depending on product type, target audience and promotion cost. Various advantage of social media for MSME has able to boost the sale of products, customer communication, branding development and cost efficiency in marketing decision. In the field of commerce, the information posted on the social media has potential lawsuits risk to be exposed as misleading marketing content.[8] Deceptive advertising in business attempts to confuse or manipulate consumer through delivering dishonest information. False advertisement in cyberspace is affiliated on misinformation, fraud and scam issue. Consequently, affiliate marketing using influencer to endorse products in digital platform become a new trend in marketplace. The field of advertising is occupied with massive information to extend advertising post on social media in which consumers nowadays are relying on recommendation from influencer before purchase decision. Affiliate marketing whereby the influencer who are using their popularity use various social media platform in exchange of commission based on the review shared to consumer. Whereas the affiliate marketing has shortcomings that might consists of misleading recommendation that published as from the paid money received from business actor. Misleading content in marketing is bringing prominent detriment to consumer as well for business integrity. A case of deception in the advertising in social media supposedly to be exaggerated even use of famous people or expert to provide testimonials about product. Several forms of advertising perversion through social media including providing false information, disclosing statement, incomplete picture, excessive opinion and offending decency yet morality issue. [9]

2 Research Method

The qualitative research is applying normative research method to examine legal regulations in related to development of cyber and business laws . Primary data is derived from primary and

secondary legal materials.[10] Data is obtained from the literature studies. The research subject is conceptualized as ethical marketing regulation law in cyberspace as a reference. Statue approach is aligned with a normative research to study various law enforcement. The research is emphasized on regulating marketing issue in cyberspace especially on counterfeit product and false advertising.

3 Result and Discussion

3.1 Ethical Marketing

The rise of electronic trading on e-commerce platforms is unequal to security provided to consumers which can be weakened as consumers evaluate the product virtually. Ethics in marketing is manifested from obeying a set of moral norms, principle or values that guide behavior to be socially responsible within society. In order to establish ethical marketing for MSME it is considered legal enactments regarding tendency of deceptive behavior in revealing information to consumer. False advertising violates consumer right to information, choice and safety.[11] As digital platform immersed the recommendation from celebrity endorser and influencer is influencing consumer before purchasing a certain product. In case of advertiser of dietary supplements, vitamins and skincare in which promoted with the claim in certain time is claimed to be deceptive content. Binding obligation between buyers and sellers in term of return policy in cyberlaw is able to improve consumer protection to accommodate the cyberlaw issue. Main responsibility in online business from MSME as business actor to consumer remain unregulated specifically either in consumer protection and EIT laws. Mutual agreement is elements to construct the business liability and protect consumer from fraudulent acts in online commerce.

Consumer is identified trust as driving force behind online shopping activity. Preventive act from the enforcement of ethical marketing by imposing cyber law instrument to regulate ethical marketing help to avoid cybercrime. Consumer Protection Law has explained many aspects to be considered during transactions involved certainty, quantity, and safety of products. Although it is not specifically intended to electronic trading it remain covering provision of business obligation in order to protect consumer.[12] Law No. 8 of 1999 on Consumer Protection in Article 9 organize regulations relating to advertising that become ethical basis in promoting products through advertisements have been widely issued in Indonesia however it not specifies non-conforming product advertisement on social media. The growth of online shopping influenced new forms of advertising strategy that able to improve the communication management between business and consumer. Previous research on commercial fraud stated that e-commerce scams victim resulted from false advertisement (35%) and commercial fraud (33%) followed with dishonest product information (14%) also discounted scam price (3%) which is unethical marketing business performance.[13] Commercial fraud is defined as the misuse of electronic news delivery to display unreliable product advertisement which lead to inconvenience to consumer that presumed to be unintended victim of online shopping. It is found that consumer complaint reports in Indonesia is experiencing fraudulent advertisement which are providing exaggerated descriptions of a product, not providing all relevant information, providing incomplete information about a product, and in some circumstances the seller is unresponsive to the buyer.

An ethical advertisement must contain true information in accordance with performance as business obligation to provide serve consumer right. Although various advertisement medium

is tending to be click bait consists of unrealistic and disproportionate content aimed to mislead a consumer intention. The legal certainty suggested as preventive efforts by recording the identity of e-commerce platform business actors who are required to have a business license under Article 15 Government Regulation on Trading Through Electronic Systems as sellers through electronic systems. Elements in ethical marketing are well regulated in several articles on EIT Law. The elements are clearly to provide legal certainty and protections in electronic transactions in accordance with Article 28 Paragraph 1 of the EIT Law categorized commercial fraud as criminal acts by spreading disinformation that results in consumer losses in electronic transactions.[14] The objective of ethical marketing is able to create trustful, legal dan honest advertising material that assured the company message that is correct conveyed to consumer. Legal enforcement in avoiding commercial fraud in online trading agreements in Indonesian is regarding Law No. 11 of 2008, Law No. 19 of 2016 and Government Regulation Number 71 of 2019 concerning electronic information and transaction Consumer conduct online selling agreements through a leading e-commerce company in Indonesia including Tokopedia, Lazada, Zalora and Shopee which is reputable e-commerce in Indonesia that have a neatly structured system to prevent fraud-prone occurrences to guarantee consumer protection in cyberspace compared to Facebook, WhatsApp, Instagram and Twitter tend to be risky because trading mechanism is subjective to seller and unstructured trading system mechanism.[15] Thus it require legal enforcement to anticipate, optimize and supress the occurrence of commercial fraud in cyberspace.[16]

Numerous countries legislated comprehensive law that govern advertising as part of ethical marketing as from India that restrict on manipulative advertising on Consumer Protection Act. Misleading advertising is considered to be an act of unfair competition in Spain as set from Organic Law on Unfair Competition Practice. Consumer trust is driven by retailer's credibility in cyberspace. Marketing ethics practices linking to product, place, promotion, person, physical evidence and packaging as the marketing mix further shaping positive outcomes for a company or brand. Information about the product should be truthful to maintain the customer relationship in short run whereas in long run it has potential to be beneficial to the society as whole. The message contains persuasive aspects such as pictures, videos and sound as whole construction that is able to influence, and change consumer perceptions remain unclarified to set by authorities. Advertising in ethical marketing should eliminate the consumer suspicion of product or business honesty. Dishonest advertisements broadcast through social media are growing in cyberspace that providing false information to obtain profits in contrast of business law and ethics.[17]

4 Conclusion

Commercial fraud is related to public trust issue that harm the digital economy structure. As an attempt to combating cybercrime by improving national cyber law standards enable to provide accelerate economic growth to guarantee safety and security system in business practice. Thus, the responsibility of business actors in consumer protection is inevitable. Improving interactive components of digital ecosystem between MSME and consumer in term of refund policy transparency to ensure business legal protection model in cyberspace. MSME as business actors must provide a reliable product description to perform ethical marketing as act of responsibility in conduction online commerce. Investment to information technology to encounter counterfeit product by product listing via barcode by authorities to ensure authenticity of product and combat commercial fraud in existing business practice.

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