
**ACCOMMODATION OF VICARIOUS LIABILITY IN ADVERTISING ENDORSEMENT AGREEMENTS IN
INDONESIA**

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ABSTRACT

The purpose of this research is to conduct research on Vicarious Liability accommodations in endorsement agreements. Vicarious Liability is a doctrine in civil law that allows someone to be held legally responsible for the actions of another person, in this case the endorser. Endorsement contract agreements, as a form of compensation between creators and endorsers, have their own characteristics and dynamics that influence the accommodation of the Vicarious Liability doctrine. The current research uses a normative doctrinal research method with a focus on an in-depth analytical approach from various legal standards, such as statutory regulations, court decisions, and legal doctrine relating to the accommodation of vicarious liability in endorsement contract agreements. The analysis was carried out qualitatively by identifying and analyzing arguments and examining the views of relevant legal experts. It is hoped that the results of this research will provide a better understanding of vicarious liability accommodation in endorsement contract agreements, including related legal aspects, controversies and challenges faced in its implementation. It is also hoped that this research can contribute to the development of legal theory and practice in the context of endorsement and vicarious liability agreements in Indonesia.

Keywords: Vicarious Liability, Endorsement, Advertising Agreement

INTRODUCTION

Currently, business actors use the latest trends as marketing strategies through social media such as Instagram, TikTok, YouTube using endorsement models. People who enter into an agreement to promote a product are called endorsers.¹ Then the work or the way we call promotional activities is called endorsement, while the promotional practice is called endorsement. There are two types of endorsers that are often found, namely celebrity endorsers and expert endorsers. Celebrity endorsers are individuals who are well-known to the general public and have the ability to increase the positive word-of-mouth image about a product. In contrast, expert endorsers are individuals who have knowledge and expertise in the relevant field, ensuring that whatever is claimed will be believed by consumers.² Apart from that, this contract or agreement is a legal event where one person makes a promise to another person or two people promise each other to do or not do something.³

So it can be interpreted that the definition of an agreement in Article 1313 of the Civil Code is as a form of action that gives rise to legal effects, but it is just that it is not emphasized as a form of legal action. According to applicable laws and regulations, it is important to have good faith in an agreement. Then, in making an agreement, it must fulfill the conditions for the validity of the agreement and the general principles or principles found in contract law.⁴ Agreements are used as legal rules in carrying out

¹ Pesulima, T. L., & Hetharie, Y. (2020). Akibat Hukum Pencantuman Klausula Baku Dalam Perjanjian Endorsement. *Lutur Law Journal*, 1(1), 37-41.

² Soliha, E. (2007). *Perbedaan persepsi risiko konsumen antara iklan dengan menggunakan Celebrity Endorser dan Expert Endorser*. Tesis. Universitas Gadjah Mada.

³ Gumanti, R. (2012). Syarat Sahnya Perjanjian (Ditinjau dari KUHPerduta). *Jurnal Pelangi Ilmu*, 5(01).

⁴ Sinaga, N. A. (2020). Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian. *Jurnal Ilmiah Hukum Dirgantara*, 10(1).

obligations and obtaining rights from each party. In the agreement there is a deed which guarantees legal protection for the parties.⁵This deed is of course the responsibility of the parties which is clearly regulated in Article 1338 1 of the Civil Code.⁶

In civil terms, the nature of celebrity endorser liability refers to the cooperation contract between the celebrity endorser and the producer, as long as there is no conspiracy or bad faith related to a product in the cooperation contract between the producer and the celebrity endorser. This is related to the civil law doctrine, Vicarious Liability. According to this doctrine, as long as the celebrity endorser carries out the obligations in the contract in good faith, all civil liability is borne by the producer as the party giving the order. Vicarious liability or substitute liability is a substitute liability imposed on the party responsible for a person for actions carried out by the party they are dependent on. Vicarious liability is regulated in Article 1367 of the Civil Code. In vicarious liability, the legal relationship between the contracting party and consumers or service users is different, the endorser only has an attachment to the business actor, the consumer or service user only has an attachment to the business actor. This means that service users may not carry out orders or complain to endorsers.

However, in reality, many business actors do not understand the meaning of endorsement itself, it could even be said that 80% of business actors do not really know who they are being approached. In this case, it is important to create a comprehensive cooperation contract before a celebrity endorses a product. Because it is different from formal marketing, influencer marketing means that the person's entire personality will be considered the "face" of the company. In this case, as endorsers and business actors, they should have more knowledge about the laws and regulations governing agreements in collaborating in the advertising sector. More knowledge about the law of this agreement can reduce disputes that are feared to occur in the future. Therefore, with the thesis that the author will examine with the title "ACCOMMODATION OF VICARIOUS LIABILITY IN ADVERTISING ENDORSEMENT AGREEMENTS IN INDONESIA" it is hoped that it will make it easier for readers to understand the details of Indonesian advertising strategies and the laws that protect them.

RESEARCH METHODS

The research method that the author applies is using the Doctrinal approach or often also called the Normative approach, where the reference is in the form of written norms created and promulgated by authorized officials and institutions whose validity is guaranteed. The type of research the author uses is descriptive. Then the type of material used by the author is secondary data. Secondary legal materials used are library materials in the form of Legislation, Deeds of Agreements, Law Journals, Legal Documents, Books, Articles and literature from the Internet. Method of collecting materials using library research which is carried out by searching, recording, inventorying and studying data and real evidence from various sources. The data analysis method used by the author in the research is a qualitative normative method which is carried out by analyzing, interpreting and discussing data based on norms, doctrines and legal theory.

RESULTS AND DISCUSSION

How is Vicarious Liability Accommodated in the Endorser Contract Agreement?

Marketing is the overall system of various business or business activities aimed at planning, determining the price of goods or services, promoting them, distributing them, and satisfying

⁵ Bernadetha Aurelia Oktavira, 2022 "Perlindungan Hukum Terhadap Konsumen Belanja Online" HukumOnline.com <https://www.hukumonline.com/klinik/a/perlindungan-hukum-terhadap-konsumen-lt50bf69280b1ee> (diakses pada 28 Agustus 2022)

⁶ Akay, B. T. (2019). Sahnya Suatu Perjanjian Yang Diatur Dalam Pasal 1320 Dan Pasal 1338 Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, 7(3).

consumers.⁷Online marketing is the form of marketing that has grown the fastest over the past few years. The advantage of online marketing is Interactive Capabilities, which means the internet is interactive, the internet has strong potential to increase customer engagement and satisfaction and also provide fast feedback for consumers. and business actors.⁸

In endorsements there are several agreements that have been agreed between celebrity endorsers and business actors. Endorsements are direct between the business actor and the endorser without the presence of a third party. Endorsements are carried out through a business relationship, where the business actor pays the endorser to promote their products or services, which is usually done by posting on feeds or stories on the endorser's Instagram. Apart from that, this endorsement practice can also be carried out by providing goods or services produced by business actors for free and expecting endorsers to review or provide testimonials on the products or services they receive.

The deed of agreement is a guarantee for the continuity of a collaboration, but it is no exception that there are several business actors (companies) who deny the agreement. Lave, as the owner of Lav Management, explained that several times there were discrepancies and obstacles in endorsement activities at his management. There is an endorsement agreement between LAV MANAGEMENT and PT KOWO LIFE INDONESIA. The agreement is made in writing with the scope of work regulated in the articles agreed to by the parties. The endorser who will endorse PT KOWO LIFE INDONESIA products is Ida Bagus Dwija Maha Gangga or often known as Ibas with the TikTok account @ibass444. It is explained in article 1 of the deed of agreement regarding the forms of cooperation that must be carried out by the endorser, namely that the endorser carries out the Electronic Cigarette Product Campaign Work - JOIWAY Brand through personal social media accounts using the Hashtag Campaign, namely #JOIWAY #JOIWAYS1NANO #DOODLE #SAKURA #JOIWAY #BERALIHKEJOIWAY # STOP SMOKINGCARILAHJOIWAY, and must include Tag & Mention @joiway_id and @joifans.id. @joiway_id and @joifans.id. In this case, the endorser is required to keep JOIWAY content for at least 1 month and the content becomes JOIWAY's property and will be used for JOIWAY's social media purposes.

In article 1 of the deed of agreement it is stated that the endorser must maintain the "Positive Image" of the Brand, if you apply Vicarious Liability there is vicarious liability if you receive a bad impression from the public even though the endorser has good intentions.⁹However, there is a discrepancy between the norms and the contents of the deed contained in article 1 number 7. In the doctrine of vicarious liability or vicarious liability, it can be understood as a vicarious liability imposed on the party responsible for someone for actions carried out by the party they are dependent on.¹⁰Vicarious liability can be used to determine the party responsible or receive a claim for compensation for an unlawful act.¹¹In an endorsement agreement, a party (business actor) gives permission to another party (endorser) to use their name, image or reputation for commercial or promotional purposes. If the endorser carries out actions or statements that violate the law or harm third parties, the business actor can be held legally responsible for these actions.¹²

However, the deed of agreement between LAV MANAGEMENT and JOIWAY states that an endorser who commits a disgraceful act (act against the law) that makes the brand image bad in the eyes of the public, the endorser is obliged to return the money paid during the collaboration and JOIWAY can immediately stop collaborating with the endorser. , in accordance with the contents of the deed of

⁷ William J. Stanton, *Fundamentals of Marketing*, 8th Edition. (New York : Mc Graw Hill,1984) hal. 7.

⁸ George E. Belch, dan Michael A. Belch, *Advertising and Promotion : An Integrated Marketing Communication Perspective Sixth Edition*. (New York : Mc Graw Hill, 2003) hal. 505.

⁹ Ashfiya, D. G. *Akibat hukum terhadap konsumen dalam perjanjian pengikatan jual beli apartemen Kota Baru Meikarta*. Skripsi. Fakultas Syari'ah dan Hukum UIN Syarif Hidayatullah Jakarta.

¹⁰ Anita Mihardja, Cynthia Kurniawan, Kevin Anthony, "Vicarious Liability: Perspektif Masa Kini", *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan*, Vol.8-No.1, Februari 2020, halaman 73

¹¹Ibid hal. 73.

¹² Zebua, M. A. (2019). Tanggung Jawab Hukum dalam Perjanjian Endorsement di Indonesia. *Jurnal Hukum Dan Pembangunan*, 49(3), 439-459.

agreement. In this case, all actions of the endorser should be the responsibility of the business actor considering the Vicarious Liability doctrine.

Apart from the contents of the deed, the agreement made between LAV MANAGEMENT and JOIWAY was canceled unilaterally, where the cancellation was carried out by JOIWAY. In civil law, unilateral cancellation can also be categorized as an unlawful act. If the discussion of the work plan is deemed to have resulted in an agreement, thereby binding the parties, then unilaterally terminating the work plan can be considered to have fulfilled the elements of an unlawful act. An endorser who feels aggrieved can apply for compensation based on an unlawful act in the form of unilateral cancellation of the agreement.¹³The basis for the claim for compensation is regulated in Article 1365 of the Civil Code, namely:

*"Every act that violates the law and brings loss to another person, requires the person who caused the loss through his fault to compensate for the loss."*¹⁴

In [Supreme Court Number 1051 K/PDT/2014](#), the Supreme Court is of the opinion that in its consideration that the action of the Defendant/Cassation Petitioner who has unilaterally canceled the agreement he made with the Plaintiff/Cassation Respondent is qualified as an unlawful act, because it is contrary to Article 1338 of the Civil Code, namely that an agreement cannot be withdrawn other than by a second agreement. both parties.

The cooperation agreement contains the obligation of the SECOND PARTY (Endorser) to become a KOL in the Electronic Cigarette Product Campaign Work - JOIWAY Brand, in which the SECOND PARTY (Endorser) is obliged to promote the brand through the KOL's personal social media account using campaign hashtags and tags and mentioning the JOIWAY account and JOIFans.id. THE SECOND PARTY (Endorser) is also obliged to follow the brief from the FIRST PARTY (Business Actor), maintain a positive image of the brand, and post on time according to the predetermined timeline. In the event that there is a disgraceful action by the KOL which makes the brand image bad in the eyes of the public, JOIWAY can immediately stop the collaboration with the KOL (Endorser) and the SECOND PARTY (Endorser) is obliged to return the money paid during the collaboration. Then, if the agreement is canceled unilaterally by JOIWAY, the SECOND PARTY (Endorser) has the right to demand compensation and JOIWAY may be subject to legal action. Regarding the concept of vicarious liability, JOIWAY can be responsible for the actions of the SECOND PARTY (Endorser) if the action is carried out within the scope of cooperation appointed by JOIWAY and is related to the JOIWAY campaign.¹⁵However, to avoid vicarious liability, JOIWAY can clarify the responsibilities of the SECOND PARTY (Endorser) in the cooperation agreement.¹⁶

CONCLUSION AND SUGGESTION

In this research, it was found that accommodation for vicarious liability in endorsement advertising agreements in Indonesia can be done by including provisions governing vicarious liability responsibilities. Some of these provisions include an explanation of the responsibilities of each party, limitations of responsibilities, and dispute resolution. In the context of Indonesian law, vicarious liability in endorsement advertising agreements can be enforced based on Article 1365 of the Civil Code which states that every person who carries out an action that results in loss to another person, that person must be responsible for that loss.

So it can be concluded that accommodation for vicarious liability in advertising endorsement

¹³ Fadlurohman, R., & Mufidi, M. F. (2023, January). Wanprestasi atas Perjanjian Jasa Promosi oleh Influencer pada Media Sosial Ditinjau dari Perspektif KUH Perdata. In *Bandung Conference Series: Law Studies* (Vol. 3, No. 1).

¹⁴ Prayogo, S. (2016). Penerapan batas-batas wanprestasi dan perbuatan melawan hukum dalam perjanjian. *Jurnal Pembaharuan Hukum*, 3(2), 280-287.

¹⁵ Solaiman, S., & Tampi, M. M. (2021). Pertanggungjawaban Influencer Dalam Pembuatan Konten Pengiklanan Melalui Social Media Yang Mengandung Informasi Palsu (Contoh Kasus Kartika Putri dan Dr. Richard Lee). *Jurnal Hukum Adigama*, 4(2), 2

¹⁶ Akbar, E. (2021). *Tinjauan Hukum Terhadap Perjanjian Baku Dalam Endorsement Di Akun Instagram Megi Irawan Dan Iwal Bani*. Skripsi. Universitas Islam Riau.

agreements in Indonesia is very important to avoid potential legal claims that are detrimental to the parties involved in the agreement. Therefore, it is recommended for business actors and endorsers to include provisions regarding vicarious liability responsibilities in the endorsement advertising agreements they agree to.

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