



**LEGAL CONSEQUENCES FOR SELEBGRAM AS ADVERTISERS IN
THE ENDORSEMENT OF UNLICENSED MEDICINES**

UNDERGRADUATE THESIS

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LAW STUDY PROGRAM

Cikarang

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**LEGAL CONSEQUENCES FOR SELEBGRAM AS ADVERTISERS IN THE
ENDORSEMENT OF UNLICENSED MEDICINES**

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**Proposed as one of the requirement
to obtain *Sarjana Hukum***

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RECOMMENDATION FORM OF UNDERGRADUATE THESIS ADVISOR

I, as the principal advisor of the undergraduate thesis entitled **“LEGAL CONSEQUENCES FOR SELEBGRAM AS ADVERTISERS IN THE ENDORSEMENT OF UNLICENSED MEDICINES”** which drafted and arranged by Marie Dame C. Simanjuntak to obtain *Sarjana Hukum* from Faculty of Humanities, Law Study Program of President University has been examined and declared that this Undergraduate Thesis has been feasible to be examined in the Undergraduate Thesis Oral Examination.

Cikarang, 23 January 2020



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DECLARATION OF ORIGINALITY

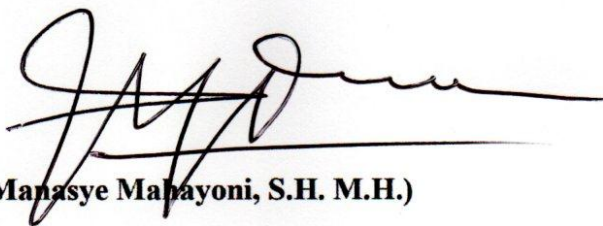
**APPROVAL FORM OF UNDERGRADUATE THESIS EXAMINER
TEAM**

We, Undergraduate Thesis Examiner Team entitled **Legal Consequences for *Selebgram* as Advertisers in the Endorsement of Unlicensed Medicines** which proposed by Marie Dame C. Simanjuntak has been approved and can be maintained properly at 25 January 2020.



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DECLARATION OF ORIGINALITY

I am stating that the undergraduate thesis entitled

“Legal Consequences for *Selebgram* as Advertisers in the Endorsement of Unlicensed Medicines”

is my original work that has never been written by anyone else, and it has followed the requirements and rules of scientific writing that is applicable in the President University Law Study Program...

Cikarang, 23 January 2020

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ABSTRACT

Name : Marie Dame C. Simanjuntak

Title : **“Legal Consequences for *Selebgram* as Advertisers in the Endorsement of Unlicensed Medicines”**

In the current era of globalization, there are a lot of improvement in every aspect in life, including the way to promotes product and the party that promoting the product. Today, there is a well-known social media in Indonesia called Instragram, which is used not only to socialize with relatives but also to be used for business purposes. One of the business activities that occur on Instagram is online sales and promotions. One of the parties doing promotions on Instagram is *selebgram*. Because *selebgram* is a new legal subject, the regulation regarding *selebgram* is not clearly explained in the Law Number 8 Year 1999 concerning Consumer Protection. The Consumer Protection Law does not explain in detail about advertisers, so the consequences that are applied to entrepreneurs conducting promotions are also applied to *selebgram*. Therefore, the Consumer Protection Law should be updated so that legal certainty can be obtained for *selebgram* and the parties related to it.

Keywords: *selebgram*, legal consequences, Instagram, Consumer Protection, unlicensed medicines

ABSTRAK

Name : Marie Dame C. Simanjuntak

Title : “**Legal Consequences for *Selebgram* as Advertisers in the Endorsement of Unlicensed Medicines**”

Di era globalisasi saat ini, ada banyak peningkatan dalam setiap aspek kehidupan, termasuk cara untuk mempromosikan produk dan pihak yang mempromosikan produk. Saat ini, ada media sosial terkenal di Indonesia yang disebut Instragram, yang digunakan tidak hanya untuk bersosialisasi dengan kerabat tetapi juga untuk digunakan untuk tujuan bisnis. Salah satu kegiatan bisnis yang terjadi di Instagram adalah penjualan dan promosi online. Salah satu pihak yang melakukan promosi di Instagram adalah selebgram. Karena selebgram adalah subjek hukum baru, peraturan tentang selebgram tidak dijelaskan dengan jelas dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen. Undang-undang Perlindungan Konsumen tidak menjelaskan secara rinci tentang pengiklan, sehingga konsekuensi yang diterapkan pada pengusaha yang melakukan promosi juga berlaku untuk selebgram. Karena itu, Undang-Undang Perlindungan Konsumen harus diperbarui sehingga kepastian hukum dapat diperoleh untuk selebgram dan pihak-pihak yang terkait dengannya.

Kata Kunci: *selebgram*, konsekuensi hukum, Instagram, Perlindungan Konsumen, *unlicensed medicines*.

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CHAPTER 1

INTRODUCTION

I. BACKGROUND

Information and communication technology is one thing that will not be separated from human life.¹ Because information and communication technology has been around for a long time and until now it continues to grow, developing far more sophisticated than before. Without information technology and communication, people will have difficulty communicating with others and it will be difficult to get information.² Information and communication technology has an important role in our daily lives, information technology and technology also have an impact in various fields.

Technology is not something that is absolutely useful, there is still a negative side as well.³ In the current era of globalization, technological developments especially in the field of information are developing so rapidly that it spurs various parties to get information quickly. There are many ways that we can do to obtain information. Information can be obtained through various media.⁴ Several examples of media to obtain information are magazines, newspapers, radio, television and others.⁵ Nowadays, internet is not only used to obtain information, but also as communication media.⁶

¹ Bhakti Satrio Wicaksono, "Pentingnya Komunikasi Sains Dunia Digital dalam Hidup Masyarakat", <https://sains.kompas.com/read/2018/08/07/070900523/pentingnya-komunikasi-sains-dunia-digital-dalam-hidup-masyarakat>, accessed on 12 December 2019

² IESC, "Impact of Information Technology (IT)", <https://master-iesc-angers.com/impacts-of-information-technology-it/>, accessed on 12 December 2019

³ Ratnaya, I Gede, "Dampak Negatif Perkembangan Teknologi Informatika dan Komunikasi dan Cara Antisifasinya", (Vol. 8, No. 1, Januari 2011) <https://ejournal.undiksha.ac.id/index.php/JPTK/article/view/2890/2392>

⁴ Rizkita Kurnia Putri, "Media Informasi Sebagai Sarana Memperoleh Relasi dan Menambah Ilmu Pengetahuan", <https://www.kompasiana.com/rizkitakurniap/56fe720adf22bd60073b6cd8/media-informasi-sebagai-sarana-memperoleh-relasi-dan-menambah-ilmu-pengetahuan>, accessed on 12 December 2019

⁵ Badan POM, Frequently Asked Questions Iklan Kosmetika, 1st Print, (Jakarta, Badan POM, 2018)

⁶ Reska Setiawan, "Penggunaan Internet Sebagai Teknologi Informasi di Kalangan Mahasiswa Ekonomi Akuntansi Universitas Muhammadiyah Surakarta." (Skripsi Universitas Muhammadiyah Surakarta, Surakarta, 2009), p.2

Internet makes it easy for us to communicate or interact without limits of distance or time. This ease caused many people to use the internet to communicate with each other, which led to the creation of social media.⁷

In Indonesia, Social Media activities have actually been around for a long time with the emergence of various kinds of web-based discussion forums such as KasKus. Social media has a big impact on our lives today. If we can take advantage of social media, there are so many benefits that we can, as a media for marketing, trading, finding connections, expanding friendships, etc.⁸

The rapid flow of information now makes people turn into information societies, where information is often used as a valuable commodity. The rapid development of information technology raises new concepts in the world of marketing. The sellers usually market goods and products that they sell only in conventional stores or media, but now with the internet the sellers can market their products more quickly and of course a wider range.⁹

Instagram is one of the existing social media. Instagram is also used by entrepreneurs or products/services seller to promote the products/services they offer using online marketing.¹⁰ The increasing interest of Instagram social media has made online shop owners see this as a promising business opportunity and of course the features available by Instagram make online shop promotion easier. One of their way to promote their product is by using *selebgram* service.¹¹ *Selebgram* is someone who has a lot of fans or followers because the photos or videos uploaded by that person are

⁷ Bagong Suyanto, "Media Sosial di Era Masyarakat Digital", <http://mediaindonesia.com/read/detail/80202-media-sosial-di-era-masyarakat-digital>, accessed on 12 December 2019

⁸ Ahmad Setiadi, "Pemanfaatan Media Sosial Untuk Efektifitas Komunikasi", (Skripsi AMIK BSI, Karawang, 2016) p.1

⁹ Ita Suryani, "Pemanfaatan Media Sosial sebagai Media Pemasaran Produk dan Potensi Indonesia dalam Upaya Mendukung ASEAN Community 2015, UII, 2014, Setiadi, Ahmad, Pemanfaatan Media Sosial Untuk Efektifitas Komunikasi", (Skripsi AMIK BSI, Karawang, 2016) p.3.

¹⁰ Firmansyah, "Pengertian Instagram Beserta Sejarah dan Fungsi Instagram yang Wajib Diketahui Pengguna Internet", <https://www.nesabamedia.com/pengertian-instagram/>, accessed on 13 December 2019

¹¹ Putri Agus, "Strategi Promosi Instagram Paling Hits Tahun 2018 Bagi Para Startup", <https://digitalentrepreneur.id/strategi-promosi-instagram/>, accessed on 13 December 2019

interesting and much liked by other Instagram users.¹² Unfortunately, many *selebgram* have promoted dubious products, for example is unlicensed beauty medicines. This action is very dangerous for potential consumers who will buy the product.

On August 9, 2018, member of the House of Representative Commission IX, Okky Asokawati asked BPOM and the National Police to Cyber-Patrol *selebgram*. Endorsement cases of beauty drugs that are detrimental can have an impact on the lack of protection for consumers.¹³ *Selebgram* cannot simply promote medicinal and beauty products, because according to regulations, medicinal and beauty products need to get permission from the BPOM and the Ministry of Health, they must know what types of medicines may be promoted or not.¹⁴

Law No. 8 Year 1999 concerning Consumer Protection stated that *selebgram* that receives paid advertising must provide honest review.¹⁵ Government also calls on *selebgram* to clearly distinguish advertisement posts and product reviews.¹⁶ Bill of Act on Electronic Information and Transaction also states that anyone who intentionally and without rights distributes false and misleading news that results in the loss of consumers in electronic transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and / or a fine of a maximum of Rp1,000,000,000.00 (one billion rupiah).¹⁷

Medicine should be obtained by consumers in places that have clear official permits such as supermarkets (specifically for over-the-counter drugs), licensed drug stores,

¹² Mutiara Salha, "Apasih Selebgram Itu", <https://www.kompasiana.com/mutiarasalha/5863e1735597736e135e43a0/apasih-selebgram-itu>, accessed on 13 December 2019

¹³ Gibran Maulana Ibrahim, "Kasus Awkarin, BPOM dan Polisi Diminta Patrol Siber Selebgram", <https://news.detik.com/berita/4157413/kasus-awkarin-bpom-dan-polisi-diminta-patrol-siber-selebgram>, accessed on 13 December 2019

¹⁴ Viva, "Meluruskan Jalan Selebgram", <https://www.viva.co.id/indepth/fokus/1063308-meluruskan-jalan-selebgram>, accessed on 13 December 2019

¹⁵ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 No. 42, TLN. No. 3821, Article 17 Paragraph 1

¹⁶ KumparanTech, "Endorse Produk Sembarangan di Instagram, Selebgram Bisa Kena Hukum", <https://kumparan.com/@kumparantech/endorse-produk-sembarangan-di-instagram-selebgram-bisa-kena-hukum-an-1534722342915540629>, accessed on 13 December 2019

¹⁷ Indonesia, Information and Electronic Transaciton Law, Law Number 19 Year 2016, LN Year 2016 No. 251, TLN No. 5952

pharmacies, clinics and hospitals (for limited free drugs, hard drugs and psychotropic drugs).¹⁸ Because each type of medicine group has a certain method of use and storage, patients or consumers who will use it must obtain information that is as clear as possible, to avoid undesirable things, because basically the medicine is poison. Especially if the drug to be used is a hard drug, then prescription screening is very necessary to be applied by competent health professionals during the drug redemption process.

In the case of a *selebgram* endorsement it is very dangerous if there are consumers who immediately trust the promotion and buy the product. *Selebgram* should know their position in the perspective of law and carry out their obligations like applicable regulations. They also have to understand the performance ethics before they do advertising. To analyze the liability of *selebgram* in endorsing unlicensed medicines from Indonesian law perspective, the author composed this research entitled **Legal Consequences for *Selebgram* as Advertisers in the Endorsement of Unlicensed Medicines**.

II. RESEARCH QUESTIONS

The question regarding this research would be:

1. To what extent the Law Number 8 Year 1999 concerning Consumer Protection regulates *selebgram* who advertises unlicensed medicines?
2. How is the liability of *selebgram* who wrongfully advertising unlicensed medicines?

III. OBJECTIVE OF THE RESEARCH

The objective of this research is to analyze the validity of the legal consequences of *selebgram* as advertiser regarding Law number 8 year 1999 concerning Customer Protection. In particular, this proposed study seeks to achieve the following objectives:

1. To investigate the range of Law Number 8 Year 1999 concerning Consumer Protection; and

¹⁸ BPOM, “Beli Obat di Tempat Legal”, <https://www.pom.go.id/mobile/index.php/view/berita/147/BELI-OBAT-DI-TEMPAT-LEGAL.html>, accessed on 13 December 2019

2. To determine the legal consequences for *selebgram* who wrongfully advertising unlicensed medicines.

IV. RESEARCH METHOD.

This research is a legal research. According to Peter Mahmud Marzuki, legal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer legal issues faced. This is in accordance with the prescriptive character of legal science. It is different from the research conducted in descriptive science that tests the truth of the existence of a fact caused by a certain factor, legal research is conducted to produce new arguments, theories or concepts as prescription in solving problems faced. If the scientific nature of the descriptive answer is true or false, the answer expected in legal research is right, appropriate, inappropriate, or wrong. thus it can be said that the results obtained in legal research already contain value.¹⁹

The method used is a normative legal research. Based on this understanding, it can be seen that the nature of prescription in the field of legal science, normative research is trying to study and explore and look for answers about what should be of each problem. It is different from descriptive research which only explains what is true, and what is wrong with each problem, and what factors influence it.

A. TYPES OF RESEARCH

This research used a qualitative method, that there is no statistic and it is based on the library research, with normative method.²⁰ The normative research method will focus on the laws in Indonesia.

¹⁹ Marzuki, Peter Mahmud. Penelitian Hukum Edisi Revisi. 13th Print. Jakarta, Prenada Media Group, 2017

²⁰ Mamudji, Sri. Metode Penelitian dan Penulisan Hukum. 1st Print. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005

B. DATA TYPE

The data that collected in this research is the Primary Legal material and Secondary Legal Material. Primary legal material is legal material that is authoritative in the form of legislation. The laws and regulations used are the laws and regulations that are related to the research conducted.²¹ Those laws and regulations include,

1. The 1945 Constitution of the Republic of Indonesia
2. Law Number 8 Year 1999 concerning Consumer Protection
3. Law Number 36 Year 2009 concerning Health
4. Law Number 19 Year 2016 concerning Information and Electronic Transaction
5. Minister of Health Regulation Number 1787/MENKES/PER/XII/2010 Year 2010 concerning Advertising and Publication of Health Services
6. Presidential Decree Number 80 Year 2017 concerning National Drug and Food Agency

Secondary Legal Material that is used include books, thesis, journals and website.

C. LEGAL RESEARCH APPROACH

Legal research recognizes several approaches that are used to examine each problem. the types of approaches are as follows:

- a. Statute approach

The law approach is carried out by examining all laws and regulations relating to the legal issues being addressed.²² The legal approach in normative legal research has both practical and academic uses.

For research for practical activities, this law approach will open up opportunities for researchers to learn whether there is consistency and

²¹ Marzuki, Peter Mahmud. *Penelitian Hukum Edisi Revisi*, 13th Print. Jakarta: Prenada Media Group, 2017

²² *Ibid*, p. 103

compatibility between laws and other laws or between laws with the Constitution or regulations and laws.²³ The results of the study are an argument to solve the problem at hand.

For research for academic activities, researchers need to look for legislation ratios and the ontological basis for the birth of the law. By studying the legislative ratio and the ontological basis of a law, researchers are actually able to uncover the philosophical content behind the law. Understanding the philosophical content behind the law, the researcher will be able to conclude about whether there is a philosophical clash between the law and the issue at hand.²⁴

b. Case Approach

The case approach is carried out by examining cases related to the issues at hand, and has become decisions that have permanent legal force. This case can be in the form of cases that occur in Indonesia or in other countries. The main study in the case approach is the ratio of *decidendi* or reasoning, namely the consideration of the court to arrive at a decision.²⁵

Practically or academically, the case approach has the use of studying the ratio of *decidendi* or reasoning as a reference for the preparation of arguments in solving legal issues. It should also be stated that the case approach is not the same as the case study. In the case approach, several cases are examined for reference to a legal issue. While the case study is a study of various legal aspects.²⁶

c. Historical Approach

The historical approach is carried out by examining the background of what was learned and the development of regulations regarding the legal issues at hand. Such studies are needed by researchers to uncover the philosophy and

²³ *Ibid*

²⁴ *Ibid*, p. 137

²⁵ *Ibid*, p. 140

²⁶ *Ibid*, p. 142

mindset that gives birth to something that is being studied. This historical approach is needed if indeed researchers assume that philosophical disclosures and thought patterns when something is learned is born, and indeed has relevance to the present.²⁷

d. Comparative Approach

A comparative approach is done by comparing the laws of a country, with laws from one or more other countries on the same matter. In addition, it can also be compared in addition to the law, namely court decisions in several countries for the same case.

The use of this approach is to obtain the similarities and differences between these laws. This is to answer the legal issue between the provisions of the law and the philosophy that gave birth to the law. Thus the comparison, researchers will get a picture of the consistency between philosophy and law in several countries. This can also be done by comparing court decisions between one country and another for similar cases.²⁸

e. Conceptual Approach

The conceptual approach departs from the views and doctrines that develop in law. by studying the views and doctrines in law, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles relevant to the issues at hand. Understanding of these views and doctrines is a support for researchers in building a legal argument in solving the issues at hand.²⁹

In achieving the goals of the study, the research approach that will be used is the Statute Approach. Statute Approach is an approach conducted by studying and analyzing the existing relevant laws and regulations. The type of Statute Approach that will be used

²⁷ *Ibid*, p.153

²⁸ *Ibid*, p.157

²⁹ *Ibid*, p.161

is Vertical Synchronization. This type will research on the consistency between the positive laws vertically.³⁰

V. SYSTEMICAL OF RESEARCH

This writing will be conducted by being divided into several chapters as follows:

1. Chapter I

The first part of Chapter I is the Background. In the Background part, the author will explain briefly about the issue that leads the author to write this undergraduate thesis. Further, the Background is followed by the second part, which is the Research Question part. In the Research Question, the author will mention the problem that is planned to be answered by the author through this undergraduate thesis. In which, the answer to the Research Question is given to achieve the Objective of this research. Next, there is Research Method part is also written to let the readers know about what kind of research method that is used by the author to write this thesis. And the last part of Chapter I is Writing Systematic. This Writing Systematic part is written in order to make it easier for the reader to understand the writings systematic as a whole briefly.

2. Chapter II

Chapter II of this undergraduate thesis is Theoretical Approach. In this Theoretical Approach, the author explains the theory that is used by the author to be the basis for the author in order to analyze the problem provided by this study. There is also provided about the relevant regulation in Indonesia that supporting the present theory.

3. Chapter III

This Chapter answers the first research problem of the study. The first research question of the study is about the ability of Law Number 8 Year 1999 concerning

³⁰ Soerjono Soekanto and Sri Mamudji. *Penelitian Hukum Normatif*. 8th Print. Jakarta: Rajawali Pers, 2009

Consumer Protection to give the legal consequence to *selebgram* who advertise unlicensed medicines. Therefore, this Chapter explains about how the implementation of Law Number 8 Year 1999 concerning Consumer Protection in Indonesia is.

4. Chapter IV

This Chapter IV answers the second research problem. The research question number two is to determine the legal consequences for *selebgram* who wrongfully advertising unlicensed medicines. This Chapter is answered by relying on the implementation of Law Number 8 Year 1999.

5. Chapter V

The study is be concluded by the Chapter V. This Chapter provides conclusion regarding the answer towards the research question provided in the study. And further, there is also suggestion that is provided by the author for the readers.

The systematical of research explained above hopefully can provide easier understanding about this undergraduate thesis.

CHAPTER 2

CONCEPT AND REGULATION OF *SELEBGRAM* AND UNLICENSED MEDICINE ADVERTISEMENT

In this globalization era, there are many ways that seller use to promote their goods and/or services, one of which is to use the services of *selebgram*.³¹ But unfortunately, there are still many *selebgram* who promotes good and/or services that are not in accordance with statutory regulation. In this chapter, the discussion is mainly regarding the *selebgram* concept and the rise of unlicensed medicines distribution in the market.

2.1 DEFINITION OF ADVERTISER

Indonesian advertising council defines advertisement as a form of communication about the product and / or brand to the target audience, so that they provide responses that fit the advertiser's goals.³² To introduce the product and / or brand to the audience, a subject is needed to carry out this task, named advertiser. According to Indonesian advertising council, advertiser is initiators, advertisers (*penaja*), and users of advertising services.³³

Law Number 8 Year 1999 concerning Consumer Protection is the main law in Indonesia that regulates about Consumer Protection. This law also regulates about the right and obligation of advertiser. However, the law does not define specifically about advertiser. But in the other hand, the law specifically define the definition of entrepreneurs and promotion which has relation with advertiser in Article 1 Paragraph (3) and Article 1 Paragraph (6).

Article 1 Paragraph (3) of Law Number 8 Year 1999 concerning Consumer Protection stated that

³¹ Karja, "4 Alasan Endorsement di Media Sosial Penting untuk Berbisnis", <https://kumparan.com/karjaid/4-alasan-endorsement-di-media-sosial-penting-dalam-berbisnis-1sV3DsywyMz>, accessed on 27 December 2019

³² Dewan Periklanan Indonesia, *Etika Pariwara Indonesia Buku Teks Edisi Kedua*, (Jakarta: Dewan Periklanan Indonesia, 2014), p.16

³³ *Ibid*, p.20

“Entrepreneurs is every individual or business entity, both in the form of a legal entity or not a legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both alone and jointly through agreements to conduct business activities in various economic fields.”³⁴

The article states that every individual or business entity that conducts business activities are categorized as entrepreneurs. Business activities in this Article is very general, any kind of business activities can be included in this Article and advertising is the business activity that helped to promotes the product of the entrepreneurs. Therefore, advertiser maybe included in this article.

Article 1 Paragraph (6) of Law Number 8 Year 1999 concerning Consumer Protection stated that

“Promotion is the introduction or dissemination of information on goods and / or to attract consumers to buy goods and or services that will be and are being distributed.”³⁵

According to Lee and Johnson “Advertising is commercial and non-personal communication about an organization and its products transmitted to a target audience through mass media such as television, radio, newspapers, magazines, direct mail (direct posting), outdoor billboards, or public vehicles.”³⁶ Furthermore, according to Fandy Tjiptono “Advertising is a form of indirect communication based on information about the benefits or advantages of a product, arranged in such a way as to cause a sense of fun that will change someone's mind to make a purchase.”³⁷

Based on the definition above, promotion and advertising has the same meaning and purposes. Therefore, advertising may included in Article 1 Paragraph (6) Law Number 8 Year 1999 concerning Consumer Protection.

³⁴ Indonesia, Law concerning Consumer Protection, *Law No. 8 Year 1999*, LN Year 1999 No. 42, TLN No. 3821, Article 1 Paragraph (3) (Translated by Author)

³⁵ *Ibid*, Article 1 Paragraph (6)

³⁶ Lee and Johnson, *Prinsip-Prinsip Pokok Periklanan Dalam Perspektif Global*, 2nd Print, (Jakarta: Kencana Prenada Media Group, 2007), p.3

³⁷ Fandy Tjiptono, *Strategi Pemasaran*, 2nd Print, (Yogyakarta: Penerbit Andi, 2005), p.226

2.2 DEFINITION OF MEDICINES

There are several definitions of medicine. According to National Agency of Drug and Food Control, medicine is a substance used for the prevention and cure of diseases as well as the recovery and improvement of health for its users.³⁸ In Indonesian Law, medicines regulated in National Agency of Drug and Food Control Regulation (*Peraturan BPOM*) Number 4 Year 2018 concerning Supervision of Management of Medicine, Medicine Materials, Narcotics, Psychotropics and Pharmaceutical Precursors in Pharmaceutical Services Facilities. In Article 1 Paragraph (1) of National Agency of Drug and Food Control Regulation Number 4 Year 2018 concerning Supervision of Management of Medicine, Medicine Materials, Narcotics, Psychotropics and Pharmaceutical Precursors in Pharmaceutical Services Facilities, medicine define as

“Materials or alloys of materials, including biological products used to influence or investigate physiological systems or pathological conditions in the context of determining diagnosis, prevention, healing, recovery, health promotion and contraception for humans.”³⁹

Article 1 Paragraph (8) Law 36 Year 2009 concerning Health also defined it as

“Drugs are ingredients or alloys of materials, including biological products that are used to influence or investigate physiological systems or pathological conditions in the context of determining diagnosis, prevention, healing, recovery, health improvement and contraception, for humans.”⁴⁰

According to Indonesian Advertising Council in advertisement ethics, it states that

“Medicines is all products referred to in the Regulation of the Minister of Health of the Republic of Indonesia Number 1010 / Menkes / PER / XI / 2008 concerning Drug Registration, along with explanations and additions, or replacements.”⁴¹

³⁸ Badan POM, Materi Edukasi Tentang Peduli Obat dan Pangan Aman, 1st Print, (Jakarta: Badan POM, 2015), p.2

³⁹ Indonesia, National Drug and Food Agency, Regulation Number 4 Year 2018, TLN No. 636, Article 1 Paragraph (1) (Translated by Author)

⁴⁰ Indonesia, Health Law, Law Number 36 Year 2009, LN Year 1992 No. 100, TLN No. 3495, Article 1

⁴¹ Dewan Periklanan Indonesia, Etika Pariwara Indonesia Buku Teks Edisi Kedua, (Jakarta: Dewan Periklanan Indonesia, 2014), p.18

In Article 1 Paragraph (2) of Regulation of the Minister of Health of the Republic of Indonesia Number 1010 / Menkes / PER / XI / 2008 states that

“Medicines are finished medicines which are preparations or alloys of ingredients including biological products and contraceptives, which are ready to be used to influence or investigate physiological systems or pathological conditions in the context of establishing diagnosis, prevention, healing, recovery and health improvement.”

2.3 HISTORY OF MEDICINES CONSUMPTION AND TRADE IN INDONESIA

As mentioned above, medicine is a substance used for the prevention and cure of diseases as well as the recovery and improvement of health for its users.⁴² Most medicines used in the past are medicines that come from plants. By trial and error, empirically, ancient people gained experience with various kinds of leaves or roots of plants to treat diseases.⁴³ This knowledge is hereditary stored and developed, so that medicines emerge.

Until the late 19th century, medicine was an organic or inorganic product from dried or fresh plants, animal ingredients or minerals that were active in healing the disease but could also cause toxic effects if the dose was too high or in certain conditions of the patient.⁴⁴ To ensure the availability of medicine so it does not depend on the season, the medicinal plants are preserved by drying. So to avoid variations in dosage, F.W. Sertuerner (1783-1841) in 1804 pioneered the isolation of active substances and purified them, and chemically synthesized separately.⁴⁵ Since then developed synthetic drugs for various types of diseases.

⁴² Badan POM, Materi Edukasi Tentang Peduli Obat dan Pangan Aman, 1st Print, (Jakarta: Badan POM, 2015), p.2

⁴³ Tan Hoan Tjay and Kirana Rahardja, Obat-Obat Penting: Khasiat, Penggunaan, dan Efek Sampingnya, 1st Print (Jakarta: PT. Elex Media Komputindo, 2007), p. 3-4

⁴⁴ Elin Yulinah Sukandar, “Tren dan Paradigma Dunia Farmasi: Industri-Klinik-Teknologi Kesehatan.” https://www.itb.ac.id/files/focus_file/orasi-ilmiah-dies-45.pdf

⁴⁵ *Ibid*

In Indonesia, there are several stages that must be passed before the drugs are deemed fit for consumption or distribute.⁴⁶ There are several important aspects that need to be considered in the development of medicines, which are; the influence on the process of preparing raw materials, biological variations, the complexity of the composition of natural drug preparations, the content of various active compounds, the extraction process, the potential for contamination, quality control, and nonclinical trials.⁴⁷

According to Article 3 Paragraph (1) of National Agency of Drug and Food Control Regulation Number 4 Year 2018 concerning Supervision of Management of Medicine, Medicine Materials, Narcotics, Psychotropics and Pharmaceutical Precursors in Pharmaceutical Services Facilities, it is stated that:

“Medicines, Narcotics, Psychotropics and Pharmaceutical Precursors distributed must have a distribution permits.”⁴⁸

Furthermore, in Paragraph (2) and (3) of National Agency of Drug and Food Control Regulation Number 4 Year 2018 explain that:

“Medicines, Narcotics, Psychotropics and Pharmaceutical Precursors distributed must meet safety, efficacy and quality requirements.”⁴⁹

“The safety, efficacy and quality requirements as referred to in paragraph (2) are in accordance with the provisions of the legislation.”⁵⁰

The article mentioned that before distributed medicines, narcotics, psychotropics, and pharmaceutical has to have distribution permits, which means every medicines that are

⁴⁶ Badan POM, Pedoman Cara Pembuatan Obat yang Baik: Guidelines on Good Manufacturing, 1st Print, (Jakarta: Badan POM, 2006), p. iv-vii

⁴⁷ Fakultas Farmasi UI, “Perkembangan Bahan Baku Obat Tradisional di Indonesia Terus Meningkatkan”, <https://farmasi.ui.ac.id/2018/12/perkembangan-bahan-baku-obat-tradisional-di-indonesia-terus-meningkat/> accessed on 27th December 2019

⁴⁸ Indonesia, National Drug and Food Agency, Regulation Number 4 Year 2018, TLN No. 636, Article 3 Paragraph (1) (Translated by Author)

⁴⁹ *Ibid*, Article 3 Paragraph (2) (Translated by Author)

⁵⁰ *Ibid*, Article 3 Paragraph (3) (Translated by Author)

distributed must have licensed from authorized party. In Indonesia, every medicines and foods are under supervision of National Agency of Drug and Food Control.⁵¹

It is confirmed in Article 2 Paragraph (1) of Presidential Regulation Number 80 Year 2017 concerning National Drug and Food Agency, it is states that:

“*BPOM* (National Drug and Food Agency) has the task of carrying out governmental tasks in the field of Drug and Food supervision in accordance with statutory provisions.”⁵²

This article clearly states that National Drug and Food Agency has the duty to supervise everything in the field of Drug and Food. The supervision happened not only when food and medicines are distributed, but also before it is distributed. It is explained in Article 3 Paragraph (2) and (3), which states:

“Supervision before Distributing as referred to in paragraph (1) is supervision of Medicines and Food before it distributes as a preventive measure to guarantee that the Medicines and Foods in distribution meet the standards and requirements of safety, efficacy / benefits, and quality of the product specified.”⁵³

“Supervision During distribution as referred to in paragraph (1) is the supervision of Medicines and Foods during distribution to ensure that the Medicines and Foods in circulation meet the standards and requirements of safety, efficacy / benefits, and quality of the products stipulated and law enforcement actions.”⁵⁴

Based on this article, it is clear that National Drug and Food Agency is the authorized supervisor assigned by government to supervise the distribution of medicines. Back to Article 3 Paragraph (1) of National Agency of Drug and Food Control Regulation Number 4 Year 2018 that states every medicine has had distribution permits, based Article 4 of Presidential Decree Number 80 Year 2017 states

“In carrying out drug and food control tasks, National Drug and Food Agency has the authority: a. issue product distribution permits and certificates in accordance with

⁵¹ Presidential Regulation Number 80 Year 2017, LN 2017 No. 180, Article 1 Paragraph (1)

⁵² *Ibid*, Article 2 Paragraph (1) (Translated by Author)

⁵³ *Ibid*, Article 3 Paragraph (2)

⁵⁴ *Ibid*, Article 3 Paragraph (3)

safety standards, efficacy / benefits and quality standards and requirements, as well as drug and food testing in accordance with statutory provisions;...⁵⁵

This article clearly stated that issuing product distribution permits and certificates is the authority of National Drug and Food Agency.

2.4 INSTAGRAM AS PLATFORM TO SELL MEDICINES

In the current era of globalization, information technology plays a very important role.⁵⁶ One of the most widely used information technologies is social media. Social media is online media with its users can easily participate, share, create content that includes, blogs, online forums, social networks, and the virtual world.⁵⁷ There are several types of social media, such as; facebook, twitter, instagram, etc. According to Ardianto, that social media, called online social networking is not online mass media, because social media has enormous social power that greatly influences public opinion that develops in the community and raising mass support can easily be done simply by moving a finger through social media rather than spreading it person to person.⁵⁸ Social media is not only used to simply communicate with relatives, but social media is also often used by sellers to promote the goods or services they provide, because by using social media promotions can quickly spread.⁵⁹

Social media is an effective business promotion tool because it can be accessed by anyone, so the promotion network can be wider.⁶⁰ There are several advantages of using

⁵⁵ Indonesia, National Drug and Food Agency, Presidential Decree Number 80 Year 2017, LN Year 2017 No.180, Article 4 (Translated by Author)

⁵⁶ Suryani, Ita. "Pemanfaatan Media Sosial sebagai Media Pemasaran Produk dan Potensi Indonesia dalam Upaya Mendukung ASEAN Community 2015. (Studi Social Media Marketing Pada Twitter Kemenparekraf RI dan Facebook Disparbud Provinsi Jawa Barat)," Jurnal Komunikasi, (Volume 8 No. 2 April 2014), p.125

⁵⁷ Sari, Desi Purnama. "Pemanfaatan Media Sosial Sebagai Sarana Promosi Minat Baca Anak di Perpustakaan *Reading Is Fun* Jakarta Selatan" (Skripsi Universitas Islam Negeri Syarif Hidayatullah, Jakarta 2017) p.7

⁵⁸ Ardiyanto. Komunikasi 2.0. 1st Print. Yogyakarta: Mata Padi Pressindo, 2011

⁵⁹ Purbohastuti, Arum Wahyuni. "Efektifitas Media Sosial Sebagai Media Promosi," (Vol. 12 No. 2 Oktober 2017), p.212

⁶⁰ Sari, Desi Purnama. "Pemanfaatan Media Sosial Sebagai Sarana Promosi Minat Baca Anak di Perpustakaan *Reading Is Fun* Jakarta Selatan" (Skripsi Universitas Islam Negeri Syarif Hidayatullah, Jakarta 2017) p.7

social media over conventional media as a platform to promote goods or service, such as:

1. Simpler

In conducting promotions, the seller can very easily use social media wherever the seller is located, the seller can still promote the goods with a very simple way that can be done through applications on mobile phones, while if using conventional media, the seller must coordinate to the marketing office first and take a long time because there is a long process that must be passed if sellers want to do a promotion.⁶¹

2. Global reach

Social media can reach a wider range than conventional media can. Besides, social media can also communicate anything in just a moment. In an instant when the seller starts to broadcast information, at that time they can also receive the seller's message regardless of their geographical conditions.⁶²

3. Measurable

Promotion using social media can be clearly controlled, the seller can get measurable data about the reach and effectiveness in no time, in contrast to conventional media which requires a very long time to be able to provide data to measure the effectiveness of promotions.⁶³

Based on this comparison it can be concluded that social media has a more effective, efficient and inexpensive role compared to conventional media.

As mention above, there are several types of social media, but there is one social media which is very influential in promoting goods or services, which is Instagram.⁶⁴

⁶¹ Setiady, N.J. Perilaku Konsumen: Konsep dan Implikasi untuk Strategi dan Penelitian Pemasaran. 1st Print. Jakarta: Prenada Media Grup, 2003

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ Marchelina Purnama Sari, "Pengaruh Media Sosial Instagram Sebagai Konten Media Promosi", <https://www.kompasiana.com/marchelinapurnamasari7894/5b50853e5e137337e5043f83/pengaruh-media-sosial-instagram-sebagai-konten-media-promosi-pada-online-shop?page=all>, accessed on 30 December 2019

Instagram is a free application for sharing photos and videos that allows users to take photos and videos.⁶⁵ Instagram is considered as an influential social media in promoting goods or services because based on research, In April 2019, out of a total population of 264 million people in Indonesia, there were 171.17 million people or around 64.8 percent who had been connected to the internet.⁶⁶ As of November 2019, the number of monthly active users of Instagram in Indonesia has reportedly reached 61,610,000.⁶⁷ 89% of Instagram users are around 18 to 34 years old.⁶⁸ It means, 22.6 percent, or almost a quarter of Indonesia's total population, are Instagram users.

There are advantages and disadvantages to the large number of Instagram users. The large number of Instagram users not only causes convenience in the promotion of products or services, but at the same time it also causes a lot of business competition.⁶⁹ Therefore, sellers are required to have more innovation in doing online marketing. One innovation that can be done is to use endorsement services. Endorsement is a way to promote the products of an online store by working with people who have many followers on Instagram.⁷⁰ People who have many followers on Instagram usually called as *selebgram*.⁷¹ The work of the endorsement system is by the sellers give free products or services to *selebgram*, then *selebgram* will promotes the products or services that

⁶⁵ *Ibid*

⁶⁶ Yudha Pratomo, "APJII: Jumlah Pengguna Internet di Indonesia Tembus 171 Juta Jiwa", <https://tekno.kompas.com/read/2019/05/16/03260037/apjii-jumlah-pengguna-internet-di-indonesia-tembus-171-juta-jiwa>, accessed on 30 December 2019

⁶⁷ Wahyunanda Kusuma Pertiwi, "Sebanyak Inikah Jumlah Pengguna Instagram di Indonesia?", <https://tekno.kompas.com/read/2019/12/23/14020057/sebanyak-inikah-jumlah-pengguna-instagram-di-indonesia>, accessed on 30 December 2019

⁶⁸ Arsan Mailanto, "Pengguna Instagram Terbanyak, Mencapai 89%", <https://techno.okezone.com/read/2016/01/14/207/1288332/pengguna-instagram-di-indonesia-terbanyak-mencapai-89>, accessed on 30 December 2019

⁶⁹ Ulfa Sekar, "Promosi Bisnis Lewat Endorsement? Jangan Asal Pilih Influencer", <https://www.moneysmart.id/tips-pilih-influencer-instagram-buat-promosi-bisnis/>, accessed on 30 December 2019

⁷⁰ Satria Kusumah Wardana. "Fenomena Endorsement dalam Iklan di Media Sosial Instagram". Undergraduate Thesis of Universitas Pasundan, Bandung 2016.

⁷¹ *Selebgram* come from the words "Celebrity (or in Indonesia pronounce as *Selebriti*)" and "Instagram". Therefore, *selebgram* mean those who have a lot of followers or well-known on Instagram.

were provided to them, and usually sellers not only have to provide products or services for free, but they also have to pay according to the rate determined by *selebgram*.⁷²

There are several advantages of using *selebgram*, such as:

1. Effective promotional tools

Selebgram usually have quite a number of followers, followers always pay attention to the activities of *selebgram* they idolize. Not only activities that are in accordance with the profession, but personal matters also become public consumption. When their idols upload something on social media like Instagram, it is certain that the post will be seen by their followers. The seller's Instagram account must also be famous because the *selebgram* has tagged the seller's account. It is not impossible if followers of the *selebgram* will also recommend posting their idols to others. This means that the seller's product has been indirectly promoted by many people.⁷³

2. Increasing the popularity of the product

Products endorsed by a *selebgram* will certainly be far more popular than those marketed in the conventional way. This is because a *selebgram* must have quite a number of followers. The number of their followers can be thousands, tens of thousands, hundreds of thousands or even millions. Millions of people will see and know the product that is being promoted, and of those millions of people, there will definitely some people who would be interested to find out more or even order the product.⁷⁴

3. Increasing product values

Selebgram are usually in the spotlight of the community, even some people are willing to become fans of the *selebgram* they like. With endorse conducted by *selebgram*, it will be able to increase the product value of the product that is being

⁷² Winda Doo, "Tarif Endorse Selebgram itu Berapa Ya?", <https://www.kompasiana.com/agendasurabaya/5969cf140457dc40925c4d92/tarif-endorse-selebgram-itu-berapa-ya?page=all>, accessed on 30 December 2019

⁷³ Azhar, "Seberapa Besar Keuntungan Jasa Endorse Untuk Bisnis Online?", https://digitalentrepreneur.id/jasa-endorse-untuk-bisnis-online/?bot_test=1, accessed on 30 December 2019

⁷⁴ *Ibid*

promoted, because the followers will think that the products that is being promoted by those *selebgram* have a good quality.⁷⁵

4. Increasing sales

Selebgram is one of the public figures. The followers will tend to imitate and follow the style of their favorite *selebgram*, and of course they will also be interested in using the same items used by the *selebgram*. That way many people will be interested and order products promoted by *selebgram*.⁷⁶

5. Minimizing marketing cost

Capital for the cost of endorsement is not as expensive as the cost of advertising on television. Seller must spend more money if they want to promotes their goods and/or services through radio and/or television. Promotions with this endorsement only need to send the product to the *selebgram* the seller choose and transfer the endorse fee according to the specified rate. Only by using this way, the product has been seen by millions of people. Indirectly, marketing costs can be reduced.⁷⁷

Based on the many benefits that can be obtained, many sellers decide to use the *selebgram*'s endorsement services.

Users of *selebgram*'s endorsement services is not limited to sellers who already have a name in the community, but also sellers who produce products with small-scale industries (Small and Medium Enterprises / SMEs).⁷⁸ Objects advertised by *selebgram* are various, from fashion products, accessories, food and drinks, cosmetics to medicine.⁷⁹

⁷⁵ *Ibid*

⁷⁶ *Ibid*

⁷⁷ *Ibid*

⁷⁸ Irmina Gultom, "Selebgram dan Iklan Produk Obat", <https://www.kompasiana.com/irmina.gultom/5b6be495caf7db48755a6622/selebgram-dan-iklan-produk-obat?page=all>, accessed on 31 December 2019

⁷⁹ *Ibid*

2.6 REGULATIONS REGARDING MEDICINES ADVERTISING

The rise of medicine and food circulation is increasing day by day.⁸⁰ This was followed by promotions in the form of advertisements, because some entrepreneurs did not pay attention to applicable advertising regulations.⁸¹ Food and drug advertising is regulated in several regulation, such as:

1. National Food and Drug Agency Regulation Number 8 Year 2017 concerning Drug Advertising Supervision Guidelines.⁸² According to Article 1 National Food and Drug Agency Regulation Number 8 Year 2017,

Medicine Advertisements, hereinafter referred to as Advertisements, are every information or statement regarding medicines in the form of pictures, writings, or other forms conducted in various ways for marketing and / or trading drugs.⁸³

Based on this article, medicines endorsement can be include as medicine advertisement.

There are several requirements that have to be followed to advertise or promotes medicines to the society. It is stated in Article 3 Paragraph (2) of National Food and Drug Agency Regulation Number 8 Year 2017

Drugs that can be advertised to the general public are drugs that are included in the list of over-the-counter and limited OTC drugs.⁸⁴

2. Article 31 of Government Regulation Number 72 Year 1998 concerning Pharmaceutical Safety Savings and Health Equipment, which states,

⁸⁰ Badan POM, “BPOM Sosialisasikan Peraturan Iklan Obat dan Makanan”, <https://www.pom.go.id/new/view/more/berita/15411/BPOM-Sosialisasikan-Peraturan-Iklan-Obat-dan-Makana.html>, accessed on 31 December 2019

⁸¹ *Ibid*

⁸² Indonesia, Drug Advertising Supervision Guidelines, Regulation Number 8 Year 2017,

⁸³ *Ibid*, Article 1 Paragraph (2) (Translated by Author)

⁸⁴ *Ibid*, Article 3 Paragraph (2)

Ads for pharmaceutical preparations and medical devices circulated must contain information about pharmaceutical preparations and medical devices in an objective, complete, and not misleading manner.⁸⁵

What is intended by pharmaceutical preparations in this article are drugs, medicinal substances, traditional medicines and cosmetics.⁸⁶

3. Article 5 of Regulation of Minister of Health Number 1787/MENKES/PER/XII/2010 Year 2010 concerning Advertising and Publication of Health Services states,

Advertising and / or publication of health services is not permitted if it is:

- a. attacking and / or showing off bad feelings such as degrading the honor and professional status of the health workforce;
- b. provide information or statements that are untrue, false, deceptive and misleading;
- c. contains information which implies that the health service facility can benefit from health services that cannot be carried out by other health service facilities or create inappropriate expectations of the health services provided;
- d. comparing the quality of health services provided by the health service facilities with other health service facilities, or denouncing the quality of health services of other health service facilities;
- e. excessive self-praise, including statements that are superlative and imply the word "one" or the same meaning of excellence, uniqueness or sophistication so that it tends to be misleading;
- f. publishing new or non-conventional health service methods, medicines, tools and / or technologies that have not yet been received by the medical

⁸⁵ Indonesia, Safety of Pharmaceutical Products and Medical Devices, LN Year 1998 Number 138, Article 31 (Translated by Author)

⁸⁶ *Ibid*, Article 1

and / or health community because their benefits and safety in accordance with their respective provisions are doubtful or unproven;

g. advertise health services and / or health workers whose health service facilities are not located in the country of Indonesia;

h. advertise health services performed by health workers and / or health service facilities that do not have a permit;

i. advertise drugs, food supplements, or medical devices that do not have a marketing authorization or do not meet quality and safety standards;

j. advertise formula milk and addictive substances;

k. advertise drugs, psychotropic drugs and narcotics except in medical scientific magazines or forums;

l. provide information to the public in a manner that is encouraging in the use of health personnel services in the health service facility;

m. advertise sales promotions in any form, including discounts (discounts), rewards for health services and / or using multi-level marketing sales methods;

n. give testimony in the form of advertisements or publications in the mass media; and

o. use academic degrees and / or professional designations in the health field.⁸⁷

Those regulation also strengthen by Article 17 Paragraph (1) and (2) of Law Number 8 Year 1999 concerning Consumer Protection which states,

(1) Advertisers are prohibited from producing advertisements that: a. trick consumers about the quality, quantity, materials, uses and prices of goods and / or service fares and the timeliness of receipt of goods and / or services; b. deceive

⁸⁷ Indonesia, Advertising and Publication of Health Services, Minister of Health Regulation Number 1787/MENKES/PER/XII/2010 Year 2010, Article 5 (Translated by Author)

guarantees / guarantees for goods and / or services; c. contain wrong, fake, or incorrect information about goods and / or services; d. does not contain information about the risks of using goods and / or services; e. exploiting an incident and / or a person without the permission of the relevant authority or agreement concerned; f. violates the ethics and / or statutory provisions concerning advertising.⁸⁸

(2) Advertisers are prohibited from continuing the circulation of advertisements that violate the provisions in paragraph (1).⁸⁹

Unfortunately even though there are many regulations governing medicines advertising, there are still many medicines advertisements that violate these regulations.⁹⁰ One example of an illegal drug endorse is done by a *selebgram* named Karin Novilda or commonly called as Awkarin. In August 2018, it was seen that Awkarin promoted breast enlargement injection medicines on her Instagram account using a feature called Instagram Story.⁹¹ In the upload of the Instagram story, Awkarin mentioned one online shop account that sells medical devices and wrote: "Breast enlargement injections and vaginal tighteners are 100% safe."

According to Okky Asokawati, *selebgram* can't just promote medicines and beauty products. Because according to the provisions, medicine and beauty products need to get permission from BPOM and the Ministry of Health.⁹²

Based on these concepts of *selebgram* advertises unlicensed medical product especially medicines, many times lead to a serious legal consequences. This matter is discussed on the next chapter.

⁸⁸ Indonesia, Consumer Protection, Law Number 8 Year 1999, LN Year 1999 Number 42, Article 17 Paragraph (1) (Translated by Autor)

⁸⁹ *Ibid*, Article 17 Paragraph (2)

⁹⁰ JPNN, "BPOM: Selebgram dan Selebritas Paling Banyak Andil Promosikan Kosmetik Ilegal", <https://www.msn.com/id-id/berita/nasional/bpom-selebgram-dan-selebritas-paling-banyak-andil-promosikan-kosmetik-ilegal/ar-BBWJMbt?li=AAuZNMP&ocid=iehp&%2525252525252520%2525252525252520li=AAb4hdQ%3FOCID>, accessed on 1 January 2020

⁹¹ Frieda Isyana Putri, "Awkarin Banjir Protes Usai Endorse Obat Injeksi Pembesar Payudara", <https://health.detik.com/berita-detikhealth/d-4155663/awkarin-banjir-protes-usai-endorse-obat-injeksi-pembesar-payudara>, accessed on 1 January 2020

⁹² Kominfo, "Meluruskan Jalan Selebgram", https://kominfo.go.id/content/detail/13848/meluruskan-jalan-selebgram/0/sorotan_media, accessed on 1 January 2020

CHAPTER 3

CONSUMER PROTECTION LAW IN INDONESIA

In Article 1 Paragraph (3) of the 1945 Constitution, it is stated that Indonesia is a rule of law state.⁹³ This article means all actions or actions of individuals, groups, people and the government must be based on the provisions of the laws and regulations that existed before the action or action was carried out or based on applicable regulations.⁹⁴ Therefore, law in Indonesia tries to reach all aspects of life, so that legal certainty can be achieved. One aspect covered by Indonesian law is consumer protection. This chapter will discuss the extent of existing consumer protection laws regulates about *selebgram*.

2.1 THE DIFFERENCE BETWEEN INSTAGRAM AND MARKETPLACE

Marketplace is a type of e-commerce site where product or service information is provided by multiple third parties, whereas transactions are processed by the marketplace operator. Online marketplaces are the primary type of multichannel e-commerce and can be a way to streamline the production process.⁹⁵ Unlike marketplaces, Instagram was originally created to be social media. However, because of the use of Instagram that can support the activities of buying and selling goods or services, many Instagram user use Instagram as the platform of buying and selling goods or services.⁹⁶

3.2 CASES REGARDING *SELEBGRAM* WHO VIOLATE CONSUMER PROTECTION LAW

⁹³ Indonesia, The 1945 Constitution of the Republic of Indonesia, Article 1 Paragraph (3)

⁹⁴ Alfina Fajrin, "Indonesia Sebagai Negara Hukum", <https://www.kompasiana.com/alfinafajrin/59b80b71941c202012739722/indonesia-sebagai-negara-hukum>, accessed on 4 January 2020

⁹⁵ Yuantoro, Cynthia Fransisca. "Perbandingan *Online Store* Berbasis Instagram dan Markeplace X dan Pengaruhnya Terhadap Keputusan Pembelian Produk Kosmetik". Undergraduate Thesis of Universitas Parahyangan, Bandung 2017.

⁹⁶ Banjaransari, Yudhi Gumbiro. "Pemanfaatan Instagram Sebagai Media Komunikasi Pemasaran *Online Page Maker Down Cloth Maker*". Undergraduate Thesis of Universitas Muhammadiyah Surakarta. Surakarta 2018.

Lately there have been many advertisements for unlicensed medicines promoted by *selebgram*. One of the most discussed cases lately is the case of one *selebgram* named Karin Novilda. The controversial *selebgram* Karin Novilda or usually called Awkarin is back in the spotlight of citizens. That is because, she promotes breast enlargement injection medicines and female genital tightener.⁹⁷ In her Instagram Stories, Awkarin promotes breast enlargement injection medicines. Even Awkarin showed the store's full name and the price of the product she was promoting. Awkarin reaped a protest for uploading Instagram stories containing endorse injection breast enlargement medicines and vaginal tighteners with frills 100% safe.⁹⁸

Given Awkarin's enormous influence on society, this has become a serious concern, because there is a possibility that many consumers are deceived by advertisements produced by Awkarin and become victims of such unlicensed medicines. Even though there have been many regulations governing the rules that advertisers must follow if they want to produce an ad. But unfortunately, the low awareness and legal concern of the celebrities regarding this regulation makes them unaware of the consequences of the advertisements they produce.

As it is known, the big name of Karin Novilda or usually called as Awkarin began to be known since a few years ago. Awkarin is known for several positive and negative things that she did. Her name is increasingly known for the free lifestyle she lived. Many internet users sneered at the Awkarin behavior, because many felt that Awkarin did not model positive things on her followers. As is known Awkarin has millions of followers on Instagram, and many of Awkarin followers are teenagers. Because of this many people hope that Awkarin can be a good example for her followers.

Unfortunately, Awkarin again shocked the internet with his negative behavior. On August 2018, Awkarin uploading stories on her Instagram. In her Instagram story, it looks Awkarin was promoting breast enlargement medicines and female genital tightener. To make it worse, it was seen Awkarin wrote a caption that said "100% Safe". It is also

⁹⁷ JPNN, "Awkarin Promosikan Pembesar Payudara, Begini Respons Polisi", <https://www.jpnn.com/news/awkarin-promosikan-pembesar-payudara-begini-respons-polisi>, accessed on 4 January 2020

⁹⁸ Tsarani Maharani, "Endorse Pembesar Payudara Ilegal, Awkarin Dikecam Komisi IX DPR", <https://news.detik.com/berita/d-4156564/endorse-pembesar-payudara-ilegal-awkarin-dikecam-komisi-ix-dpr>, accessed on 4 January 2020

seen a syringes and bottles of medicines that allegedly are products intended by Awkarin as a safe breast enlargement and female genital tightener. Seeing the upload, Awkarin received a lot of criticism from many parties. Many internet users regrets Awkarin uploads, because she did not think about the risk that will be accepted by her followers if they use a product that is not clinically tested.

Unfortunately not only Awkarin, *selebgram* who promote unlicensed medicines like this. Found a lot of celebrities who promote unlicensed medicines. This become a great concern to society, because reckon the number of sellers who use the *selebgram* endorsement services and the number of buyers who get influenced to buy products promoted by the *selebgram*.

As it is known, Consumer Protection Law existed long before *selebgram* appeared. This causes a number of things about *selebgram* that might not be regulated in the Consumer Protection Law. Therefore, this chapter will further discuss the extent to which the Consumer Protection Law regulates programs that promote unlicensed medicines.

3.3 LEGAL PROTECTION FOR CONSUMER RELATED TO DISTRIBUTION OF UNLICENSED MEDICINE

Article 1 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection stipulates that consumer protection is any effort that guarantees legal certainty to provide protection to consumers.⁹⁹ In general, consumer protection for unlicensed medicines can be said to be regulated in such a way, this can be seen from the existence of various laws and regulations governing the procedure for medicines distribution, including:

1. Article 7 of Law Number 8 Year 1999 concerning Consumer Protection states

The obligation of the entrepreneurs:

- a. to act in good faith in conducting the business;

⁹⁹ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 Number 42, TLN. Number 3821, Article 1

- b. to provide correct, clear and honest information with regard to the condition and warranty of the goods and/or services and provide explanation on the use, repair and maintenance;
- c. to treat and serve the consumers properly and honestly and non-discrimination
- d. to guarantee the goods and/or services produced and/or traded based on the prevailing quality standard provision of the goods and/or services
- e. to provide the opportunity to the consumers to test and or/try on certain goods and/or services and provide warranty and/or guarantee on the produced and/or traded goods
- f. to provide compensation, redress and/or substitution for the damages caused by the use, consumption and application of the goods and/or services;
- g. to provide compensation, redress and/or substitution if the goods and/or services received or used do not accord with the agreement.¹⁰⁰

In this article, letter d clearly states that entrepreneurs have to guarantee the good and/or services produced and/or traded based on the prevailing quality standard provision of the goods and/or services it means that a goods and/or services that does not pass the quality standard qualification can not be traded.

In this case, entrepreneurs are deemed not fulfilling their obligations as referred to in Article 7 of Law Number 8 Year 1999 concerning Consumer Protection. This is because entrepreneurs do not guarantee the quality of the products they sell and entrepreneur do not guarantee the quality of products that are accepted by consumers. The product in this case is medicines. If entrepreneurs guarantee the quality and the safety of the medicines, the entrepreneurs supposed to register the medicine to Drug and Food Agency to get the licensed that stated that the medicine is passed the quality standard and it is safe to be consumed.

2. Article 8 Paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection states

- (1) The entrepreneurs are not allowed to produce and/or trade goods and/or services which:
 - a. do not meet or accord with the required standard and provisions of the law

¹⁰⁰ *Ibid*, Article 7

- b. do not accord with the net weight, net volume, and the total amount as stated on the label of the said goods;
- c. do not accord with the actual size, measurement, and total amount;
- d. do not accord with the condition, guarantee, specialty or efficacy as stated on the label or information of the said goods and/or services;
- e. do not accord with certain quality degree, composition, process, style, mode, or use as stated on the label or information of the said goods and/or services;
- f. do not accord with the promise as stated on the label information, advertisement or sales promotion of the goods and/or services;
- g. do not mention expiry dates or best before for the use of the said goods and/or services;
- h. do not follow halal production processes for products with halal label;
- i. do not have labels explaining the name, size net weight/volume composition, directions, product dates, side effect, name and address of the company or other information required to be labeled or made by the law;
- j. do not include information and/or directions on the use of the goods in Indonesian language to conform with the prevailing provision of the law.¹⁰¹

In this article, Article 7 of Law Number 8 Year 1999 concerning Consumer Protection is strengthened by letter a. that stated that entrepreneurs are not allowed to produced and/or trade goods and/or services which do not meet or accord with the required standard and provision of the law. Furthermore, as stated in letter d of this article, entrepreneurs are not allowed to produced and/or trade goods and/or services which do not accord with the condition, guarantee, specialty or efficacy as stated on the label or information of the said goods and/or services, which mean that the goods and/or services that produced and/or traded may not declare something that is not in line with the real condition.

In this case, the entrepreneurs violates the provisions in letter a and d of Article 8 of Law Number 8 Year 1999 concerning Consumer Protection. This is cause by entrepreneurs who produced medicines that does not or has not pass the quality standard that has been determined by Drug and Food Agency. Furthermore, entrepreneurs also

¹⁰¹ *Ibid*, Article 8

consider violating provision in this article is because in the promotion which is Awkarin's Instagram story, there was a statement that said the drug was "100% Safe", this clearly did not match the reality, because this drug had not passed the quality standards of Drug and Food Agency.

3. Article 9 Paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection states

- (1) Entrepreneurs are prohibited from misleadingly offering, promoting, advertising certain goods and/or services if:
 - a. the goods have been discounted, have special prices and/or have not met certain quality standard, certain style or mode, certain characteristic, certain historical or use;
 - b. the goods are not in good and/or new condition;
 - c. the goods and/or services have obtained and/or had a sponsor, approval, certain features, certain advantages, certain working characteristics or accession;
 - d. the goods and/or services are made by the company which has a sponsor approval or affiliation,
 - e. the goods and/or services are not available;
 - f. the goods and/or services have hidden defect;
 - g. the goods and/or services are features of a certain goods;
 - h. the goods come from a certain area;
 - i. directly or indirectly disparaging other goods and/or services;
 - j. using exaggerated words, such as safe, not harmful, not risky, no side effect without complete information,
 - k. offering something containing unsecured promise.¹⁰²

In this article, letter j. and letter k. clearly stated that entrepreneurs are prohibited from misleading offering, promoting, advertising certain goods and/or services if using exaggerated words and offering something containing unsecured promise, which means every claims that stated in the product must be real without any exaggerated words.

¹⁰² *Ibid*, Article 9

In this case, it is clearly seen that the entrepreneurs is violating the provision in this article. It is because of the caption in the promotion that stated that the medicines is “100% Safe”, but in the other hand the medicines itself has not passed the quality standard of Drug and Medicines Agency.

4. Article 3 of National Agency of Drug and Food Control Regulation Number 4 Year 2018 concerning Supervision of Management of Medicine, Medicine Materials, Narcotics, Psychotropics and Pharmaceutical Precursors in Pharmaceutical Services Facilities states,
 - (1) Medicines, Narcotics, Psychotropics and Pharmaceutical Precursors distributed must have a distribution permits.¹⁰³
 - (2) Medicines, Narcotics, Psychotropics and Pharmaceutical Precursors distributed must meet safety, efficacy and quality requirements.¹⁰⁴
 - (3) The safety, efficacy and quality requirements as referred to in paragraph (2) are in accordance with the provisions of the legislation.¹⁰⁵

In this article, it is clearly stated that the distribution of medicines must have a licensed from the authorities and must have past certain quality requirement, it means unlicensed medicines can not be distributed.

In this case, it is clearly seen that the entrepreneurs is violating the provision of this article, it is because the medicine that the entrepreneurs produced has not pass the quality standard that has been determined by Drug and Food Agency. Furthermore, the medicine that the entrepreneurs does not have the licensed from Drug and Food Agency, but it is still distributed.

3.4 REGULATION REGARDING ADVERTISING UNLICENSED MEDICINES

Law Number 8 Year 1999 concerning Consumer Protection is not only regulates about consumers and entrepreneurs, it is also regulates about advertisers. There are several rules and regulation that have to be followed by advertiser, such as:

¹⁰³ Indonesia, National Drug and Food Agency, Regulation Number 4 Year 2018, TLN Number 636, Article 3 Paragraph (1) (Translated by Author)

¹⁰⁴ *Ibid*, Article 3 Paragraph (2) (Translated by Author)

¹⁰⁵ *Ibid*, Article 3 Paragraph (3) (Translated by Author)

1. Article 17 Paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection states,

- (1) Entrepreneurs in the advertising business are prohibited from producing advertisement which:
- a. deceive the consumers on the quality, quantity, ingredients, use and prices of the goods and/or rates of the services and the punctuality of receiving the goods and/or services;
 - b. deceive the guarantees on certain goods and/or services;
 - c. provide incorrect, wrong or inaccurate information on the goods and/or services;
 - d. do not provide information on the risks of using the goods and/or services,
 - e. exploit the incident and/or someone without the permission from the authorized officials or the approval of the person concerned;
 - f. violate the ethics and/or legal provision on advertising.¹⁰⁶

In this article, it is clearly stated that every advertisement that is advertise by advertiser must contain all things that are in accordance with the function and use of the products and/or services.

In this case, the advertiser is Awkarin. Awkarin is considered to have violated the provisions of this article because in her instagram story, Awkarin mentioned that the medicines that she promotes are “100% safe” which is not in accordance with the reality. Furthermore, the benefits of the drug are not clearly known.

2. Article 20 of Law Number 8 Year 1999 concerning Consumer Protection states

“Entrepreneurs in the advertising business are responsible for the advertisement they produce and all the consequences caused by the advertisement.”¹⁰⁷

¹⁰⁶ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 Number 42, TLN. Number 3821, Article 17

¹⁰⁷ *Ibid*, Article 20

This article clearly states that advertiser have a full responsibility on the advertisement that the produced. In this case, it means that Awkarin has full responsibility products that she promotes, which means any consequences that arise because of the promotion must be received and accounted by Awkarin.

Not only the consumer protection law, there are several manners that must be followed by advertiser based on Indonesian Advertising Council, which are:

1. Ads must not use superlative words such as "most", "number one", "top", or words beginning with "most", and/or which have the same meaning, unless accompanied by evidence that can be justified.¹⁰⁸
2. If an ad includes a guarantee of the quality of a product, then the basis of the guarantee must be accountable.¹⁰⁹
3. Product benefits must be delivered honestly, correctly and responsibly, and not add other benefits that are beyond the capabilities of the product.¹¹⁰

These articles clearly regulates the manners that must be followed by a *selebgram* in producing advertising. In this article, Awkarin is violating this manner by giving a false information about that medicine. Awkarin stated that the medicines is “100% safe” which is not true. Furthermore, the benefit of using that medicines is still unknown, which makes the possibility of false expectations of the capability of the medicines.

3.5 THE DANGERS OF MEDICINES THAT HAVE NOT PASSED NATIONAL FOOD AND DRUG AGENCY CERTIFICATION

Buying medicines over the internet has a great risk because the medicines being sold may be fake, out of date, contaminated medicines, medicines that are not approved by

¹⁰⁸ Dewan Periklanan Indonesia, *Etika Pariwisata Indonesia Buku Teks Edisi Kedua*, (Jakarta: Dewan Periklanan Indonesia, 2014), p.23

¹⁰⁹ *Ibid*, p.24

¹¹⁰ *Ibid*, p.28

National Food and Drug Agency, or medicines that are not safe for the consumers.¹¹¹ Medicines advertising and tagging is one source of information that must be in accordance with applicable regulations, it aims to protect the public from inappropriate use of medicines and risk to health.¹¹² The World Health Organization (WHO) states, the circulation of fake medicines worldwide is around 10 percent. Meanwhile, in developing countries like Indonesia, it can reach 25 percent. Counterfeit medicines can cause bad risks to public health.¹¹³ The problem of illegal medicines and fake medicines has become a serious concern of National Food and Drug Agency, considering that medicines are one of the irreplaceable components in health services and the use of substandard fake medicines can lead to medicines resistance and can even cause death.¹¹⁴ Eka Purnamasari added, illegal medicines including fake are not guaranteed safety, quality and usefulness because they do not go through the assessment or registration process at National Food and Drug Agency.¹¹⁵ In December 2019, a *selebgram* named Tasya Farasya posted a story to remind fellow *selebgram* to be more careful in choosing the products they want to promote.¹¹⁶ Tasya highlighted several other dangerous beauty products, such as slimming medicines that can lose weight in an instant that can actually harm the heart or intestines, breast enlargement medicines that can trigger cancer, to facial care products that can whiten the skin instantly, which can actually damage the

¹¹¹ Lusia Kus Anna, “Cermat Membeli Obat Lewat Internet”, <https://properti.kompas.com/read/2012/10/08/14570766/cermat.membeli.obat.lewat.internet>, accessed on 31 December 2019

¹¹² Badan POM. Pedoman Pengawasan Periklanan Obat dan Evaluasi Kepatuhan Penandaan Obat. Jakarta: Badan POM, 2017

¹¹³ Republika, “Hindari Bahaya dengan Mengenali Obat Palsu”, <https://republika.co.id/berita/koran/medika/ogh58231/hindari-bahaya-dengan-mengenali-obat-palsu>, accessed on 31 December 2019

¹¹⁴ Indah Handayani, “Bahaya Obat Palsu dan Ilegal Mengancam”, <https://www.beritasatu.com/kesehatan/396571/bahaya-obat-palsu-dan-ilegal-mengancam>, accessed on 31 December 2019

¹¹⁵ Republika, “Hindari Bahaya dengan Mengenali Obat Palsu”, <https://republika.co.id/berita/koran/medika/ogh58231/hindari-bahaya-dengan-mengenali-obat-palsu>, accessed on 31 December 2019

¹¹⁶ Ade Indra Kusuma, “Tasya Farasya Geram dengan Selebgram yang Endorse Produk Kecantikan Palsu”, <https://www.suara.com/lifestyle/2019/12/20/125116/tasya-farasya-geram-dengan-selebgram-yang-endorse-produk-kecantikan-palsu>, accessed on 31 December 2019

skin .¹¹⁷ Seeing Tasya's post, a doctor commented that there were patients who had kidney failure because of bleach injections.¹¹⁸

With so many products being promoted by celebrities, buyers are expected to be smart in choosing what products they will buy, especially if the product is related to food and medicine, because if not careful in choosing food or medicine, it can have a negative impact on consumer.¹¹⁹ Based on research conducted by National Food and Drug Agency, there are around 83 sites that produced illegal medicine and unlicensed medicines are found.¹²⁰ According to the Head of National Food and Drug Agency Center in Denpasar, I Gusti Ayu Adhi Aryapatni, in the last three years, it is shown that 40% to 50% of advertisements about the promotion of medicines and food products that do not meet the standard requirements.¹²¹ The most marketed illegal medicines include erectile dysfunction medicines, slimming medicines, medicines that helps breast enlargement, and medicines that helps enhancing woman's arousal.¹²²

3.6 ANALYSIS OF THE EXTENT TO WHICH THE CONSUMER PROTECTION LAW REGULATES *SELEBGRAM* THAT PROMOTES UNLICENSED MEDICINES

Promotion according to Article 1 number 6 of Law Number 8 of 1999 concerning Consumer Protection is the activity of introducing or disseminating information on goods

¹¹⁷ *Ibid*

¹¹⁸ Fhai, "Ingatkan Selebgram yang Paid Promote Produk Murahan dan Palsu, Tasya Farasya: Ribuan Orang Menderita", <https://www.hipwee.com/showbiz/efek-paid-promote-produk-murahan/>, accessed on 31 December 2019

¹¹⁹ Liputan6, "Tips Belanja Obat Online yang Aman", <https://www.liputan6.com/health/read/484492/tips-belanja-obat-online-yang-aman>, accessed 31 December 2019

¹²⁰ Lusiana Kus Anna, "Cermat Membeli Obat Lewat Internet", <https://properti.kompas.com/read/2012/10/08/14570766/cermat.membeli.obat.lewat.internet>, accessed on 31 December 2019

¹²¹ Badan POM, "BPOM Sosialisasikan Peraturan Iklan Obat dan Makanan", <https://www.pom.go.id/new/view/more/berita/15411/BPOM-Sosialisasikan-Peraturan-Iklan-Obat-dan-Makanan.html>, accessed on 31 December 2019

¹²² Nurul Mahmudah, "13 Jenis Obat Palsu Beredar di Pasar", <https://nasional.tempo.co/read/543213/13-jenis-obat-palsu-beredar-di-pasar/full&view=ok>, accessed on 31 December 2019

and / or services to attract consumers to buy goods and / or services to be traded.¹²³

Related to promotion, entrepreneurs are prohibited from doing the things stated in Article 17 paragraph 1 of Law Number 8 Year 1999 concerning Consumer Protection. Furthermore, in article 17 paragraph (2) states

“Entrepreneurs in the advertising business are prohibited from continuing the advertisement circulation which has violated the provision on Paragraph (1)”¹²⁴

Hereinafter, Article 10 of Law Number 10 Year 1999 concerning Consumer Protection states

“In offering the goods and/or services for trading, entrepreneurs are prohibited from offering, promoting, advertising or providing incorrect or misleading statements regarding:

- a. the price or rate of a certain goods and/or services;
- b. the use of the goods and/or services;
- c. the conditions, dependents, guarantees, rights or compensation for goods and / or services;
- d. discounted offers or attractive prizes offered;
- e. danger of using goods and / or services.”¹²⁵

If an entrepreneurs violates the provisions mentioned above, then it is stated in article 62 of the Consumer Protection Law that

“(1) Business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be liable to a maximum

¹²³ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 Number 42, TLN. Number 3821, Article 1

¹²⁴ *Ibid*, Article 17

¹²⁵ *Ibid*, Article 10

imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).

- (2) Business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letter d and letter f shall be sentenced to a maximum imprisonment of 2 (two) years or a criminal fine of no more than Rp. 500,000,000.00 (five hundred million rupiah).
- (3) For violations that result in serious injury, serious illness, permanent disability or death, applicable criminal provisions apply.¹²⁶

In addition, business actors may also be subject to additional penalties, this is stated in article 63 of Law Number 8 Year 1999 concerning Consumer Protection, which states

“For criminal sanctions as referred to in Article 62, additional penalties may be imposed, in the form of:

- a. confiscation of certain goods;
- b. announcement of the judge's decision;
- c. payment of compensation;
- d. orders to stop certain activities that cause consumer losses;
- e. liability for withdrawal of goods from circulation, or
- f. revocation of business license.¹²⁷

Unfortunately, regarding to consumer protection law, there is no clear definition of the meaning of the word advertiser. Therefore, it is necessary to analyze whether *selebgram* as advertisers are included in the entrepreneurs referred to in these articles, because if not, the article does not apply to *selebgram*.

According to Article 1 Paragraph (3) of Law Number 8 Year 1999 concerning Consumer Protection stated that

¹²⁶ *Ibid*, Article 62

¹²⁷ *Ibid*, Article 63

“Entrepreneurs is every individual or business entity, both in the form of a legal entity or not a legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both alone and jointly through agreements to conduct business activities in various economic fields.”¹²⁸

The article states that every individual or business entity that conducts business activities are categorized as entrepreneurs. Business activities in this Article is very general, any kind of business activities can be included in this Article and advertising is the business activity that helped to promotes the product of the entrepreneurs. Based on the analysis above, Therefore, advertiser maybe included in this article. Therefore, advertiser may included in Article 1 Paragraph (3) Law Number 8 Year 1999 concerning Consumer Protection. Hereinafter, because advertisers are included in entrepreneurs under the consumer protection law, it means all the articles mentioned above does apply to *selebgram* as advertiser.

It can be concluded that *selebgram* who violate the provisions in Consumer Protection Law can get penalties in accordance with applicable regulations. Therefore, the next chapter will further analyze the legal consequences that can be received by the *selebgram* if they promotes unlicensed medicines.

¹²⁸ *Ibid*, Article 1 Paragraph (3)

CHAPTER 4

LEGAL CONSEQUENCES FOR *SELEBGRAM* WHO PROMOTES UNLICENSED MEDICINES

All things if violated must have their respective consequences. It is the same with law in Indonesia, there are consequences that must be accepted if they violate the provisions of Indonesian law. This chapter, will discuss the legal consequences that will received by *selebgram* who promotes unlicensed medicines.

4.1 THE ORIGIN OF *SELEBGRAM* ENDORSEMENT

About 10 years ago, the Instagram application was released to the public.¹²⁹ Instagram is one type of social media that is being used a lot lately.¹³⁰ Instagram is an image-based social media that provides photo or video sharing services online.¹³¹ With active users reaching 61.6 million people every month, Instagram has a big influence on the lives of Indonesian people.¹³² Over time, features on Instagram began to be reproduced and renewed.¹³³ One of the Instagram features that many users are interested in is Instagram story. Instagram story is one of the features that allow users to be able to

¹²⁹ Hutomo Dwi, “Ternyata Ini Asal-Usul Nama Instagram, Sudah Tahu?”, <http://jadiberita.com/132148/ternyata-ini-asal-usul-nama-instagram-sudah-tahu.html>, accessed on 10 January 2020

¹³⁰ Wahyunanda Kusuma Pertiwi, “Sebanyak Inikah Jumlah Pengguna Instagram di Indonesia?”, <https://tekno.kompas.com/read/2019/12/23/14020057/sebanyak-inikah-jumlah-pengguna-instagram-di-indonesi>, accessed on 10 January 2020

¹³¹ Putri, A. W. “PENGUNAAN INSTAGRAM STORIES SEBAGAI PERSONAL BRANDING (Studi pada Mahasiswa Ilmu Komunikasi UMM Angkatan 2014)”. Undergraduate Thesis of UMN University, Jakarta 2018

¹³² Wahyunanda Kusuma Pertiwi, “Sebanyak Inikah Jumlah Pengguna Instagram di Indonesia?”, <https://tekno.kompas.com/read/2019/12/23/14020057/sebanyak-inikah-jumlah-pengguna-instagram-di-indonesi>, accessed on 10 January 2020

¹³³ Aswab Nanda Pratama, “Hari Ini dalam Sejarah: Aplikasi Instagram Dirilis”, <https://tekno.kompas.com/read/2018/10/06/10512437/hari-ini-dalam-sejarah-aplikasi-instagram-dirilis?page=all>, accessed on 10 January 2020

upload short photos or videos that are imbued with text or scribbles that will be kept for 24 hours.¹³⁴

Because of its high popularity, Instagram is not only used to upload personal photos and videos, but there are also some who use it to open online shops.¹³⁵ Not only that, there are also some people who have a lot of followers (commonly called *selebgram*) who use Instagram as a medium to promote online shops that use their services, through a system called endorsement.¹³⁶ Endorsement is considered to be one of the most effective online marketing strategies to increase sales.¹³⁷

Endorsement is also considered to have a significant advantage over other promotional media.¹³⁸ The advantage of using endorsement services are:

1. Effective Promotion

If a product is promoted through one of the *selebgram* accounts, the public will automatically see a lot of the seller products, given the large number of followers. Interested people will also find out which online shop sells the product, by clicking on the online shop account tagged in the photo.¹³⁹

2. Minimize Marketing Costs

Capital for endorsement is not as expensive as the cost of advertising on television. All seller has to do is send their product to *selebgram* who are

¹³⁴ Oik Yusuf, "Begini Cara Membuat "Stories" di Instagram", <https://tekno.kompas.com/read/2016/08/03/20150037/Begini.Cara.Membuat.Stories.di.Instagram?page=all>, accessed on 10 January 2020

¹³⁵ Chindy Salsabillah, "Awal Mula Selebgram", <https://www.ibigacademy.com/apa-itu-selebgram-asal-usul-endorse/>, accessed on 10 January 2020

¹³⁶ *Ibid*

¹³⁷ Nabilla Kartika Luthfa, "Keuntungan dan Panduan Melakukan Endorsement bagi Perkembangan Bisnis Online", <https://www.jurnal.id/blog/2018-endorsement-dapat-meningkatkan-penjualan-bisnis-online/>, accessed on 11 January 2020

¹³⁸ *Ibid*

¹³⁹ Team LiputanUKM.com, "5 Keuntungan Menggunakan Endorsement Instagram dalam Bisnis", <https://liputanukm.com/tips-usaha/5-keuntungan-menggunakan-endorsement-instagram-dalam-bisnis/>, accessed on 11 January 2020

endorsers and their fees. Only this way, the product has been seen by millions of people. Indirectly, the marketing costs can be reduced.¹⁴⁰

3. Increase Sales

Selebgram is one of the public figures. Followers will tend to imitate and follow the style of their idol *selebgram*. That way many people will be interested and order products promoted by *selebgram*. This certainly encourages sales to increase.¹⁴¹

4. Products Easy to Recognize

By doing the endorsement method with a *selebgram*, it certainly increases the popularity of the brand. Especially if the *selebgram* that the seller chose have different market segments, this will certainly expand marketing, as well as get new markets.¹⁴²

5. Increase credibility

Endorsement cooperation not only provides financial benefits, but also brand awareness. Not infrequently businesses that already have a name, still increase brand awareness through endorsement cooperation. That way sellers product is better known and trusted.¹⁴³

From these reasons, it appears that endorsement is more profitable and influences to the seller, *selebgram* and buyer. According to Nukman Luthfie, the presence of this *selebgram* business is inseparable from research that says that recommendations from people you know or other people through social media can be more influential than advertising.¹⁴⁴

¹⁴⁰ *Ibid*

¹⁴¹ *Ibid*

¹⁴² *Ibid*

¹⁴³ *Ibid*

¹⁴⁴ Akhdi Martin Pratama, "Bisnis Selebgram: Promosi Lewat Sentuhan Personal", <https://vik.kompas.com/selebgram/>, accessed on 11 January 2020

4.2 SELEBGRAM AS ADVERTISER IN INDONESIAN LAW

The development of the advertising world has developed very rapidly from time to time. One form of the development of the advertising world is the emergence of diverse advertising business actors, one example is *selebgram*. *Celebrities* or acronyms of celebrities and Instagram are those who are famous through social media Instagram.¹⁴⁵ *Selebgram* can be considered advertisers because the activities they do are the same as those of advertisers in general, which is promoting products.

The number of *selebgram* currently demands legal certainty for these celebrities, in addition to knowing their rights and obligations, also to protect all parties related to this celebrity. But unfortunately, for now there is still minimal law governing *selebgram* as advertisers. This can be seen by the absence of a specific definition of advertisers in the current legislation. In Law Number 8 of 1999 concerning Consumer Protection, there is no specific definition regarding advertisers. But on the other hand, the law wants to state the definition of entrepreneurs and promotion.

Article 1 Paragraph (3) of Law Number 8 Year 1999 concerning Consumer Protection states

An entrepreneur is an individual person or a company, in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in the economic sector through contracts, both individually and collectively.¹⁴⁶

In this article, it is stated that an entrepreneurs is and individual or a company that conducting various kinds of activities in the economic sector. There is no specific limit regarding the activities in the economic sector. This means every activities that related to economic sector can be included in this article. In this case the activity in economic sector that conducted by *selebgram* is promoting product. It means *selebgram* can be

¹⁴⁵ Info Peluang Usaha, “Apa Itu Selebgram? Berikut Pengertian, Contoh dan Pengertiannya”, <https://infopeluangusaha.org/apa-itu-selebgram-berikut-pengertian-contoh-dan-keuntungannya/>, accessed on 11 January 2020

¹⁴⁶ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 No. 42, TLN. No. 3821, Article 1 Paragraph (3)

included in this article, because *selebgram* is an individual that conducting an activity in the economic sector, which is promoting products.

Article 1 Paragraph (6) of Law Number 8 Year 1999 concerning Consumer Protection states

Promotion is any activity of introducing or spreading the information on certain goods and/or services to attract the consumers to buy the goods and/or services being traded.¹⁴⁷

In this article promotion means any activity that introducing a product to attract consumers to buy the goods or use the services that is being traded. What is done by *selebgram* can be included this article, because *selebgram* use their Instagram account to introduce products to their followers so that their followers are interested in buying the products or using the services.

In addition to the Consumer Protection Law, advertisers are also regulated in Adverts Ethics. According to Indonesian Advertising Council advertisers are proponents, advertisers (*penaja*), and users of advertising services.¹⁴⁸ There is no further explanation regarding the definition of advertisers. Based on the definition according to Indonesian Advertising Council, *selebgram* can be included as advertisers.

Unfortunately the lack of legal certainty regarding the definition of advertisers makes a lot of opinions about whether a program can be subject to sanctions as stated in the consumer protection law.

4.3 SELEBGRAM AS ADVERTISERS

According to a legal project officer named Dimas Hutomo, *selebgram* cannot accept sanctions as stated in the Consumer Protection Law, this is because in his opinion

¹⁴⁷ *Ibid*, Article 1 Paragraph (6)

¹⁴⁸ Dewan Periklanan Indonesia, Etika Pariwara Indonesia Buku Teks Edisi Kedua, (Jakarta: Dewan Periklanan Indonesia, 2014), p.20

selebgram can not be included as entrepreneurs.¹⁴⁹ In his opinion, according to Article 1 number 6 of Law Number 8 of 1999 concerning Consumer Protection, Promotion is the activity of introducing or disseminating information on goods and / or services to attract consumers to buy goods and / or services to be and are being traded.¹⁵⁰

Related to promotion, business actors are prohibited from doing the following:

1. Entrepreneurs are prohibited from producing and / or trading goods and / or services that are not in accordance with the promises stated in the label, label, statement, advertisement or promotion of the sale of goods and / or services.¹⁵¹
2. Entrepreneurs is prohibited from offering, promoting, advertising an item and / or service incorrectly, and / or one of them as if using excessive words, such as safe, harmless, does not contain risks or side effects without complete information.¹⁵²

Goods and / or services that meet the above criteria are prohibited from being traded.¹⁵³ Entrepreneurs who commit violations in promoting goods / services in the ways above are prohibited from continuing the offer, promotion and advertising of said goods and / or services.¹⁵⁴

Furthermore, in offering these goods and / or services, entrepreneurs in offering goods and / or services intended for trading are prohibited from offering, promoting, advertising or making false or misleading statements regarding:

1. price or fare of goods and / or services;
2. the use of an item and / or service;

¹⁴⁹ Dimas Hutomo, "Risiko Hukum Artis yang Meng-endorse Kosmetik Ilegal", <https://www.hukumonline.com/klinik/detail/ulasan/lt5c90127000d5d/risiko-hukum-artis-yang-meng-iendorse-i-kosmetik-ilegal/>, accessed on 12 January 2020

¹⁵⁰ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 No. 42, TLN. No. 3821, Article 1 Paragraph (6)

¹⁵¹ *Ibid*, Article 8 Paragraph (1) Letter f

¹⁵² *Ibid*, Article 9 Paragraph (1) Letter j

¹⁵³ *Ibid*, Article 9 Paragraph (2)

¹⁵⁴ *Ibid*, Article 9 Paragraph (3)

3. conditions, dependents, guarantees, rights or compensation for goods and / or services;
4. discounted offers or attractive prizes offered;
5. danger of using goods and / or services¹⁵⁵

If the entrepreneurs violates the provisions mentioned above, then he can be sentenced to a maximum imprisonment of 5 years or a maximum fine of Rp 2 billion.¹⁵⁶ In addition, entrepreneurs may also be imposed additional penalties, in the form of:

1. confiscation of certain goods;
2. announcement of the judge's decision;
3. payment of compensation;
4. orders to stop certain activities that cause consumer losses;
5. obligation to withdraw goods from circulation; or
6. revocation of business license.¹⁵⁷

Based on the Consumer Protection Law, it is stated that entrepreneurs are every individual or business entity, both in the form of legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both alone and jointly through agreements to conduct business activities. in various fields of economics.¹⁵⁸

Based on these articles, Dimas Hutomo considers that *selebgram* cannot be categorized as a business actor and receives sanctions as explained.¹⁵⁹ He stated that although the artist (in this case is *selebgram*) promotes fake cosmetics (in this case is

¹⁵⁵ *Ibid*, Article 10

¹⁵⁶ *Ibid*, Article 62 Paragraph (1)

¹⁵⁷ *Ibid*, Article 63

¹⁵⁸ *Ibid*, Article 1 Paragraph (3)

¹⁵⁹ Dimas Hutomo, "Risiko Hukum Artis yang Meng-endorse Kosmetik Ilegal", <https://www.hukumonline.com/klinik/detail/ulasan/t5c90127000d5d/risiko-hukum-artis-yang-meng-iendorse-i-kosmetik-ilegal/>, accessed on 12 January 2020

unlicensed medicines) that cause consumer losses, they cannot be immediately convicted and held accountable because the party fully responsible is entrepreneurs.¹⁶⁰ He also added that the artist would not necessarily know that the cosmetics he was promoting were cosmetics that were not licensed (fake).¹⁶¹

Similar opinion is also stated by Diana Kusumasari.¹⁶² According to her, those who deserve sanctions as mentioned in Article 62 Paragraph (1) of the Consumer Protection Law are entrepreneurs (sellers) not advertisers.¹⁶³ House Commission IX member Okky Asokawati also has the same opinion as Dimas Hutomo and Diana Kusumasari.¹⁶⁴ This can be seen from the way Okky regretted Awkarin's behavior on promoting unlicensed medicines without mentioning the legal sanctions that the program might receive.¹⁶⁵ Head of the Sub-Directorate of Inspection and Certification of Therapeutic Product Distribution, the Directorate of Drug and Food Agency Therapeutic Product Distribution Supervision, Eka Purnamasari, also warns consumers to be careful before buying products that are promoted as *selebgram*, rather than emphasizing the consequences that will be received by *selebgram*.¹⁶⁶ However, author have different opinions which will be discussed next

Because there is no specific definition of advertisers, this creates a variety of opinions. These various opinions determine whether *selebgram* as an advertiser can accept sanctions as stated in the Consumer Protection Law. First, let's look at the sanctions mentioned in the consumer protection law.

Article 60 Paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection Law states

¹⁶⁰ *Ibid*

¹⁶¹ *Ibid*

¹⁶² Diana Kusumasari, "Ancaman Pidana Bagi Pelaku Usaha yang Membuat Iklan Menyesatkan", <https://www.hukumonline.com/klinik/detail/ulasan/t4f7f4e348f6b3/penipuan-apakah-termasuk-pidana>, accessed on 12 January 2020

¹⁶³ *Ibid*

¹⁶⁴ Gibran Maulana Ibrahim, "Kasus Awkarin, BPOM dan Polisi Diminta Patroli Siber *Selebgram*", <https://news.detik.com/berita/4157413/kasus-awkarin-bpom-dan-polisi-diminta-patroli-siber-selebgram>, accessed on 12 January 2020

¹⁶⁵ *Ibid*

¹⁶⁶ Republika, "Hindari Bahaya dengan Mengenali Obat Palsu", <https://republika.co.id/berita/koran/medika/ogh58231/hindari-bahaya-dengan-mengenali-obat-palsu>, accessed on 12 January 2020

The Consumer Dispute Settlement Agency shall be authorized to impose an administrative sanction to the entrepreneurs who violate Article 19 Paragraph (2) and Paragraph (3), Article 20, Article 25 and Article 26.¹⁶⁷

In this article it is stated that whoever violates the provision of Article Paragraph (2) and Paragraph (3), Article 20, Article 25 and Article 26 will get an administration sanction from Consumer Dispute Settlement Agency. In this case, *selebgram* considered violating the provisions of Article 20 of Law Number 8 Year 1999 concerning Consumer Protection. In Article 20 of Consumer Protection Law it is stated that

The advertisers is responsible for the advertisements produced and all consequences caused by the advertisements.¹⁶⁸

In this article, it is stated that advertisers is responsible for all the consequences caused by the advertisement. There is no further explanation about consequences caused by the advertisement, which means every consequences in this case consumer losses can be included in this article.

Furthermore, Article 60 Paragraph (2) of Law Number 8 Year 1999 concerning Consumer Protection states

The administrative sanction shall be determined in the maximum amount of Rp. 200, 000,000 (two hundred million rupiahs).¹⁶⁹

In this article, it is stated that as referred to in article 1, the administrative sanctions that will be received by the violators are a maximum amount of Rp. 200, 000,000 (two hundred million rupiahs). In this case, *selebgram* can accept this consequences because it is in accordance with the provisions of Article 20.

¹⁶⁷ Indonesia, Consumer Protection Law, Law Number 8 Year 1999, LN Year 1999 No. 42, TLN. No. 3821, Article 60 Paragraph (1)

¹⁶⁸ *Ibid*, Article 20

¹⁶⁹ *Ibid*, Article 60 Paragraph (2)

Hereinafter, Article 62 Paragraph (1) states that

Entrepreneurs who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 Paragraph (2), Article 15, Article 17 Paragraph (1) Letter a, Letter b, Letter c, Letter e, Paragraph (2) and Article 18 shall be liable to a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiahs).¹⁷⁰

In this article, it is stated that entrepreneurs who violate provision in Article 8, Article 9, Article 10, Article 13 Paragraph (2), Article 15, Article 17 Paragraph (1) Letter a, Letter b, Letter c, Letter e, Paragraph (2) and Article 18 will received a sanction which is imprisonment of 5 (five) years or fine of 2 billion rupiahs. In this case, *selebgram* considered violating provision in Article 17 Paragraph (1) Letter c, which states

Advertisers are prohibited from producing advertisements that contain false, incorrect, or incorrect information about goods and / or services.¹⁷¹

In this article, it is stated that advertisers are prohibited from producing advertisements that contain false information about goods and/or services. In this case, Awkarin mentioned that the breast enlargement injections and vaginal tighteners are 100% safe, which are not, and it means Awkarin has produce an advertisement that contains false information. Furthermore, it means that Awkarin can received the sanction as mention in Article 62 Paragraph (1) of Consumer Protection Law.

In conclusion, in author's opinion *selebgram*, in this case is Awkarin, can received the sanction as regulated in Consumer Protection Law, because there is no provision that states that *selebgram* is not included as entrepreneurs. To add further, in author's opinion *selebgram* meet the conditions of being an entrepreneurs.

¹⁷⁰ *Ibid*, Article 62 Paragraph (1)

¹⁷¹ *Ibid*, Article 17 Paragraph (1) Letter c

CHAPTER 5

CLOSING

I. CONCLUSION

Indonesia is a rule of law state which means that law in Indonesia tries to cover all aspects of life. But with the rapid development of the times, sometimes the law becomes a little behind. One example is the Consumer Protection Law. Consumer Protection is regulated in Law Number 8 Year 1999 concerning Consumer Protection. The few regulations governing advertisers result in a lot of legal uncertainty for *selebgram* and parties related to *selebgram*, whereas in this day, *selebgram* services are widely used by sellers to promote their product and/or service. The lack of awareness of *selebgram* regarding the Consumer Protection Law also makes *selebgram* made an actions that are considered detrimental to consumers. One of the *selebgram* actions that is considered to be detrimental to consumers is promoting unlicensed medicines. This action is illegal.

The concept of *selebgram* can be interpreted suitable with the concept of advertisers mentioned in the Consumer Protection Law. Advertisers themselves are part of entrepreneurs. Therefore, *selebgram* bear liability under the rule of Consumer Protection Law. Law Number 8 Year 1999 concerning Consumer Protection, also provides several sanctions, including criminal liability and sanctions that may be imposed towards entrepreneurs if they promote products that are not in accordance with the product's claims or endanger consumers. SUGGESTION

Based on the research, researcher suggesting to government of Indonesia to amend the existence Consumer Protection Law which is Law Number 8 Year 1999 concerning Consumer Protection. As the times grow, so does our law supposed to be. With the existence of new legal subjects in the field that had not yet been regulated in the Law Number 8 Year 1999 concerning Consumer Protection, in researcher opinion, it is the time for Consumer Protection Law to be amended. Consumer Protection Law should also explain the definition of advertisers, so there is no legal uncertainty in the community. Researcher also suggests making derivative rules from the Consumer Protection in the

form of Government Regulation or other regulations to regulate more detailed information regarding *selebgram* as entrepreneurs.

Furthermore, besides adding the definitions of advertisers, Consumer Protection Law should also mention and explain the legal consequences that advertisers will get (in this case *selebgram*) if they decide to violate the provisions set out in the Law Number 8 Year 1999 concerning Consumer Protection.

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