

ENFORCEMENT OF SOCIAL MEDIA PROMOTIONAL SERVICES AGREEMENTS ACCORDING TO INDONESIAN POSITIVE LAW

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Abstract

This study aims to determine the validity of the promotional service agreement and to find out the legal remedies for losses on defaults carried out by the influencer in the promotion agreement on social media. This study is a normative legal study type. The data sources in this study used primary legal material, secondary legal materials, and also tertiary legal materials. The results of the study can be concluded that the promotion service agreement (endorsement) is included in an oral agreement formed through social media, and is an anonymous agreement, because the agreement is not regulated in the legislation. The promotional service agreement is valid in accordance with the legal terms of the agreement in the book of civil law article 1320 and is binding both parties. In the agreement, there has been a default by the influencer to the online shop. The form of default that occurs is influencer do not carry out their obligations in promoting a product according to the initial agreement and it is not uncommon for influencer to be late in promoting a product on their social media. Default in the promotional service agreement can ensure that the parties apply good principles in carrying out the agreement, understand the rights and obligation of both parties, and can receive sanction in the agreement, so that both parties can be more responsible. If there has been a default in the promotional service agreement, the appropriate dispute resolution is through alternative dispute resolution in the form of negotiations that can be carried out by both parties.

Keywords: *The promotional service agreement, default, dispute resolution, social media*

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1. INTRODUCTION

Using social media as a trading medium has been widely used, because it is easier, cheaper, and without more specific requirements. Business actors only need to prepare the products to be offered, attractive product designs/photos, and social media accounts which will later be used to open and run an online shop. However, one of the drawbacks of this business is the limited coverage for potential buyers/consumers. Business actors offer goods to someone who is a follower on their social media account, if in the social media account the number of followers is only small, then the marketing reach of the seller is also small. Instagram is the most popular means for buying and selling activities today, so it is undeniable that more and more online shops are popping up on Instagram. Business actors are starting to look for alternatives to increase the marketing of the products they sell. Business actors certainly want the products they sell to be known by the general public, therefore this is done by using promotional services on social media. One of them is a promotional service, better known as endorse, which comes from the word endorsement in English which means support, ratification, or approval of something. Basically endorsement aims to popularize a public figure to be better known by the public.

Along with the development of time, endorsement is currently changing its function into a means to focus more on increasing product sales. In this promotional activity (endorse) is usually done by using the services of influencers. Someone who is called an influencer can work as a celebrity, blogger, youtuber, or a public figure who is considered important and can have a big influence on his followers on social media. An influencer usually has a lot of followers (followers) on their social media accounts. The followers (followers) on the social media of an influencer are usually stimulated to want to try or use the goods used by their idols. Therefore, this is an opportunity for online shop owners to make the best use of promotional services carried out in collaboration with influencers

Promotional services (endorsement) that are usually carried out in the community are by way of online shop business actors contacting influencers through social media with the chat feature. From here arises an agreement that occurs on both sides, so that it becomes a reference in fulfilling or obtaining the rights and obligations of each. According to article 1233 of the Civil Code, it is emphasized that both a law and an agreement cause an engagement to be born. So the agreement made by the online shop with the influencer can be seen as a binding agreement for the parties as long as it also follows article 1320 of the Civil Code, which explains the legal terms of the agreement. As explained in Article 1234 of the Civil Code, an engagement is intended to give up something, to do something, or not to do something.

However, in reality many influencers do not understand the importance of fulfilling achievements. The cases that often occur are that the influencer does not perform as previously agreed with the online shop. The rates issued by online shop business actors are certainly not small to be able to carry out the endorsement collaboration. Business actors must prepare a budget of hundreds of thousands to millions of rupiah to be able to feel the effect of the endorsement on their online shop. So if an influencer does not immediately endorse as agreed, of course it will make online shop business actors suffer losses. In this case, the reality shows that online shop owners as users of endorse services in business transactions through electronic systems have borne the burden of risk caused by influencers. If viewed based on the principle of agreement in article 1338 of the Civil Code, then the influencer has violated the principle of good faith. This principle is based on the existence of good faith in the form of trust and confidence of the parties who make up the agreement.

The endorsement agreement itself is not exclusively regulated in laws and regulations, but instead grows according to the needs of the community. The endorse agreement can be said to be an online agreement/electronic agreement, because the agreement uses an electronic system instead of paper. Basically, the clauses in the endorsement agreement have been standardized before being given to the online shop owner. This standard electronic endorsement agreement uses the "take it or leave it" principle. So that the online shop owner can only comply with or reject the requirements given by the influencer.

Some online shop owners admit that they spend a lot of money to be able to use the services of these influencers. According to their experience, endorsement services are promising to expand marketing, increase consumer purchasing power, and increase followers in online shop social media. It is possible that the endorsement service will run smoothly according to the price determined by the influencer. Some problems that occur in the endorsement agreement are not uploading photos in accordance with the initial agreement/agreement, there are also influencers who do not use endorsed products wisely according to the initial agreement, and there are still several other cases that have been experienced by online shop owners.

It is appropriate for the parties in entering into an endorsement service agreement to understand the role in the agreement and the importance of fulfilling achievements so that the parties do not suffer losses and the implementation can be carried out in a balanced and based on good faith. So the author is interested in studying about "WANPRESTATION OF PROMOTIONAL SERVICES AGREEMENTS BY INFLUENCER ON SOCIAL MEDIA"

2. RESEARCH METHODS

In this legal research, the author uses a normative juridical method, which means that this research is focused on examining the implementation of the rules and norms in positive law. Library materials are basic data as secondary data in (science) research. In addition to using secondary data, the authors also conducted interviews with online shop owners who had experienced defaults in fulfilling promotional service agreements by influencers, because conducting a secondary data research could not work without primary data.

The author in this study uses data analysis methods in the form of qualitative data analysis methods, namely research that focuses on the data obtained

3. RESULTS AND DISCUSSION

A. Applicability of Promotion Services Agreements by Influencers on Social Media according to the Civil Code

An agreement is an event that arises as a result of one of them stating a promise to the other person or both parties making a vow to each other to carry out something in accordance with what was agreed upon. Judging from the incident, a relationship emerged which is known as an engagement. Based on this formulation, there are elements of an engagement, including the existence of a legal relationship, the parties concerned, as well as achievements in it, including:

1. Subject of Engagement

It consists of the parties who form an agreement (Article 1315 in conjunction with Article 1340 of the Civil Code), their heirs and those who obtain rights from it (Article 1318 of the Criminal Code), as well as third parties (Article 1340 in conjunction with Article 1317 of the Criminal Code). In the promotional service agreement, it can be said that the legal subject is the influencer and the owner of the online shop, because the two parties are bound by a legal act, namely in an endorsement service agreement. Based on the case examples that the author describes, both parties can be considered legally competent, because in general the sources as online shop owners seek information first about the skills of the influencers they will use their services for.

2. Engagement Object

Are all things that are included in the rights of the creditor and become an obligation for the debtor. Based on article 1234 of the Criminal Code, achievement can be in the form of

giving up something, doing something, and not doing something. In the event of an endorsement service agreement, the object itself is included in the achievement of doing something. The object agreed in the promotional service agreement is a service in promoting goods/products carried out by the influencer for the online shop owner who uses his services.

3. Legal Relations

Engagement is the cause of the emergence of an engagement in which there is a legal relationship between the two parties or more. In a legal relationship, the rights and obligations of one party are faced with the rights and obligations of the other party. The online shop owner as the user of the promotional service has an obligation to pay for promotional services that will be carried out by the influencer, as well as provide products that will be used for promotion, besides that the online shop owner must also get his rights in the form of fulfilling the achievements made by the influencer to promote his goods. according to what was agreed. The influencer also has the right, namely in the form of getting goods to be promoted and payment for his services as determined by the influencer, besides that they must also carry out their obligations to the online shop to promote goods that have been received by the influencer.

The online shop business actor said that he had never found/made a written agreement with the influencer, so that the agreement was formed as a result of an agreement that was only made through the chat feature on social media that was binding and became a guideline for both parties in carrying out their achievements. Forming an agreement is essentially not based on a certain form of agreement. In the Civil Code, it is not explained in a structured manner regarding the form of the agreement. The parties involved have the freedom to form an agreement, meaning that the parties are free to form an agreement orally or in writing.

In accordance with the meaning of the principle in article 1338 paragraph (1) of the Civil Code, namely the principle of freedom of contract which frees the parties concerned to form or not to form an agreement, to enter into an agreement with anyone, to formulate the contents of an agreement, its implementation, requirements, and to determine the form of the agreement. written/verbal agreement. In addition, online agreements in the form of promotional service agreements are included in an anonymous agreement, which means that the agreement is not regulated in the Civil Code or exclusively in the law, but the agreement arises due to developments in society.

1. A Certain Thing

In an agreement, the type of object of the agreement/goods can be ascertained or it can be calculated or determined. In the promotional service agreement, the goods in question are

services from one of the influencers who are invited to cooperate in promoting a product belonging to the online shop. These services can be determined or calculated by giving a price for each promotional service carried out by an influencer.

2. Halal Causes

The purpose of the cause is the essence of the agreement and the intention of the parties to make an agreement. Halal is the non-contravention of the agreement established by law, public order, and morality. The promotion service agreement is basically not contrary to the law, public order, or decency. However, it is not uncommon for influencers and online shops to not understand the existing rules, so there are still influencers who accept these promotional offers, such as promoting online gambling, illegal cosmetics, fraudulent investments or endorsements in alcoholic beverages, according to article 30 of the Minister of Trade Regulation 20/ 2014 explained that, importers who have recorded alcoholic beverages, distributors, sub-distributors, direct sellers, and retailers are not allowed for alcoholic beverages to be advertised in any mass media.

The terms of the agreement are divided into two, namely subjective conditions and objective conditions. Subjective conditions are the occurrence of an agreement between the parties, as well as the skills of the parties, if these conditions do not materialize, cancellation of the agreement can be requested by one of the parties. In contrast to the objective conditions, if the objective conditions consisting of the conditions for a certain matter and a lawful cause are not achieved, then the agreement is null and void, meaning that from the beginning the agreement was deemed never to have been born. So there is no basis for both parties to sue each other in front of the judge.

A. Legal Efforts for Service Agreement Defaults Made by Influencers on Social Media
Basically, oral agreements are quite risky if used in activities that can cause a lot of harm to both parties, in the event of a default. This is because a written deed is not used in an oral agreement, so it cannot be ascertained that there is an agreement if one of the parties does not justify having formed an agreement.

In view of article 1 number 2 of Law no. 19 of 2016 concerning Information and Electronic Transactions, it is explained that legal actions in the form of electronic transactions are carried out using computers, computer networks, and/or other electronic media. In electronic transactions carried out by influencers with online shop parties, there is an agreement that creates an agreement for both parties.

The promotion service agreement itself, in addition to providing ease of promotion in electronic media, as well as creating an advantage for both parties, of course there are problems that become risks in these activities. One of them is a default that is often done by influencers against online shop owners. Default is the non-fulfillment or negligence of a person in fulfilling obligations (achievements) as determined between the two parties. Some forms of default that usually occur in promotional service agreements (endorsements)

1. Not Doing What He Was Promised To Do

Like Afifah as the owner of an online shop on Instagram named @aiMost. Both parties reached an agreement in March 2020, one of which contained that the product would be uploaded to AM's social media a month after the product to be promoted arrived in AM. But in reality, the product has not been uploaded to social media Instagram for 6 months by AM. So Afifah asked for the money back which in the end the money was returned by AM in full, but the goods sent by Afifah to be promoted by AM were never returned.

Larasati Eka has also experienced a default by an influencer in a promotional service agreement. Larasati has an online shop on Instagram called @Lrsbracelet. Larasati tried to contact one of the influencers with the initials JO through the social media line. On August 5, 2020 Larasati contacted the admin management of the JO influencer. The two sides negotiate until an agreement is reached between the two parties. In the provisions provided by the JO management, it is explained that, one of the rights of the online shop as a consumer in using JO services is to get a photo soft file that is given after the talent/influencer posts the endorsement. But in reality, Larasati did not get the soft file. This made Larasati wait for clarity from the soft file, and asked to be sent immediately. For 1 month Larasati waited for clarity from the soft file. Of course, Larasati has been trying to keep asking about the soft file photoshoot. But to no avail, the soft file photoshoot was declared lost by JO himself. Although the soft file photoshoot is included in the rights of the online shop as a consumer in using its services to promote a product. Not only that, in the provisions provided by the management it is clear that endorsed photos in the form of feeds on Instagram at a price of IDR 600,000 will be kept/stored on JO's Instagram for 1 (one) month. However, when the post has not reached 1 (one) month, the promotional photo (endorse) on Instagram has been deleted by JO.

2. Did What He Promised But It Was Too Late

There is also Chika as the owner of the @Queenstuffsby online shop who has experienced a default. Chika spent Rp. 800,000, - to collaborate in promotion (endorsement) with an

influencer with the initials SB. Since the goods were sent to the influencer. The SB has not yet carried out its obligations in promoting the products provided. The reason given is often because SB itself is busy, so it is late in fulfilling its obligations. After a long wait, SB finally uploaded a promotion regarding the product on Instagram within a period of almost 2 months since the item arrived. The incident can of course be said to be inconsistent with the agreement/agreement at the beginning between the two parties.

An understanding of prevention is needed in order to avoid legal problems, in the form of default. Article 4 letter e of Law Number 19 of 2016 implicitly explains the rights of users of information technology and electronic transactions, including providing comfort, a sense of fairness, and for users and providers of information technology there is a legal certainty. There are rights that are often overlooked by influencers, including online shop owners as users of promotional services (endorsement) who have the right to a sense of security while using promotional service agreements (endorsement) which in this case the informants do not get that sense of security, because online business actors the shop did not get a definite time regarding the date of the promotion service (endorsement). In addition, there is the right to justice in terms of compensation, which of course, when a default occurs, the money belonging to the online shop and goods/products are immediately returned with a full sense of responsibility. However, as Afifah has experienced, the items she wants to promote and have given to influencers cannot be returned even though the agreement is canceled because the influencer has not fulfilled its obligations.

The parties to the agreement have an obligation to always fulfill an agreement in good faith. As explained in Article 1338 paragraph (3) of the Criminal Code that, an agreement that is formed must be carried out in good faith. The point is that as something that has been agreed and agreed upon by both parties, the fulfillment of obligations in each agreement must be fully respected, in accordance with the wishes of both parties at the time the agreement is closed. It is also emphasized in Article 17 paragraph (2) of the Law on Electronic Information and Transactions that, the parties who carry out electronic transactions as referred to in paragraph (1) must have good intentions in carrying out the relationship and/or exchange of electronic information and/or electronic documents. during the transaction. If at any time there are legal consequences in activities that use electronic transactions, then as described in Article 21 paragraph (2a) of the Law on Information and Electronic Transactions that, all matters related to legal consequences in the implementation of electronic transactions of parties who play a role as referred to in paragraph (1), among others, if carried out alone, then all legal consequences that occur in the practice of electronic transactions are the responsibility of the parties who transact.

According to Hasanudin Rahmat, the formulation of an agreement should be made in writing for several reasons, including a written agreement as a tool to show that the agreement can be declared valid in accordance with the legal terms of the agreement or not, then a written agreement can be used as a medium to monitor each other's parties. that, both parties have carried out their respective achievements or have not or even a default event has arisen, and a written agreement can be used as evidence for the aggrieved party to be able to apply for compensation to the other party. If during the implementation of the promotional service agreement there is a default that causes loss to one of the parties, then efforts to resolve the problems that arise in the implementation of the online agreement can be seen in Articles 38 and 39 of the Law on Information and Electronic Transactions carried out through a civil lawsuit against a person. which causes losses. In practice, if there is a dispute in a civil relationship which in this case causes a default between the owner of the online shop and the influencer, then the first step that can be taken to the party who is in default is to give warnings 3 times so that the party immediately carries out achievements in accordance with with what was agreed / had been previously agreed. However, if a warning has been given, but someone who fulfills the default still does not immediately complete his obligations, he can be given a subpoena. This is a form of giving a term to the potential defendant to find a solution and stop an act as demanded by the plaintiff. The subpoena serves to resolve a problem before the case is officially submitted to the court. In civil procedural law, a subpoena can be made by anyone, as long as the plaintiff is capable of taking legal action against the prospective defendant who is negligent in carrying out his obligations. If after these steps have been carried out, the party who defaults in this case is the influencer who still does not perform the achievement. Then the case can be officially brought to court.

According to Subekti, negligence or negligence of the debtor as someone who has to fulfill something, is subject to several sanctions/punishments. Some of the consequences for debtors who neglect an agreement, one of which is paying the losses suffered by the creditor or known as compensation (Article 1243 of the Civil Code). A party who feels aggrieved due to a default by someone in an agreement can demand the fulfillment of the agreement, cancel the agreement or ask for compensation for the party who has defaulted

According to article 39 paragraph (2), it is also explained that the parties can resolve the problem through arbitration, as well as other dispute resolution institutions in accordance with the provisions of the legislation. Referring to article 1 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution several forms of non-litigation dispute resolution include consultation, negotiation, mediation, conciliation, expert judgment, and arbitration. Negotiation is the most common dispute resolution and is part of community

activities when carrying out daily activities. One of the alternatives for resolving this dispute is the one most often done by the community and the most effective in resolving a case within the scope of civil law that can be resolved peacefully in order to reach an agreement, because not all losses suffered by the parties reach millions or tens of millions of rupiah, but sometimes the loss is only in the form of hundreds of thousands and losses in the form of goods and time experienced by the online shop. So that if the default case is resolved through litigation, the costs and energy incurred are not proportional to the losses experienced by the online shop.

4. CONCLUSION

The promotion service agreement (endorsement) is formed as a result of an agreement between the online shop and the influencer through the chat feature on social media that both parties use. The agreement is formed only to the extent of an agreement between the two parties, so it is categorized as an unwritten agreement/oral agreement. Basically the promotion service agreement (endorsement) is an agreement that is included in an anonymous agreement, meaning that the agreement in the Civil Code or specifically in the law is not regulated, but the agreement arises due to developments in society. The promotion service agreement (endorsement) even though it is included in the electronic agreement because there are electronic transactions in it, it is still necessary to ensure the validity of the agreement in line with article 1320 of the Criminal Code.

It is possible that in the implementation of the promotional service agreement there may be a default. In the Laws and Regulations it has been explained the responsibilities of the parties in fulfilling achievements. This is intended so that the parties in carrying out the agreement and try to remain in harmony with the existing laws and regulations, so as not to cause disputes in the future. However, if there has been a dispute between the parties who have suffered losses, a claim can be made in the form of compensation or fulfillment of achievements. In general endorsement service agreements, if a dispute occurs, it can be resolved through alternative dispute resolution in the form of negotiation, in order to save costs, time, and be more private because it is resolved by both parties.

5. SUGGESTION .

For further researchers, it is hoped that they will be able to master the research problems as a whole, so that research can be carried out in depth. It is better for research to use empirical research methods, in order to find many sources.

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Wawancara dengan Afifah, pemilik online shop @aiMost, tanggal 18 November 2020, pukul 18.00 WIB.

Wawancara dengan Larasati Eka, pemilik online shop @Lrsbracelet, tanggal 18 November 2020, pukul 12.30 WIB.

Wawancara dengan Chika, pemilik online shop @Queenstuffsby, tanggal 26 Januari 2021, pukul 11.00 WIB.