

Criminal Liability of Influencers for Distribution of Illegal Products on Social Media

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Abstrak: *Product promotion activities through influencers on social media are increasingly prevalent, including for products that lack distribution permits or are classified as illegal. This situation raises legal issues regarding the criminal liability of influencers when their promotions result in consumer losses. This study aims to analyze the basis for criminal liability of influencers under the Indonesian legal system and identify regulatory gaps (legal gaps) in digital marketing practices. The method used is normative juridical through analysis of laws and regulations, legal literature, and case studies of illegal product promotion by influencers. The results show that influencers can be punished as perpetrators or accomplices to a crime under Articles 55–56 of the Criminal Code if they are proven to know or reasonably suspect that the promoted product is illegal. While proving guilt can be done through digital evidence according to the provisions of the ITE Law. In addition, the Consumer Protection Law and the Health Law provide the basis for criminal liability if the promotion is misleading or endangers public health. The study also found the absence of a *lex specialis* regulating the obligation to verify product legality and transparency of commercial relationships, so regulatory reform is needed to provide legal certainty and strengthen consumer protection.*

Keywords: *Influencer; Criminal Liability; Illegal Products; Social Media*

INTRODUCTION

The development of information technology and social media has revolutionized the way people interact, communicate, and conduct transactions in their daily lives. Platforms like Instagram, TikTok, YouTube, and X (Twitter) serve not only as entertainment media but also as effective and massive digital marketing tools.¹ This phenomenon has given rise to a new profession called influencers, individuals who have the ability to influence the opinions and consumption behavior of their followers through the content they upload.² In the digital economy, influencers have become the primary intermediary between producers and consumers, replacing the role of

conventional advertising, which is now increasingly being phased out.³ This transformation marks a shift from traditional marketing models to a promotional ecosystem based on social trust and emotional connection with the audience.

As public figures with personal appeal and symbolic authority, influencers are often considered more credible than traditional commercial advertisements. A survey conducted by Tirto and Jakpat showed that 59.61 percent of respondents trust the information conveyed by influencers, while nearly four in ten respondents admitted that their purchasing decisions are influenced by influencer recommendations.⁴ These findings

¹ Sitanggang, C. E., Firda, D. A., Ramadhini, R., Panjaitan, J. M., Sofwan, S., & Sholeh, M. (2024, September). Penggunaan Media Sosial Sebagai Alat Promosi Usaha. In *FORBISWIRA FORUM BISNIS DAN KEWIRAUSAHAAN* (Vol. 14, No. 1, pp. 23-29). <https://doi.org/10.35957/forbiswira.v14i1.8045>

² Triyas, Anggun Putri Ady, Dwi Rizky Wulan Maulida, and Nanda Aulia Rahmawati.

"Analisis representasi influencer dalam memunculkan budaya hiperrealitas mahasiswa terhadap suatu produk melalui konten review." *Jurnal Penelitian Inovatif* 4.3 (2024): 1033-1044. <https://doi.org/10.54082/jupin.457>

³ Hendro Sukoco, S. M., et al. *BISNIS DAN EKONOMI DIGITAL*. Azzia Karya Bersama, 2025.

⁴ Asfawi, Kristiyani, and Meylani Tuti. "Pengaruh Social Media Marketing, Influencer, dan

are reinforced by a Cube Asia research report titled "The Power of Influence: E-commerce Influencer Marketing in Southeast Asia," which shows that 87 percent of Indonesian consumers still use influencer or celebrity recommendations as the basis for purchasing decisions.⁵ These figures illustrate the enormous persuasive power of influencers in shaping people's consumption behavior, including in promoting potentially illegal or regulatory-violating products.

The rise in endorsements of illegal products, such as cosmetics without distribution permits, counterfeit medicines, and even illegal cigarettes and vapes, demonstrates that influencers' social power is not always matched by moral and legal responsibility. This phenomenon indicates weak oversight of commercial activities online, where the line between entertainment content and advertising is often blurred. The case involving singer Via Vallen, for example, who promoted cosmetic products from Derma Skin Care Beauty (DSC) without knowing that the products were not registered with the Food and Drug Monitoring Agency (BPOM), demonstrates the continued lack of legal awareness among influencers.⁶ This situation raises both ethical and legal questions: to what extent can influencers be held accountable for the distribution of illegal products?

Although Indonesia has several regulations, such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 36 of 2009 concerning Health, and Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), none of

these laws explicitly stipulates criminal liability for influencers who distribute illegal products. Existing provisions place greater emphasis on the responsibility of business actors, rather than the promoters. This lack of clarity creates a legal gap that has the potential to lead to uncertainty in law enforcement in the digital age. In practice, law enforcement officials often struggle to determine whether influencers are merely acting as intermediaries for promotion or participating in the criminal act of distributing illegal products.

A number of legal cases involving influencers in recent years have reinforced the urgency of reconsidering the limits of their criminal liability. For example, several influencers promoting illegal online gambling or vape sites have been subject to administrative sanctions or investigated by law enforcement, but there is no precedent consistently establishing their legal position.⁷ This ambiguity creates a gap between influencers' social function as conveyors of public messages and their legal responsibilities as parties benefiting economically from promotional activities. Within the criminal law framework, this raises questions about whether their actions can be classified as part of the crime of disseminating misleading information or assisting in the commission of a crime.

From a criminal law perspective, the primary issue that needs to be examined is whether influencers can be categorized as "direct perpetrators" or "accomplices" in the distribution of illegal products. The element of *mens rea*, or malicious intent, is key in determining their criminal liability. If an

Varian Produk Terhadap Keputusan Pembelian Melalui Kepercayaan." *Journal of Economics, Bussiness and Management Issues* 2.2 (2025): 173-190. <https://doi.org/10.47134/jebmi.v2i2.611>

⁵ Rahmadaningsih, Sekar, and Miftakhus Surur. "Pengaruh Influencer Marketing, Online Customer Review, dan Rating Terhadap Minat Beli Konsumen pada Produk Fashion di Shopee: Studi Kasus Penggunaan Aplikasi Shopee di Provinsi Riau." *Cakrawala Repositori IMWI* 7.3 (2024): 999-1006.

<https://cakrawala.imwi.ac.id/index.php/cakrawala/article/view/682>

⁶ Rauf, Ahmad Fandi Abdul. "SANKSI PIDANA TERHADAP ARTIS YANG MELAKUKAN ENDORSE KOSMETIK ILEGAL MENURUT UNDANG-UNDANG PERLINDUNGAN KONSUMEN." *LEX PRIVATUM* 13.2 (2024). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/54124>

⁷ Irawan, Hengki. "Regulasi Hukum Bisnis Dalam Praktik Endorsement Judi Online Di Media Sosial Oleh Influencer Indonesia: A Review." *Islamic Law Journal* 2.2 (2024): 47-56. <https://journal.nabest.id/index.php/ILJ/article/view/460>

influencer knew that the product being promoted lacked a distribution permit or violated the law, then their actions could qualify as participation in a criminal act. However, if the influencer acted solely under a collaboration contract without knowledge of the product's legality, more in-depth evidence of their negligence (*culpa*) is required. This is where criminal law faces the challenge of balancing public protection with the presumption of innocence for influencers.

The criminal liability of influencers must also be placed within the framework of social justice and public communication ethics. The constitutionally guaranteed freedom of expression does not mean unlimited freedom, especially when the content disseminated could harm consumers or mislead the public. Intan Fitranisa, a Communication Studies lecturer at Airlangga University, emphasized that influencers have now become social role models who enjoy close and emotional connections with their followers.⁸ Therefore, their behavior in the digital space must be accompanied by legal awareness and public morality. In this context, the principle of prudence is an integral part of an influencer's professional ethics, preventing them from sacrificing the public interest for purely economic gain. Considering these various issues, research into the criminal liability of influencers for the distribution of illegal products is highly relevant. Clear and firm legal formulation is needed to provide legal certainty for all parties involved in the digital industry, including influencers, business actors, and consumers. Such regulations are also crucial to define the boundaries between freedom of expression and legal responsibility in the context of digital marketing. Without clear norms, the potential for abuse of influence by influencers will continue to increase, ultimately

harming society and weakening public trust in Indonesia's legal system and digital regulations.

RESEARCH METHODS

This research uses a normative juridical method, an approach that examines law as norms or rules written in laws and regulations, legal principles, and relevant legal doctrines.⁹ This method was chosen because the focus of the research is to analyze the criminal liability of influencers within the framework of Indonesian positive law. The study was conducted on regulations related to consumer protection, trade, and digital communications, including Law Number 8 of 1999 concerning Consumer Protection, Law Number 36 of 2009 concerning Health, Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), and additional regulations related to product distribution permits from the Food and Drug Monitoring Agency (BPOM). This normative juridical analysis aims to find legal certainty regarding the legal status of influencers, the limits of criminal liability, and the relationship between promotional actions and potential legal violations.

According to legal experts such as Peter Mahmud Marzuki, normative juridical research is useful for understanding the legal position of a phenomenon through the study of existing laws, doctrines, and legal literature, resulting in a systematic and conceptual analysis.¹⁰ Furthermore, Soerjono Soekanto and Sri Mamudji state that this method allows researchers to assess the correspondence between written norms and existing social practices, thereby identifying legal gaps or normative inconsistencies.¹¹ Therefore, this research emphasizes not only an understanding of legal texts but also a critical analysis of the effectiveness of existing legal norms in

⁸ Parayow, Bena Apeles Deru, and Nonie Magdalena. "Analisis Social Media Influencer dan Followers dalam Mendorong Ikatan Emosional dan Niat Pengadopsian Perubahan Perilaku Masyarakat di Masa Pandemi Covid-19." *Journal of Integrated System* 6.2 (2023): 125-143. <https://doi.org/10.28932/jis.v6i2.4448>

⁹ Wiraguna, Sidi Ahyar. "Metode normatif dan empiris dalam penelitian hukum: Studi

eksploratif di Indonesia." *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 3.3 (2024). <https://doi.org/10.59818/jps.v3i3.1390>

¹⁰ Marzuki, Mahmud. *Penelitian hukum: Edisi revisi*. Prenada Media, 2017.

¹¹ Firmanto, Taufik, et al. *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum*. PT. Sonpedia Publishing Indonesia, 2024.

combating the spread of illegal products by influencers on social media.

RESULTS AND DISCUSSION

Legal Analysis of the Criminal Liability of Influencers in the Distribution of Illegal Products on Social Media

In the Indonesian criminal law approach, the assessment of influencers' accountability in promoting illegal products must begin with the principle of "geen straf zonder schuld" (no crime without fault), which asserts that a person can only be punished if there is a legally accountable error.¹² The role of influencers in the digital distribution system cannot be viewed as ordinary marketing activities, because in practice they play a determinative role in influencing the public's decision to purchase the promoted product.¹³ Thus, the involvement of influencers fulfills the element of causality in criminal law, namely that their actions are an inseparable condition (*conditio sine qua non*) for the distribution or circulation of illegal products in the community. A series of actions such as uploading promotional content, providing purchase links, and providing referral codes indicate that influencers directly contribute to illegal trading activities.

Normatively, the construction of participation in Article 55 of the Criminal Code provides the basis for criminal liability for those who commit or participate in a crime, while Article 56 of the Criminal Code ensnares those who assist or facilitate the commission of a crime. Referring to the theory of participation (*deelneming*), an influencer can be considered a perpetrator if he or she actively promotes a product, gains from the transaction, and knows the purpose of the promotion.¹⁴ However, if their role is limited to providing the means—for

example, posting a purchase link without further communication or control—then the category shifts to assisting a crime. Therefore, in assessing the role of an influencer, the primary issue is not their name or status in the endorsement contract, but rather their actual contribution to the crime of distributing illegal products.

The aspect of responsibility then shifts to proving *mens rea*, or the element of fault, which can be intentional (*dolus*) or negligence (*culpa*). Intentional action can be seen when an influencer knows that a product lacks a distribution permit or is illegal, but still promotes it for financial reward. Under certain circumstances, an influencer's actions can also qualify as *dolus eventualis* if they know the product is potentially illegal but still accept a collaboration offer for economic gain. Meanwhile, negligence occurs when an influencer fails to conduct minimal due diligence on the legality of a product, even though they profit from the promotion and have a reasonable responsibility to ensure the security of the information conveyed to the public.

Proving an influencer's guilt is highly possible through electronic evidence, as stipulated in the ITE Law. Conversations in the form of Direct Messages, emails, WhatsApp messages, endorsement contracts, payment invoices, and even affiliate links are valid evidence that can demonstrate whether the influencer was aware of the illegal status of the product being promoted. The application of this digital evidence broadens the scope of criminal law enforcement and demonstrates that the digital space is not free from the law.¹⁵ Thus, proving guilt no longer relies solely on

¹² Utoyo, Marsudi, et al. "Sengaja Dan Tidak Sengaja Dalam Hukum Pidana Indonesia." *Lex Librum* 7.1 (2020): 75-85.

¹³ Izzati, Salsabilla, and Muhammad Iqbal Fasa. "Memaksimalkan Dampak: Peran Strategis Influencer Marketing Dalam Lanskap Pemasaran Digital." *Jurnal Media Akademik (JMA)* 3.4 (2025). <https://doi.org/10.62281/thknfb76>

¹⁴ Putri, Novika Wama, and Putri Raodah. "Tanggung Jawab Influencer Terhadap Endorsement Produk Palsu Melalui Media

Sosial." *Commerce Law* 5.1 (2025): 98-107. <https://doi.org/10.29303/commercelaw.v5i1.3023>

¹⁵ Cahyono, Soetardi Tri, Wina Erni, and Taufik Hidayat. "RIKONSTRUKSI HUKUM PIDANA TERHADAP KEJAHATAN SIBER (CYBER CRIME) DALAM SISTEM PERADILAN PIDANA INDONESIA: Rekonstruksi Hukum Pidana terhadap Kejahatan Siber (Cyber Crime) dalam Sistem Peradilan Pidana Indonesia." *Dame Journal of Law* 1.1 (2025): 1-23. <https://doi.org/10.64344/djl.v1i1.6>

confessions but can be objectively proven through recorded digital traces.

The Consumer Protection Law provides the basis for assessing influencers as parties who can be held accountable. Article 8 paragraph (1) of the Consumer Protection Law prohibits business actors from providing false or misleading information about a product, while Article 19 emphasizes the principle of strict liability that parties who cause consumer losses are responsible without first needing to be proven guilty. If an influencer obtains financial benefits from endorsement activities, then under the legal system they fulfill the elements of a "business actor", so that strict liability can be applied.¹⁶ In certain situations there is also the possibility of vicarious liability, namely other parties such as agencies and companies can be held jointly responsible if their legal relationship shows a clear delegation of commercial roles.

In the realm of health products, cosmetics, medicines, or supplements, the criminal liability of influencers finds a firmer basis through the Health Law and BPOM regulations.¹⁷ Articles 196 and 197 of the Health Law emphasize the prohibition on distributing and promoting products that do not have a distribution permit or that could endanger public health. If an influencer promotes a product that is proven to be dangerous or not registered with BPOM, then they are no longer simply conveying

information, but become part of the distribution chain of illegal products.¹⁸ In the public health law approach, the public interest in health protection overcomes the influencer's defense argument that they only received a brief from the sponsor. In addition, the ITE Law, through Article 28 paragraph (1), prohibits the dissemination of misleading information that is detrimental to consumers in electronic transactions. Influencers' promotional content on TikTok Shop, Instagram, or YouTube falls into the category of electronic information, so they can be subject to sanctions if the content is proven to be misleading.¹⁹ This norm emphasizes that the promotion of illegal products in digital media is not only a violation of business ethics, but has entered the realm of criminal acts that can be processed through law enforcement.

One common defense influencers use is the argument that responsibility for product legality rests entirely with the brand owner or agency, as stipulated in the contract.²⁰ However, in the criminal law system, a private contract cannot eliminate public criminal liability. This concept aligns with the principle that criminal liability is personal and cannot be transferred. Therefore, an influencer is still obliged to exercise caution and conduct due diligence before accepting an endorsement contract, for example by requesting proof of BPOM distribution permits or import legality.

¹⁶ Dewi, Wulan Tyana Kusuma, and Made Aditya Pramana Putra. "KELALAIAN PELAKSANAAN PERIKLANAN ENDORSEMENT OLEH INFLUENCER DARI PERSPEKTIF PERLINDUNGAN HUKUM TERHADAP KONSUMEN." *Kertha Wicara: Journal Ilmu Hukum* 15.3 (2025): 169-178. <https://ejournal4.unud.ac.id/index.php/wicara/en/article/view/32>

¹⁷ Marchella, Shania, et al. "Aspek Legalitas Dan Viralitas Dalam Peredaran Kosmetik Tanpa Izin BPOM di Indonesia." *Jurnal Riset Multidisiplin Edukasi* 2.4 (2025): 186-197. <https://doi.org/10.71282/jurmie.v2i4.248>

¹⁸ Atmoko, Dwi, and Adhalia Septia Saputri. "Tinjauan Yuridis Tanggung Jawab Influencer yang Melakukan Endorse Produk Skincare Mengandung Bahan Berbahaya bagi

Masyarakat." *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8.4 (2023): 5772-5779.

¹⁹ Hasanah, Huswatun, Tjuk Wirawan, and Zainuri Zainuri. "Pertanggungjawaban Hukum Influencer Terhadap Kegiatan Promosi Melalui Aplikasi Tiktok." (2022): 670-689. <https://doi.org/10.55129/v1i1i5.2681>

²⁰ Rizkiyana, Aula, M. Yazid Fathoni, and Hera Alvina Satriawan. "PERLINDUNGAN HUKUM TERHADAP INFLUENCER DALAM PERJANJIAN PROMOSI (ENDORSEMENT) PRODUK KOSMETIK KECANTIKAN (Studi Perjanjian Kerjasama Brand Ambassador CV. Noera By Reisha Dan Influencer)." *Jurnal Rekomendasi Hukum* 1.2 (2025): 298-307. <https://jurnal.unram.ac.id/index.php/rekomendasihukum/article/view/6515>

Despite the availability of criminal law, a legal gap exists because the legal system does not specifically address influencers as legal subjects in digital marketing. Indonesia lacks specific regulations regarding advertising transparency obligations and influencer legal liability. Meanwhile, the United States, through the Federal Trade Commission (FTC), requires influencers to disclose commercial relationships with paid partnerships²¹, and the United Kingdom, through the Advertising Standards Authority (ASA), can impose sanctions for misleading advertising.²² This comparison demonstrates that other countries have regulated this issue with a preventative and responsive approach. Therefore, Indonesia needs to be encouraged to develop a more specific regulatory mechanism, for example, in the form of a Government Regulation or Ministerial Regulation that requires influencers to verify product legality (due diligence obligation), include a commercial transparency disclaimer, and provide a liability mechanism if promotions cause consumer harm. This approach strikes a balance between protecting consumer interests and legal certainty for influencers as subjects in the digital economy. Thus, discussions on influencer criminal liability should not only highlight repressive aspects but also lead to the development of legal norms that adapt to developments in digital marketing.

Regulatory Weaknesses and Legal Reform Efforts in Regulating Product Promotion Activities on Social Media

The first weakness that must be acknowledged is the absence of a *lex specialis* that expressly regulates the phenomenon of influencer marketing in the context of consumer advancement and protection. Currently,

Indonesia's relevant legal framework is spread across the Criminal Code (KUHP), Law No. 8/1999 concerning Consumer Protection, the Electronic Information and Transactions (ITE) Law, the Health Law, and technical regulations from agencies such as the Food and Drug Monitoring Agency (BPOM) and the Ministry of Communication and Information Technology (Kominfo). This fragmented distribution of norms creates loopholes in enforcement, as there is no unified regulation that comprehensively defines the roles, obligations, and standards of behavior of influencers.²³ Consequently, law enforcement officials often fall into a case-by-case approach that relies on ad hoc interpretations of outdated norms, thus reducing legal certainty and leading to inconsistent decisions.

Two substantive problems arise from this fragmentation: first, the definition of "business actor" in the Consumer Protection Law has not been elaborated in such a way that the inclusion of influencers as subjects conducting digital business activities remains unclear; second, norms regarding misleading information, takedowns, or administrative sanctions are not accompanied by proactive mechanisms for real-time detection and prevention of harmful promotions. This unclear definition opens up opportunities for agents, brand managers, or influencers themselves to shift responsibility through contractual clauses, while the ultimate victims, consumers, face substantial barriers to accessing justice. In practice, the absence of an explicit legal obligation for disclosure makes consumer protection highly dependent on platform initiatives or private policies alone.

Regulatory weaknesses are also evident in the weak due diligence standards required of

²¹ Mubarikah, Nurul Ain. "Kewajiban endorser atas pengajuan suatu produk pada media sosial menurut peraturan perundang-undangan di Indonesia dalam perbandingan dengan Amerika Serikat, Inggris dan India." *" Dharmasisya "* *Jurnal Program Magister Hukum FHUI* 1.1 (2022): 13. <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss1/13/>

²² Apsari, Kirana Pungki, Ismail Ismail, and Dewi Iryani. "Tanggung Jawab Selebgram terhadap Iklan yang Dilakukan di Sosial Media untuk

Mewujudkan Kepastian Hukum." *Jurnal Syntax Admiration* 6.1 (2025): 597-615.

²³ Gunawan, Nabila Fitri, Nabila Inita Zahra, and Silfia Hanani. "INTEGRASI HUKUM DAN ETIKA DIGITAL: KONTROL SOSIAL TERHADAP PERILAKU NETIZEN DI MEDIA SOSIAL." *Jurnal Salome: Multidisipliner Keilmuan* 3.3 (2025): 383-393. <https://wikep.net/index.php/SALOME/article/view/185>

digital marketers. Without norms requiring influencers to verify product legality, such as checking BPOM distribution permits for cosmetics, drugs, or supplements, endorsements often occur based on incomplete or intentionally obscured information.²⁴ This situation places influencers in a conflict of interest between commercial gain and public protection obligations. From a criminal law perspective, gross negligence or neglect of verification obligations can easily become elements of culpa or even dolus eventualis if evidence is provided that the influencer was aware of the risks but still acted. Therefore, filling the gap in due diligence norms is a preventative measure with high legal and ethical value.

In terms of oversight, regulatory bodies such as the Food and Drug Monitoring Agency (BPOM) and the Ministry of Communications (Kemenkominfo) have relatively strong administrative action capabilities, such as product recalls, suspension orders, and administrative sanctions. However, they lack the capacity of automated oversight systems and cross-institutional collaborative mechanisms to quickly respond to viral digital advertisements.²⁵ Without data integration between platforms, payment gateways, and the national distribution permit registry, enforcement efforts are often reactive and slow, allowing risky products to circulate widely before intervention is implemented. This situation reinforces the argument that a reform approach cannot be solely normative but must

be accompanied by the development of data-driven enforcement infrastructure and public-private partnerships. Empirical and normative analyses demand proportional and tiered sanctions. Administrative sanctions should be the first response for minor violations or technical negligence, while criminal action is directed at cases that meet the elements of mens rea, mass harm, or a clear public health risk. The principle of ultimum remedium remains relevant, and criminal law should only be used when administrative and civil alternatives are inadequate.²⁶ However, without clear standards for administrative action and a clear threshold of evidence, enforcement officials tend to avoid criminal charges against public figures for practical or political reasons, thus preventing substantive justice for victims. Reforms must establish clear evidence thresholds, audit procedures, and escalation mechanisms so that decisions between administrative and criminal sanctions are made transparently and accountably.

Comparisons with other jurisdictions reveal models of preventative regulation that can serve as references. The Federal Trade Commission in the United States requires clear commercial disclosures from influencers and provides technical guidance on how disclosures should be made to be effective for consumers²⁷, while the Advertising Standards Authority in the United Kingdom implements oversight and enforcement against misleading advertising on social media.²⁸ Adapting these principles, rather than literal copying, could enrich

²⁴ Wardani, Nizia Kusuma, et al. "Tanggungjawab Influencer Dalam Pelaksanaan Endorsment Produk Kosmetik Illegal Terhadap Konsumen." *Commerce Law* 4.1 (2024). <https://journal.unram.ac.id/index.php/commercelaw/en/article/view/5011>

²⁵ Prabowo, David, and Dede Kurniawan. "Pengaturan Pengawasan Badan Pengawas Obat Dan Makanan (Bpom) Dalam Perlindungan Konsumen Regulation Of Supervision Of The Drug And Food Control Agency (Bpom) In Consumer Protection." *Jurnal Projudice* 2.2 (2021). <https://jurnal.pascasarjana.uniba-bpn.ac.id/index.php/JurnalProjudice/article/view/108>

²⁶ Mahesa, Pande Komang Surya, and Ayu Putu Laksmi Danyathi. "PENERAPAN PRINSIP ULTIMUM REMEDIUM DALAM KEBIJAKAN KRIMINALISASI DI INDONESIA: TINJAUAN TEORITIS DAN PRAKTIS." *Jurnal Media Akademik (JMA)* 3.9 (2025). <https://doi.org/10.62281/ax2d1f19>

²⁷ Hutapea, Raja Pratama. "Disclosure of Information in Franchise Disclosure Document: A Comparative Study in Indonesia, the United States, and Australia." *Lex Patrimonium* 3.2: 4. <https://scholarhub.ui.ac.id/lexpatri/vol3/iss2/4/>

²⁸ Daely, Pinter Putra Sudianto. "TANGGUNG JAWAB HUKUM INFLUENCER TERHADAP PRODUK YANG DI PROMOSIKAN DI MEDIA SOSIAL." *Leuser: Jurnal Hukum*

Indonesia's legal framework, for example by requiring highly visible disclosures, mandatory auditable recording of endorsement contracts, and significant administrative sanctions for platforms or brands whose systems condone the promotion of illegal products. The proposed normative reforms need to be based on several pillars: first, the ratification of *lex specialis* norms defining influencers, basic due diligence obligations, and mandatory disclosure; second, strengthening collaboration between institutions (BPOM, Kominfo, the National Police, and the KPPU) and data-sharing mechanisms with platforms for rapid detection; third, the establishment of a tiered sanctions scheme that combines administrative fines, suspension of platform monetization, and criminal penalties if intent and serious consequences are met; fourth, granting regulators technical authority to conduct compliance audits and redress mechanisms for consumers. This draft should be rooted in the principle of proportionality and the principle of human rights protection so that it does not turn into a tool of excessive censorship.

Institutional reforms should include mandatory compliance and education programs for influencers and agencies. Preventive approaches such as minimum certification for micro-influencers, standardized product verification procedures that require regular reporting, and consumer literacy campaigns will reduce the frequency of violations. These efforts also address the problem of information asymmetry, where consumers lack the capacity to assess product claims, by placing the initial responsibility on those with resources and information—*influencers and platforms*. Finally, legal reforms should include mechanisms for regular evaluation and public participation to ensure regulations remain relevant to technological dynamics and marketing practices. Rigid regulations tied to specific technologies quickly become outdated; therefore, legislators need to establish generic principles (e.g., transparency, due diligence, and accountability) along with expedited

administrative procedures to regulate new technical aspects. Thus, reforms will not only close the current regulatory gap but also establish a system that is adaptive, accountable, and fair to consumers, influencers, and other digital economy actors.

CONCLUSION

The criminal liability of influencers for the distribution of illegal products on social media is a logical consequence of the construction of Indonesian criminal law, which is based on the principle of "*geen straf zonder schuld*", the theory of inclusion of Articles 55 and 56 of the Indonesian Criminal Code, and the responsibilities of business actors in the Consumer Protection Law, the Health Law, and the Electronic Information and Transactions Law. Influencers can no longer hide behind the pretext of "only promoting" because they are functionally part of the distribution chain that encourages transactions of illegal products through persuasive and commercial digital content. Through the application of the principle of causality and proof of *mens rea* based on electronic evidence, influencers can be qualified as perpetrators or accomplices of criminal acts if proven to know or reasonably suspect that a product does not have a distribution permit or is harmful to public health. However, critical analysis shows that law enforcement is still hampered by the lack of specific regulations regarding transparency and due diligence obligations for influencers, so that legal reform is needed in the form of the establishment of *lex specialis* on digital promotional activities that regulates the definition of influencers, the obligation to verify product legality, commercial disclosure standards, and a tiered sanction scheme. Thus, consumer protection can only be realized if the legal system not only punishes after violations occur, but also preventively builds regulatory mechanisms that are adaptive to the dynamics of digital marketing and the social media-based economic ecosystem.

REFERENCES

- Apsari, Kirana Pungki, Ismail Ismail, and Dewi Iryani. "Tanggung Jawab Selebgram terhadap Iklan yang Dilakukan di Sosial Media untuk Mewujudkan Kepastian Hukum." *Jurnal Syntax Admiration* 6.1 (2025): 597-615.
- Asfawi, Kristiyani, and Meylani Tuti. "Pengaruh Social Media Marketing, Influencer, dan Varian Produk Terhadap Keputusan Pembelian Melalui Kepercayaan." *Journal of Economics, Bussiness and Management Issues* 2.2 (2025): 173-190.
<https://doi.org/10.47134/jebmi.v2i2.611>
- Atmoko, Dwi, and Adhalia Septia Saputri. "Tinjauan Yuridis Tanggung Jawab Influencer yang Melakukan Endorse Produk Skincare Mengandung Bahan Berbahaya bagi Masyarakat." *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8.4 (2023): 5772-5779.
- Cahyono, Soetardi Tri, Wina Erni, and Taufik Hidayat. "RIKONSTRUKSI HUKUM PIDANA TERHADAP KEJAHATAN SIBER (CYBER CRIME) DALAM SISTEM PERADILAN PIDANA INDONESIA: Rekonstruksi Hukum Pidana terhadap Kejahatan Siber (Cyber Crime) dalam Sistem Peradilan Pidana Indonesia." *Dame Journal of Law* 1.1 (2025): 1-23.
<https://doi.org/10.64344/djl.v1i1.6>
- Daely, Pinter Putra Sudianto. "TANGGUNG JAWAB HUKUM INFLUENCER TERHADAP PRODUK YANG DI PROMOSIKAN DI MEDIA SOSIAL." *Leuser: Jurnal Hukum Nusantara* 2.2 (2025): 1-6.
<https://journal.myrepublikcorp.com/index.php/leuser/article/view/150>
- Dewi, Wulan Tyana Kusuma, and Made Aditya Pramana Putra. "KELALAIAN PELAKSANAAN PERIKLANAN ENDORSEMENT OLEH INFLUENCER DARI PERSPEKTIF PERLINDUNGAN HUKUM TERHADAP KONSUMEN." *Kertha*
- Firmanto, Taufik, et al. *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum*. PT. Sonpedia Publishing Indonesia, 2024.
- Gunawan, Nabila Fitri, Nabila Inita Zahra, and Silfia Hanani. "INTEGRASI HUKUM DAN ETIKA DIGITAL: KONTROL SOSIAL TERHADAP PERILAKU NETIZEN DI MEDIA SOSIAL." *Jurnal Salome: Multidisipliner Keilmuan* 3.3 (2025): 383-393.
<https://wikep.net/index.php/SALOME/article/view/185>
- Hasanah, Huswaton, Tjuk Wirawan, and Zainuri Zainuri. "Pertanggungjawaban Hukum Influencer Terhadap Kegiatan Promosi Melalui Aplikasi Tiktok." (2022): 670-689.
<https://doi.org/10.55129/v11i5.2681>
- Hendro Sukoco, S. M., et al. *BISNIS DAN EKONOMI DIGITAL*. Azzia Karya Bersama, 2025.
- Hutapea, Raja Pratama. "Disclosure of Information in Franchise Disclosure Document: A Comparative Study in Indonesia, the United States, and Australia." *Lex Patrimonium* 3.2: 4. <https://scholarhub.ui.ac.id/lexpatri/vol3/iss2/4/>
- Irawan, Hengki. "Regulasi Hukum Bisnis Dalam Praktik Endorsement Judi Online Di Media Sosial Oleh Influencer Indonesia: A Review." *Islamic Law Journal* 2.2 (2024): 47-56.
<https://journal.nabest.id/index.php/ILJ/article/view/460>
- Izzati, Salsabilla, and Muhammad Iqbal Fasa. "Memaksimalkan Dampak: Peran Strategis Influencer Marketing Dalam Lanskap Pemasaran Digital." *Jurnal Media Akademik (JMA)* 3.4 (2025).
<https://doi.org/10.62281/thknfb76>

- Mahesa, Pande Komang Surya, and Ayu Putu Laksmi Danyathi. "PENERAPAN PRINSIP ULTIMUM REMEDIUM DALAM KEBIJAKAN KRIMINALISASI DI INDONESIA: TINJAUAN TEORITIS DAN PRAKTIS." *Jurnal Media Akademik (JMA)* 3.9 (2025). <https://doi.org/10.62281/ax2d1f19>
- Marchella, Shania, et al. "Aspek Legalitas Dan Viralitas Dalam Peredaran Kosmetik Tanpa Izin BPOM di Indonesia." *Jurnal Riset Multidisiplin Edukasi* 2.4 (2025): 186-197. <https://doi.org/10.71282/jurmie.v2i4.248>
- Marzuki, Mahmud. *Penelitian hukum: Edisi revisi*. Prenada Media, 2017.
- Mubarikah, Nurul Ain. "Kewajiban endorser atas penganjuran suatu produk pada media sosial menurut peraturan perundang-undangan di Indonesia dalam perbandingan dengan Amerika Serikat, Inggris dan India." "Dharmasisya" *Jurnal Program Magister Hukum FHUI* 1.1 (2022): 13. <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss1/13/>
- Parayow, Bena Apeles Deru, and Nonie Magdalena. "Analisis Social Media Influencer dan Followers dalam Mendorong Ikatan Emosional dan Niat Pengadopsian Perubahan Perilaku Masyarakat di Masa Pandemi Covid-19." *Journal of Integrated System* 6.2 (2023): 125-143. <https://doi.org/10.28932/jis.v6i2.4448>
- Prabowo, David, and Dede Kurniawan. "Pengaturan Pengawasan Badan Pengawas Obat Dan Makanan (Bpom) Dalam Perlindungan Konsumen Regulation Of Supervision Of The Drug And Food Control Agency (Bpom) In Consumer Protection." *Jurnal Projudice* 2.2 (2021). <https://jurnal.pascasarjana.uniba-bpn.ac.id/index.php/JurnalProjudice/article/view/108>
- Putri, Novika Wama, and Putri Raodah. "Tanggung Jawab Influencer Terhadap Endorsement Produk Palsu Melalui Media Sosial." *Commerce Law* 5.1 (2025): 98-107. <https://doi.org/10.29303/commercelaw.v5i1.3023>
- Rahmadaningsih, Sekar, and Miftakhus Surur. "Pengaruh Influencer Marketing, Online Customer Review, dan Rating Terhadap Minat Beli Konsumen pada Produk Fashion di Shopee: Studi Kasus Pengguna Aplikasi Shopee di Provinsi Riau." *Cakrawala Repositori IMWI* 7.3 (2024): 999-1006. <https://cakrawala.imwi.ac.id/index.php/cakrawala/article/view/682>
- Rauf, Ahmad Fandi Abdul. "SANKSI PIDANA TERHADAP ARTIS YANG MELAKUKAN ENDORSE KOSMETIK ILEGAL MENURUT UNDANG-UNDANG PERLINDUNGAN KONSUMEN." *LEX PRIVATUM* 13.2 (2024). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/54124>
- Rizkiyana, Aula, M. Yazid Fathoni, and Hera Alvina Satriawan. "PERLINDUNGAN HUKUM TERHADAP INFLUENCER DALAM PERJANJIAN PROMOSI (ENDORSEMENT) PRODUK KOSMETIK KECANTIKAN (Studi Perjanjian Kerjasama Brand Ambassador CV. Noera By Reisha Dan Influencer)." *Jurnal Rekomendasi Hukum* 1.2 (2025): 298-307. <https://jurnal.unram.ac.id/index.php/rekomendasihukum/article/view/6515>
- Sitanggang, C. E., Firda, D. A., Ramadhini, R., Panjaitan, J. M., Sofwan, S., & Sholeh, M. (2024, September). Penggunaan Media Sosial Sebagai Alat Promosi Usaha. In *FORBISWIRA FORUM BISNIS DAN KEWIRAUSAHAAN* (Vol. 14, No. 1, pp. 23-29). <https://doi.org/10.35957/forbiswira.v14i1.8045>

- Triyas, Anggun Putri Ady, Dwi Rizky Wulan Maulida, and Nanda Aulia Rahmawati. "Analisis representasi influencer dalam memunculkan budaya hiperrealitas mahasiswa terhadap suatu produk melalui konten review." *Jurnal Penelitian Inovatif* 4.3 (2024): 1033-1044. <https://doi.org/10.54082/jupin.457>
- Utoyo, Marsudi, et al. "Sengaja Dan Tidak Sengaja Dalam Hukum Pidana Indonesia." *Lex Librum* 7.1 (2020): 75-85.
- Wardani, Nizia Kusuma, et al. "Tanggungjawab Influencer Dalam Pelaksanaan Endorsment Produk Kosmetik Illegal Terhadap Konsumen." *Commerce Law* 4.1 (2024). <https://journal.unram.ac.id/index.php/commercelaw/en/article/view/5011>
- Wiraguna, Sidi Ahyar. "Metode normatif dan empiris dalam penelitian hukum: Studi eksploratif di Indonesia." *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 3.3 (2024). <https://doi.org/10.59818/jps.v3i3.1390>