

## Legal Analysis of the Consumer Protection Law in the Promotion of Alcohol with Ethnic and Religious Elements by Holywings on Instagram



Tania Octaviona<sup>1</sup>, Aju Putrijanati<sup>2</sup>, Kadek Cahya Susila Wibawa<sup>3</sup>

<sup>1,2,3</sup>Faculty of Law, Diponegoro University

**ABSTRACT:** Promotional efforts are crucial to a company's marketing strategy. However, Holywings' promotion offering free alcoholic beverages to individuals named Muhammad and Maria violates Law Number 1 of 2024 on electronic information and transactions, specifically Article 28, paragraph 2. This article prohibits spreading information that incites hatred or enmity based on ethnicity, religion, race, and inter-group distinctions (SARA). This research analyzes promotion regulations under this law and the responsibilities of businesses concerning promotions involving ethnic and religious elements, as outlined in Law Number 8 of 1999 on Consumer Protection. Using a normative juridical approach, this study examines literature, secondary data, and statutes to address the legal issues. The research employs qualitative analysis to systematically gather and analyze data, aiming to compile relevant theories, concepts, legal principles, and regulations. The result indicate that legal protection for consumers regarding promotions with ethnic and religious elements is upheld by Article 4, letter g of the Consumer Protection Law, ensuring fair, honest, and non-discriminatory treatment. Additionally, Article 17, Paragraph 1, Letter f prohibits business actors from engaging in such advertising, while Articles 19 and 20 outline their accountability.

**KEYWORDS:** Consumer Right; Legal Protection; Business Actor Responsibility; Ethnic and Religion.

### I. INTRODUCTION

The rapid evolution of information technology delivers enormous benefits for human advancement. Similarly, in Indonesia, where the use of information technology is rapidly developing and becoming more important for the community. The application of this technology has likewise experienced a significant increase in its prevalence, permeating nearly all domains of human existence.[1] In modern times, the vast majority of individuals use online communication platforms, including social media. The ubiquity of social media has become important in modern individuals' daily routines, facilitating convenient access to and widespread distribution of information. One of the advantages derived from the utilization of social media platforms lies in its application within the realm of business, facilitating the promotion of products for business actor.

Promotional endeavors is a vital component of a company's marketing strategy, pursued with the objective of boosting the sales performance of the products produced by the company. These promotional initiatives encompass a wide array of methods, including digital marketing, often referred to as digital advertising. Digital advertising is the most frequently used strategy by people worldwide because it can increase market share, attract more consumers to a marketplace's social media, boost revenue, and reduce marketing costs [2] Consequently, a significant number of entrepreneurs, including Holywings, using social media as a platform to promote their products.

Holywings using Instagram as a platform for promoting their products, as evidenced by a recent viral campaign offering free alcoholic beverages to individuals named Muhammad and Maria. The idea of promotion which holywings arrange has gained widespread attention on social media in recent days, allows visitors with the names Muhammad and Maria to enjoy complimentary alcoholic beverages every Thursday, by showing ID cards or other identification documents. This promotion was posted on the Instagram account @holywingsindonesia.[3]

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The promotional post was deleted immediately, yet many Instagram users have viewed and reshared it on other platforms. Due to the post's potential religious and cultural insensitivity, it was archived by the public, sparking widespread discussions. Many individuals expressed discomfort and concern about Holywing's promotional strategy, which featured religious icons, notably Muhammad, a prominent figure in Islam, and Maria, a revered figure in Christianity.

Provisions regarding promotional activities are outlined in Law Number 8 of 1999 concerning Consumer Protection, particularly addressed in Article 17. Specifically for the Holywing's case, Article 17 paragraph 1 letter f stated that 'Violates ethics and/or the provisions of laws and regulations regarding advertisements' this article mandates businesses to obey ethical norms and legal regulations governing advertising practices. This regulation prohibits the incorporation of elements such as ethnicity, religion, race, and intergroup references in advertising materials.

Business actors are obliged not only to comply with promotional regulations but also to fulfill their duties as stipulated in Law Number 8 of 1999 on Consumer Protection, particularly in Article 7(a), which requires business operators to "act in good faith in carrying out their business activities." In accordance with this description, Holywing's actions deviate from the principle of conducting business activities in good faith. This matter necessitates attention to ensure that business operators fulfill their responsibilities appropriately, especially regarding product promotion that aligns with consumer protection standards. It is crucial for businesses to also take into consideration and abide by the relevant regulations when conducting promotional activities.

The offer of complimentary alcoholic beverages at Holywings for individuals named Muhammad and Maria violates Article 28, paragraph 2 of Law Number 1 of 2024 on electronic information and transactions. This provision prohibits the dissemination of information aimed at stirring up hatred or enmity towards specific individuals or groups in society based on ethnicity, religion, race, and inter-group distinctions, commonly known as SARA. Investigating this issue is crucial as it encompasses several significant concerns. Holywing's questionable promotional tactics raise legal and ethical considerations, including their adherence to business conduct, consumer protection laws, and regulations governing electronic advertising. This case underscores the importance of robust regulations and ethical standards in digital marketing, ensuring businesses promote their products online in an ethical, legal, and responsible manner. It highlights the challenges and consequences of contemporary marketing in the digital era, emphasizing the need for fair, ethical advertising that respects the interests and values of consumers and society as a whole. Hence, based on the background information presented above, the author recognizes the necessity for further research and deems it appropriate to undertake a thesis with the title "**Legal Analysis of the Consumer Protection Law in the Promotion of Alcohol Products with Ethnic and Religious Elements by Holywings on Instagram.**" Based on the background, the research problems of this research are: (1) How is the legal protection for consumers regarding the promotions with ethnic and religious elements?; and (2) How is Holywing's responsibility as a business actor regarding the promotions with ethnic and religious elements?

### **II. RESEARCH METHOD**

This research employs a qualitative, library-based methodology, focusing on examining existing literature and secondary data in line with Soerjono Soekanto's normative juridical approach.[4] It is descriptive-analytical, aiming to accurately depict the current state of the research object by describing or analyzing the characteristics of individuals, situations, phenomena, or specific groups. The research uses both statute and case approaches to examine laws, regulations, and legal issues, incorporating theoretical aspects of legal principles. As a doctrinal law study, it relies on secondary data, collected through library research involving laws, books, and relevant literature. The data is analyzed qualitatively to draw conclusions.

### **III. RESULT AND DISCUSSION**

#### **1. Legal Protection of Consumers in Promotions with Ethical and Religious Dimensions in Instagram**

In legal terms, rights symbolize the protected of consumer's interest, while interests signify the expectations for fulfillment. Essentially, interests encompass authorized powers guaranteed and upheld by law. Thus, consumer protection is effectively synonymous with the legal safeguarding provided by consumer rights legislation.[5]

In the field of consumer protection, it's essential to acknowledge that consumers frequently face vulnerabilities, leaving them open to potential harm, especially from advertising strategies. The rise of online advertising, while advantageous in many respects, underscores the need to mitigate negative consequences to safeguard consumer welfare. A notable concern arising from online promotions is the presence of promotional material that perpetuates racial discrimination.

Legal protection of consumer rights is necessary due to the vulnerable position of consumers, which entails safeguarding both consumer rights and business actor obligations. Consequently, the State has implemented Law Number 8 of 1999 concerning

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Consumer Protection (UUPK), which, through Articles 4 to 5, delineates the protection of rights and obligations that must be upheld.

Article 4 of Law Number 8 Year 1999 on Consumer Protection, point g, outlines consumer rights, including the right to fair, honest, and non-discriminatory treatment. This provision aims to prevent business entities from engaging in consumer discrimination. Business actors are obliged to treat all consumers equally, without discrimination based on status, ethnicity, or religion, as any differentiation could lead to conflict or division between businesses and consumers.

According to the Consumer Protection Law No. 8 of 1999, advertisements are defined as efforts made by businesses to inform and promote their products and services, aiming to attract consumer attention. While the term 'advertisement' is not explicitly mentioned in the ITE Law Number 1 of 2024, Holywings' promotional activities on digital platforms like Instagram fall under the classification of electronic information..

Many consumers are unaware of their ability to assess and respond if advertisements breach regulations, allowing them to seek protection from various sources, ultimately enabling the detection of advertising businesses' practices and imposition of sanctions.

Promotion serves not only the interests of businesses in marketing their products but also provide the consumers' need for truthful and non-misleading information. The Consumer Protection Law (UUPK) assumes a critical role in governing advertising practices by stipulating explicit prohibitions detailed in Articles 9 through 12, Article 13, and Article 17, thereby providing a strong legal framework for ensuring consumer protection in the realm of advertising.

The presence of prohibited clauses imposes clear limitations on business actors, which also extend to advertising parties, as outlined in the following paragraph (2). Particularly, advertising business actors are forbidden from continuing to distribute advertisements that have breached the provisions in paragraph (1). Article 17 of Consumer Protection Law No. 8 of 1999 particularly point f, underscores the importance of advertising ethics outlined in the Indonesian which is contained in Pariwira Ethics of 2006.

Effective advertising doesn't deceive consumers, they have the right to truthful and precise information. Therefore, producers and advertisers must abide by regulations and ethical principles, ensuring that advertisements reflect respect and morality.[6] according to Islamic teachings, the consumption of alcoholic beverages is forbidden. However, Holywings' promotion incorporates religious icons with the offer of complimentary alcohol drinks. Hence, Holywings' promotion is considered to contain Ethnic and Religious Elements (SARA).

The concept of Ethnic and Religious Elements (SARA) refers to ethnicity, religion, race, and intergroup, as explained in Article 1 number 2 of Law Number 40 of 2008. the act of promoting alcoholic beverages by mentioning religious representation also violates Law 11 of 2008 concerning information and electronic transactions, especially Article 28 paragraph 2 which discusses actions that are prohibited in disseminating electronic information.

### **2. The Responsibility of Holywings as a Business Actor for Promotions With Ethical and Religious Dimensions in Instagram**

The concept of responsibility was put forward by the originator of pure legal theory, Hans Kelsen, argued that responsibility is closely related to obligation, but not identical. The obligation arises because of the existence of legal rules that regulate and provide obligations to legal subjects. Legal subjects who are burdened with obligations must carry out as an order from the applicable legal rules.[7]

Holywings' Instagram promotion involving ethnic and religious elements violates the Consumer Protection Law No. 8 of 1999, which requires business entities to operate in good faith and provide honest services to consumers. This action goes against the law's established standards. Furthermore, Article 7 (c) mandates that businesses handle funds impartially and honestly for consumer services, in line with Article 7 (a), which emphasizes the importance of conducting operations in good faith.

However, Holywings' lack of adequate consumer service breaks the regulation of good faith, violating consumer rights and their duty to avoid discrimination. Additionally, using names of Islamic and Christian religious figures in their promotion shows their failure to treat consumers fairly.

According to Az Nasution, commercial advertisements that have the potential to have a negative impact on society can be held accountable to the parties involved in advertising, especially violations of the provisions contained in the Consumer Protection Law.[8] Advertising must be honest, responsible and not contrary to applicable law. Advertisements must not offend and demean the dignity of religion, morals, customs, culture, ethnicity and groups. Advertising must be imbued with the principle of fair competition.[9]

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Article 19 paragraph (1) of the Consumer Protection Law emphasizes the principle of responsibility, requiring businesses to compensate for damages, pollution, and consumer losses resulting from their goods or services. This provision underscores the core aspect of consumer protection, highlighting the accountability of producers for any losses related to their products.

Holywings promptly removed their Instagram promotion (@holywingsindonesia) as it contained prohibited ethnic and religious (SARA) Article 17 Paragraph 2 of Law Number 8 Year 1999 on Consumer Protection prohibits advertising businesses from continuing the circulation of advertisements that violate the provisions of the previous paragraph. This means that if an advertisement is found to violate Article 17 Paragraph 1, it must be removed. Consequently elements, violating Article 17 Paragraph 2.

After further check, Holywings' business license is being revoked. DKI Provincial Government found several violations committed by Holywings Jakarta. As a result, suggestions are put forward to the Central Government for the withdrawal of business permits. Previously, the DKI Jakarta Provincial Government issued the initial warning correspondence to Holywings. The nightlife establishment has subsequently clarified its position and issued an apology.[10]

Consumers choose not to pursue court litigation due to the potential for significant expenses and losses. Instead, these cases are typically managed through class actions or legal proceedings initiated by established non-governmental organizations.

#### IV. CONCLUSION AND RECOMMENDATION

The conclusions drawn from the previous chapters emphasize the prevalent use of online advertising via social media in today's digital age. The Consumer Protection Law provides a legal framework for advertising practices, specifically through Articles 17, which outline prohibitions to protect consumers. Despite these regulations, many business actors fail to comply, often releasing ads with inappropriate content, such as racial elements, thus violating Article 17 point f. This negligence results in consumer harm and highlights the responsibility of business actors to adhere to legal standards in their advertising content, particularly those involving ethnic and religious elements, as specified in Article 20 of the Consumer Protection Law.

The recommendations propose that the government should develop specific regulations for online advertising on social media to serve as comprehensive guidelines, ensuring consumer rights are protected and providing legal certainty for business actors. Such regulations would not only safeguard consumers but also encourage business actors to be more diligent in their promotional activities. Additionally, it is recommended that consumers exercise caution when interpreting advertisements, comparing advertised information with other sources to verify compliance with regulations. This vigilance is crucial for protecting their rights as consumers, as stated in Article 4 of the Consumer Protection Law. By being more discerning, the public can better identify misleading advertisements and protect their interests.

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