



# Criminal Liability of Users of Electronic Advertising Services that are Fraudulent in the Advertising Program of Electronic System Providers

Ilham Giri Wijaya<sup>1\*</sup>, Gelar Ali Ahmad<sup>2</sup>

<sup>1</sup> Faculty of Law, State University of Surabaya, Indonesia

<sup>2</sup> Faculty of Law, State University of Surabaya, Indonesia

\* ilham.19057@mhs.unesa.ac.id

Article	Abstract
<p><b>Keywords:</b> Advertising; Liability; PSE; Fraud; Consumer</p>	<p><i>Law enforcement related to advertising fraud in the digital environment faces challenges in regulation, vague interpretation of the ITE Law, and the need for cooperation between the government, system organizers, and consumer awareness. The purpose of this study is to examine and analyze the criminal liability of electronic advertising service users who place fraudulent advertisements on the advertising program of electronic system providers and the legal consequences faced by electronic advertising service users who place fraudulent advertisements on the advertising program of electronic system providers. This research uses normative legal research methods that use statutory and conceptual approaches to answer the problem of criminal liability of electronic advertising service users for fraudulent content on official advertising programs for electronic system providers. Primary legal materials used include laws and regulations related to electronic systems and secondary legal materials in the form of legal literature and scientific journals. Analysis of legal materials is carried out descriptively prescriptively to find answers to the problems raised. The results show that in the context of using online advertising services in Indonesia, the installation of fraudulent advertisements on the advertising program of electronic system providers has the potential to face criminal sanctions such as prosecution, fines, or imprisonment, in accordance with the ITE Law, Criminal Code, Consumer Protection Law, and Broadcasting Law. Individuals and corporations involved in this practice may also face administrative sanctions, revocation of business licenses, and civil lawsuits. These serious legal consequences can include significant financial penalties and serious reputational damage, in addition to possible revocation of operating licenses as electronic system operators. Both subjects may face serious legal implications for harming consumers and violating applicable electronic advertising laws.</i></p>

## INTRODUCTION

Recorded in the latest census conducted in 2020, the population in Indonesia has reached 270.2 million people (Central Bureau of Statistics 2021). This massive demographic makes Indonesia the 4th most populous country in the world (CNN

Indonesia 2022). The existing demographic potential makes the market fertile ground for electronic systems based on social interaction or more familiarly known as social media. It is evident from the data obtained, that the number of active users of social media in Indonesia is currently 191 million people or around 70% of the total population of Indonesia, and this number will continue to grow along with the diversity of additional features and variations of social media. The distribution of 191 million active social media users is Whatsapp 88.7%, Instagram 84.8%, Facebook 81.3%, Tiktok 63.1%, and Telegram as much as 62.8% (Mahdi 2022). This development is certainly a burden on electronic system organizers when it is not balanced with significant profit generation by electronic system organizers. Advertising is the main means of profit income from several social media platforms today (Lisawati 2017). Of the social media mentioned in the previous paragraph, not all of them offer advertising programs as a source of income. Social media that offer official ad programs are Instagram, Facebook, and Tiktok, while on the other hand Whatsapp and Telegram do not offer official ad programs.

Advertising programs are a very common marketing strategy used by various companies and individuals to promote their products or services to potential customers (Karina, Hernaningsih, and Rivanto 2022). This model is based on the concept that by publishing advertisements, users hope that the products or services they offer will be known by many people, thereby increasing sales opportunities and profit generation.

Through advertising programs, advertisers (organizers) attempt to create attractive and persuasive messages aimed at specific target audiences. The ads are then published through various media, such as television, radio, print media, online advertising, and social media platforms. Thus, advertisements try to reach a wide target market in the hope of getting a positive response from potential customers (Indonesian Advertising Council 2020).

One of the main objectives of an advertising program is to increase brand awareness about the products or services offered. With increased brand awareness, it is expected that consumers will better recognize the product and be more likely to choose it when making a purchase (Faristin, Hariyadi, and Prihastuty 2013).

In addition, advertising programs can also help create consumer preferences for certain products or services. By presenting the benefits and advantages of the product in an attractive manner, advertisements can influence consumers' perceptions and attitudes towards the advertised brand or product.

The success of an advertising program depends not only on the message it carries, but also on proper targeting. The use of market data and analysis helps identify who is the most suitable target audience for a particular product or service, so that advertisements can reach consumers who have the most potential to become customers. In the business sphere, advertising programs are one of the significant

sources of revenue for media, such as websites, social media platforms, and television stations. Advertisers pay to place their advertisements on these media, so that the media get revenue from these ad programs (Junaedi et al. 2022). With advertising programs, users have the opportunity to reach a wider market and earn greater profits through the promotion of their products or services. However, it is also important to remember that advertisements must comply with applicable ethics and regulations, and present accurate and honest information to potential consumers.

This is because marketing communication methods that contain persuasive messages in the form of invitations to enjoy or use a good or service have the potential to be used for illegal activities. Illegal activities in advertising that harm users through misdirection, especially on behalf of bona fide companies, are very harmful fraudulent practices. One case of using the Instagram Ads program to commit fraud by claiming a fake offer to become a priority customer of BCA Bank is a concrete example of how this type of fraud can occur.

In such cases, fraudsters try to capitalize on the reputation and trust that consumers have already given to bona fide companies (such as BCA Bank) to lure victims into falling for their scams. Ads set up with convincing graphics and copy can make consumers feel that the offer is legitimate and trustworthy. This is a serious challenge in today's digital environment where ads can be embedded easily and quickly across various social media platforms. Fraudsters often look for loopholes to trick unwary consumers.

Fraudulent practices that are becoming more prevalent today pose a serious threat to consumer trust and also damage the reputation of companies that are misrepresented in fraudulent ads. Ad service providers such as Instagram should make greater efforts to identify and remove such misleading and harmful ads so that users can avoid financial loss and other harassment. Fraud perpetrated on behalf of bona fide companies is criminal and violates various consumer protection regulations. Collective efforts and cooperation between the government, social media platforms, and bona fide companies will be essential to address the problem of advertising fraud. By taking decisive action, we can create a safer and more trustworthy advertising environment for users and increase their trust in social media platforms.

**Figure 1**  
**Fraudsters Using Multiple Accounts on Instagram**



Source: [www.instagram.com](http://www.instagram.com) (2023)

These ads appear on Instagram users' pages due to Instagram's algorithm that targets users relevant to the creatives (Prabowo 2022). Fraudulent advertisements as described above do not only occur at one time or with one account profile but use various accounts with the profile identity of the advertiser account made as similar as possible to customer service or an official representative of a company, in this case BCA Bank. Instagram itself is an Electronic System Operator under the company Facebook Singapore PTE. LTD. as evidenced by the following PSE list: Source: Kominfo website (2023)

**Figure 2 Instagram Registered as PSE at Kominfo**

275	INSTAGRAM	apps.apple.com/au/app/instagram/id389801252	Sektor Teknologi Informasi dan Komunikasi	FACEBOOK SINGAPORE PTE. LTD.	2022-07-19
276	INSTAGRAM.COM	instagram.com	Sektor Teknologi Informasi dan Komunikasi	FACEBOOK SINGAPORE PTE. LTD.	2022-07-19
277	FACEBOOK	apps.apple.com/au/app/facebook/id284882215	Sektor Teknologi Informasi dan Komunikasi	FACEBOOK SINGAPORE PTE. LTD.	2022-07-19
278	FACEBOOK.COM	facebook.com	Sektor Teknologi Informasi dan Komunikasi	FACEBOOK SINGAPORE PTE. LTD.	2022-07-19

The position of Electronic System Operator such as Instagram has been regulated in Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as PP PSTE). When classified based on the PP PSTE, Instagram is included in Article 2 paragraph (5) letter b, namely as a Private Scope Electronic System Operator that provides communication services in the form of social media, as the

paragraph reads: "Electronic System Operator that has a portal, website, or application in the network via the internet which is used to:

1. provide, manage, and/or operate the offering and/or trading of goods and/or services.
2. provide, manage, and/or operate financial transaction services.
3. sending paid digital material or content through data networks either by downloading through portals or sites, sending via electronic mail, or through other applications to user devices.
4. providing, managing, and/or operating communication services including but not limited to short messages, voice calls, video calls, electronic mail, and online conversations in the form of digital platforms, networking services and social media.
5. search engine services, services providing Electronic Information in the form of writing, sound, images, animation, music, video, movies, and games or a combination of some and/or all of them; and/or
6. Processing of Personal Data for operational activities to serve the public related to Electronic Transaction activities".

Article 2 paragraph (5) letter b number 2, namely in providing, managing, and/or operating financial transaction services. The two fields are within the same scope, namely within the realm of information technology and electronic transactions. Financial transaction services include various platforms and systems that facilitate the payment process and financial transactions electronically. This can include online payments, money transfers, credit card transactions, digital wallets and other financial services that operate through electronic systems. In the context of this research, financial transaction services become one of the relevant elements, as fraud often involves illegal or unauthorized financial transactions.

The purpose of the research on the criminal liability of users of electronic advertising services that contain fraud in the advertising program of electronic system providers is to identify and analyze the role and legal responsibility of individuals or entities that utilize electronic advertising platforms to disseminate information that is deceptive or harmful to other parties. This research aims to explain the applicable legal framework, explore the penalties imposed on perpetrators, and identify challenges and obstacles in law enforcement related to fraud through electronic advertising. By understanding the role and criminal responsibility of electronic advertising service users in this context, this research is expected to provide a clearer view of legal efforts to address fraud in electronic systems and encourage system organizers and service users to comply with existing regulations.

In an effort to overcome advertising fraud involving illegal financial transactions, the criminal responsibility of electronic advertising service users becomes very

important. Users of electronic advertising services have a major role in ensuring that the advertisements they deliver are not misleading or promote illegal activities, including unlawful financial transactions. They must comply with applicable regulations and laws and ensure that the advertisements they display comply with good business ethics. In situations where fraud or illegal activities are detected, authorities need to be able to identify responsible users of electronic advertising services and enforce appropriate legal measures as a preventive and enforcement measure. This will not only help protect consumers from fraud but will also preserve the integrity of electronic advertising as a legitimate business communication tool.

The fact that to date there have been no cases of electronic advertising service users being held liable for fraudulent advertising content in their advertising programs, despite the potential harm that arises, reflects the challenges in law enforcement relating to fraudulent advertising in the digital environment. This phenomenon illustrates the complexity of addressing the misuse of digital technology for fraudulent purposes and demonstrates the lack of a legal framework strong enough to effectively address this issue. Therefore, further efforts are needed to develop stricter regulations and more efficient enforcement solutions to protect consumers from harmful advertising content and ensure the integrity of the digital environment.

Addressing these challenges requires close cooperation between the government, regulators, electronic system providers, and other relevant parties. The first step is to improve and update relevant regulations to accommodate technological developments and new challenges in the digital environment. In addition, it is necessary to enhance cooperation among all parties in identifying and handling cases of fraud that occur in electronic systems. This effort will help minimize the risk of fraud and protect consumers. Finally, it is also important to raise consumer awareness about the risks of fraudulent advertisements in the digital environment so that they can be more vigilant and careful in transacting online. With synergy between the government, regulators, electronic system providers, and better consumer awareness, we can effectively address these challenges.

Through this description, the author is interested in researching further in the form of a thesis entitled "**Criminal Liability of Electronic Advertising Service Users Containing Fraud in the Electronic System Operator Advertising Program**".

The problem formulation in this research is as follows:

1. How is the criminal liability of electronic advertising service users who place fraudulent advertisements on the electronic system organizer's advertising program?
2. What are the legal consequences of electronic advertising service users who place fraudulent advertisements on the electronic system organizer's advertising program?

## METHOD

This research method categorizes the type of research as normative law which aims to overcome legal problems related to the criminal liability of electronic advertising service users for fraudulent content on their electronic systems. The research approach used is a combination of statutory approach and conceptual approach. The statutory approach is used to analyze all legal regulations relating to the issue, including the ITE Law and its implementing regulations, as well as the criminal regulations contained therein. The conceptual approach was chosen to fill the existing legal vacuum by referring to the views and doctrines of experts.

Primary legal materials used include various related laws, such as the ITE Law, Consumer Protection Law, and government regulations related to electronic systems. Secondary legal materials, in the form of legal literature such as scientific journals and books written by legal experts, are used to provide objective arguments and references to risk mitigation against fraudulent content in electronic advertisements. The technique of collecting legal materials is carried out through library research to identify legal materials that are relevant to the problem. Furthermore, the legal material analysis technique is carried out using the prescriptive analysis method, which aims to put forward arguments and recommendations regarding solutions to the legal problems studied. In this case, this research focuses on the criminal liability of electronic advertising service users for fraudulent content in electronic systems.

## RESULTS AND DISCUSSION

### **Criminal Liability of Electronic Advertising Service Users Who Place Fraudulent Ads on the Electronic System Operator's Advertising Program**

The development of technology, especially in Indonesia, has progressed very quickly. This can be seen from the daily activities of Indonesian residents who increasingly rely on technology to meet various needs of life (Vengga and Ariawan 2021). This era is referred to as the industrial era 4.0, where smartphones have become an inseparable device from human life. From waking up to sleeping again, daily activities and work often involve interaction with smartphones. Communication between individuals has also changed, where messages that could previously be delivered in person are now more often done through smartphone applications, including various social platforms, short messages, and groups. Ironically, this phenomenon can lead to indifference to the surrounding environment due to excessive focus on these devices.

In the current situation, smartphones are no longer a luxury but have become a necessity. Through various applications on smartphones, these devices not only serve as a means of communication and information sharing, but also a means for consumption. Shopping for goods, food and drinks can be done easily through apps, provided you have sufficient balance in your account or app. This kind of transaction

is not limited to age, occupation, education, or background factors; if there is an agreement, buying and selling transactions can be done (Handoko 2021).

To attract consumer interest, smartphone applications offer a variety of products through the content presented. Whether it is consumptive needs or non-need products, everything is available in the application through offers mediated by advertisements. Electronic advertising services have become one of the main means for companies and individuals to promote products, services and information to a wide audience. While these services provide various benefits, it must be recognized that abuse in the form of fraudulent advertisements is also increasingly prevalent. Such advertisements not only harm consumers financially but also undermine trust in the e-commerce ecosystem. In the case of users of electronic advertising services who place fraudulent advertisements on the advertising programs of electronic system providers, the concept of criminal liability becomes crucial to punish the perpetrators and prevent further abuse.

In law, there are two main types of legal subjects, namely "natuurlijke persoon" (natural person) and "rechtspersoon" (legal entity). These two types of legal subjects have different characteristics and responsibilities within the legal system.

Natuurlijke persoon is a legal subject that represents a private individual. This refers to human beings as individuals, whether they are citizens or residents of a country. Natural persons have legal rights and obligations relating to their personal lives, such as the right to life, liberty, property, and other rights. They can also be held legally responsible for their personal actions, be it in a criminal or civil context. Rechtspersoon refers to a legal entity that has a legal status separate from the individuals who founded it. Legal entities can be companies, foundations, non-profit organizations, or other legal entities. One of the distinctive features of legal entities is that they have legal rights and obligations separate from their members. They can have ownership, enter contracts, and be legally responsible for the actions of the entity. The granting of legal entity status allows these entities to operate, own assets, and face legal liability independently.

In practice, the separation between natuurlijke persoon and rechtspersoon is important in law as it affects how legal responsibilities, rights and obligations are applied. Natural persons are responsible for their own individual actions, while legal entities are responsible for the actions of their legal entities. The introduction of these two types of legal subjects reflects the complexity of legal relationships in modern society where individuals cooperate in various forms of legal entities to achieve diverse goals.

Liability in the context of criminal law can be imposed on both humans (natuurlijke persoon) and legal entities (rechtspersoon), but the mechanisms and criteria for liability differ between the two. First, for humans (natuurlijke persoon), criminal liability can be imposed when the individual commits an act that violates



criminal law, either with elements of *dolus* (intent) or *culpa* (negligence). In this case, the individual will be faced with a legal process involving investigation, trial, and possible criminal punishment in accordance with the wrongdoing. Accountability for human criminal acts is a basic principle in the criminal law system that aims to implement justice and uphold the law.

Second, for legal entities (*rechtspersoon*), criminal liability can also be imposed. However, in the context of legal entities, this liability will focus on the actions committed by the entity as an organization. Legal entity liability does not mean that the entity has the consciousness or ability to act fully like a human being. Rather, legal entity liability encompasses actions taken by agents or representatives of the legal entity in an organizational capacity, which may then affect the policies, operations or objectives of the organization.

Criteria for criminal liability of legal entities usually relate to the element of *dolus* (willfulness) in the acts committed by agents or representatives of legal entities. This means that a legal entity can be held criminally liable if the actions of its agents intentionally violate the law. In some jurisdictions, a legal entity may also be held liable if the act was committed with a high degree of negligence or if there was a failure in supervision that allowed the act to occur. In addressing cases of criminal liability of users of electronic advertising services who place fraudulent advertisements on the advertising programs of electronic system operators, it is important to understand the legal basis and regulatory framework governing such matters. The following are some aspects of legislation and court decisions that are relevant in this context:

#### 1) Criminal Liability in the ITE Law

In the Indonesian context, the Electronic Information and Transaction Law (ITE Law) are a particularly relevant regulation to govern conduct related to electronic advertising. Article 28 paragraph (1) of the ITE Law explicitly states that every person is prohibited from sending electronic information and/or electronic documents that have content that violates religious norms, norms of decency, norms of morality, and norms of law and regulations. In the context of electronic advertising, this has significant implications, because with this provision, users of electronic advertising services are prohibited from posting advertisements that contain fraud or false information. This is an important step in maintaining the integrity of Indonesia's digital market and protecting consumers from harmful practices. Article 45A of the ITE Law is a legal provision that regulates acts of fraud in electronic transactions in Indonesia. This article states that a person may be subject to criminal liability if they intentionally and unlawfully enter electronic data and/or information in an electronic system with the intent to benefit themselves or others, while harming the public interest or private interests of others. In the context of electronic advertising, this means that users of electronic advertising services who

place advertisements that contain elements of fraud can be considered to have committed acts of fraud in electronic transactions. This provision aims to protect the public from fraudulent practices that can harm other parties in the scope of electronic transactions, maintain integrity and trust in the digital ecosystem, and encourage ethical and honest business practices in the online world.

## 2) Criminal Liability Under the Criminal Code

Criminal liability of electronic advertising service users who post fraudulent advertisements can not only be regulated in the Electronic Information and Transaction Law (UU ITE) but can also be subject to the provisions contained in the Indonesian Criminal Code (KUHP). The Criminal Code regulates various acts of fraud, which include acts that have elements of the use of deception to obtain unlawful gain or mislead other parties. In the context of electronic advertising service users, if a person places false or misleading advertisements with the intention of gaining profit or harming other parties, such actions may be considered as acts of fraud in accordance with the provisions of the Criminal Code.

In the context of electronic advertising, Article 378 of the Criminal Code which regulates fraud has important relevance. This article classifies an act of fraud as a person's attempt to deceive another person by deceit or concealing information that should be notified. When users of electronic advertising services place advertisements that cast doubt on the honesty or conceal facts that should be notified to consumers, they may be considered unlawful under this Article 378 of the Criminal Code. As such, this regulation can be used to protect consumers from misleading advertising practices in the digital world, and users of electronic advertising services should be careful not to violate this provision. Proper enforcement in this regard can ensure that electronic advertising remains fair and honest, maintain consumer confidence, and promote ethical business practices in the online environment.

Article 379 of the Criminal Code is the legal provision governing fraud with loss. This article states that if because of the fraudulent act, a person suffers a loss, then the perpetrator of the fraud may be subject to more severe penalties. This provision can also be applied in the context of electronic advertisements, where advertisements containing fraudulent elements posted by users of electronic advertising services may result in losses for consumers or other parties involved. In this situation, perpetrators of fraud in electronic advertising may be held legally liable pursuant to Article 379 of the Criminal Code, with harsher penalties because of the harm caused by the act. This aims to protect consumers and other parties from harmful fraudulent practices in the realm of electronic advertising.

### a) Criminal Sanctions

Article 379 of the Criminal Code regulates fraud with loss. This article has important implications in the case of users of electronic advertising services who are

proven to place fraudulent advertisements on the advertising program of electronic system providers. In this case, Indonesian law provides a strong legal basis to address acts of fraud in the digital world. Users of Gasal page header: Journal Article Title Fragment 7 electronic advertising services involved in fraudulent activities may be subject to criminal sanctions in accordance with the ITE Law and the Criminal Code. These criminal sanctions can be in the form of fines or imprisonment, depending on the level of offense committed and the amount of loss incurred. This shows that Indonesian law has accommodated the development of information and communication technology and provides legal protection for people who are victims of fraud in the digital realm.

Article 28 paragraph (2) of the Electronic Information and Transaction Law (ITE Law) has an important role in determining criminal sanctions for violations of these provisions. According to this article, violations of the provisions of Article 28 paragraph (1) of the ITE Law can result in quite serious criminal sanctions. The perpetrators of such violations can be subject to imprisonment with a maximum penalty of 6 years, and/or a fine that can reach 1 billion rupiah.

Criminal sanctions can be more severe if the violation causes harm to others. This means that if perpetrators commit acts that result in financial loss or harm to other parties, then they may be subject to severe criminal sanctions that can be higher than the maximum limits mentioned above. Article 378 in the Indonesian Criminal Code (KUHP) is one of the articles that regulates criminal sanctions for acts of fraud. This article stipulates that a person convicted of fraud may be subject to imprisonment for varying lengths of time. In general, perpetrators of fraud are subject to imprisonment for a maximum of 4 years or a fine of a maximum amount of 9,000 rupiah. However, it must be understood that the criminal sanctions in this article are not rigid. If the fraud committed by the perpetrator results in a very large loss, the punishment given can be more severe. In this situation, the perpetrator of fraud can be punished with a longer imprisonment, which is a maximum of 6 years.

Article 378 of the Criminal Code is a legal instrument used to protect the public from harmful acts of fraud. With the criminal sanctions imposed, it is hoped that it can reduce the incentive for individuals or groups to commit fraud, as well as provide recovery and justice to victims of fraud. In addition, this criminal sanction also aims to provide a deterrent effect to potential fraud perpetrators.

### 3) Law No. 32 of 2002 on Broadcasting

Criminal liability for users of electronic advertising services who place fraudulent advertisements in the advertising programs of electronic system providers is regulated in Law No. 32 of 2002 on Broadcasting. The relevant articles in this Law refer to the applicable legal arrangements to protect the public interest and ensure the integrity of the electronic broadcasting system. Article 32 of the Broadcasting Law is a very important legal foundation in regulating broadcasting in Indonesia. It

explicitly mandates that all broadcasting, including electronic advertising, must adhere to key principles such as truth, fairness, justice and certainty. The principle of truth is particularly relevant in the case of fraudulent advertising.

In the context of the truth principle, deceptive advertising clearly violates this provision. Deception involves the dissemination of untrue or misleading information with the aim of manipulating others. When electronic advertisements employ such tactics, they not only violate the truth principle, but can also deceive and harm the public to whom they are directed. The Broadcasting Law aims not only to protect the interests of broadcasting as an industry, but also to protect the interests of the public. Therefore, when someone places a fraudulent advertisement in the advertising program of an electronic system operator, they can be held criminally liable because their actions damage the integrity and public trust in electronic media and harm individuals who may be negatively affected by the advertisement.

In implementing Article 32 of the Broadcasting Law, the authorities have the power to act against these violations in accordance with the provisions of the law, including the imposition of criminal sanctions if necessary. As such, criminal penalties can be an effective way to ensure that users of electronic advertising services adhere to the principles set out in the law to maintain the integrity of electronic broadcasting and protect the public interest.

In addition, Article 33 of Law No. 32/2002 on Broadcasting also contains provisions that are highly relevant in addressing fraudulent electronic advertising. This article expressly prohibits any form of broadcasting that could harm the public or spread false and misleading information. In the context of electronic advertising that contains elements of deception, this is particularly important.

When electronic advertisements direct false information to the public or mislead them, it creates the potential for significant harm to consumers and society at large. The Act requires users of electronic advertising services to take responsibility for the content they post. If it is found that the advertisement has violated the principle of honesty and may harm the public, it may be subject to criminal sanctions in accordance with the applicable provisions.

Users of electronic advertising services who intentionally place fraudulent advertisements should understand that they may be prosecuted in accordance with Article 57 of the Broadcasting Law. This article provides a legal basis for electronic system operators and authorities to take administrative action against these violations. The administrative measures that can be applied include giving a warning to the perpetrator, freezing the problematic advertisement, or even withdrawing the advertisement from broadcasting.

Thus, Article 57 of the Broadcasting Law authorizes the authorities to impose administrative sanctions against violations of fraudulent advertising in electronic advertising services, but if the violation also violates criminal law, then the perpetrator may also face criminal consequences in accordance with relevant laws and regulations. This aims to maintain the integrity of the electronic broadcasting system and protect the public interest from harmful fraudulent practices.

4) Law No. 8/1999 on Consumer Protection (Consumer Protection Law)

Article 8 of the Consumer Protection Law has important relevance in addressing the issue of criminal liability of users of electronic advertising services. This article expressly regulates the issue of advertisements that are misleading or contain false information that has the potential to confuse consumers. In this context, users of electronic advertising services who intentionally place advertisements that contain elements of fraud may be subject to sanctions in accordance with this article, provided that the advertisement is considered an attempt to mislead or present false information that may harm consumers. Thus, Article 8 aims to protect consumers from unethical advertising practices and provides a legal basis for prosecuting criminal liability against electronic advertisers who violate this provision.

Article 62 of the Consumer Protection Law has significant relevance in the context of this case. The article expressly regulates the administrative and criminal sanctions that can be imposed on business actors who engage in actions that harm consumers. In situations where users of electronic advertising services act as business actors and deliberately place fraudulent advertisements that result in harm to consumers, Article 62 of the Consumer Protection Law is the legal basis that can be used to act. This article provides a strong legal basis to impose criminal sanctions on individuals or entities responsible for the fraudulent advertisements.

### **Legal Consequences of Electronic Advertising Service Users Who Place Fraudulent Electronic Ads on the Electronic System Operator's Advertising Program**

Indonesia applies the principle of a state of law (*rechtsstaat*) which places law as the foundation, not merely power (*machstaat*). By placing law at the center of all state activities, one of the efforts is through progress in the legal sector and creating justice, legal clarity, order, and a society that has an understanding and obedience to the law. Law enforcement must be carried out in accordance with applicable regulations and based on the ideology of Pancasila and the 1945 Constitution of the Republic of Indonesia (Kurnia 2016). The development of technology and communication that facilitates access and sharing of information by the public. In line with this development, the government seeks to follow this trend in providing public information that keeps up with the latest developments.

In the growing digital era, electronic advertising has become one of the most dominant and effective marketing tools.

Electronic advertising has the potential to reach millions of users in a short period of time, but the imbalance between ease of advertising and effective oversight often becomes a loophole for ill-intentioned actors.

The use of electronic advertising services has become an integral component in the modern business world, providing a vast and potential platform to promote products and services to a global audience (Ulfah 2021). However, along with the increased use of technology and online platforms comes the potential for abuse in the form of fraudulent advertisements. Such advertisements not only harm consumers but also damage the integrity of advertising platforms and undermine public trust in the services and products offered. Electronic advertising has provided a great opportunity for businesses to promote their products and services to a global audience at a more efficient cost than traditional media (Permadi 2022). However, along with these potential benefits also comes the risk of abuse in the form of misleading, inaccurate, or fraudulent advertisements. In this context, the advertising programs of electronic system providers become platforms that are vulnerable to the spread of such advertisements.

Fraud is one of the most common types of crime in the electronic media environment. In this form, the crime offers various types of situations, including business transactions, purchase of goods, or services at unreasonable prices or below reasonable standards. Although it has become difficult to avoid as such transactions have become a common trend, this phenomenon provides an opportunity for irresponsible individuals to commit violations of the applicable rules, solely for personal gain or to generate profits for other parties (Kesuma, Widiati, and Sugiarta 2020).

In the act of fraudulent advertising by users of electronic advertising services, it needs to be analyzed in relation to the application of articles in the Indonesian Criminal Code (KUHP) which regulates the concept of *concursum* in criminal law. To understand which type of *concursum* can be applied, it is necessary to understand the definition of each type of *concursum* in the Criminal Code.

1) *Concursum Idialis* (Article 63 of the Criminal Code):

*Concursum idialis* occurs when a person commits two or more acts that are part of the same criminal act or plan. This means that a person commits several criminal acts that are interrelated in a common criminal plan or purpose. These acts are considered as one crime.

2) *Continuing Act* (Article 64 of the Criminal Code):

A continuing act is an act that is continuously committed by a person without any significant break or pause between the acts. In this case, each act is considered as a single act and can be classified as a continuing act.

### 3) Concursus Realis (Article 65 KUHP):

Concursus realis occurs when a person commits two or more acts that are physically and temporally separated, but are all connected to a single criminal purpose. This means that acts that are physically and temporally separated but have the same criminal purpose can be considered as concursus realis.

The legal consequences of the installation of fraudulent advertisements on the electronic system organizer's advertising program are of serious concern both for legitimate business actors and for consumers who are vulnerable to being affected. Dishonest advertisers who seduce consumers with false promises or misleading information have the potential to harm customers and undermine trust in the business ecosystem. The following are the legal consequences in Indonesia based on the relevant laws and regulations:

#### 1) Legal Action under the ITE Law

In Indonesia, legal actions related to fraud in electronic advertising are governed by the Electronic Information and Transaction Law (ITE Law) No. 19 of 2016. Article 28 of the ITE Law is the foundation that regulates acts that violate privacy rights and/or fraud committed through electronic media. Therefore, a person who posts fraudulent advertisements, such as advertisements that mislead or provide false information, can be charged with the provisions of the ITE Law.

A person who commits fraud through electronic advertising may face serious legal consequences under Indonesia's Electronic Information and Transaction Law (ITE Law). One of the relevant articles is Article 45 of the ITE Law. This article stipulates that if a person intentionally and without right accesses another person's electronic system to commit fraud, they can be penalized with a fine of up to IDR 750 million or imprisonment of up to 6 years. This means that perpetrators of electronic advertising fraud risk facing significant penalties if found guilty. These penalties aim to protect the integrity and security of the digital world and provide a deterrent effect to perpetrators of fraud that harm other parties through electronic media.

Article 28 paragraph (2) of the ITE Law regulates actions involving electronic information and electronic documents that violate privacy rights and intellectual property rights. In this article, it is stated that any individual who intentionally and without rights performs actions such as distributing, transmitting, or creating electronic information and/or electronic documents that have content that violates these rights can be subject to criminal sanctions. The punishment that can be imposed is imprisonment with a maximum duration of 6 years and/or a maximum fine of Rp 1 billion.

## 2) Legal Action under the Consumer Protection Law

Fraudulent advertisements can indeed be a serious concern in Indonesian law. In addition to the Electronic Information and Transaction Law (UU ITE) which regulates certain aspects related to fraud in the digital world, the Consumer Protection Law No. 8 Year 1999 also has an important role in dealing with this kind of case. In the context of the Consumer Protection Act, fraudulent advertising can be considered a business practice that harms consumers and violates their rights. The Act provides legal protection to consumers and encourages fair and ethical business practices.

Article 8 of the Consumer Protection Act plays a very important role in maintaining business integrity and protecting consumers. The article emphasizes the prohibition against dishonest or misleading business practices. This means that businesses must be responsible for honesty in every aspect of their business, especially in advertising the products or services they offer.

Dishonest or misleading advertisements can harm consumers by providing false or manipulative information, which in turn can result in purchases that do not match their expectations. Therefore, when an advertisement can be considered a dishonest or misleading business practice, the Consumer Protection Law authorizes administrative sanctions, such as fines, to businesses that conduct such advertisements.

With these administrative sanctions in place, it is hoped that businesses will be more careful in crafting their advertisements, ensuring that the information conveyed to consumers is true and honest. This not only protects the rights of consumers but also creates a healthier and fairer business environment. Thus, Article 8 of the Consumer Protection Act plays an important role in maintaining consumer confidence and welfare as well as business integrity in the country.

Article 18 of the Consumer Protection Act provides important protection to consumers in the face of harmful business practices. With this provision, consumers have the right to file a civil suit against business Even page header: Journal Name. Volume 01 Number 01 Year 2012, 0 - 216 10 actors who engage in business practices that harm them. The implications of these suits can be significant, especially for businesses that engage in fraudulent advertising. Such civil suits can result in serious financial losses for businesses, including fines and claims for damages to aggrieved consumers.

## 3) Legal Action under the Code of Advertising Ethics

The advertising code of ethics issued by the Indonesian Advertising Council (DPI) has an important role in regulating the behavior of advertising industry players in Indonesia. In addition to the legal aspects, fraudulent advertisements may also violate this advertising code of ethics. DPI, as a non-governmental organization responsible for overseeing the advertising industry, has the authority to take action



against advertisements that are deemed to violate the code of ethics. Actions that can be taken by DPI include retracting the problematic advertisement, demanding an apology to the affected public, or even prohibiting the advertiser from advertising again. Thus, in addition to potentially being exposed to legal consequences, advertising actors must also comply with the advertising code of ethics set by DPI so that the advertising industry in Indonesia can run with integrity and trust from the public.

#### 4) Civil Liability and Indemnification

Users of electronic advertising services who engage in deceptive advertising should be aware that such actions may not only have legal repercussions but may also expose them to potential claims for damages from aggrieved parties. Consumers or parties who feel deceived by misleading or deceptive advertisements have the right to file a civil lawsuit to seek compensation for their losses. These claims may cover various types of losses, including financial losses arising from the purchase of products or services that are not as promised, reputational losses from engaging in disappointing transactions, or other losses arising as a direct result of the fraudulent advertisement.

#### 5) Other Relevant Regulations

In addition to the Electronic Information and Transaction Law (ITE Law) and the Consumer Protection Law, there are other regulations that can serve as the basis for legal action against fraudulent advertisements. One concrete example is Bank Indonesia Regulation No. 19/12/PBI/2017 on Information Technology-Based Financial Services. This regulation governs the advertising of financial products, and if an advertisement involves financial products, the advertiser must also comply with the provisions in this regulation. This includes important aspects such as the obligation to provide accurate and clear information to consumers, as well as prohibiting fraudulent practices or manipulation of information in financial product advertisements. In addition, if the advertisement involves a specific product or service, it is likely that there are sectoral regulations governing advertisements within that sector. For example, if the advertisement is related to food and beverages, then the advertiser must comply with the regulations issued by the Food and Drug Administration (BPOM). This is important to ensure that the advertisement does not mislead consumers and meets the safety and quality standards set by the competent authority.

## CONCLUSION

Based on the analysis of the criminal liability of electronic advertising service users who place fraudulent advertisements on the advertising program of electronic system providers, it can be concluded that criminal liability for electronic advertising service users who place fraudulent advertisements on the advertising program of electronic

system providers is subject to sanctions based on several regulations, including the ITE Law, Criminal Code, Consumer Protection Law and Broadcasting Law. Individuals involved in fraud through electronic advertising may be subject to criminal sanctions such as prosecution, fines, or imprisonment in accordance with applicable law. Meanwhile, corporations engaged in similar practices may face serious legal action, including substantial fines and other sanctions such as revocation of business licenses or further prosecution. It is important to consult a lawyer or local legal authority to obtain further information on the legal implications applicable in concrete cases.

In the context of the use of electronic advertising services in Indonesia involving the posting of fraudulent advertisements on the advertising programs of electronic system operators, the legal consequences can be very serious. For individuals who place fraudulent advertisements on the advertising programs of electronic system providers, possible legal consequences include criminal law violations, such as fraud, and violations of electronic advertising laws that may result in administrative sanctions or fines. For corporations engaging in such practices, they may face civil and criminal lawsuits, which could lead to significant financial penalties and serious reputational damage, in addition to possible revocation of their operating licenses as electronic system operators. Both subjects may face serious legal consequences for engaging in actions that harm consumers and violate applicable electronic advertising laws.

### **Suggestions**

The results of the study provide some important suggestions for users of electronic advertising services, including improving understanding of applicable laws, having clear internal policies, cooperating with legal authorities, using external auditors, implementing effective monitoring and reporting systems, commitment to business ethics, and joining industry associations. Through these measures, they can ensure legal compliance and integrity in their electronic advertising practices.

### **REFERENCES**

- Central Bureau of Statistics. (2021). *2020 population census results*. Statistics Indonesia.
- CNN Indonesia. 2022. "10 most populous countries in the world, Indonesia is one of them." CNN.
- Indonesian Advertising Council. 2020. *Indonesian Advertising Ethics*.
- Faristin, Latifa, Sugeng Hariyadi, and Rahmawati Prihastuty. 2013. "The Effectiveness of College Advertising in Increasing Brand Awareness in 3rd Grade Students at Sma Negeri 1 Bae Kudus." *Journal of Social and Industrial Psychology* 2(1):64–68.
- Handoko, Heru Pujo. 2021. "Legal Protection of Smartphone Users from Advertising Fraud." *Journal of Police Science* 15(1):15. doi: 10.35879/jik. v15i1.293.

- Junaedi, Fajar, Hanif Indhie Pratama, Riyadh Rofiatul Darojat, Nauval Hijran Nugraha, Nur Alfian Basri, Ryo Adhi Pradana, Muhammad Robich Anugerah, Muhammad Nur Arif, Aji Nurseto, Benny Cahya Ramadhan, Halimah Ardelia Sekar Sari, Tania Rahayu Putri, Muhammad Fahreza Aliazzra, Muhammad Aldy Setiawan, Nurlinda Yulia, Dhafin Izqi Adhie Alfauzan, Muhammad Firdaus Saputra, Muammar Syahdan Kurniawan, Dicky Andhika Nugroho, Dhalmar Aji Prasetyo, Difa Andira, Febri Trihartanto, Karina Lintang Cahyani, Muhamad Shidqii Faadhilah, Ilham Malul Khoirun, Tasya Arda Muslimah, Nurullia Annisa Putri, Taffadona Nafsa Deinarvi, Zeintito Pranata, M. Daffa Rafif Mustajab, Maulana Rayhan Setiawan Ali, Ibnu Alif Azrab, Shofura Albatul Latifah, Yusrina Amalia Izzaty, Elfira Regita Cahyani, Mohammad Tabrani Febry, Herbi Salsabila Nurainoctavianis Ifada, Allfa Rian Chaniago, Daffa Tabris Flemino, Muhammad Faruq Iqbal, Tantri Adista, Anis Fikri Nuriadi, Agnes Purnama Wati, Fadli Ammar Tsany, and Abiyyu Asykarul Haq. 2022. *RUNners of Advertising Ethics Violations*. Yogyakarta: Buku Litera Yogyakarta.
- Karina, Mona, Fery Hernaningsih, and Rinto Rivanto. 2022. "Marketing Strategy by Utilizing Viral Phenomena and Electronic Word Of Mouth Communication Through Social Media in Indonesia." *Journal of Management, Economics and Accounting* 6(3):924–42.
- Kesuma, I. Gusti Made Jaya, Ida Ayu Putu Widiati, and I. Nyoman Gede Sugiarta. 2020. "Law Enforcement Against Fraud Through Electronic Media." *Journal of Legal Preference* 1(2):72-77. doi: 10.22225/jph.1.2.2345.72-77.
- Kurnia, T. S. 2016. *Indonesian Legal System An Initial Understanding*. CV Mandar Maju.
- Lisawati, P. 2017. "The Effectiveness of Advertising on Social Networks as One of the Marketing Strategies for Small and Medium Enterprises (SMEs) Using Methods." *Scientific Journal of Business Economics* 21(3):153–59.
- Mahdi, M. Ivan. 2022. "Social Media Users in Indonesia Reach 191 Million by 2022." *DataIndonesia.Id*.
- Permadi, Ricky Noor. 2022. "Utilization of Social Media as the Main Platform for Marketing MSME Products." *Avant Garde* 10(1):15. doi: 10.36080/ag.v10i1.1695.
- Prabowo, Gama. 2022. "Sadly, BCA Customer Frauded Rp 118 Million in 30 Minutes, Initially Clicked on Fraud Link on Instagram." *Nextren*.
- Ulfah, Mariya. 2021. "The Use of Online Media as a Means of Promotion for Traditional Fabric Traders in Palangka Raya City." *Journal of Hadratul Madaniyah* 8(2):21-32. doi: 10.33084/jhm.v8i2.3078.

Vengga, V., and A. Ariawan. 2021. "Liability of Instagram Social Media Platform as an Advertising Service Provider in Fraud Cases Under the Guise of Online Shop." *Adigama Law Journal* 4:989– 1012.