

CHAPTER IV

CONCLUSION AND RECCOMENDATION

A. Conclusion

1. Positive law in Indonesia has established general principles prohibiting deceptive advertising through several provisions of Act No. 8 of 1999 concerning Consumer Protection, particularly Articles 8 and 9. In addition, National Agency of Drug and Food Control (BPOM) Regulation No. 3 of 2022 on Technical Requirements for Cosmetic Claims sets out technical standards related to the truthfulness, accuracy, and substantiation of advertising claims in the cosmetics sector. However, the existing regulatory framework does not specifically or comprehensively address the practice of deceptive advertising conducted through influencer-based digital marketing on User-Generated Content platforms. Although there are substantive provisions regarding the obligation of honesty in advertising and administrative sanctions for violations, there remains a significant legal vacuum, particularly since BPOM's administrative sanctions are limited to warnings, product withdrawals, suspension of activities, and revocation of distribution permits, without encompassing more severe measures such as corporate closure or dissolution. Furthermore, limitations in BPOM's testing infrastructure, including the absence of reference standards and advanced testing equipment, weaken the effectiveness of verifying the truthfulness of product claims.

2. The legal status of influencers within the Indonesian legal system remains undefined. Influencers may be categorized as advertising business actors based on their functional role in marketing products; however, in the absence of an explicit legal definition, they continue to occupy a legal grey area. Moreover, the assessment of skincare products is inherently subjective, relying heavily on individual compatibility, thus making the claims conveyed by influencers potentially fall under personal opinion, which is difficult to objectively verify. On the other hand, content moderation of User-Generated Content (UGC) in Indonesia also remains ambiguous; Government Regulation No. 71 of 2019 merely prohibits unlawful content without providing specific operational parameters to distinguish between commercial promotional content and purely personal content. In terms of consumer rights to bring claims against influencers and business actors, consumers are normatively entitled to legal recourse through civil litigation mechanisms (based on Article 1365 of the Indonesian Civil Code and Articles 19–23 of the Consumer Protection Act). However, in practice, the burden of proof lies entirely on the consumer. This includes proving the existence of a commercial relationship between the influencer and the business actor, substantiating the falsity of product claims through laboratory testing, verifying false claims regarding country of origin, and establishing both damages and a causal link. Given that consumers do not have access to endorsement contracts or laboratory results, and considering the high cost of testing active skincare ingredients, this burden of proof

becomes highly challenging. As a result, consumers are placed in a structurally disadvantaged position, while perpetrators of deceptive advertising may continue their operations. Consequently, this regulatory gap may lead to an increase in deceptive advertising practices within the skincare industry, ultimately heightening the risk of consumer harm in the absence of effective legal protection, especially for those consumers who have suffered losses.

B. Recommendation

1. It is imperative for the Indonesian government to enhance the regulatory framework of Consumer Act, especially Article 8 and 9, which govern deceptive advertising in digital skincare marketing. This may include the issuance of a dedicated regulation that adopts best practices, such as the Endorsement Guides of the U.S. Federal Trade Commission, mandating explicit disclosure of paid content. In parallel, the capacity of the National Agency of Drug and Food Control (BPOM) must be reinforced through upgrading laboratory infrastructure, acquiring advanced testing equipment, and expanding reference standards. Furthermore, administrative sanctions should be broadened to include more severe measures, such as company closure or dissolution, in cases of repeated violations.
2. The legal status of influencers must be clearly defined within the consumer protection framework, explicitly categorizing compensated influencers as advertising business actors who bear legal responsibility for misleading content. Regulatory guidelines should also establish clear boundaries

between personal and commercial User-Generated Content, ensuring transparency in commercial relationships. To address the structural disadvantage faced by consumers, procedural reforms, such as the introduction of a reversal of the burden of proof in deceptive advertising cases, should be implemented to shift evidentiary obligations away from consumers who lack access to key information, thereby enabling more equitable access to justice.