

Legal Consequences of Not Fulfilling the Terms of Validity the Agreement between Online Shop Owners and Endorser on Instagram Social Media

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Abstract: Endorsement agreements are developments that occur in society and there are no laws that specifically regulate endorsement agreements. Along with the many needs of endorsement agreements, problems arise such as the non-fulfillment of subjective and objective conditions that cause the endorsement agreement to be canceled. The existence of an agreement, the parties should carry out the agreement in accordance with what has been agreed (consensus), but there are actions that actually violate what has been agreed. The purpose of this research is carried out regarding the unfulfilled conditions of the validity of the agreement between the owner of the online shop and the endorser on Instagram social media. The research method is normative juridical, which is descriptive analysis with literature study data collection techniques. Based on the results of the research, the legal basis for endorsement agreements on Instagram social media according to applicable regulations in Indonesia refers to articles 1313 and 1320 of the Civil Code for the legal side of the agreement and the Law Number 11 Year 2008 on Electronic Information and Transactions article 5 to article 12 for the validity of endorsement agreements made online. The legal consequences of online business cooperation agreement transactions that do not meet the requirements of the validity of the agreement between online shop owners and endorsers on Instagram social media are that online buying and selling transactions are difficult to execute or real action in the event of a dispute or criminal act of fraud. Legal protection for the parties in the endorsement agreement in the event of default by one of the parties can be done by taking litigation or non-litigation.

Keyword: Agreement, Endorser, Instagram, Online Shop.

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1. Introduction

The rapid development of technology and information in the current era has brought changes to society. One of the changes in the economic sector is one of the impacts of the development of technology and information. Various things that previously required large costs and a long time along with the development and assistance of sophisticated technology can be completed effectively, quickly and easily. The current technological sophistication has changed the mechanism of trade transactions which no longer requires direct meetings between the parties involved in trade activities. This is because all stages in the transaction, starting from the introduction of objects

or goods, offers, orders, payment transactions to the delivery of goods can be done through the use of internet facilities. This activity is then known as electronic commerce (e-commerce) which basically still has the legal basis of ordinary trading or buying and selling, but is specific to the role of media and electronic devices that are dominant in it (Kantaatmadja, 2002).

The ease of transactions means that economic actors no longer have to meet in order to transact. They only need to make an agreement and the goods will arrive at the buyer's location without visiting the store again. This system is called an online shop. Online shop is "a process of buying and selling goods or services from sellers via the internet, without having to meet and buyers can only see the items they want to buy through the images contained in the online shop." After choosing the desired item, the buyer makes payment to the seller by sending money according to the price offered by the seller. After payment is received, it is the seller's obligation to send the goods to the destination address provided by the buyer.

Online shops are also a means available to offer goods and services via the internet. Consumers in online shops can see goods directly both in the form of images or photos and in the form of videos. Usually, items sold by online shops are limited edition items and are usually not available in stores or markets (Nurhayati, 2017). Online Shop is one of the most attractive alternatives for consumers to shop besides physical shopping. For businesses, online shops are considered attractive because they do not require large capital, large markets because the internet can be accessed by consumers from all over the world, and others. Online shop is the result of the rapid development of information technology that has led to a new method of trading system and made people compete to reap more profits and income by utilizing this information technology.

The development of online shops has made online shop activists in Indonesia also grow massively. Sometimes to increase consumer interest, online shop activists often utilize the current social media in the community, so that their products can reach the wider community. One of the social media that is widely used is Instagram.

Instagram was developed by Kevin Systrom and Mike Krieger who are members of their own company, Burbn.Inc Instagram was launched in 2010. Instagram became a powerful photo sharing service with a million users. Kevin and Mike started to put into another platform, Android, because this platform made by Google is relatively new but is now the largest in the world. Entering the platform made by Google means reaching more users around the world. Until April 3, 2012, it was a historic day for Instagram because it had succeeded in being a platform on Android. The number of Instagram users previously numbered 30 million increased by 1 million in just 12 hours and continues to increase. This made the price value of Instagram as a photo sharing service and Burbn as a company even higher. Only 9 days after the boom of its presence on Android, the company was acquired by Facebook, which is currently controlled by a company called Meta (Dwi, 2012). The rapid growth of Instagram social media users has the impact of being a wetland for online shoppers to sell their wares because it is easy, time-saving and efficient.

The strong competition of online shop owners on Instagram social media, sometimes requires them to use all marketing strategies so that the online shop they manage can be widely recognized and can compete with other online shops, one of which is by using the services of influencers or also known as endorsers to do marketing by posting product photos or making short videos to promote their merchandise on their accounts. The demands of professionalism as an endorser, sometimes make the cost of their services relatively large. Therefore, for the sake of the parties, the awareness to make cooperation is often done with an agreement.

Agreements between endorsers and online shops, in practice, are often agreed through electronic agreements and are standardized. The standardized nature of the agreement offered sometimes requires endorsers to perform obligations that are actually limited by law. For example, endorsers who ask for rights to their relatively large service fees. Not to mention endorsers who refuse to be responsible if something unexpected happens to consumers because of the products they promote. Vice versa, sometimes online shops also require endorsers to promote cosmetic ingredients that contain harmful substances, promote cheap illegal electronic goods, and even worse, endorsers are required to promote the purchase of chips on online gambling sites. This sometimes provides false and misleading information, even though such actions are regulated in Law Number 8 of 1999 concerning Consumer Protection and other laws governing unjustified behavior. Therefore, the purpose of this research is important to discuss, considering that the legal aspects of the agreement in cooperation between endorsers and online shops sometimes do not meet the requirements of the validity of the agreement. However, the 'not fulfilling' clause is often packaged in phrases that can trick the endorser. So, it is necessary to know what are the legal consequences of online business cooperation agreement transactions that do not meet the requirements of the validity of the agreement between online shop owners and endorsers on Instagram social media.

2. Research Method

The type of research used is normative legal research. This normative legal research is conducted with a statute approach and conceptual approach. The nature of the research used in this research is descriptive analytical. The data sources obtained in principle use secondary data, which may include primary, secondary and tertiary legal materials. Data collection techniques are carried out by means of library research, then qualitative data analysis is carried out. Furthermore, from the results of the existing analysis, legal arguments are given which are expressed deductively.

3. Result and Discussion

Basically, all people are capable of making agreements, in accordance with the provisions in Article 1329 of the Civil Code except those regulated in Article 1330 of the Civil Code. Article 1329 of the Civil Code reads: "Every person is authorized to make an agreement, unless he is declared incapable of it." Article 1330 of the Civil Code states "persons who are incapable of making agreements, namely minors, persons under guardianship, wives in cases stipulated by law and all persons to whom the law has

prohibited making such agreements." Capacity is associated with the validity of endorsements made by immature legal subjects according to the law. The endorsement agreement does not bring together the parties who enter into it so it is not known whether the parties have the capacity to carry out the agreement. The incapacity in question is in the context that the person entering into the agreement is not yet an adult so that the agreement can be requested for cancellation from the incapable party including his guardian or guardian. So, it can be concluded that people who are adults and are not under guardianship are considered capable of carrying out agreements. If a person is an adult but is not of sound mind, he or she must have a guardian to enter into an agreement, and if a person is not an adult, he or she must have a parent or guardian as his or her representative.

Furthermore, Article 1333 of the Civil Code which states that "An agreement must have a subject matter in the form of an item of at least a specified type. The amount of the goods does not need to be certain, as long as the amount can then be determined or calculated." That means that an agreement must have a certain thing as the subject matter of the agreement, namely goods of at least a specified type. Regarding the amount does not matter as long as it is determined at a later date. Then, the next requirement is *halal cause or causa*. The agreement according to the Civil Code, as in Article 1320, does not explain the meaning of *oorzaak* (lawful cause). Article 1337 of the Civil Code only mentions prohibited causes. A cause is prohibited if it is contrary to law, decency, and public order. The Hoge Raad since 1927 defines *oorzaak* as something that is the purpose of the parties (Sari, 2017).

As explained earlier, the contents of the agreement in the endorsement itself are only in the form of terms and conditions made by the endorser unilaterally, while the endorse can only agree or reject the agreement given by the celebgram (endorser). There is a standard clause in this endorsement agreement, thus basically the endorse through Instagram has a weak bargaining position and therefore clear legal protection is needed (Taufik, 2004).

Although in practice, Business Owners as users of endorse services are often disadvantaged by celebrities. This is reinforced by the fact that consumers in electronic business transactions always bear the risks borne by producers or business actors. It is clear that this is due to the unbalanced position of the parties, causing violations of rights committed by one of the parties. Many problems occur due to the unbalanced position between online shop owners and endorsers. One of the most visible is the endorse requirements that have been determined by the endorser, while the online shop owner can only approve or reject. This fact makes online shop owners have a weak bargaining position and require legal protection.

Endorsement agreements made electronically, the parties involved in it conduct legal relations as outlined in a form of agreement or contract which is also carried out electronically and in accordance with Article 1 paragraph 17 of Law Number 11 of 2008 concerning Electronic Information and Transactions are referred to as electronic contracts, namely agreements contained in electronic documents or other electronic media. Law Number 11 of 2008 concerning Electronic Information and Transactions,

hereinafter referred to as Law Number 11 Year 2008 on Electronic Information and Transactions, recognizes this Electronic Contract in Article 1 paragraph (17) of Law Number 11 Year 2008 on Electronic Information and Transactions as "Agreement of the parties made through an electronic system". Electronic systems are explained in Article 1 paragraph (5) of Law Number 11 Year 2008 on Electronic Information and Transactions as "Electronic Systems are a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate Electronic Information." Article 5 of Law Number 11 Year 2008 on Electronic Information and Transactions explains that "Electronic Information and/or Electronic Documents and/or their printouts are legal evidence and are an extension of legal evidence as the same as the Indonesian Law of Procedure.."

The provisions in the Law Number 11 Year 2008 on Electronic Information and Transactions indicate that agreements made electronically have the same strength as agreements signed by the parties directly (in the presence of the parties). Likewise, with its evidentiary power, electronic and recorded agreements will have the same evidentiary power as agreements signed directly by the parties. Defaults in reality often occur, especially in the practice of online agreements in the form of endorser agreements. For example, after receiving the product and fee payment, Celebgram as a business actor does not fulfill its obligations to promote the goods and/or services of the online business owner, performs achievements not in accordance with the agreement, or the business actor is late in promoting goods and/or services and various other examples of default actions.

Every engagement has at least two legal subjects, namely the creditor and the debtor. The creditor is entitled to the achievement, while the debtor is obliged to fulfill the achievement. The debtor's obligation to fulfill this achievement is called schuld. Apart from schuld, the debtor is also obliged to guarantee the fulfillment of the achievement with all of his assets, which is called haftung, while the creditor has the right to the achievement and the right to fulfill the achievement. However, the law sometimes makes exceptions, so that the debtor does not always have schuld and haftung (Riduan, 2010) If one party does not fulfill its obligations, it can be said that the party has made a default. He is negligent or negligent or breaks his promise. Or he also violates the agreement, if he does or does something that he should not do. As is known, default can be of four kinds, namely not doing what he promised to do; doing what he promised, but not as promised; doing what he promised but late; Doing something that according to the agreement he should not do (Subekti, 2005).

Some of the things that can be demanded on the party who made default in Article 1267 of the Civil Code, namely: The party against whom the obligation is not fulfilled, can choose whether he, if it can still be done, will force the other party to fulfill the agreement, or he will demand the cancellation of the agreement, accompanied by reimbursement of costs and interest. The party who does not receive the performance of the other party is given a choice of five possibilities so that he is not harmed, namely requesting fulfillment of the performance; demanding performance accompanied by compensation; demanding and asking for compensation; demanding

cancellation of the agreement; demanding cancellation of the agreement accompanied by compensation. Compensation must be in the form of payment of a fine. This option can be accompanied by compensation (costs, losses and interest) if there is a reason for it, meaning that the party demanding this does not have to demand compensation. The determination of the commencement of the calculation of the payment of damages depends on whether or not there is a period of time that is used as a benchmark for the negligence of one of the parties. Article 1243 of the Civil Code states that reimbursement of costs, losses, and interest for non-fulfillment of an obligation, will only begin to be required if the debtor, after being declared negligent to fulfill his obligation, continues to neglect it, or if something must be given or made can only be given or made within the time frame that has been exceeded.

4. Conclusion

Based on the discussion above, it is concluded that the legal consequences of online business cooperation agreement transactions that do not meet the requirements for the validity of the agreement between online shop owners and endorsers on Instagram social media are that the endorsement agreement can be canceled if the subjective conditions are not met and is null and void and deemed never existed if it does not meet the objective conditions so that there is no basis for the parties to sue each other in front of a judge but in online buying and selling transactions it is difficult to carry out execution or real action in the event of a dispute or criminal act of fraud. Therefore, the endorsement agreement must fulfill the requirements for the validity of the agreement between the online shop owner and the endorser on Instagram social media as Article 1320 of the Civil Code.

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