

## **Online trade marketing techniques through giveaway as one of the guise of fraud**

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### **Abstract**

*Technological development also affects the economy. Nowadays commercial activities by using the internet are different from the conventional. Those who are parties to internet commerce base their transactions on trust. To build trust in customers, online merchants use marketing techniques named endorse service. Seller currently makes giveaway events on these endorser accounts. However, the gift is often not fulfilled by online merchants so that giveaway is just a guise of online fraud. The author emphasizes the relation of fraud caused by giveaway with the building of public trust through the endorsers. This crime is rarely revealed because the victims didn't want to report. This research is a normative study using a statutory approach, data collection through library research, and analyzed using descriptive-analytical techniques. From this study, the result is an understanding that the relations between endorsers and fraudulent activities carried out by digital economics actors is by creating trust in the community, giveaway exists without further investigation of prizes. Fraud is seen as a causal subjective relations where there is an act of influencing the will of others created by endorsers so that person gives something to the seller.*

**Keywords:** *electronic commerce, fraud, marketing*

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### **1. Introduction**

Technological advances bring significant changes in various areas of human life. Not only in the field of communication and information, but advances in technology also influence developments in the economic field. The business network becomes infinite space and time. With just "one-click" everyone can make a promotion or get products even though they have long distances and long travel times. Trading activities have shifted from conventional face-to-face businesses to online businesses that are conducted through computer networks, namely the internet. The use of trading activities via the internet or better known as e-commerce today is part of changing community interaction patterns (Rahmanto, 2019).

Those who are parties to online commerce base their transactions on mutual trust. Traders cannot market products through shop like conventional traders in general. Products marketed cannot be held and seen directly, but only through images displayed on the device. To build the trust of potential consumers, online merchants certainly do different marketing techniques from conventional traders. One of the means to introduce their products to visitors to social media sites is to use endorsers. An endorser is someone that will convey a message from a certain good or service. A large number of followers on their social media is one of the good signals captured by the sellers that there will be many people who will find out about their stalls and products.

Business actors will send creative photos of the products then the endorser will share them on the endorser's social media account. Along with the busy adverts on endorser's accounts, it makes people who see them feel bored and finally only glimpse them, and often skip them. Then the merchants modify the advertisement into a giveaway. Everyone will certainly be interested in gifts. But unfortunately, the promise of giving gifts is often not fulfilled by online merchants, even though the participating parties have met all the requirements. In order to make a profit, business people commit fraud by exploiting cyberspace loopholes. This mode of crime is often carried out but is rarely exposed because fraud victims are reluctant to report to law enforcement. According to Barda Nawawi Arief, as cited by Ikka Puspitasari, cybercrime is a new form or dimension of current crime that has received the attention of the wider community in the international community, it is also one of the dark sides of technological progress which has a very broad negative impact on all modern life today (Puspitasari, 2018)

Given that research that focuses on fraud through electronic media has been conducted before such as by Agus Rusmana in 2015, this study focuses on fraud in interactions through social media (Rusmana, 2015). Dhaniar Eka Budiastanti in 2017, this research focuses on legal protection for victims of fraud through the internet (Budiastanti, 2017). Research conducted by Noor Rahmad in 2019, this research focuses on legal studies of online fraud crime (Rahmad, 2019). Then research conducted by Anton Hendrik Samudra in 2019, this research focuses on the modus operandi and problems of overcoming online fraud crime (Samudra, 2019). As well as research conducted by Jevlin Solim et al in 2019, this research focuses on efforts to tackle the criminal act of online buying and selling site fraud in Indonesia (Solim et al., 2019).

Based on existing articles, there are differences in the focus of the research that the author will carry out with previous research. Even though they have the same theme regarding fraud through electronic media, the author emphasizes the linkage of prize fraud with building public trust through marketing by endorsers, thus making the discussion about this matter always important and actual for further study.

Based on the description stated above, two problems can be formulated, first, how is the relationship between online fraud and the narrative constructed by the endorser? second, how is the endorser accountable for one of the parties experiencing fraud?

## **2. Method**

This research is normative. This research approach uses a statute approach because the problems in this study are approached by positive legal norms. Collecting data through library research, which is research conducted only based on written work, including research results, both published and unpublished. Meanwhile, to obtain data about the object of this study is to use documents in the form of regulations relating to fraud committed via the internet. The supporting data will be obtained through literature related to the existing topic of discussion. The data analysis technique is descriptive-analytical. Descriptive research is research that is intended to collect information about the status of an existing symptom, namely the symptoms according to what they were when the research was conducted. Meanwhile, analysis is an attempt to systematically find and organize research data to then study the concept of existing regulations on fraud committed via the internet in Indonesia. After the data is collected, it is continued with analysis to answer the main problem.

### **3. The Relations between Fraud and Endorser-Constructed Narrative**

The development of a technology-based business in today's digital era has presented a new business mechanism, namely platform-based business. The platform's business model has brought changes in society at large, especially in economics and business through its simple but transformative concept (Setiawan 2018). Many countries are starting to active in the world of the digital economy, including Indonesia, as evidenced by the easy access to electronic transactions today. Marketing is one of the things that is important to do both by conventional business actors and digital business actors because through marketing, a product can be known by the wider community.

Business competition in the digital economy is also very tight, this naturally occurs in any business because every business actor is sure to develop their products for the better. Many threats occur, for example, companies offering products that have relatively the same characteristics or products that can substitute them because they have better benefits than existing products. To maintain existing markets and expand market networks, digital businesses need to innovate, one of which is in the marketing aspect through advertising.

The hard-selling method of marketing as is common in conventional markets is not very attractive to prospective buyers in cyberspace to see the products. The internet offers a virtual system as a new reality where a person cannot see goods or services directly so that online business people must develop a communication system that is not only able to inform and invite but also must be able to remind consumers of the products they sell, as conveyed by Kotler and Keller who quoted by Daniel Yudistya Wardhana (Wardhana, 2016). Using the services of an endorser is one option that can be done. The attractive advantages possessed by endorsers are the main points that differentiate them from other individuals (Rahima, 2018). Many attributes such as attractiveness, or mastery of a particular skill are examples of characteristics that differentiate endorsers from the public.

The different character that is owned by the endorser makes the advertisements to be more attractive, convincing, and can be trusted by the audience. The information conveyed by the owner of the connecting medium is then used as the basis for one's trust in conducting online transactions (Ananda, 2018). The transactions on social media are influenced by many factors, but trust is the key factor. Only someone who has trust will dare to make transactions via the internet. This trust is what business actors try to build through the use of endorser services, that the confidence of potential consumers to conduct transactions with business actors is built in such a way through a narrative created by the endorser appointed to be the company spokesman. Businesses will pay endorsers who have many viewers to present their products on their platform.

In practice, not all endorsers are considered an effective way to attract consumers run smoothly. People will stop at the fun of seeing new products every day, with no desire to see and follow the online shop that is being promoted. Then a new strategy developed among business people by using endorser services not only to represent products but also to increase public awareness of their stores by creating a giveaway. Giveaway is an event for giving prizes free of charge to those selected after previously competing by following the rules of the giver. Prizes will be given by the online shop owner if all requirements are fulfilled.

Marketing techniques through prize contests are often only a guise of fraud. The giveaway is designed in such a way even though there are no items prepared as prizes,

the selection of the winner is only a formality because in the end the goods were never given, or the name of the winner has been prepared in advance which is known as a fictitious account. Business people get a wide market advantage because they are promoted not only through endorsers, but many times through accounts that take part in the giveaway. Endorsers also certainly benefit from getting a certain amount of money after uploading the event through photos and providing such a narrative to the viewers without wanting to investigate further whether the prize was really given or not.

#### **4. Endorser's Liability for Fraudulent Activities by Business Actors**

Along with the increased social interactions in society, especially due to advancing technology, the law is also required to keep up with the changes that occur. Technology brings big changes to human life, besides having a positive impact, it seems that technological developments are being used by some people to develop various modes of crime considering that their use can be done freely by anyone. According to Wahid and Labib quoted by Dhanier Eka Budiastanti, crimes related to technology are divided into 2 (two), namely crimes that damage computer systems, and crimes that use computers as a tool to carry out vicious acts (Budiastanti, 2017). One of the crimes that have developed using electronic systems as a tool for doing vicious acts is a fraud.

The provision that regulates fraud is Article 378 of the Criminal Code: Any person who with the intention of illegally benefiting himself or another person, using a false name or false dignity, by deception, or a series of lies, moves another person to surrender something to him, or to give a debt or write off receivables is threatened with fraud with a maximum imprisonment of four years. The provisions in the article explain that fraud requires a causal subjective relationship between actions affecting the will of others so that the will is formed according to what the maker wants (Budiastanti, 2017). Fraud in article 378 of the Criminal Code consists of:

- a. Objective element:
  - 1) the act of driving
  - 2) it is people who are driven
  - 3) giving objects
  - 4) give debt or write off receivables
  - 5) using a variety of measures: a false name or dignity, with tricks, or a series of lies
- b. Subjective element:
  - 1) actions intended to benefit oneself or others
  - 2) done against the law

The fraud mentioned in Article 378 of the Criminal Code does not specifically mention fraud via the internet, so it cannot penalize the fraud's actors who are in cyberspace.

Indonesia has regulated itself regarding crimes that occur in cyberspace through Law Number 11 of 2008 concerning Electronic Information and Transactions as amended to Law Number 19 of 2016, hereinafter referred to as the ITE Law. The emergence of regulations regarding cyber law in Indonesia can be seen through 2 (two) approaches that describe the relationship between technology and law. First, the instrumental theory approach, according to Cockfield & Priedmore as quoted by Indriati Amarini, the instrumental theory sees technology as something neutral, it is created to meet certain needs and is separate from economic, political, social, and cultural processes. If there is a misuse of technology, the people who use the technology are blamed, not the technology itself. This approach will then emphasize the need to follow

existing laws to maintain legal consistency and certainty. Second, the substantive theoretical approach that sees technology as something that is not neutral, it is closely related to the interests of the subject which makes it necessary to form rules to adjust technological developments in order to safeguard the interests of society that also develop along with the presence of new technology (Amarini, 2018).

The ITE Law itself does not specifically explain fraud, but some articles tend to be close to fraud due to the impact of losses on victims of transactions, in Article 28 paragraph 1: Everyone knowingly and without the right to distribute false and misleading news that resulted consumer losses in Electronic Transactions. This article regulates actions that are prohibited in electronic transactions, namely that everyone is prohibited from spreading false and misleading news. which can harm consumers.

Users who use their accounts to provide false information and commit a series of lies resulting in fraud have violated Article 28 paragraph (1) of the ITE Law. Following are the elements contained in Article 28 paragraph (1):

a. Objective element:

- 1) the act of spreading
- 2) which is spread is false and misleading news
- 3) cause consumer losses in electronic transactions

Consumer losses, in general, can be divided into 2 (two): first, losses caused by the behavior of irresponsible merchants harm consumers, then consumer losses due to illegal actions by third parties so that consumers are misled and then harmed (Solim et al., 2019).

b. Subjective elements:

- 1) the element of error, that is spreading false and misleading news
- 2) against the law without rights

Based on these two rules, there are differences in the imposition of criminal responsibility in Article 378 of the Criminal Code and Article 28 paragraph (1) of the ITE Law. Article 378 of the Criminal Code provides a sanction of 4 (four) years in prison for the perpetrator of fraud, while Article 28 paragraph (1) does not directly mention criminal sanctions but is contained in Article 45A paragraph (1) which mentions imprisonment for a maximum of 6 (six) years and/or a fine of 1 (one) billion rupiah.

The rise of fraud using technology occurs due to the interpretation by victims that the invitation, offer, or explanation conveyed by the perpetrator is a reality, using the knowledge that the victim has then he builds a thought on all the symbols he receives. The trust given by the victim to the perpetrator's invitation is only used during the interaction (Rusmana, 2015).

#### 4. Conclusion

Based on the description above, it can be concluded that the relations between endorsers and fraudulent activities carried out by digital economy players are by creating trust in the public that giveaway exists without conducting further investigations regarding the awarding of prizes. Fraud is seen as a causal subjective relationship where there is an act of influencing the will of others which is created by endorsers so that someone gives something to the business actor. Losses suffered by consumers exist due to actions against the law so that consumers are misled. Endorsers must be careful in promoting something, not only money-oriented without paying

attention to the impact that will be experienced by consumers. When the endorsers decide to cooperate, they should have studied the products or services offered to them because they are the one that has a responsibility when the consumer gets a loss.

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