

## CONSUMER PROTECTION REGARDING MISLEADING ADVERTISING IN COMMUNICATION SERVICES

Teuku Daudsyah

Universitas Islam Sumatera Utara

Email : [tengkudaudsyah@fh.uisu.ac.id](mailto:tengkudaudsyah@fh.uisu.ac.id)

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### ABSTRACT

Telecommunications consumer protection requires greater government attention to ensure consumers receive clear protection and secure access to their rights. Legal protection for mobile phone service users who act in bad faith is based on the normative basis of Law Number 8 of 1999 concerning Consumer Protection and contract law. In this regard, mobile phone service providers must uphold consumer rights, including the right to correct, clear, and honest information regarding the condition and guarantees of goods and/or services, as well as consumer rights in the form of standard clauses contained in subscription contracts. The liability of telecommunications service providers for consumer dissatisfaction with mobile phone services generally relates to liability for defective products, such as unusable cards, and service liability, such as lost credit not caused by user negligence, and manufacturer promises as stated in advertisements. This is in accordance with Article 22 of Law Number 8 of 1999 concerning Consumer Protection, which stipulates that proving the existence or absence of any element of error or negligence in a case or matter is the responsibility of the business actor or telecommunications service provider.

### 1. Introduction

Legal protection for consumers is a major concern because it involves regulations designed to improve the well-being of consumers. Consumer protection is necessary because consumer rights are often neglected by businesses. Consumers need protection because they face greater risks than businesses; in other words, their rights are highly vulnerable. Due to consumers' weak bargaining position, consumer rights are highly vulnerable to violation. Consumer protection encompasses many aspects, one of which is the legal aspect. Law in society is always evolving dynamically in line with the development of society itself; law has significant significance within that society. Law functions to regulate social life and thus protect the public's interests. Good law is law that lives within



society and is complied with by the public. Law can also act to protect consumer interests. Consumer protection is one of the new legal developments in Indonesia. In the era of globalization and free trade, supported by advances in communication and information technology, many products and/or services are currently offered in Indonesia, whether through advertising, promotions, or direct offers, including telecommunications services. As is well known, fast telecommunications services are essential for all groups to support their various activities. As a diverse nation, Indonesia has diverse needs. The motivation for people to meet these needs arises from a desire for change in their lives and is also based on a desire to improve their well-being. To achieve this, communication is essential for interactions between individuals and on a larger scale, namely interactions between parties. Communication in an interaction involves not only one party but also others.

Communication in these interactions has a pattern of implementation, both direct and indirect. Currently, communication is no longer conducted directly through face-to-face contact. However, with the advancement of technology, communication has become a vital means of connecting individuals, necessitating indirect communication. As time goes by, the diverse needs of society, in accordance with their dignity, are increasing. This is demonstrated by the increasing number of needs that must be met. A variety of electronic products have emerged to make life easier for people, including communication devices like cellular phones, commonly known as handphones. Efforts to improve quality and convenience are key to the success of telecommunications services. The future of wireless telecommunications is also increasingly driven by the rapid development of the internet. Wireless technology allows anyone to access the internet wherever they are without the hassle of finding a landline. However, accessing the internet or sending information via a wireless modem currently relies on the ability of mobile phone operators to provide a cellular network. With the increasingly busy activities of both business people and the general public, and the advancement of communications technology, the need for effective communication has also increased. Undeniably, mobile phones have become an essential part of their daily lives, as they provide a solution that facilitates communication without limiting one's space and movement. Furthermore, mobile phones are now widely recognized and used by people around the world.

As companies providing vital services to society, telecommunications companies strive to serve the public interest, while maintaining a profit-oriented focus. Therefore, they consider how telephones can no longer be used solely for indirect communication but also for profit from their use as a supporting tool for indirect communication. Based on this, telecommunications companies provide additional



features for telephones, aimed at facilitating telecommunications operations while still generating profits.

Telecommunications consumer protection must receive greater government attention to ensure consumers receive clear protection and secure access to their rights. This also significantly impacts consumer trust in existing providers, ensuring that trust in these providers is not eroded. Consumers have the right to protection from dissatisfaction with the use of mobile phone cards, such as prepaid cards. The use of prepaid mobile phone cards is not merely a business activity; therefore, strict oversight is essential for the well-being of the public and consumers. Strong legal protection and accountability from cellular providers in matters of consumer dissatisfaction and consumer protection are essential.

## 2. Research Method

This research is "descriptive and analytical in nature because it only describes the object of study, investigated by describing applicable laws and regulations in relation to legal theories and the practice of implementing legislation." The approach used in this research is a normative juridical approach, namely "analyzing the research problem through an approach to legal principles that refer to applicable norms or rules of positive law." In relation to the research method used, the author conducted this by examining regulations, legislation, court decisions, circulars and jurisprudence, legal magazines, legal theories, and the opinions of leading legal scholars, which constitute secondary data, then related these to consumer protection.

## 3. Results And Discussion

The rapid development of telecommunications facilities has presented humans with a seemingly limitless range of communication options. In the decades before the 1990s, humans only knew landline telephones. In the current millennium, various types of mobile phones have emerged, providing portable telecommunications services. Mobile phones, more popularly known as handphones, are one of the many electronic products that have become a popular means of communication in Indonesia. The emergence of mobile phones as a means of communication has led to the emergence of telecommunications service operators, providing a choice for users. Advances in trade and the development of science and technology have also led to the introduction of various types of agreements, one of which is the mobile phone service agreement or mobile telecommunications subscription agreement. This situation is supported by

globalization, free trade, and advances in telecommunications technology, which can expand the flow of goods and services.

Advances in information technology are highly beneficial for consumers, as they meet their needs and provide the freedom to choose various types and qualities of goods or services according to their desires and capabilities. However, on the other hand, they can create an imbalance between businesses and consumers, placing consumers in a vulnerable position. Businesses seek to maximize profits through various promotions, sales methods, and the implementation of standard agreements that are detrimental to consumers. Consumer protection encompasses many aspects. One of these is the legal aspect. Law in society is always evolving dynamically in line with the development of society itself, and it holds significant significance within that society. Law functions to regulate social life and thus protect its interests. Good law is law that is alive in society and is obeyed by the public. Law can also act to protect consumer interests.

Consumer protection law receives special attention because it is related to public welfare. The government plays a role in regulating, supervising, and controlling, creating a conducive, interconnected system, thereby achieving the goal of broad public welfare. The development of consumer protection law in Indonesia aims to provide protection for consumers in Indonesia. According to the General Provisions of Law Number 8 of 1999 concerning Consumer Protection, Supplement to the State Gazette of 1999 Number 3821, consumer protection is defined as all efforts to ensure legal certainty to protect consumers. Consumer protection through this law will provide legal protection for consumers in Indonesia. According to Abdul Halim Barkatullah, consumers need protection because they face greater risks than businesses. In other words, consumer rights are highly vulnerable. Due to consumers' weak bargaining power, consumer rights are highly vulnerable to violations.

As time goes by, people's diverse needs, in line with their dignity, are increasing. This is demonstrated by the increasing number of needs that must be met. A variety of electronic products have emerged to facilitate people's lives, one of which is communication devices such as mobile phones, commonly known as handphones. Currently, mobile phones are an essential necessity for people in carrying out their daily activities. They are practical and relatively easy to carry compared to other communication devices. Through mobile phones, many people can connect directly with friends and family who live far away.

Mobile phones are a digital communication network that currently connects thousands of people across the world. To operate a mobile phone, a SIM card is required from a specific cellular operator or provider. This presents an opportunity for businesses to promote their products, and some people exploit it



for their own personal gain. Telecommunications consumer protection must receive greater government attention to ensure consumers receive clear protection and secure access to their rights. This also significantly impacts consumer trust in existing providers, ensuring that trust in these providers is not diminished.

Consumers have the right to protection from dissatisfaction with their mobile phone cards, such as prepaid cards. The use of prepaid mobile cards is not merely a business activity; therefore, it must be strictly monitored, as it is essential for the well-being of the public and consumers. Strong legal protection and accountability from mobile providers in matters of consumer dissatisfaction and consumer protection are essential. Based on this incident, those who were negatively impacted were, of course, the public as consumers using the provider. Article 1, point 2 of Law Number 8 of 1999 stipulates: "A consumer is any person who uses goods and/or services available in the community, whether for their own benefit, their family, other people, or other living beings, and not for trade." Furthermore, Article 1, point 4 of Law Number 8 of 1999 defines "goods" as: "Any object, whether tangible or intangible, movable or immovable, consumable or non-consumable, that can be traded, used, utilized, or exploited by consumers."

Based on these two definitions, when combined with the provisions of Articles 1, points 2 and 4 of Law Number 8 of 1999, prepaid card users are consumers who must receive guaranteed protection from telecommunications service providers.

Article 1, point 3 of Law Number 8 of 1999 states: "A business actor is any individual or business entity, whether a legal entity or not, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through an agreement, to conduct business activities in various economic sectors." Based on this article, a provider, as a company, can be considered a business actor. As a business actor, a provider is responsible for the products or quality of the telecommunications services it provides. Therefore, if a consumer feels disadvantaged, the business actor (provider) providing telecommunications services, such as prepaid mobile phone cards, must be responsible for the losses incurred as a result of the consumer's use or consumption of the mobile phone.

Legal regulations that can be used to examine this issue include: the 1945 Constitution of the Republic of Indonesia as amended 4th, Chapter XA Article 28D paragraph (1), Law Number 8 of 1999 concerning Consumer Protection, State Gazette of the Republic of Indonesia. Law of the Republic of Indonesia Number 42 of 1999, Chapter VI, Article 19, paragraphs (1), (2), (3), (4), (5). Law Number 8 of 1999 concerning Consumer Protection, State Gazette of the Republic of Indonesia Number 42 of 1999, Chapter VI, Article 23. Law Number 36 of 1999 concerning Telecommunications, State Gazette of the Republic of Indonesia Number 3881 of



1999. The existence of cellular providers as producers of products used by the general public and consumers who use cellular provider products in the form of SIM cards. This should be a reciprocal relationship between them, namely a mutually beneficial relationship. Providers need consumers to use their SIM cards, and consumers need SIM cards in the form of credit to communicate with other members of the public. However, in reality, consumers are often disadvantaged by cellular providers, namely various disruptions/cases arising from the use of these cards.

The above cases are very detrimental to consumers as users of these SIM cards. In this case, the victim has rights and obligations as a consumer that can be fought for, as stipulated in Law Number 8 of 1999, Articles 4 and 5. Law Number 8 of 1999 also regulates the rights and obligations of producers in Articles 6 and 7, prohibits business actors in Articles 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, and regulates the responsibilities of business actors in Article 19. This law should be used as a legal means to handle this case. Reality shows that consumers in electronic business transactions always bear a greater risk burden than the risks borne by producers or business actors. Therefore, it is somewhat difficult to protect consumer rights in this type of business activity, because producers or business actors tend to choose standard agreement models whose substance is determined only by the producers or business actors themselves. One of the probability factors that harms consumer rights is that the products marketed are not suitable for consumer consumption and do not match what is promoted by business actors, so that consumer rights are often ignored by them.

The issue of consumer protection is intertwined with the globalized business world. This is clearly evident in the textual considerations of Law No. 8 of 1999 concerning Consumer Protection, which, in point (c), emphasizes that the increasing openness of national markets as a result of economic globalization must continue to guarantee increased public welfare and certainty regarding the quality, quantity, and safety of goods and/or services purchased in the market. Furthermore, point (d) emphasizes that to enhance consumer dignity, it is necessary to increase consumer awareness, knowledge, concern, ability, and independence to protect themselves and develop responsible business actors. Based on this formulation, it can be said that legal liability is: A legal obligation or duty to bear all legal responsibility if something occurs that can be claimed, blamed, or assumed to be the result of one's own actions. Consumer transactions constitute a contract, namely a civil contract. From a civil law perspective, consumer transaction contracts do not simply occur spontaneously. A consumer contract is the implementation of a previous contract, known as a pre-transaction consumer contract. After a consumer transaction is completed, there are other

obligations that must be fulfilled by both parties, known as post-transaction consumer contracts or post-sales transactions. The principle of liability is a crucial issue for telecommunications product providers to consider in consumer protection matters. This requires careful analysis of who is responsible and the extent of responsibility assigned to the relevant parties, namely the telecommunications product provider as a business actor. Product liability is the responsibility of producers or telecommunications product providers as business actors for losses caused by their delivered/marketted goods. Product liability stems from specific product conditions (defects or harm to others).

#### 4. Conclusion

Legal protection for mobile phone service users who act in bad faith is based on the normative foundations of Law Number 8 of 1999 concerning Consumer Protection and contract law. In this regard, mobile phone service providers must uphold consumer rights, including the right to correct, clear, and honest information regarding the condition and guarantees of goods and/or services, as well as the standard clauses contained in subscription contracts. The liability of telecommunications service providers for consumer dissatisfaction with mobile phone services generally relates to liability for defective products, such as unusable cards, and service liability, such as lost credit not caused by user negligence, and manufacturer promises as stated in advertisements. This is in accordance with Article 22 of Law Number 8 of 1999 concerning Consumer Protection, which stipulates that proving the existence of errors or negligence in a case or situation is the responsibility of the business actor or telecommunications service provider.

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