



## Securing Consumer Rights: Ethical and Legal Measures against Advertisements that Violate Advertising Procedures

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**Abstract.** Advertising is an integral part of modern consumer culture, shaping consumer behavior and influencing purchasing decisions. However, concerns have arisen regarding advertisements that violate established advertising procedures, such as false claims, deceptive practices, and manipulative tactics. This paper explores the legal measures available to protect consumers from such advertisements and secure their rights. It emphasizes the importance of consumer rights in maintaining a fair marketplace and examines the consequences of advertising violations on consumer trust and decision-making. The research adopts a comprehensive methodology, combining normative and empirical juridical approaches, to analyze the existing legal framework and propose improvements. The study highlights the responsibilities of advertisers, advertising companies, and advertising media in ensuring compliance with ethical standards. It also discusses the implications of sanctions for violations and explores the resolution of consumer disputes through specialized bodies or the court system. The findings contribute to ongoing discussions on consumer protection in advertising and aim to foster a fair and transparent marketplace that respects consumers' rights

**Keywords:** Advertising procedures, consumer rights, misleading advertisements, legal measures

**Abstrak.** Periklanan merupakan bagian integral dari budaya konsumen modern, membentuk perilaku konsumen dan memengaruhi keputusan pembelian. Namun, muncul kekhawatiran mengenai iklan yang melanggar prosedur periklanan yang telah ditetapkan, seperti klaim palsu, praktik penipuan, dan taktik manipulatif. Makalah ini mengeksplorasi langkah-langkah hukum yang tersedia untuk melindungi konsumen dari iklan semacam itu dan mengamankan hak-hak mereka. Ini menekankan pentingnya hak-hak konsumen dalam menjaga pasar yang adil dan memeriksa konsekuensi dari pelanggaran iklan pada kepercayaan konsumen dan pengambilan keputusan. Penelitian ini mengadopsi metodologi yang komprehensif, menggabungkan pendekatan yuridis normatif dan empiris, untuk menganalisis kerangka hukum yang ada dan mengusulkan perbaikan. Studi ini menyoroti tanggung jawab pengiklanan, perusahaan periklanan, dan media periklanan dalam memastikan kepatuhan terhadap standar etika. Dibahas pula implikasi sanksi atas pelanggaran dan pendalaman penyelesaian sengketa konsumen melalui badan khusus atau sistem pengadilan. Temuan berkontribusi pada diskusi berkelanjutan tentang perlindungan konsumen dalam periklanan dan bertujuan untuk mendorong pasar yang adil dan transparan yang menghormati hak-hak konsumen

**Kata kunci:** Prosedur periklanan, hak konsumen, iklan yang menyesatkan, tindakan hukum

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## 1. Introduction

Advertising plays a significant role in shaping consumer behavior, influencing purchasing decisions, and promoting products and services, making it an integral part of modern consumer culture.<sup>1</sup> However, as the advertising industry continues to evolve and expand across various platforms, concerns have arisen regarding advertisements that deviate from established advertising procedures.<sup>2</sup> These violations can manifest as false claims, deceptive practices, or manipulative tactics aimed at influencing consumer perceptions.

Consumer rights, which encompass the fundamental entitlements individuals have when engaging in economic transactions, are crucial for maintaining a fair and ethical marketplace.<sup>3</sup> Misleading advertisements not only erode consumer trust but also infringe upon their rights to accurate and transparent information.<sup>4</sup> Therefore, it is imperative to examine the legal measures available to protect consumers from advertisements that violate established advertising procedures and compromise their rights.<sup>5</sup>

The significance of advertising lies in its ability to inform, persuade, and raise awareness about brands and products.<sup>6</sup> It provides businesses with a platform to showcase their offerings to a wide audience, enabling them to reach potential customers and gain a competitive edge in the market. Simultaneously, consumers

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<sup>1</sup> Wided Batat, *Experiential marketing: Consumer behavior, customer experience and the 7Es* (London: Routledge, 2019), 6. See also, Marieke de Mooij, *Consumer Behavior and Culture: Consequences for Global Marketing and Advertising* (London: Sage Publications Ltd., 2019), 8; Taanika Arora, Arvind Kumar, and Bhawna Agarwal, “Impact of social media advertising on millennials buying behaviour,” *International Journal of Intelligent Enterprise* 7, no. 4 (2020): 481.

<sup>2</sup> Lee Wilkins, Chad Painter, and Philip Patterson, *Media ethics: Issues and cases* (Lanham, MD: Rowman & Littlefield, 2021), 54.

<sup>3</sup> Stefan Kirchner and Elke Schüßler, “Regulating the sharing economy: a field perspective,” in *Theorizing the sharing economy: Variety and trajectories of new forms of organizing*, ed. Indre Maurer, Johanna Mair, and Achim Oberg (Bingley: Emerald Publishing Limited, 2020), 216. See also, Guo Bai and S. Ramakrishna Velamuri, “Contextualizing the sharing economy,” *Journal of Management Studies* 58, no. 4 (2021): 977; Kristofer Erickson and Inge Sørensen, “Regulating the sharing economy,” *Internet Policy Review: Journal on Internet Regulation* 5, no. 2 (2016): 10.

<sup>4</sup> Desirée Schmuck, Jörg Matthes, and Brigitte Naderer, “Misleading consumers with green advertising? An affect–reason–involvement account of greenwashing effects in environmental advertising,” *Journal of Advertising* 47, no. 2 (2018): 127.

<sup>5</sup> Geraint Howells and Stephen Weatherill, *Consumer protection law* (London: Routledge, 2017), 76.

<sup>6</sup> Béatrice Parguel, Florence Benoit-Moreau and Cristel Antonia Russell, “Can evoking nature in advertising mislead consumers? The power of ‘executonal greenwashing,’” *International Journal of Advertising* 34, no. 1 (2015): 107.

rely on advertising to gather information, compare products, and make informed choices that align with their needs and preferences.<sup>7</sup>

Nevertheless, the proliferation of advertisements has raised concerns about the ethical conduct of advertisers.<sup>8</sup> While advertising is a legitimate form of communication, it must adhere to established procedures and ethical standards to maintain a fair and trustworthy marketplace. Unfortunately, certain advertisements deviate from these procedures, resorting to misleading tactics and deceptive practices to gain an advantage or manipulate consumer perceptions.<sup>9</sup>

Consumer rights serve as a vital safeguard for individuals, ensuring a level playing field in commercial transactions.<sup>10</sup> These rights encompass various entitlements, including access to accurate information, protection against fraudulent or deceptive practices, and the assurance of fair and transparent transactions. When advertisements violate established procedures, they encroach upon these consumer rights, eroding trust, distorting market dynamics, and potentially causing harm to individuals.<sup>11</sup>

For example, advertisements that feature false or misleading claims can lead consumers to make ill-informed purchasing decisions, resulting in financial losses or negative effects on their well-being.<sup>12</sup> Deceptive practices such as hidden fees, exaggerated product benefits, or manipulated testimonials can misguide consumers, creating unrealistic expectations and impairing their ability to make rational choices. Moreover, advertisements targeting vulnerable groups or exploiting societal concerns can further widen the power imbalance between businesses and consumers.<sup>13</sup>

To address these pressing issues, it is essential to examine the legal measures available to protect consumer rights within the realm of advertising. By ensuring

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<sup>7</sup> Behrang Rezabakhsh, Daniel Bornemann, Ursula Hansen, and Ulf Schrader, "Consumer power: a comparison of the old economy and the Internet economy," *Journal of Consumer Policy* 29, no. 1 (2006): 8.

<sup>8</sup> Minette Drumwright, "Ethical issues in marketing, advertising, and sales," in *The Routledge Companion to Business Ethics*, ed. Eugene Heath, Byron Kaldis, and Alexei Marcoux (London: Routledge, 2018), 507.

<sup>9</sup> Jagdish N. Sheth and Rajendra Sisodia, *Does marketing need reform? Fresh perspectives on the future* (New York: ME Sharpe, 2006), 16.

<sup>10</sup> David S. Schwartz, "Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in an Age of Compelled Arbitration," *Wisconsin Law Review* 1 (1997): 33.

<sup>11</sup> Nicole Votolato Montgomery, Sekar Raju, Kalpesh Kaushik Desai, and H. Rao Unnava, "When good consumers turn bad: Psychological contract breach in committed brand relationships," *Journal of Consumer Psychology* 28, no. 3 (2018): 437.

<sup>12</sup> Iqbal Thonse Hawaldar, Mithun S. Ullal, Felicia Ramona Birau, and Cristi Marcel Spulbar, "Trapping fake discounts as drivers of real revenues and their impact on consumer's behavior in India: A case study," *Sustainability* 11, no. 17 (2019): 4.

<sup>13</sup> Kelly D. Martin and Patrick E. Murphy, "The role of data privacy in marketing," *Journal of the Academy of Marketing Science* 45 (2017): 135.

that advertisements adhere to established procedures and ethical guidelines, consumer trust can be restored, enabling individuals to confidently engage in commercial transactions.<sup>14</sup> Additionally, robust legal frameworks promote fair competition, encourage responsible business practices, and contribute to a healthy marketplace that benefits both businesses and consumers.<sup>15</sup>

The purpose of this research paper is to delve into the legal measures designed to address advertisements that violate established advertising procedures and assess their effectiveness in securing consumer rights. By analyzing the existing legal framework, evaluating the consequences faced by consumers and businesses due to advertising violations, and exploring potential improvements, this study aims to contribute to ongoing discussions surrounding consumer protection in advertising. Ultimately, the goal is to foster a fair and transparent marketplace that respects consumers' rights, empowers individuals to make informed choices, and cultivates trust between businesses and their customers.

## **2. Research Methods**

This research paper adopts a comprehensive methodology, combining normative juridical and empirical juridical approaches, to investigate the legal measures against advertisements that violate advertising procedures and their effectiveness in securing consumer rights. The study employs a qualitative and descriptive research design, primarily relying on secondary data sources. The normative juridical approach involves analyzing legal texts such as legislation, regulations, guidelines, and case law to identify the legal principles governing advertising practices and their conformity with established procedures. The empirical juridical approach focuses on secondary data collection through an extensive literature review, utilizing the documentary study method. Thematic analysis will be conducted on the collected data to identify patterns and trends. By employing this methodology, the research aims to provide a comprehensive examination of the legal measures, contributing to the understanding of consumer rights protection in advertising and proposing recommendations for enhancing the legal framework in this domain.

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<sup>14</sup> Beomjoon Choi and Suna La, "The impact of corporate social responsibility (CSR) and customer trust on the restoration of loyalty after service failure and recovery," *Journal of Services Marketing* 27, no. 3 (2013): 223.

<sup>15</sup> Rabah Arezki et al., *Reaching New Heights: Promoting Fair Competition in the Middle East and North Africa* (Washington, DC: World Bank Publications, 2019), 15.

### 3. Results and Discussion

#### 3.1. The Evolution of Advertising and Ensuring Consumer Protection

In the rapidly evolving technological landscape, advertising agencies face intense competition as they strive to create captivating ads and influence consumers to purchase promoted products.<sup>16</sup> Consequently, advertising agencies have undergone a significant transformation, becoming versatile and independent service providers.

Advertising is a paid form of communication with six key elements.<sup>17</sup> While some forms of advertising, like public service announcements, utilize unpaid space, most advertising serves as a platform for showcasing product features and informing consumers about the manufacturers. The ultimate objective of advertising is to persuade consumers to engage in specific activities and use the promoted products.<sup>18</sup> To effectively deliver messages, advertising relies on various media channels, making it a non-personal, mass communication tool. Additionally, ads must be designed with a clear target audience in mind to ensure their effectiveness.

Consumer Protection Law No. 8 of 1999, Article 17 Paragraph (1), explicitly prohibits advertising businesses from deceiving consumers regarding the quality, quantity, materials, usefulness, and price of goods and/or services. This provision also includes the accuracy of delivery timing for goods and/or services. These regulations are in place to safeguard consumer interests and prevent deceptive advertising practices.

Regrettably, Indonesia experiences a prevalence of misleading advertisements that contain deceptive elements across both print and electronic media platforms. For instance, housing advertisements may claim a proximity of “only 15 minutes” to the city center without providing transportation details, thereby neglecting the diverse modes of travel available to potential buyers.<sup>19</sup> Beauty product advertisements tend to emphasize the positive aspects while withholding information about potential negative effects or side effects that could harm consumers. Similarly, medication advertisements often fail to highlight the

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<sup>16</sup> Michael E. Porter and Mark R. Kramer, “Creating shared value: How to reinvent capitalism—And unleash a wave of innovation and growth,” in *Managing sustainable business: An executive education case and textbook*, ed. Gilbert G. Lenssen and N. Craig Smith (Dordrecht: Springer Netherlands, 2018), 324.

<sup>17</sup> Taufik H. Simatupang, *Aspek hukum periklanan* (Bandung: Citra Aditya Bakti, 2018), 32.

<sup>18</sup> Morgan Glucksman, “The rise of social media influencer marketing on lifestyle branding: A case study of Lucie Fink,” *Elon Journal of undergraduate research in communications* 8, no. 2 (2017): 77.

<sup>19</sup> Ahmad Syarifudin, “Cari Hunian Strategis? Perumahan Di Kalijambe Sragen Bisa Jadi Opsi: Dekat Gerbang Tol, Sudah Laku 15.” *Tribunnews.com*, Oct 11, 2022. Retrieved <https://solo.tribunnews.com/2022/10/11/cari-hunian-strategis-perumahan-di-kalijambe-sragen-bisa-jadi-opsi-dekat-gerbang-tolsudah-laku-15>, accessed Mar 12, 2023.

importance of reading and following instructions, thereby potentially compromising consumer well-being.

### **3.2. A Comparison: The Anti-Monopoly Committee of Ukraine (AMK)'s Role**

The Anti-Monopoly Committee of Ukraine (AMK) holds a crucial responsibility in enforcing competition laws related to advertising practices within the country.<sup>20</sup> As an independent regulatory body, the AMK actively monitors the market to identify unfair advertising practices and takes necessary actions to ensure compliance with advertising regulations. If an advertisement is found to be in violation of advertising procedures, the AMK has the authority to issue various measures to rectify the situation.<sup>21</sup>

The AMK acts as a vigilant watchdog, actively monitoring the advertising landscape in Ukraine to identify potential instances of unfair competition and deceptive advertising practices.<sup>22</sup> By analyzing various advertising channels, including print media, television, radio, online platforms, and social media, the AMK remains alert to emerging trends and swiftly detects advertisements that may violate advertising procedures. This proactive approach helps maintain a level playing field for businesses and protects consumers from misleading information.<sup>23</sup> When the AMK receives complaints or suspects unfair advertising practices, it initiates thorough investigations into alleged violations. These investigations can be triggered by consumer complaints, competitor concerns, or the AMK's independent findings during market monitoring.<sup>24</sup> During the investigation process, the AMK collects evidence, interviews relevant parties, and scrutinizes the advertising content to determine whether it indeed violates advertising

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<sup>20</sup> Kseniia Smyrnova and Bohdan Veselovskyi, "Candidate Countries: Ukraine: Current Jurisprudence in Cases of State Aid: Quo Vadis or Europeanisation in Action," *European State Aid Law Quarterly* 21, no. 2 (2022): 210

<sup>21</sup> Ovidiu Horia Maican, "Competition Council in Ukraine," in *Administrative Corpus Juris between Implementation, Reforms and Continuous Developments*. Contributions to the 5<sup>th</sup> International Conference, "Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective" (Bucharest: Societatea de Științe Juridice și Administrative, May 27, 2022), 106.

<sup>22</sup> John Lough, "Ukraine's system of crony capitalism: The challenge of dismantling 'systema,'" *Research Paper, Russia and Eurasia Programme* (London: Chattem House, 2021), 28.

<sup>23</sup> Olga Gurgula, *The Intersection Between Intellectual Property and Competition Laws in the Pharmaceutical Sector: A Ukrainian Perspective* (Heidelberg: Springer, 2023), 23.

<sup>24</sup> Małgorzata Jakubiak and Anna Kolesnichenko, eds., "Prospects for EU-Ukraine Economic Relations," *CASE Reports* 66/2006 (CASE - Center for Social and Economic, Warsaw, Poland, 2006), 66.

procedures.<sup>25</sup> This robust enforcement ensures that advertisers are held accountable for their marketing practices.

Upon confirming that an advertisement violates advertising procedures, the AMK has the authority to issue cease and desist orders. These orders demand that the advertiser immediately stops disseminating or publishing the offending advertisement.<sup>26</sup> Cease and desist orders serve as swift measures to prevent further harm to consumers and competitors while the investigation is ongoing or to halt the continuation of deceptive practices. This enables the AMK to act promptly in protecting the interests of the public and ensuring fair competition.<sup>27</sup>

In addition to issuing cease and desist orders, the AMK can impose fines and penalties on advertisers found guilty of breaching advertising regulations.<sup>28</sup> The severity of the fine is determined based on the gravity of the violation, the scale of the advertising campaign, and the advertiser's compliance history. The imposition of fines acts as a powerful deterrent, dissuading advertisers from engaging in deceptive practices and maintaining ethical advertising standards.<sup>29</sup>

Apart from cease-and-desist orders and fines, the AMK can take other appropriate measures to address violations of advertising procedures. These measures may include requiring the advertiser to issue corrective statements or undertakings, seeking corrective advertising to clarify misleading claims, or demanding the removal of specific deceptive elements from the advertisement.<sup>30</sup> By utilizing various measures, the AMK ensures that advertisers are held responsible for their actions and encouraged to adhere to ethical advertising practices.

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<sup>25</sup> Zvenyslava Opeida, "Competition and International Trade: Complementing Trade Defense Policy with Effective Competition Policy in Ukraine," in *Competition and Intellectual Property Law in Ukraine*, ed Heiko Richter (Berlin, Heidelberg: Springer, 2023), 38.

<sup>26</sup> Ganna Fokina, "Trademark law as a tool of protection against unfair competition: lessons for Ukraine" (Master thesis. International and Comparative Intellectual Property Law, Central European University, 2015), 67.

<sup>27</sup> Richard Masquelier, "After 19 Years of Complete Oblivion, Are Interim Measures the European Commission's New Panacea to Enforce Article 102 TFEU in the Digital Age?," *European Competition and Regulatory Law Review* 5, no. 1 (2021): 24.

<sup>28</sup> Olga Bakalinska, "Legal Mechanisms of Protection Against Unfair Competition in Ukraine—Prerequisites, Problems and Trends," in *Competition and Intellectual Property Law in Ukraine*, ed. Heiko Richter. Berlin, Heidelberg: Springer, 2023), 223.

<sup>29</sup> Donald I. Baker, "The use of criminal law remedies to deter and punish cartels and bid-rigging," *George Washington law review* 69, no. 5 (2000): 693.

<sup>30</sup> Fokina, "Trademark law as a tool," 15.

### **3.3. Ensuring Legal Protection for Consumers Against Unethical Advertisements**

Advertising plays a crucial role in both the legal and advertising realms. It serves as a specialized form of publication aimed at connecting sellers and buyers. In order to make informed purchasing decisions, consumers rely heavily on detailed information about products, including their advantages and disadvantages. Consequently, it is essential to establish legal safeguards to protect consumers from advertisements that breach ethical advertising codes.<sup>31</sup>

Businesses involved in advertising have four crucial obligations pertaining to consumer information.<sup>32</sup> Firstly, they are legally bound to provide consumers with accurate information, making producers accountable for the information conveyed. Vital details encompass pricing, quality, potential side effects, and other relevant information necessary for consumers during the product selection process. Secondly, excessive market information must be avoided as it misleads consumers. Thirdly, stringent control measures, such as monitoring and regulating product information and addressing false claims, should be implemented. Lastly, policies should be in place to recognize consumers' rights to accurate information. Producers bear the responsibility of conveying truthful and honest information about the products they advertise.<sup>33</sup> This necessitates the incorporation of complementary and compensatory policies to safeguard consumers' economic and health interests. Upholding principles of fairness, balance, security, safety, and legal certainty is crucial in ensuring effective consumer protection.

Over time, the principle of "Let the buyer beware" (caveat emptor), which placed the onus on consumers to exercise caution, has shifted to "caveat vendor," emphasizing the need for businesses to provide accurate information about advertised product.<sup>34</sup> Consequently, businesses are obligated to exercise caution in their marketing strategies, and consumers possess the right to seek redress in case of contractual breaches. Although legal standing between businesses and consumers may appear equal, consumers often find themselves subjected to rules set by businesses, particularly in advertising where product superiority is frequently

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<sup>31</sup> Cagri Yalkin, Hayriye Kahveci, and Kubra Uygur, "Advertising as discursive reflections of the political realm: Turkish-Cypriot advertisements between 1940-1974," *Journal of historical research in marketing* 15, no. 1 (2023): 25.

<sup>32</sup> Christopher A. Summers, Robert W. Smith, and Rebecca Walker Reczek, "An audience of one: Behaviorally targeted ads as implied social labels," *Journal of Consumer Research* 43, no. 1 (2016): 156.

<sup>33</sup> Phillip Nelson, "Advertising as information," *Journal of political economy* 82, no. 4 (1974): 729.

<sup>34</sup> Esben Rahbek Pedersen and Peter Neergaard, "Caveat emptor—let the buyer beware! Environmental labelling and the limitations of 'green' consumerism," *Business strategy and the Environment* 15, no. 1 (2006): 15.

accentuated while weaknesses are downplayed. This situation can have detrimental consequences for consumers, leading to subsequent losses.<sup>35</sup>

The protection of consumers against advertisements violating advertising ethics necessitates compliance with the Consumer Protection Law (UU PK). The law explicitly prohibits the dissemination of false or misleading information to consumers (Consumer Protection Law No. 8 of 1999, Article 17). Furthermore, the law prescribes measures for information control to shield consumers effectively. These information control measures can be broadly classified into four categories. Firstly, removing information barriers through continuous monitoring and control of product information received by consumers. Secondly, rectifying misleading information by clarifying claims or demands arising from producer errors or unethical advertising practices. Thirdly, encouraging the provision of additional information that is relevant to the product's characteristics and conditions while avoiding excessive details. Lastly, formulating policies that reinforce consumers' rights to obtain accurate information.

### 3.4. Responsibilities of Advertisers, Advertising Companies, and Advertising Media

The principle of accountability holds significant importance in consumer protection law.<sup>36</sup> When addressing cases involving consumer rights violations and resulting damages, it is crucial to carefully analyze who should bear responsibility and to what extent they can be held accountable for the regulatory breaches. In economic transactions between consumers and producers, consumers often suffer losses primarily because they heavily rely on information or advertisements that reach them.<sup>37</sup> However, the applicable law does not provide a precise definition of legally accountable goods or specify the extent of responsibility that businesses have towards consumers within their legal relationship.

Generally, accountability in this context can be categorized into different principles.<sup>38</sup> Firstly, there is liability based on fault, which asserts that individuals can be held legally liable if their actions involve fault or negligence. Secondly, there is the presumption of liability principle, where the defendant is initially presumed to be liable until they can prove their innocence. Conversely, the presumption of

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<sup>35</sup> Elizabeth H. Creyer, "The influence of firm behavior on purchase intention: do consumers really care about business ethics?", *Journal of consumer Marketing* 14, no. 6 (1997): 421.

<sup>36</sup> Fred H. Cate, "The failure of fair information practice principles," in *Consumer Protection in the Age of the 'Information Economy'*, ed. Jane K. Winn (London: Routledge, 2016), 342.

<sup>37</sup> Ramsi A. Woodcock, "The Obsolescence of Advertising in the Information Age," *The Yale Law Journal* 127, no. 8 (2018): 2270.

<sup>38</sup> Gayle Kerr, Kim Johnston, and Amanda Beatson, "A framework of corporate social responsibility for advertising accountability: The case of Australian government advertising campaign," *Journal of Marketing Communications* 14, no. 2 (2008): 155.

non-liability principle states that individuals are not always required to prove their innocence. Additionally, strict liability holds individuals fully responsible for any mistakes or damages caused.<sup>39</sup> Finally, the limitation of liability principle allows businesses to include clauses in agreements that limit their liability, although these limitations should be based on legal regulations rather than arbitrary decisions.

It is important that businesses refrain from unilaterally determining clauses that disadvantage consumers, including those that limit their liability. If limitations are imposed, they should be based on legal regulations rather than arbitrary decisions. Two significant principles recognized in consumer protection law are product liability and professional liability.<sup>40</sup> Product liability refers to the responsibility of manufacturers for products that cause harm due to inherent defects during circulation. This liability can be contractual or based on the law of torts. Claims related to product liability can be made based on breach of warranty or negligence. The law specifies provisions regarding product liability.

Professional liability pertains to services provided by businesses. The law explicitly addresses the liability of businesses for consumer harm in a dedicated section. This section delineates the responsibilities of businesses, burden of proof requirements, and dispute resolution processes when businesses fail to fulfill their obligation to compensate consumers.

### **3.5. The Implications of Sanctions for Violations**

The enforcement of sanctions for violations in the realm of advertising regulations is a critical aspect governed by the relevant law. In accordance with the Consumer Protection Law, the imposition of penalties is outlined in Articles 60, 61, 62, and 63 of Chapter XIII. These sanctions encompass administrative, primary criminal, and additional criminal categories.

Administrative sanctions, as stipulated in Article 60, require the Consumer Dispute Settlement Board (BPSK) to impose compensatory measures, with a maximum limit of IDR 200,000,000, against businesses found in breach. These penalties are applicable in cases where businesses fail to provide appropriate compensation to consumers, either in monetary reimbursement, replacement of goods or services, healthcare provisions, or imposing penalties for consumer losses. Furthermore, damages arising from advertising activities conducted by advertising agencies can also lead to administrative sanctions.

Primary criminal sanctions, as defined in Article 62, are enforced through court rulings or actions by the public prosecutor. Businesses, as well as their administrators, may face primary criminal sanctions for violating various

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<sup>39</sup> Curtis Bridgeman, “Reconciling Strict Liability with Corrective Justice in Contract Law,” *Fordham Law Review* 75, no. 6 (2007): 3013.

<sup>40</sup> Jeffrey E. Thomas, “Insurance Law Between Business Law and Consumer Law,” *The American Journal of Comparative Law* 58, no. 1 (2010): 353.

provisions of the relevant law. These provisions include non-compliant goods or services, dissemination of false information, clearance sales or auctions, offering special rates, promoting drugs and health-related matters, physical product offers, orders through mail, prohibited advertising circulation, and inclusion of standard clauses.

In addition to primary criminal sanctions, the relevant law also allows for the imposition of additional criminal sanctions, as outlined in Article 63. These supplementary penalties may include the seizure of specific goods, public announcement of court decisions, orders to cease specific activities causing consumer losses, withdrawal of products from circulation, and revocation of business licenses.

Collectively, these sanctions serve as a robust framework for deterring violations of advertising regulations and protecting consumer rights.<sup>41</sup> The administrative sanctions imposed by the BPSK ensure that businesses are held accountable for compensating consumers appropriately. Meanwhile, primary criminal sanctions, which are determined by the court or public prosecutor, further reinforce compliance with the relevant law. The availability of additional criminal sanctions provides a means to address severe violations, promoting a fair and ethical advertising landscape. By upholding these sanctions, the relevant law safeguards the interests and rights of consumers while fostering responsible business practices in the advertising industry.<sup>42</sup>

### **3.6. Resolution of Consumer Disputes**

Consumer disputes encompass conflicts related to the infringement of consumer rights, which can be effectively addressed through a series of steps aimed at reaching a resolution.<sup>43</sup> Pursuant to Article 45, Paragraph 1 of the Consumer Protection Law, any consumer who has suffered harm is entitled to initiate legal action against the business entity either through specialized consumer dispute resolution bodies or by resorting to the general court system.

In cases brought before the regular courts, the law grants specific individuals the right to file a lawsuit under Article 46 of the Consumer Protection Law. This includes individual consumers who have suffered damages or their rightful heirs, groups of consumers with shared interests, non-governmental organizations dedicated to safeguarding consumer rights and explicitly stating their mission in their legal charters, as well as governmental authorities or relevant entities when

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<sup>41</sup> Shidarta and Stefan Koos, “Introduction To A Social-Functional Approach In The Indonesian Consumer Protection Law,” *Veritas et Justitia* 5, no. 1 (2019): 49.

<sup>42</sup> Christopher Kennedy, “Criminal Sentences for Corporations: Alternative Fining Mechanisms,” *California Law Review* 73, no. 2 (1985): 443.

<sup>43</sup> Michael Grynberg, “Trademark Litigation as Consumer Conflict.” *New York University Law Review* 7, no. 47 (2008): 60.

substantial material losses or significant harm have resulted from the consumption of goods or services.

Recognizing the complexity of legal proceedings, the Consumer Protection Law offers an alternative avenue for dispute resolution outside the traditional court system. Article 45, Paragraph 4 specifies that if consumers opt for out-of-court settlement measures, legal recourse through the court system becomes available only if these alternative methods prove unsuccessful to either party involved or in cases where both parties are unable to reach a satisfactory resolution. Such alternative measures may involve processes like conciliation, mediation, or arbitration. By providing these options, the law seeks to streamline the resolution of consumer disputes, offering flexible and accessible pathways to ensure fair and efficient outcomes.

#### **4. Conclusion**

The evolution of advertising in the rapidly changing technological landscape has led to increased competition among advertising agencies. To ensure consumer protection, it is essential to establish legal safeguards and ethical advertising practices. The Consumer Protection Law prohibits deceptive advertising and emphasizes the responsibility of advertisers to provide accurate information about their products. Consumers have the right to seek redress in case of contractual breaches, and businesses should exercise caution in their marketing strategies. Compliance with the law and effective enforcement of sanctions are crucial in protecting consumer rights and promoting responsible business practices in the advertising industry.

In terms of accountability, businesses should bear responsibility for the information they provide and avoid unilateral clauses that disadvantage consumers. Principles such as product liability and professional liability hold businesses accountable for consumer harm caused by defective products or inadequate services. Sanctions for violations of advertising regulations include administrative, primary criminal, and additional criminal penalties, which serve as a deterrent and ensure compliance.

Resolving consumer disputes can be achieved through specialized consumer dispute resolution bodies or the general court system. Alternative measures like conciliation, mediation, or arbitration provide flexible options for out-of-court settlements, promoting fair and efficient resolution of conflicts. By implementing these measures and promoting consumer rights, the law aims to protect consumers and foster a fair and ethical advertising landscape.

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Bai, Guo, and S. Ramakrishna Velamuri. "Contextualizing the sharing economy." *Journal of Management Studies* 58, no. 4 (2021): 977-1001.

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