

PROCEEDINGS OF THE 2ND INTERNATIONAL CONFERENCE ON BUSINESS LAW AND LOCAL WISDOM IN TOURISM (ICBLT 2021)

Bali, Indonesia
28-29 July 2021

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PREFACE

The 2nd International Conference on Business Law and Local Wisdom in Tourism (ICBLT) will be an annual event hosted by Universitas Warmadewa, Denpasar, Bali. This event held on 15-16 November 2021 at zoom conference.

“Business Law and Local Wisdom in Tourism” has been chosen at the main theme for the conference, with a focus on the latest research and trends, as well as future outlook of the field of Call for paper fields to be included in ICBLT 2021 are Local Wisdom (Customary Law); Law on Business, Business Competition, and Prohibition of Monopoly; Law on Land and Environment; Law on Investment; Law on Criminal Act of Corruption and Asset Recovery Law on Licenses and Labor; Law on Tourism; Law on Transportation; Law on Immigration Intellectual Property Rights; and Law on Resolution of Tourism Investment and Business Disputes.

This international seminar aims to facilitate scholars, researchers, practitioners, and students to share their thoughts on the latest trends on Business Law and Local Wisdom in Tourism whilst building network in an engaging environment. The participants of this conference will have a chance to enrich knowledge and discuss common challenges and offer creative solutions. By this, we hope to enhance and contribute knowledge for a better civilized community.

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Legal Aspects in Indonesian Digital Marketing Business: What should Be Complied With?

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ABSTRACT

This article examines the types of legal compliance that must be carried out by digital marketing business actors based on normative juridical methods accompanied by a statutory approach and a conceptual approach. Business actors who will perform actions or business processes on digital campaign content should comply with at least three main legal aspects: legality content, personal data protection, and intellectual property protection. The legality content is mainly related to the legality of the products being marketed, the legality of content that does not violate the illegal content, to the legality of legal relations between business actors. Aspects of personal data protection include the written consent of the owner of personal data, consumers, and business partners and guarantees not to misuse personal data. Aspects of intellectual property protection include the legality of ownership of intellectual property rights and licenses.

Keywords: *Digital marketing business, Digital campaign content, Legal compliances.*

1. INTRODUCTION

Marketing is one of the most significant factors in determining a business's success. The marketing function plays a significant role in establishing and maintaining contacts between companies and markets [1]. On the other hand, human life itself is constantly evolving. Globalization and technological development have brought a significant change to human life. These changes also impact business. In this current era, especially in this pandemic, digital marketing is one of the most preferred forms of marketing [2].

Digital marketing is a term that refers to promotional techniques that are used to reach customers using digital technologies [3]. The importance of digital marketing grows alongside the growth of internet usage. By 2016, 3.5 billion people used the internet, while in 2000, only 400 million people used the internet. Those numbers represent a growth rate of 875% [4]. The development and the rise of the modern trend in digital marketing have been the incentive for creating new internet marketing strategies [5]. Those internet marketing strategies are based on digital marketing services, such as Search Engine Marketing (SEM), Pay Per Click (PPC), Search Engine Optimization (SEO), Social Media Marketing (SMM), Email Marketing, Content Marketing, and Web Analytics [3]. Every business act or business process carried out in a specific jurisdiction must not violate

various rules set out in that jurisdiction, including the digital marketing business model.

Therefore, every business actor must strive to carry out legal compliance procedures to avoid law violations and avoid risks that bring losses to the business actors themselves. This understanding of the purpose of legal compliance stops at avoiding the risks of loss to the company and various related parties and on several acts that violate the law in a business context, which must be understood as an inherently wrong act by nature. Cases such as an influencer or digital marketer who promotes gambling or a web developer who lists the promotion of the alcoholic beverage business show how crucial legal compliance is for digital marketing business people. The legal rules that cover the digital marketing business process are spread not only on one type of rule but also several types of rules and include several substances that are not simple to understand. Based on the explanation above, this study discusses the formulation of legal compliance that must be carried out by digital marketing business actors, particularly related to legal compliance with digital marketing content.

2. METHOD

The study in this article is based on a normative juridical method using a statutory and conceptual approach. Starting from several facts, the analysis begins by compiling and systematizing several related

regulations and legal concepts so that a legal compliance formula for digital marketing content can be drawn up.

3. RESULT AND DISCUSSION

The main character of the digital marketing business is business actors who will perform various actions or business processes on digital content as digital campaigns, both in the production process and distribution of digital campaign content. Digital campaign content plays an essential role because it is intended to influence consumer behavior [6] (attracting and retaining customers), which in turn impacts the brand value or brand awareness of a product or service or achieve other goals that benefit a company [7]. The parties involved in digital marketing business activities certainly do not only consist of companies or individuals who manage marketing services (marketers) but also various parties including (each in the form of companies or individuals):

- Digital marketing specialist or business actors who manage digital campaign content as services (marketers).
- Digital developers such as website developers.
- Influencer or celebrity endorser [8].
- Digital campaign service users (customers of digital marketing services).

The business actors or related parties mentioned above in perform various activities or business processes for digital campaign content must at least have compliance with three legal aspects.

The first aspect relates to the legality of digital campaign content that will be produced or distributed. This aspect relates to the legality of the content according to the law. The validity of the content can be viewed from two parts, namely the validity of the content that does not violate the prohibited contents by law and the validity of the goods or services that are the material of the digital content. The validity of the content that does not violate the prohibited contents mainly refers to Law No. 11 of 2008 concerning Electronic Information and Transactions as amended by Law No. 19 of 2016 (ITE Law). The ITE Law strictly regulates content that is prohibited from being distributed and/or transmitted.

This means that digital marketing actors in producing or distributing digital campaign content may not contain information that contains information that violates the prohibition. Based on Article 27 to Article 29 of the ITE Law, specifically, there are seven types of content prohibitions regulated, namely [9] :

- Prohibition of decency violation content (related to pornography and obscene acts).
- Prohibition of gambling content.
- Prohibition of insulting content and/or defamation.

- Prohibition of blackmail and/or threatening content.
- Prohibition of false and misleading content that harms electronic consumers.
- Prohibition of hateful or hostile speech content.
- Prohibition of personal threatening or frightening content.

In addition to the validity of the content related to the seven prohibitions according to the ITE Law, digital marketing actors must also comply with the validity of the goods or services that are the material of the digital campaign content. The validity of this product can refer to various applicable legal rules, depending on the type of goods or services that are the material of the digital campaign content. Digital marketing actors must pay attention to and comply with every legal aspect that leads to certainty to answer whether the goods or services that are the material in the digital content can be legally commercialized, traded, or marketed. Some goods or services are illegal products or activities, such as drug trafficking, illegal firearms, or human trafficking. However, some products require more in-depth scrutiny and audit of legal aspects.

For example, regarding the validity of digital campaign content materials to promote the trade in alcoholic beverages. Business actors must at least know some of the main rules governing the trade in alcoholic beverages, including Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages, Minister of Trade Regulation No. 20/M-DAG/PER/4/2014 of 2014 concerning Control and Supervision of the Procurement, Distribution, and Sales of Alcoholic Beverages, which has been amended by Minister of Trade Regulation No. 25 of 2019 and Food and Drug Supervisory Agency Regulation No. 8 of 2020 concerning Drug Control and Food Distributed Online. Based on compliance with these three legal rules, alcoholic beverages may not be circulated online and may only be traded directly in a particular place and have obtained a permit. For compliance with these legal rules, it is clear that business people are not allowed to produce or distribute digital campaign content that promotes the online trading of alcoholic beverages.

After paying attention to and complying with two parts related to the legality of digital campaign content, digital marketing business people also need to build transparent legal relationships. This aims to support certainty on the validity of the content, the product validity and prevent parties in business from being responsible for violating the law. For example, a social media marketing service provider can sign an agreement containing specific clauses with the product owner to be promoted using social media. Several clauses that can be regulated are mainly related to the obligation of the product owner to show and guarantee the legality of the product to be promoted (legal permit, registered trademarks, and so on). These obligations can

undoubtedly guarantee the validity of the products that are the material of the digital campaign content.

The second aspect of legal compliance in the business process of digital campaign content relates to protecting personal data. According to positive law in Indonesia, regulations related to the protection of personal data refer to the ITE Law and implement regulations such as Government Regulation No. 71 of 2019 and Minister of Communication and Informatics Regulation No. 20 of 2016. Indonesian regulations also refer to the European Union General Data Protection Regulation (EU GDPR) as one of the international benchmarks for personal data protection compliance. The aspect of personal data protection implies that every individual has the right to privacy over his data. Owners of personal data as subjects who have the right to control their data determine whether they will share or exchange their data or not, including the conditions for the implementation of the transfer of personal data, such as which subjects have access rights to the personal data, for how much the length of time the access is granted, what is the reason for the access, and how the data modification can be done. [10] [11] This personal data protection also requires certain obligations for data recipients and processors based on the owner's consent, including having technical-organizational policies and procedures to ensure that the law carries out the personal data processing. [11]

According to Indonesian regulation, personal data itself means specific personal data stored, maintained, and kept true and protected by confidentiality [12]. This data concretely includes data of a general nature such as name, date of birth, to sensitive ones such as data on health, habits, health to personal finances, or other personal data that may harm and harm the data subject's privacy. Indonesia's ITE Law stipulates that the use of personal data without the owner's consent is a violation of the law that can give rise to the right to file a claim for losses. Therefore, Indonesian law provides arrangements for protection obligations for electronic system operators who carry out processes related to personal data consisting of:

- Electronic systems must be certified according to law.
- Have internal rules for protecting personal data
- Take preventive measures to avoid data protection failures.
- Provide a written form in the Indonesian language for approval of personal data requests.

Thus, if digital marketing business actors also implement electronic systems and carry out processes for personal data, then the business actors must comply with the personal data protection obligations mentioned above. Regarding business processes for digital campaign content, business actors must also perform several compliance procedures. First, it must be understood that legally personal data is an absolute

privacy right of the personal data owner. Any action on personal data requires the owner's consent. Second, the consent must be in writing. Suppose there is digital campaign content containing personal data such as name, telephone number, home address, etcetera.). In that case, there must be written consent from the owner of the personal data that the data is to be used in the digital campaign content. The consent, of course, contains what type of personal data is shared, when it is shared, the period, and the form of protection provided. In the written agreement, there must also be a clear purpose for the use of personal data and a guarantee from the digital marketing service provider not to misuse personal data. Third, digital marketing business actors who are also the organizers of electronic systems must have internal rules regarding protecting personal data that can be read and accessed by users. This internal rule aims as a preventive mechanism to avoid failures in protecting personal data that is managed.

The third aspect of legal compliance relates to the protection of intellectual property. This legal aspect refers to the design process of each digital campaign content used. This design process should comply with the legal aspects of intellectual property so that the content produced does not result in the consequences of violating the law related to intellectual property to the consequences of claims for compensation from related parties, both as parties who commit violations or parties who are victims or are harmed due to violations. Regarding this design process, designers must, of course, comply with Indonesian Law No. 18 of 2014 concerning Copyrights (Copyrights Law). In any digital campaign content design process, designers can become creators who create original digital content works or become users of other people's digital works [13].

Creators of digital works according to the law have moral rights and economic rights over their digital works. The law provides a framework for licensing agreements to protect the economic rights of digital work. In addition, content designers can also register the copyright with related institutions and take advantage of various technological control facilities to protect their copyrights, such as watermarking, encryption from copying protection [14]. Meanwhile, as a user, the designer must understand the types of licenses attached to a digital work because each type of license has different requirements. Particular digital works have a license attached which can be used directly. If this license does not exist, the user must make his license agreement with the creator. Copyright in the digital campaign content business process concerns the content design and includes website addresses to related e-mail addresses. This is undoubtedly related if the digital marketing business actor also acts as the organizer of the electronic system. The use of this domain name is subject to the first to file principle registered with the Indonesian Registry Organization or Domain Name Registrar Indonesian [9].

Three aspects of legal compliance related to digital campaign content can be formulated in the following figure:

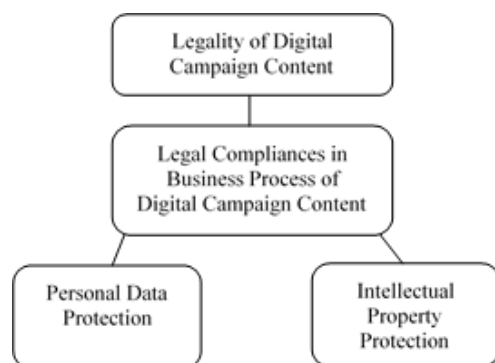


Fig. 1. Three aspects of legal compliance in Business Process of Digital Campaign Content

Compliance audits on the three legal aspects described above are carried out on business processes for digital campaign content, which are not solely built on avoiding business risks. These legal aspects are primarily aimed at protecting the community's interests, including the protection of content that has a negative impact (damaging cultural and religious values in Indonesia), the protection of personal data to prevent misuse and the protection of digital works for the sake of protection. Macro creativity of a society. Therefore, legal compliance must also be based on the awareness that the violation of the law is an act that is morally evil and detrimental to society.

4. CONCLUSION

Digital marketing business actors will carry out various business processes for digital campaign content, both in the production process and distribution of digital campaign content. The formulation of compliance by business people or parties related to digital marketing in carrying out various activities or business processes for digital campaign content consists of 3 legal aspects. Aspects of compliance with the legality of digital content are mainly related to the legality of content that does not violate illegal content, the legality of marketed products, and the legality of legal relationships between business actors. The compliance aspect of personal data protection includes the written consent of the owner of personal data, both consumers and business partners, as well as guarantees not to misuse personal data to the formulation of internal rules for personal data protection if the business actor is also the operator of the electronic system—intellectual property and license. Compliance audits on three legal aspects must be built on the awareness that violations resulting from non-compliance with the law in the business processes carried out are morally evil and harms the wider community's interests.

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