Legal Protection For Consumers Against The Potential Harm Caused By Promotions Using Deepfakes

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Original Article

Abstract

This research aims to determine the regulation of the use of deepfakes in promotions and whether the law can protect consumers against promotions that use deepfakes. This research uses a normative legal approach, analyzing legal principles and statutory regulations, especially those in the Consumer Protection Law and the Information and Electronic Transactions Law. The results of this research are that the Consumer Protection Law and the Information and Electronic Transactions Law can become a regulatory framework for using deepfakes in promotions. Legal protection for consumers can be carried out through two approaches, namely preventive legal protection and repressive legal protection.

Keywords: *Legal Protection, consumer, deepfakes, promotion*

Abstrak

Penelitian ini bertujuan mengetahui pengaturan penggunaan deepfake dalam promosi dan apakah hukum dapat melindungi konsumen terhadap promosi yang menggunakan deepfake. Penelitian ini menggunakan pendekatan hukum normatif, dengan fokus pada analisis asas-asas hukum dan peraturan perundangan, khususnya yang terdapat dalam Undang-Undang Perlindungan Konsumen dan Undang-Undang Informasi dan Transaksi Elektronik. Hasil dari penelitian ini adalah Undang-Undang Perlindungan Konsumen dan Undang-Undang Informasi dan Transaksi Elektronik dapat menjadi kerangka pengaturan penggunaan deepfakes dalam promosi. Perlindungan hukum bagi konsumen dapat dilakukan melalui dua pendekatan, yaitu perlindungan hukum preventif dan perlindungan hukum represif.

Kata kunci: *Perlindungan Hukum, konsumen, deepfake, promosi*

1. INTRODUCTION

Technological strides in recent years have given rise to innovations that have proven their adaptability across various sectors. One of the most versatile technologies is deepfakes, a technique for creating highly realistic digital content, such as video or sound, manipulated to appear genuine despite being fabricated.

Originally, deepfakes technology was primarily used for entertainment, such as in the movie industry or digital art. However, it has now found a new and significant role in marketing and promotion. Many companies are leveraging deepfakes to create advertisements and promotional campaigns that are not just engaging, but also highly innovative. The efficiency of deepfakes technology is particularly confidence-inspiring. For instance, companies can use deepfakes to incorporate the images or voices of celebrities, famous figures, or even historical figures to promote products without directly involving the individual. In essence, deepfakes technology enables the creation of more creative, cost-effective, and efficient promotional content.

Deepfakes in promotions have the potential to not just attract consumer attention, but to significantly increase promotional effectiveness. This technology allows companies to craft personalized and relevant messages that resonate with their target audience, potentially even going viral. Looking ahead, we can anticipate even more innovative uses of deepfakes technology in marketing. The future could see the use of deepfakes in personalized product demonstrations or interactive customer service experiences, further enhancing the effectiveness of advertisements that require a certain level of repetition or uniqueness to capture the market's attention.

Deepfakes, a product of advanced artificial intelligence (AI) techniques and intense learning, can create highly realistic synthetic media through video and audio recordings. These manipulated media can depict someone saying or doing something they never actually did, blurring the line between reality and fabrication[1].

Deepfakes technology is a significant advancement in the field of artificial intelligence. The term "deepfakes" emerged around 2017, combining "deep learning" and "fake," and refers to the use of advanced algorithms to create highly realistic synthetic media where a person's likeness can be convincingly altered or swapped in videos and images[2]. The technology uses AI learning techniques, particularly neural networks, to analyze and mimic a person's facial features or voice[3].

Creating a deepfakes typically usually involves training a generative model on a dataset of videos and voices of a target person. This collection of videos and voices allows the AI to learn and mimic their facial expressions, voice, and behavior[4]. This capability has raised significant concerns regarding misinformation, privacy violations, and potential misuse in various contexts, including politics, entertainment, and personal relationships[5].

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The ease with which deepfakes can be created and disseminated poses a risk to an individual's reputation and can facilitate the spread of disinformation[6]. The challenge of detecting and mitigating their harmful effects is becoming increasingly important, requiring the development of robust detection methods and public awareness initiatives[7].

Deepfakes technology is characterized by its ability to create highly realistic synthetic media by applying advanced artificial intelligence techniques, specifically Generative Adversarial Networks (GAN). This technology allows for the manipulation of video and sound content indefinitely, thus enabling the replacement of a person with another virtually indistinguishable person[8]. The core of deepfakes technology lies in its reliance on deep learning algorithms, which analyze massive datasets to learn the intricate features of the human face and voice, thus facilitating the creation of convincing fake media[9].

One of the defining characteristics of deepfakes is their capacity to have high fidelity in visual and auditory representations. As the GAN progresses, deepfakes improve the quality of the content produced, making it increasingly difficult for viewers to distinguish between genuine and manipulated media[10].

The high level of realism raises significant ethical and legal issues, particularly regarding the potential for misuse in creating misleading information, content without the parties' consent, and other malicious applications[11]. Technology's easy accessibility to software and open-source platforms further exacerbates these risks, allowing individuals with minimal technical expertise to produce deepfakes[12].

Deepfakes technology has implications that extend beyond fraud; it also offers opportunities for innovation across various fields. However, the dual nature of its use necessitates careful regulation. While deepfakes can enable creative expression, they also have the potential to facilitate harmful practices[13].

Sumsub (a global verification technology provider) in 2024 detected a 245% Year-on-Year (YoY) increase in deepfakes worldwide. The findings reveal some the growth of deepfakes in certain countries that hold elections in 2024, including the United States, India, Mexico, South Africa, and Indonesia. For Indonesia, there was a notable growth in deepfakes YoY of 1,550%[14].

Deepfakes technology has significant implications for business practices, especially in marketing, advertising, and public relations. The use of deepfakes in promotions has become a growing trend, especially in digital marketing. This technology allows businesses to create engaging and interactive promotional content in ways that were not previously possible. For example,

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deepfakes can create advertising videos featuring celebrities or influencers who do not need to be physically present, thereby reducing production costs and increasing flexibility in promotions[15]. Deepfakes's ability to change faces and voices in videos allows businesses to produce promotional materials that are more engaging and relevant to their target audience[16].

The use of deepfakes technology in promotions is risky. Potential abuses, such as creating misleading advertisements or manipulating public perception, can pose significant ethical and legal challenges[17]. Deepfakes can be used to fake endorsements or testimonials[18], leading to consumer fraud and creating confusion among consumers regarding what is real and what is not[19]. One way is through creating promotional video advertising content featuring the faces and voices of celebrities or influencers without needing their physical presence and permission.

Indonesian celebrity Melaney Ricardo was once a victim of a weight-loss ad that used deepfakes technology. A deepfakes video of her giving a fake testimonial about a slimming product went viral, leaving people confused and damaging her reputation. That shows how easily advanced technology can used to deceive consumers[20].

The use of deepfakes in promotions presents an exciting opportunity for innovation. However, it is crucial to address the legal aspects to ensure the practice is ethical and does not harm consumers. Although several regulations govern consumer protection and electronic transactions in Indonesia, the unlawful and misleading use of deepfakes technology still needs to be regulated in detail by the applicable law. That creates a legal loophole that allows individuals and businesses to utilize deepfakes technology in promotions that harm consumers.

Some provisions in the Consumer Protection Law prohibit fraudulent practices and misleading information that can harm consumers. The use of fakes in promotions can be considered a form of information manipulation that can mislead consumers and thus may violate this law. Meanwhile, the Electronic Information and Transaction Law also has provisions prohibiting the use of false or misleading information in electronic transactions, including promotions. Therefore, it is necessary to know the limitations of using deepfakes in promotions to avoid violating the law and harming consumers. Based on the description above, there are several interesting problems to discuss, namely how to use deepfakes in promotions according to the UUPK and according to the UUITE and how to protect consumers from promotions that use deepfakes.

2. RESEARCH METHODOLOGY

This study uses a normative legal research approach, focusing on the analysis of legal principles and regulations in the legal system, which aims to examine the use of deepfakes in legal promotions and legal protection for consumers against promotions that use deepfakes, especially

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those regulated in Law No. 8 of 1999 and Law No. 11 of 2008 which have been amended by Law No. 19 of 2014 which has been amended by Law No. 19 of 2014 which has been amended by Law No. 1 of 2024 concerning Information and Electronic Transactions.

Normative legal research allows for a thorough examination of the law and theoretical perspectives relevant to consumer rights and the obligations of business actors. This research focuses on the use of deepfakes technology for the promotion of goods and services. This method involves examining the laws and academic literature relevant to the study. The data collected was analyzed qualitatively using a legal interpretation approach. This study will discuss the use of deepfakes in promotions according to the UUPK and the UUITE and how legal protection for consumers against promotions that use deepfakes will discussed.

3. RESEARCH RESULT AND DISCUSSION

3.1. Regulation of the Use of Deepfakes in Promotion According to UUPK and UUITE

Promotion is one of the key elements in a marketing strategy; the goal is to communicate information about the product to consumers. Promotions can influence consumers' decisions to buy goods. Etymologically, the term "promotion" comes from the English word "promote," which means to develop or improve[21].

Promotion can be defined as a series of communication activities that aim to inform, persuade, and remind the market about the products or services offered by the Company[22]. According to Kotler and Keller, promotion includes three main aspects: informing, persuading, and reminding. Thus, promotion not only serves as a communication tool, but also as a means to influence consumer behavior in the purchase process[23].

Promotions have a significant impact on consumer purchasing decisions. Research shows a positive relationship between promotional activities and purchasing decisions, where effective promotions can increase consumer interest and trust in the product[24]. Thus, companies need to design promotional strategies that suit market characteristics, and consumer needs to achieve optimal results[25].

Promotions using deepfakes technology are an innovation in the world of marketing that utilizes artificial intelligence to create very realistic audiovisual content. This technology allows the creation of videos and audio that can feature individuals or characters who are not involved in the content, so it can used to attract consumer attention in new and interesting ways[26]. For example, in the context of product promotions, companies can use deepfakes to create ads featuring

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celebrities or well-known figures who appear to be recommending their products, even though, in reality, the figures never provided such endorsements[27].

The use of deepfakes in promotions offers several advantages: First, this technology can increase the visual appeal of advertising, making it more attractive to the audience[28]; Second, deepfakes allow companies to tailor promotional messages better, reaching broader market segments[29]. The resulting promotional videos can be tailored to specific audience preferences, creating a more personalized and relevant experience[30].

The relationship between producers and consumers has undergone significant changes towards a more horizontal structure[31]. The power of individuals and customer communities is increasing. Previously, consumer trust factors were more influenced by marketing campaigns through traditional marketing communications. Currently, consumer trust is influenced by celebrity endorsements[32].

Celebrity endorsements help business actors introduce products to the public and also share endorsement experiences while using the products offered with the aim that the celebrity's followers will be interested or have a desire to imitate the artist so that purchases of the products offered will occur. Endorsement marketing, which shares the public figure's experience using the product offered, will more effectively influence consumers because they believe the public figure uses the product[33].

With endorsements from celebrities, the product will get wider exposure and also increase consumer confidence in the quality of the product. Apart from that, the use of public figures can also give the impression that the product is a fashionable and trendy choice, thereby attracting consumers' interest in trying the product. This can have a positive impact on product sales and also increase the Company's brand awareness.

In the context of consumer rights contained in Article 4 letter of the UUPK, consumers have the right to comfort and security in choosing products, so if celebrities genuinely recommend promotions using deepfakes, then the promotion is not considered to violate consumers' rights to comfort and safety in choosing products. Meanwhile, in Article 4 paragraph c UUPK, consumers have the right to buy products based on false or misleading information, so if the deepfakes promotion is genuine and not misleading, then the promotion cannot be considered a violation of consumers rights to correct information.

In the context of consumer rights contained in Article 4 letter of the UUPK, consumers have the right to comfort and security in choosing products, so if celebrities genuinely recommend promotions using deepfakes, then the promotion is not considered to violate consumers' rights to comfort and safety in choosing products. Meanwhile, in Article 4 paragraph c UUPK, consumers

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have the right to buy products based on false or misleading information, so if the deepfakes promotion is genuine and not misleading, then the promotion cannot be considered a violation of consumers' rights to correct information.

Furthermore, Article 10 UUPK states that business actors who offer goods and services intended for trade are prohibited from offering, promoting, or advertising goods and services in a misleading manner. That means that, in this case, the use of deepfakes for promotions can permitted as long as the information conveyed is accurate and not misleading.

Article 28 paragraph (1) Law no. 19 of 2016 concerning Information and Electronic Transactions (UU ITE) states that every person intentionally and without right spreads false and misleading news, which results in consumer losses in electronic transactions. Deepfakes for promotions may be permitted if the information submitted is accurate and not misleading.

Article 28, paragraph (1) emphasizes the prohibition of spreading false and misleading information. However, deepfakes are used in promotions in a way that is not misleading and still conveys accurate and correct information. In that case, the use of this technology cannot violate the provisions of this article. For example, deepfakes display advertisements more interestingly and creatively. However, this technology can be considered legitimate if the message remains clear and does not mislead consumers regarding the product or service being promoted.

3.2. Legal Protection For Consumers Against Promotions That Use Deepfakes.

Along with the use of deepfakes technology, various risks, and potential abuses arise that are detrimental to consumers and society. One of the most serious problems is using deepfakes in promotions that do not correspond to reality, which can deceive consumers. For example, promotions that use the image or voice of celebrities without permission or manipulate misleading images to increase product sales

Deepfakes allows the creation of highly realistic fake digital content, such as videos, images, or audio. This technology can utilized for various purposes, including product or service promotion[34]. Thus, using deepfakes in promotions contains risks that need to be considered. First, deepfakes can cause confusion and distrust among consumers[35]. When consumers see promotional content that appears genuine but turns out to be fake, this can damage their trust in the brand and product being promoted. That can hurt the Company's reputation and image. Second, deepfakes can be used to spread misleading or false information. Promotional content created with deepfakes can be leveraged to trick consumers, influence their perceptions, or even commit fraud[36]. That can harm consumers and cause legal problems for business actors. Third, using deepfakes in promotions can raise ethical and legal issues. Creating content that manipulates a person's identity or appearance without their consent may violate the rights of the face owner.

The most common use of deepfakes technology to appear as if celebrities are providing endorsements without permission is the most common occurrence, which can be considered identity abuse. Unauthorized or unauthorized use of celebrity images is against the law. In the

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context of consumer protection laws and electronic transaction information, this could be considered a dishonest business practice and detrimental to consumers, as they could be deceived into thinking that the celebrity is recommending the product.

Along with deepfakes technology, various risks, and potential misuse emerge that are detrimental to consumers and society. One of the most serious problems is using deepfakes in promotions that do not correspond to reality, which can deceive consumers. For example, promotions that use the image or voice of a celebrity without permission or manipulate misleading images to increase product sales

The use of deepfakes technology to appear as if a celebrity is giving an endorsement without permission can be considered an abuse of identity. Unauthorized or unauthorized use of celebrity images is against the law. In the context of consumer protection laws and electronic transaction information, this could be considered a dishonest business practice and detrimental to consumers, as they could be deceived into thinking that the celebrity is recommending the product.

Therefore, there is a need for legal protection for consumers against the use of deepfakes technology that violates the law. Legal protection for consumers can be divided into :

3.2.1. Preventive Legal Protection

Consisting of :

1. Development of effective deepfakes detection methods. That can help identify promotional content that uses deepfakes to prevent the spread of false or harmful information. With reliable detection methods, people can be more alert and avoid negative consequences that may arise due to the spread of deepfakes. In addition, developing effective detection methods will also strengthen security and trust in various digital platforms and social media.

2. Development of clear ethical and regulatory guidelines for the use of deepfakes technology. Clear regulations can prevent the deepfakes ecosystem from being promoted and guide companies and individuals who wish to use this technology ethically. In this way, a safer and more trustworthy digital environment can be created for all users. In addition, collaboration between governments, technology companies, and society is also essential to effectively tackle the problem of deepfakes and maintain the integrity of information shared in the digital world.

3. Education and increasing consumer awareness about deepfakes. That can build consumer trust and resilience towards promotional content created with deepfakes, thereby reducing the risk of spreading false or harmful information. With good guidelines and cooperation between all relevant parties, deepfakes can be dealt with better, and the public can be more alert to the manipulation of information in this digital era. Apart from that, strict regulations are also needed to control the use of deepfakes technology so that it is not misused for unethical purposes. With these steps, the digital world can remain a safe and trusted place for all its users.

4. Socialization and campaigns related to the use of deepfakes technology. This effort can prevent deepfakes intimidation in promoting products, politics, or personal interests. Apart from that, education for the public about identifying deepfakes also needs to be improved so that they can be more alert and critical of the content they consume. In this way, the potential dangers of deepfakes technology can be

minimized, and the digital world can remain a safe and trustworthy environment for all its users.

5. Strict supervision and regulation of deepfakes, especially in product promotion, politics, and personal interests, is essential to maintain information integrity. In addition, there needs to be cooperation between the government, regulatory agencies, and social media platforms to monitor and remove harmful deepfakes content. With these steps, it is hoped that a safer and more trustworthy digital environment can be created for everyone

3.2.2. Repressive Legal Protection

Consisting of :

1. Dispute resolution through the Consumer Dispute Resolution Agency (BPSK). Consumers can submit complaints and get dispute resolution quickly and fairly through BPSK. This dispute-resolution process usually occurs through mediation or deliberation between consumers and service providers. With BPSK, consumers can feel more protected and have a clear way out if a dispute occurs with business actors. Also, settlement through BPSK can avoid lengthy and expensive legal processes. Dispute resolution through BPSK is regulated in articles 49 to 56 UUPK.

2. Dispute resolution through judicial bodies. Consumers who suffer losses due to deepfakes can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general judiciary. Dispute resolution through the general judiciary is regulated in Articles 45 to 46 UUPK

3. Giving administrative sanctions, these sanctions can stop business actors who violate the rules and provide a deterrent effect for other business actors. By imposing administrative sanctions, business actors who violate the rules will experience negative financial impacts, thus warning them not to repeat these violations in the future. Administrative sanctions can also increase compliance with applicable regulations and create a fairer and healthier business environment for all operating business actors. This administrative sanction is regulated in Article 60 UUPK.

4. Providing criminal sanctions for violations that occur. These can provide a deterrent effect for business actors who use deepfakes in promotions illegally. Criminal sanctions can provide legal protection for consumers who may be victims of illegal use of deepfakes. This criminal sanction is regulated in Article 62 UUPK and Article 45 paragraph (2) UUITE.

4.   CONCLUSION

Deepfakes can be used in promotions as long as they provide correct, clear, and not misleading information; by the provisions of Article 7 and Article 10, UUPK, Deepfakes can also be used in promotions as long as accompanied by clear information that the content is produced by technology so that it does not violate the obligation to provide accurate information. Apart from that, Article 28 paragraph (1) of the Information and Electronic Transactions Law (UUITE) also prohibits spreading false and misleading information in electronic transactions. Therefore,

deepfakes can be permitted as long as the information conveyed remains accurate and precise and does not mislead consumers so that it remains by applicable legal provisions.

Legal protection for consumers against deepfakes technology in promotions can be preventive and repressive ways. Preventive legal protection includes the development of effective deepfakes detection methods, creating clear ethical and regulatory guidelines, consumer education and awareness, outreach regarding the use of deepfakes technology, and strict supervision of misuse of this technology. Meanwhile, repressive legal protection can be achieved through dispute resolution through the Consumer Dispute Resolution Agency (BPSK) and judicial bodies, providing administrative sanctions, and implementing criminal sanctions for business actors violating existing provisions.

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