

## ANALYZING NEGATIVE ADVERTISEMENTS FROM LEGAL FRAMEWORK IN INDONESIA AND THE IMPACT ON INDONESIA BUSINESS

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### **Abstract**

*Negative advertisement has been a marketing strategy in Indonesia's business world. However, the debate around this strategy has occurred due to divided opinion. While several parties agreed that it is a common practice, others are against negative advertisements since the impact will corrupt the vision of a sustainable economy in Indonesia entirely and have negative impacts on the development of Indonesian business. This research analyses the legality of negative advertisements in Indonesia in various contexts, such as Consumer Protection Law, Information and Electronic Transaction Law, and Fair Business Competition Law.*

*Later, the research will discuss the impacts of existing laws on negative advertisements and recommendations on how to tackle the negative impacts of negative advertisements. Finally, the research is done by the normative-judicial method. It explores the element of law-sociology to explain the phenomenon of negative advertisement and the future impacts due to the flaws of existing laws.*

**Keywords:** *Negative Advertisement; Legal Framework; Business.*

### **Abstrak**

Iklan negatif telah menjadi strategi pemasaran dalam dunia bisnis di Indonesia. Namun, perdebatan seputar strategi ini terjadi karena adanya perbedaan pendapat. Beberapa pihak setuju bahwa iklan negatif merupakan hal yang lumrah dilakukan, namun beberapa pihak lainnya menentang iklan negatif karena dampaknya akan merusak visi ekonomi berkelanjutan di Indonesia secara keseluruhan, serta berdampak negatif bagi perkembangan bisnis di Indonesia. Penelitian ini menganalisis legalitas iklan negatif di Indonesia dalam berbagai konteks, seperti Undang-Undang Perlindungan Konsumen, Undang-Undang Informasi dan Transaksi Elektronik, dan Undang-Undang Persaingan Usaha.

Kemudian, penelitian ini akan membahas dampak dari undang-undang yang ada terhadap iklan negatif dan rekomendasi tentang bagaimana menanggulangi dampak negatif dari iklan negatif. Terakhir, penelitian ini dilakukan dengan metode yuridis normatif. Penelitian ini mengeksplorasi unsur sosiologi hukum untuk menjelaskan fenomena iklan negatif dan dampak yang akan terjadi di masa depan akibat kelemahan hukum yang ada.

**Kata kunci:** *Iklan Negatif; Kerangka Hukum; Bisnis.*

## A. Background

Each business entity aims to compete and demonstrate competitive advantages compared to other businesses. Winning the competition and leading the market share is one of the vital ways for a business to stay relevant and keep its sustainability. However, staying competitive is difficult since the competitor has brands and followers who trust their product and do not readily change their minds or loyalty. A new player in a particular business needs to re-learn how to attract their competitor's loyal customers and, therefore, pave their existence for sustainability in the market.<sup>1</sup>

Various methods are used to achieve this, one of which is through advertising. One popular advertising method today is negative advertisement. Negative advertisement involves exposing the weaknesses of competitors and critiquing them. Some consider this method efficient because it can highlight a business's competitive advantages while contrasting one company's product to its competitors. Through negative advertising, there is a high expectation of shifting customers' loyalty instantly since the customers will get influenced or, in favourable terms, get educated and choose the company's brands, which, based on the campaigning, has certain critical competitive advantages.<sup>2</sup>

However, at the same time, various parties question the ethical aspect of this practice since there is no verification of the information released in the opposing campaign. Not only is the information not verified, but it will trigger public unrest since now the public has information that triggers their concern but has no clue how to confirm it and know how to ensure that the fact will affect their life. Not only that but the negative advertisement is perceived as a form of unproductive business practice that will lead to issues later when the national business will not grow for the betterment of people's lives and just be stuck in stagnancy, only several people benefit and the national prosperity is suffering.<sup>3</sup>

This research explores the reality of negative advertisements based on a legal perspective, especially favourable laws in Indonesia. The research will simultaneously analyse the impact of negative advertisements on society and business in general. In the end, the research will recommend whether a new law needs to be enacted or if the current law is suitable enough to ensure negative advertisements will be only limited in the context of marketing strategy or the effect will be widespread and affect the social structure holistically.

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<sup>1</sup> Zavadskas, *et al.*, "Sustainable Business Models: A Review," *Sustainability* 11, no. 6 (2019): 1663.

<sup>2</sup> Zaenal Aripin, *Marketing Management* (Deepublish, 2021), 315.

<sup>3</sup> Michael E Porter, *The Changing Role of Business in Society* (Boston: Harvard Business School, 2021), 12.

This research is an original work exploring negative advertisement in Indonesia's current legal framework. This research aims to clarify to small and big businesses the reality of negative advertisement and how it will affect stakeholders of Indonesia's businesses, limited to business entities such as sellers, companies, or distributors but also the customers themselves.

## **B. Theoretical Framework**

Negative advertisements or campaigns were limited to several occasions, especially politics. The first negative advertisement was recorded during the U.S. election in 1828. At that time, the incumbent, John Quincy Adams, was against Andrew Jackson, the candidate from the democratic party. Andrew Jackson was relatively the most popular candidate. Meanwhile, John Quincy Adams suffered from a popularity decline due to various failures in his presidency. The supporters of John Quincy Adams then released a series of pamphlets explaining the crimes that Andrew Jackson committed, including assassination and adultery. However, most accusations were proven hoaxes, and Andrew Jackson still won the election. Nevertheless, it did not stop people from employing negative advertisements during the presidential election in any situation.<sup>4</sup>

The famous cases of negative advertising occurred when Lyndon B. Johnson ran for president as a candidate of the Democratic Party. He released a video titled "Daisy Girl" which depicted a young girl imagining a nuclear explosion. The aim was to criticize his opponent, Barry Goldwater, who proposed nuclear strikes on Vietnam. This advertisement resulted in Barry Goldwater, a war veteran and war hero, experiencing defeat. This ad was highly controversial and is an example of a highly effective negative advertising or campaign. While Lyndon B. Johnson did succeed in winning the presidential election, the ad garnered criticism for exploiting the fear of nuclear threat for political gain.

Furthermore, "Daisy Girl" also became a focal point in the debate on the ethics of political advertising and whether using images of young children in such threatening contexts was appropriate. This ad sparked widespread discussion about the boundaries of ethical political campaigning. Later, negative advertisements are practiced in different situations. One big question, especially in the Indonesian legal framework, is whether a negative advertisement done in the business context is legal or actually against the law.

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<sup>4</sup> Jens Koed Madsen & Jens Koed Madsen, "Negative Campaigning and Attack Ads," *The Psychology of Micro-Targeted Election Campaigns* (2019), 62-243.

As we can notice today, several brands purposefully expose their competitor weaknesses implicitly or explicitly. One case that caught the public attention is the case that involved TikTokers or a social-media figure, Richard Lee. Though he only mentioned that a big brand of mineral water had been proven to use BPA as the primary material for their gallon water, people quickly noticed that Richard Lee targeted Aqua due to the colour, brand, and likeliness shown in the advertisement.

Richard Lee's action to expose Aqua was considered a negative advertisement towards Aqua since Aqua is the leading market in mineral water and practically can dictate the market.<sup>5</sup> BPA itself is considered a dangerous material. It is believed to be a trigger of autism and reproduction organ dysfunctionality. BPA was used to cover the inside part of food packaging. As a part of food packaging, BPA has several strengths and advantages.

The BPA strengths are (1) **Durability and Resilience**; BPA is a sturdy and resilient plastic. It can withstand high temperatures and pressures, making it suitable for processing, pasteurization, or microwave heating containers. (2) **Clarity and Transparency**: BPA-based plastics are clear and transparent, which is essential for consumers to see the contents of the packaging. This is particularly important for products like beverages or baby bottles. (3) **Flexibility in Shaping**: BPA-based plastics can be molded into various shapes and sizes, essential for creating different types of food containers, including bottles, jars, and other packaging materials. (4) **Barrier Properties**: BPA-based plastics have good barrier properties, which can help protect food from moisture, air, and light. This is important for preserving the quality and safety of the packaged food. (5) **Long Shelf Life**: The barrier properties of BPA help extend the shelf life of packaged food by preventing spoilage or degradation caused by external factors like air, moisture, or light. (6) **Cost-Efficiency**: BPA is relatively inexpensive to produce compared to some alternative materials, which makes it an attractive option for manufacturers looking to keep production costs low. Considering those strengths, the usage of BPA is understandable. Nonetheless, due to health concerns, BPA has been banned in Europe, but in Indonesia, BPA is still allowed at a certain level.

Though Richard Lee denied the allegation, Richard Lee himself never confirmed or showed that he ever got payment or other gratification for his content regarding the BPA materials on the mineral water packaging. Thus, it pushed the public to question the nature of Richard Lee's content. Richard Lee is only one among several other negative

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<sup>5</sup> Berita Solo Raya, "Kesal Dituduh Black Campaign, Dokter Richard Lee Bongkar Langung Fakta Galon AQUA dan Le Mineral," <https://prsoloraya.pikiran-rakyat.com/nasional/pr-1117222595/kesal-dituduh-black-campaign-dokter-richard-lee-bongkar-langung-fakta-galon-aqua-dan-le-mineral> (accessed October 18, 2023).

advertisements practiced in Indonesia. The negative advertisement in Indonesia's business competition still existed. There are two cases that we can take as examples:

1. #Pilihaman

Grab issues the campaign. The visual advertisement shows a lady who turns into a 'zombie' or looks like a victim of a horrible traffic accident when she left her campus. In the visual ad, it also showed that the lady then got called by bikers that can be identified as 'Ojek Pangkalan' (non-apps motorbike taxi driver); the lady then thinks for a while in the video before she decided to choose a Grab Bike driver instead 'Ojek Pangkalan', suddenly she re-appeared perfectly fine.

The advertisement implicitly mentioned that if you choose 'Ojek Pangkalan', you risk your own life. The campaign is criticized because it gives false information that non-apps motorbike taxi drivers have no responsibility to keep their passengers safe and will give more significant risks. Meanwhile, there is no evidence that Grab Bike drivers will drive safely compared to non-Grab Bike drivers.

2. Pantene

Though not mentioning other brands, the research study conducted by Ni Luh Putu Ratna Suandari<sup>6</sup> said that, ethically, this campaign is categorized as a negative advertisement. One particular advertisement that Ni Luh Putu observed is the visual advertisement that shows Anggun C. Sasmi, a singer, mentioning that Pantene is helping her overcome dandruff issues and make his hair fall rate decline intensively.

It gives people false facts that Pantene will have such an effect. Though there is no doubt that Pantene has good quality, will the impact that Anggun C. Sasmi experienced indeed be experienced by customers? Otherwise, it is a misleading advertisement. People will get discouraged from trying other shampoos since they believe other shampoos will risk their hair health.

Those examples mentioned, including Richard Lee's, explain why various companies explore negative advertisements to promote their products. In reality, the facts mentioned that negative advertisements are considered one of the practical marketing tools and will be done to attract public awareness and ensure put the business on the map for a long time.

In the business term, there is a thing called competitive advantage. Competitive advantage refers to the unique strengths or advantages a business or organization possesses,

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<sup>6</sup> Ni Luh Putu Ratna Suandari, Fajri Rahma Pratiwi, & Handriyotopo, "Dimensi Etis Iklan, Studi Kasus pada Iklan Sampo Anti Dandruff dan Iklan Belanja Online Di Media Televisi," *Citrawira: Journal of Advertising and Visual Communication* 2, no. 2 (2021): 38-129.

allowing it to outperform its market competitors. These advantages enable the company to achieve its objectives more effectively and efficiently than its rivals. A brand/ product wants to be on the map by employing a negative advertisement. It wants to ensure people realize that the brand is on a different level. Due to this common situation, it was expected that a negative advertisement would educate or, in other terms, influence people to choose a product rather than other products. Thus, negative advertisements will expose weaknesses and strengthen a brand's competitiveness. Ultimately, customers buying decisions will prefer the one who decided to issue the campaign.

There are two different perspectives on negative advertisements. The first one argues that the negative advertisement is unethical and needs to be banned entirely. A negative advertisement will bring false information or even misconceptions of vital educative information. In this perspective, negative advertisements are not different from hoaxes, which will affect people negatively in the long term. Hoax, in a further way, is considered a form of crime, too. Therefore, there must be a total ban on negative advertisements since their harmful impacts will affect the public.<sup>7</sup>

Critics mention when social influencers known as an expert on something suddenly endorse a product and say good things to support the product while degrading other products categorized in the same market. The critiques about this practice will be widely rampant. For example, how do we decide if a social media influencer would be classified as an expert in something without clear training and certification?<sup>8</sup> Is it okay that toothpaste is claimed to be approved by nine dentists while we never know the qualifications of all dentists? In another case, like the supplement advertising, it showed that a man should have big muscle, consume a massive load of proteins, and risk their health altogether. Is it ethical to give the public false information?<sup>9</sup>

The worst case that once occurred is the case of Nestle.<sup>10</sup> At that time, they claimed that breastfeeding was not a good practice and that formula milk would better impact infants. This false accusation is leading to mass malnutrition. In this case, Nestle's formula milk is competing against breastfeeding. To ensure the increase in formula milk sales, Nestle would

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<sup>7</sup> Jens Koed Madsen & Jens Koed Madsen, *Loc. cit.*

<sup>8</sup> Mariah L Wellman, et al., "Ethics of Authenticity: Social Media Influencers and the Production of Sponsored Content," *Journal of Media Ethics* 35, no. 2 (2020): 68–82.

<sup>9</sup> Falaq, Janata Shoji Al, & Dian Puspita, "Critical Discourse Analysis: Revealing Masculinity Through L-Men Advertisement," *Linguistics and Literature Journal* 2, no. 1 (2021): 62–68.

<sup>10</sup> Dann Okoth, "Health Workers 'given Incentives' to Push Baby Formula," *SciDev. Net-Communication*, 2022; Marion Nestle, "Infant Formula Marketing: An Update," *Marketing*, 2022; Kimberly Johnson, "The Infant Nutrition Debate: Innovation and It's Role in International Crisis," 2021.

do anything on the table to degrade the status of breastfeeding. Meanwhile, breastfeeding is widely recognized as the best source of infant nutrition and provides numerous health benefits for both the baby and the mother. Infant formula can serve as a suitable alternative only when breastfeeding is not possible or feasible. However, Nestle would go further to false claims to make parents prioritize formula milk over breastfeeding milk.

On the other side, there are various support for negative advertisement. Suppose negative advertisements are fulfilling several requirements. It would impact positively. Firstly, a 'good negative advertisement' will have factual accuracy. The opposing claims or criticisms presented in the campaign are based on truthful and verifiable information. Exaggerations, false statements, or misleading information should be avoided.

Secondly, information or facts shared have relevance and importance. The issues raised in the negative advertisement should be relevant and significant to the audience. They should address public concerns, customer satisfaction, or areas where improvement is needed. Thirdly, the product, the owner's product, should be able to be part of the solution. Instead of just attacking, an excellent negative advertisement provides constructive feedback or offers viable alternatives. It points out problems to encourage positive change or improvement.

Fourth, we discuss transparency, Undoubtedly, the source of the negative advertisement should be clear, and any affiliations or interests that may influence the critique should be disclosed. Transparency builds trust with the audience. Though a company that decides to use negative advertisement models will have interest, it should have a good reputation. If, in some cases, the message of negative advertisements is brought by a trustworthy company, the message will not sound.

Fifth, we must have ethical and respectful tones when delivering such a negative message. There is an urgency to accentuate the way of communicating. Not only do we learn how to validate the facts, but we need to be enticed by good intentions and a clear dream of bringing solutions rather than just the company's profitability.

### **C. Research Methods**

The research methodology employed a normative-judicative analysis approach, which involved studying the phenomenon of negative advertisements and assessing their effects on business competition and their influence on society. The research initially delved into the existing positive law in Indonesia and examined how legal protection and regulation are established.

The normative aspect of the analysis focused on examining legal principles, doctrines, and statutes related to negative advertisements within the framework of Indonesian law. This entailed an in-depth study of relevant legal texts and precedents. The judicative component involved evaluating court decisions and legal judgments about negative advertisement cases. This step aimed to provide insights into how the judiciary interprets and applies the law in situations involving harmful campaign practices.

The research also investigated the impact of negative advertisements on business competition. This included assessing how such campaigns may create unfair advantages or disadvantages for competing entities, potentially distorting the market dynamics. Furthermore, the study explored the broader societal implications of negative advertisements. This involved examining how they can influence public opinion, consumer behaviour, and overall consumer perception of businesses and products.

In order to contextualize these findings, the research also scrutinized the existing legal framework in Indonesia. This encompassed an analysis of laws, regulations, and policies that pertain to negative advertisements, as well as any provisions aimed at safeguarding businesses and consumers from the adverse effects of such practices. The research ultimately aimed to provide a comprehensive understanding of the legal landscape surrounding negative advertisements in Indonesia, shedding light on the regulatory framework and its practical implications for business competition and society.

#### **D. Results and Discussions**

In Indonesia, business competition is ruled by Law Number 5 of 1999. One section that needs to be emphasized further is section 19, about things banned in business competition. As stated, a leading company or any company should not be allowed to hamper competitors from selling or marketing their products. The things discussed in the section include but are not limited to distribution activity and negotiating. However, the limit of this law dissipates through time. For example, several reports recorded that Aqua banned their distributor from selling their competitors products.

Meanwhile, Coca-Cola company did the same thing without any consequences in Indonesia. Aqua and Coca-Cola defend their actions since they believe they provide infrastructure for their distributors, and therefore, exclusiveness should be allowed. On the contrary, section 15 of Law Number 5 of 1999 banned this kind of exclusiveness, and they demanded an open agreement. All kinds of exclusive agreements, such as limitation of distribution, threat, or price manipulation, are proscribed. The law is clear, but the situations



are not as expected in practice as the law designed. Notwithstanding, this is a sign of effort in hampering other brands or products in the same field to compete in the same market.<sup>11</sup>

There is no clear section in Law Number 15 of 1999 to ban and prohibit negative advertisements except in Article 9, point (i). Though it was stated that there is a prohibition to degrading the image of competitors, there is no explicit punishment for such an action except there will be a warning from the business competition supervising commission. Besides that, part of the marketing strategy is not discussed in the Law Number 15 of 1999.

However, other acts work as a guide in negative marketing. It is called UU ITE or Law Number 11 of 2008 and the consumer protection law (Law Number 8 of 1999). From the perspective of Law Number 8 of 1999, it has been mentioned that consumers in Indonesia have the right to be well informed. The consumer's right to obtain information about a product is regulated in Article 4 of Law Number 8 of 1999 on Consumer Protection. Article 4 of Law No. 8 of 1999 states that every consumer has the right to receive accurate, transparent, and honest information about the condition and guarantees of products and their rights and obligations in choosing products or services.

Thus, based on the law in Indonesia, consumers have the right to receive accurate and honest information about the products or services they are considering purchasing. This is part of the efforts to protect consumer rights and ensure they can make informed purchasing decisions. Nonetheless, there is a debate about which part has the right to inform customers. Is it legal for competitors in the same business to share information about their competition? Is it legal to do so if ethical aspects are not considered in this matter?

Based on the research by Rizky Aldhanais Utama Hutagalung, the possibility of imposing criminal sanctions for violations of advertising regulations is based on general criminal law provisions such as the Indonesian Criminal Code (KUHP) as well as specific provisions like Law Number 8 of 1999 on Consumer Protection. Under the Indonesian Criminal Code, deviant behaviour in the field of advertising refers to Article 378 on Fraud and Article 382 bis on Deceptive Acts. Advertising practitioners who violate Article 17 paragraph (1) letters a, b, c, and e, as well as paragraph (2), are subject to a maximum imprisonment of 5 (five) years or a maximum fine of 2 (two) billion Indonesian Rupiah.<sup>12</sup>

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<sup>11</sup> Dina Rasyida, "Praktik Monopoli Produk Air Minum Dalam Kemasan (AMDK) Air Mineral Oleh PT Tirta Investama Dan PT Balina Agung Perkasa," *Diversi: Jurnal Hukum* 7, no. 1 (2021): 25–49; Travis Bennion Olsen, "Big Cola v. Coca-Cola: How a Convenient Store Owner's Complaint Resulted in One of Mexico's Largest Antitrust Fines," *The University of Miami Inter-American Law Review* 42, no. 1 (2010): 87–114.

<sup>12</sup> Rizky Aldhanis Utama Hutagalung, "Tinjauan Hukum Terhadap Pelaku Usaha Yang Melakukan Pelanggaran Etika Bisnis Dalam Mengiklankan Produknya," *Jurnal Ilmiah Mahasiswa Hukum* 2, no. 4 (2022): 9-10.

Meanwhile, advertising practitioners who violate Article 17 paragraph (1) letters d and f are subject to a maximum imprisonment of 2 (two) years or a maximum fine of five hundred billion Indonesian Rupiah. A similarly argument was issued by Ni Putu Mayra,<sup>13</sup> it was stated that a company can be punished for giving false advertisements based on Law Number 8 of 2012. However, false advertisements and negative advertisements have different meanings.

**False advertisements** refers to promoting a product or service with misleading or deceptive information. This can include false claims about a product's features, benefits, or effectiveness. False advertising is typically intended to deceive consumers into believing something that is not true in order to influence their purchasing decisions. It is considered unethical and is often regulated by consumer protection laws. Legal consequences for false advertising can include fines, penalties, and orders to cease deceptive practices.

**Negative advertisements**, on the other hand, involves promoting a product or service by directly criticizing or comparing it to a competitor's offering. This type of advertising often highlights the perceived weaknesses or shortcomings of the competitor's product. Negative advertising can create a contrast between products to sway consumers toward choosing the advertised product. While negative advertising can be effective in some cases, it may also carry the risk of alienating potential customers who prefer positive and uplifting messaging.

In Law Number 11 of 2008, about electronic information and transactions, there is a law that states Article 28 paragraph (1) of the UU ITE regulates the act of disseminating electronic information or electronic documents containing defamation and defamation of character and violations of this article may potentially result in legal sanctions. It is important to remember that interpretations and enforcement of the law may change. If you have specific questions about a particular case, it is advisable to consult a legal expert or attorney knowledgeable in this area.

Thus, we must realize that the law does not regulate negative advertisements. The current law states that you cannot mention the brand, but the brand is not only about the name but, in the same time, it is the logo, likeness, colour, etc.<sup>14</sup> The opportunity to apply

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<sup>13</sup> Ni Luh Putu Ratna Suandari, Fajri Rahma Pratiwi, and Handriyotopo Handriyotopo, "Dimensi Etis Iklan, Studi Kasus Pada Iklan Sampo Anti Dandruff Dan Iklan Belanja Online Di Media Televisi," *Citrawira: Journal of Advertising and Visual Communication* 2, no. 2 (2021): 170.

<sup>14</sup> Muslihk Madiyant, *Copywriting: Retorika Iklan dan Storytelling Teori dan Teknik Menulis Naskah Iklan* (UGM PRESS, 2021); I Gst Agung Ketut Gede Suasana and Luh Gede Krisna Handayani, *Kreativitas Iklan Yang Efektif Dalam Membentuk Brand Attitude* (Media Pustaka Indo, 2023), 12.

negative advertisements is wide open for the company by showing certain logos, colours, and other signs to give consumers a wrong impression of a brand. A similar situation occurred in a free-market country like the U.S. The ethics of this practice are indeed being questioned, but in the legal framework, there is no law or punishment if we do a negative advertisement as long as it does not mention any name. Nevertheless, if the logo and the colour are there, people would know which brands are targeted. Notwithstanding, the information in the negative advertisement is not verified and cannot be judged.<sup>15</sup> For example, the statement from Pantene that other shampoos will trigger hair fall syndrome and dandruff cannot be verified, and the government has not imposed any law to pressure a company that publicly states such sensitive information.

From the perspective of the function of law,<sup>16</sup> it is a significant issue since the laws do not serve the interests of the public and give advantages to the capital owners. It is not a healthy sign of the rule of law tradition and, at the same time, will not be suitable for healthy business competition. What occurred is that the public is in the limbo of misinformation. If a shampoo triggers allergies and other issues in hair health, the public will surely want to know the information deeper.

Similarly, in the case of Richard Lee, if there is mineral water packaging that contains BPA, the public needs to know the truth and facts. For example, when Toyota cars had issues in the U.S., there were direct actions from the government to ensure that the braking system was not endangering people's lives. In an ideal state, the Senate or DPR (people's representative) will be the first one to verify and help the people get the information verified without any falsehood.<sup>17</sup>

The reality is that the news is rarely confirmed and grows into fear, whereas the fear leads people into misleading states. Consumers or people later have yet to choose what is right or not for them. They have no one to consult for the product they use the good and the bad side, how the valuable product is for them or even harmful to their interests, this situation leads to confusion without a solution.

In addressing the phenomenon of negative advertisement, a legal framework based on *lex specialis* (specific rules) is required to help resolve this issue without causing concerns

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<sup>15</sup> Brian E Humphreys, *Critical Infrastructure: Emerging Trends and Policy Considerations for Congress*. R45809 (Washington, DC: Congressional Research Service, 2019), 15.

<sup>16</sup> Mory Johanes Sinaga, Firdaus Firdaus, and Geofani Milhree Saragih, "Relevansi Antara Kekuatan-Kekuatan Sosial dan Fungsi Hukum Dalam Masyarakat," *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 381–89.

<sup>17</sup> Adalia Safira Rahma, et al., "Penerapan Fungsi Hukum Pidana Dalam Kasus Investasi Bodong," *Jurnal Analisis Hukum* 5, no. 1 (2022): 56–65.

for the public. What needs to be emphasized is not when negative advertisement affects unhealthy business competition. What truly warrants attention is when misleading information from negative advertising generates concerns among the public, potentially impacting the stability and peace within the community.

Negative advertisement involves marketing practices that include criticism or comparisons of a competitor's products or services. To address this phenomenon, specialized legal regulations are needed to handle such cases without causing concerns or confusion among the public. Conversely, unhealthy business competition is not the main focus. What is more important is preventing false or misleading information from negative advertisements from causing concerns and confusion among the public. This can have severe implications for the stability and peace within the community.

## **E. Conclusions and Recommendations**

This research concludes that although healthy business competition is regulated and governed by laws, primarily Competition Law Number 5 of 1999, this law does not provide explicit provisions for punishing negative advertisements. The explanations given are merely recommendations. Furthermore, using the Electronic Information and Transactions Law (UU ITE) and the Consumer Protection Law also gives rise to ambiguous interpretations.

The Law Number 5 of 1999 will only give suggestions and recommendations but not implicitly state consequences for a company or other business involved in unethical business practices. This situation will lead us to the UU ITE. In UU ITE, it has been mentioned that any party giving false accusations can get punishment. However, the practicality of negative advertisements will not mention names but focus on brand and likeliness that people can notice. However, the law can touch because no law punishes attacks on likeliness.

In the event, putting business context aside, the negative advertisement will impact directly to the people. The people would be concerned, and the government has no systematic mechanism to address these occurrences. The people will live under uncertainty, and it will similarly take out their rights to feel safe and consume trusted products.

Later, The Consumer Protection Law states that consumers can receive explanations regarding the products they consume and use. Thus, negative advertisements can be seen as an effort to fulfil the rights of consumers and protect their needs. However, on the other

hand, there is no mechanism or regulation to verify the statements that arise from negative advertisements. As a result, society tends to feel left in limbo and uncertain when faced with information from negative advertisements. This is not an effective mechanism, and a *lex specialis* is needed to address this issue and not harm national business's survival.

*Lex specialis* is needed in the context of if negative advertisements are issued regarding products and there is a high chance of people unrest or the safety of consumers under threat; *lex specialis* will make it possible for the Senate or the House to verify information or in other case assisting responsible ministry or body to finally settle the issue and helping business livelihood under right circumstances without further risks.

## References

### Journal Articles

- Falaq, Janata Shoji Al, & Dian Puspita. "Critical Discourse Analysis: Revealing Masculinity Through L-Men Advertisement." *Linguistics and Literature Journal* 2, no. 1 (2021). [http://jim.teknokrat.ac.id/index.php/linguistics\\_and\\_literature/article/download/764/324](http://jim.teknokrat.ac.id/index.php/linguistics_and_literature/article/download/764/324).
- Hutagalung, Rizky Aldhanis Utama. "Tinjauan Hukum Terhadap Pelaku Usaha Yang Melakukan Pelanggaran Etika Bisnis Dalam Mengiklankan Produknya." *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 2, no. 4 (2022). <http://jurnalmahasiswa.umsu.ac.id/index.php/jimhum/article/download/1750/1796>.
- Nosratabadi, Saeed, *et al.* "Sustainable Business Models: A Review." *Sustainability* 11, no. 6 (2019). <https://www.mdpi.com/2071-1050/11/6/1663/pdf>.
- Olsen, Travis Bennion. "Big Cola v. Coca-Cola: How a Convenient Store Owner's Complaint Resulted in One of Mexico's Largest Antitrust Fines." *The University of Miami Inter-American Law Review* 42, no. 1 (2010). <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1003&context=umialr>.
- Rahma, Adalia Safira, *et al.* "Penerapan Fungsi Hukum Pidana Dalam Kasus Investasi Bodong." *Jurnal Analisis Hukum* 5, no. 1 (2022). <https://journal.undiknas.ac.id/index.php/JAH/article/download/3483/1069>.
- Rasyida, Dina. "Praktik Monopoli Produk Air Minum Dalam Kemasan (AMDK) Air Mineral Oleh PT Tirta Investama dan PT Balina Agung Perkasa." *Diversi: Jurnal Hukum* 7, no. 1 (2021). <https://pdfs.semanticscholar.org/fed2/089ef30a63adce7076314fd163dcf2cacd67.pdf>.
- Sinaga, Mory Johanes, *et al.* "Relevansi Antara Kekuatan-Kekuatan Sosial dan Fungsi Hukum Dalam Masyarakat." *Innovative: Journal Of Social Science Research* 3, no. 2 (2023). <http://j-innovative.org/index.php/Innovative/article/download/327/307>.
- Suandari, Ni Luh Putu Ratna, Fajri Rahma Pratiwi, and Handriyotopo Handriyotopo. "Dimensi Etis Iklan, Studi Kasus pada Iklan Sampo Anti Dandruff dan Iklan Belanja Online Di Media Televisi." *Citrawira: Journal of Advertising and Visual Communication* 2, no. 2 (2021). <https://jurnal.isi-ska.ac.id/index.php/citrawira/article/download/4013/3035>.
- Wellman, Mariah L, *et al.* "Ethics of Authenticity: Social Media Influencers and the Production of Sponsored Content." *Journal of Media Ethics* 35, no. 2 (2020). [https://www.academia.edu/download/63193856/Wellman\\_et\\_al.\\_-2020\\_Ethics\\_of\\_Authenticity\\_Social\\_Media\\_Influencers\\_and\\_the\\_Production\\_of\\_Sponsored\\_Content.pdf](https://www.academia.edu/download/63193856/Wellman_et_al._-2020_Ethics_of_Authenticity_Social_Media_Influencers_and_the_Production_of_Sponsored_Content.pdf).

### Books

- Aripin, Zaenal. *Marketing Management*. Deepublish, 2021.
- Blanding, Michael. *The Coke Machine: The Dirty Truth behind the World's Favorite Soft Drink*. Penguin, 2011.
- Johnson, Kimberly. *The Infant Nutrition Debate: Innovation and It's Role in International Crisis*, 2021.
- Madiyant, Muslikh. *Copywriting: Retorika Iklan dan Storytelling Teori dan Teknik Menulis Naskah Iklan*. UGM Press, 2021.

Madsen, Jens Koed, & Jens Koed Madsen. “*Negative Campaigning and Attack Ads.*” *The Psychology of Micro-Targeted Election Campaigns*, 2019.

Nestle, Marion. *Infant Formula Marketing: An Update. Marketing*, 2022.

Okoth, Dann. *Health Workers ‘Given Incentives’ to Push Baby Formula. SciDev. Net-Communication*, 2022.

Porter, Michael E. *The Changing Role of Business in Society*. Boston: Harvard Business School, 2021.

Suasana, I Gst Agung Ketut Gede, & Luh Gede Krisna Handayani. *Kreativitas Iklan Yang Efektif Dalam Membentuk Brand Attitude*. Media Pustaka Indo, 2023.

### **Digital Sources from the Internet**

Berita Solo Raya. “Kesal Dituduh Black Campaign, Dokter Richard Lee Bongkar Langung Fakta Galon AQUA dan Le Mineral.” <https://prsoloraya.pikiran-rakyat.com/nasional/pr-1117222595/kesal-dituduh-black-campaign-dokter-richard-lee-bongkar-langung-fakta-galon-aqua-dan-le-mineral>, (accessed October 18, 2023).

### **Reports from Agency/Institution/Organization/Company**

Humphreys, Brian E. “Critical Infrastructure: Emerging Trends and Policy Considerations for Congress.” *R45809*. Washington DC: Congressional Research Service, 2019.