

***SETTLEMENT OF DEFAULT BETWEEN BUSINESS
OWNERS IN ENDORSEMENT AGREEMENTS THROUGH
SOCIAL MEDIA REVIEWED FROM THE CIVIL CODE
(Research Study In Bireuen City)***

Wulan Ikhwana

Faculty of Law, Malikussaleh University
wulan.180510154@mhs.unimal.ac.id

Muhammad Nasir

Faculty of Law, Malikussaleh University
muhammadnasir@unimal.ac.id

Hamdani

Faculty of Law, Malikussaleh University
hamdani@unimal.ac.id

ABSTRACT

Online shop business owners have a promotional strategy to develop their business. One of the popular promotional services in online shops and Instagram users is the endorsement service. Endorsement agreements often cause unwanted things, so the cooperation is not always smooth and successful, depending on the awareness and responsibility of each party, especially the endorsement service provider called the endorser. This study aims to find out the form of default between business owners in endorsement agreements and to find out the settlement of defaults between business owners in endorsement agreements on social media. This study uses an empirical juridical method with a legal sociological juridical approach. The research was carried out in several online shop business owners in Bireuen City. The data collection method was obtained from primary data and secondary data. Primary data refers to information collected directly from the source through interviews, while secondary data is obtained from books, journals, theses, and laws and regulations related to this research. Data analysis uses qualitative data. The results of the study show that the celebrity, which is referred to as an endorser, defaulted on the owner of the online shop business. The form of default committed by the endorser is uploading photos or videos of the product not on time. The settlement of default carried out by the owner of the online shop business is to give a warning and reprimand to the endorser, the settlement of default according to articles 1243-1244 of the Civil Code, namely by means that the creditor can ask for compensation from the debtor.

Keywords: Defaults, Agreements, Endorsements

1. INTRODUCTION

The development of technological and information progress has an impact on changes in the economic sector which makes the mechanism of trade transactions no longer require direct

meetings between the parties involved in trade activities. This is because all stages in the transaction, starting from the introduction of objects or goods, offers, orders, Transaction payments to delivery of goods can be done through the use of internet facilities. This activity is then known as *electronic commerce (e-commerce)* which basically still has the legal basis of ordinary trade or buying and selling, but is specific in nature related to the role of dominant media and electronic devices. inside it.¹

According to Subekti, "an agreement is an event when one or more people promise to carry out an agreement or promise each other to carry out something". ²An agreement that has been agreed upon by both parties should be carried out according to what has been agreed upon, but it is not uncommon for parties to not fulfill their performance in implementing the agreement or what is often referred to as default. Default or also known as breach of promise, *default, non-fulfillment*, or *breach of contract* is a condition where an achievement/obligation is not carried out as it should have been agreed upon as stated in the contract. Default can occur due to intent, negligence or without fault (intention and/or negligence). The legal consequences of default are the emergence of the rights of the injured party in the contract to demand compensation from the party who committed the default. Default has 3 (three) forms, namely default in the form of not fulfilling performance, default in the form of being late in fulfilling performance, and default in the form of not perfectly fulfilling performance.³

In doing this *online business*, the owners *online shop* has a promotional strategy to develop its business. The strategy used is to utilize promotional services on *Instagram accounts* through *celebrities* or public figures, this service is popularly called *endorsement* among *Instagram users*, especially *online shops*. *Endorsement* is one of the new product marketing strategies in the *online business world*. This business strategy is a collaboration between the *online shop* which is referred to as the user of the *endorsement service* and the celebrity or public figure who can be referred to as *the endorser*. The form of *endorsement* is generally in the form of promoting products by the *online shop* contacting *the endorser* and offering *endorsement* cooperation, if *the endorser* is willing, then the next step is to make an agreement between the *online shop* and *the endorser*, after that the *online shop* sends the product to *the endorser* and the product is uploaded in the form of a video or photo to the *Instagram account* of each *endorser* accompanied by positive and interesting reviews and support so that consumers have a desire to buy the product.⁴

endorsement services are increasing consumer purchasing power, introducing products to the public and increasing *online followers*. *Endorsement* services are a form of cooperation between two people, namely service providers and users of *endorsement services*. This agreement often causes undesirable things. So that the cooperation is not always smooth and successful, depending on the awareness and responsibility of each party, especially the *endorsement service provider* called *the endorser*.

The failure referred to above, for example, is the possibility of obligations not being carried out in accordance with the agreement by the service provider to the service user. The impact can cause losses for service users and cause distrust in this *endorsement service*. *This case was experienced by several online shop business owners in Bireuen City*. Initially, the *online shop* who wanted to use the *endorsement service*, then searched for which *celebrity* had many *followers* and

¹Ni Luh Putu Siska, et al., *Legal Protection for Online Shop Business Actors in the Event of Default by Endorsement Service Providers*, Journal of Legal Science, Vol 7, No 4, 2019.

²Subekti, *Contract Law*, 13th ed., Intermasa, Jakarta, 1991, p. 1.

³Nanda Amalia., *Teaching Materials for Contract Law*, Faculty of Law, Malikussaleh University, Lhokseumawe, 2007, page 6.

⁴Nabilla Aisyah Amien, *Settlement of Default in Endorsement Practices from the Perspective of the CIVIL ACT and KHES*, Thesis, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim, Malang, 2021, p. 5.

could do *the endorsement*. Then the *online shop* contacted *the celebrity* via *direct message* on the *Instagram platform* and offered an *endorsement collaboration*.

If the *celebrity* is willing, the next step is to form an agreement containing the number or size of the product, *endorsement fee* and product upload schedule. After the agreement is agreed upon by both parties via *direct message* on *Instagram*, an obligation is born that must be carried out by each party. The *online shop* has an obligation to send goods and send *a fee* before the product is uploaded to the celebrity who can be called *an endorser*, while the *endorser has an obligation to promote the online shop's products* on their *Instagram account*. When the *online shop* has carried out its obligations, then *the endorser* must also carry out its obligations.

However, in the *endorsement process*, the *endorser* experienced several obstacles, such as not preparing properly, being negligent because of the many products that had to be promoted and forgetting because they had indeed been missed. This had an impact on the implementation of the endorsement, namely the endorser uploading the *online shop's product* beyond the agreed time or delaying the upload of the product and there were *endorsers* who carried out their obligations but not in accordance with the agreement. From these problems, the *online shop* service took firm action, namely warning the endorser and feeling disadvantaged by *the endorser's actions*.

2. RESEARCH METHODS

This study uses an empirical legal method. In the sense that this legal research is conceptualized as an empirical phenomenon that can be observed in real life, where empirical itself means something that is based on experience itself obtained based on interviews with informants and respondents in the field. This legal research is conducted by means of direct research into the field originating from informants by means of structured questions and answers and legal principles on secondary data sources obtained from primary legal materials, secondary legal materials, and tertiary legal materials related to the settlement of default between business owners in *endorsement agreements*.

3. RESEARCH RESULTS AND DISCUSSION

3.1 Form of endorsement agreement between business owners via social media in Bireuen City

endorsement agreement can be said to be one of the new forms in contract law, so that endorsement agreements made by celebrities on *Instagram social media* have different characteristics when compared to other types of agreements in general.⁵

Based on Article 1313 of the Civil Code, which states that "An agreement is an act by which one or more people bind themselves to one or more people". The *endorsement agreement* can be linked to Article 1320 paragraph (1) of the Civil Code, which states: "One of the conditions for the validity of an agreement is the agreement of those who bind themselves" and Article 1338 paragraph (1) of the Civil Code determines that: "all agreements made legally apply as laws for those who make them" which is the most important provision in contract law.

Endorsement agreement made by *the celebrity* on Instagram social media is an agreement between two parties, in this case *the celebrity* as a business actor providing *endorsement services* and *the online shop* as a user of *endorsement services* are mutually bound to achieve an achievement, namely the obligation of a party to carry out the things in an agreement for mutual benefit.⁶

⁵ Riyo Mulyono, *Endorser as Affirmative Action* in Business Communication, Journal of Communication Science, Faculty of Social and Political Sciences, Merdeka University of Malang, Vol. 2, No. 2, 2016, p. 2.

⁶ Edmon Makarim, *Introduction to Telematics Law*, PT. Raja Grafindo Persada, Jakarta, 2005, p. 270.

Endorsement agreement is an agreement that establishes cooperation between *a celebrity* and *an online shop* to promote goods and/or services owned by the *online shop* by posting photos and/or videos on the *celebrity's Instagram social media account* which has tens of thousands or even hundreds of thousands of followers on Instagram. Where the form of the *endorsement agreement* contains several clauses made by one party, namely the *celebrity*, the *celebrity* has prepared the contents of the agreement which is then given to the prospective *endorser* or the *online shop*. They can only approve or reject the contents of the agreement that has been made by the *celebrity*.⁷

The following are some general forms of provisions made unilaterally by the celebrity as a form of *endorsement agreement*:

1. Written form: In the form of a written document that contains, among other things, the amount of payment that must be received by the celebgram, including the period of cooperation, and the length of the *endorsement display period* on the celebgram's Instagram social media account, as well as the shipping address for the product to be *endorsed*. Also account information, and contact information.
2. Promotion Scope: This agreement will determine the scope of the promotion carried out by *the celebgram*, including the type of content that will be posted, whether it is a photo, video, or story.
3. Payment: The *endorsement agreement* will include the payment the *celebrity* will receive, whether it is a flat fee, sales commission, or other form of payment.

From the interview above, it is known that so far the *endorsement agreement* in its implementation has been carried out through the terms and conditions of *the celebgram's decision*. As *onlineshop* must follow the direction of the *celebgram*. So that *onlineshops in endorsement agreements* have a vulnerable power position. This does not reflect justice because there is space that can harm one party, namely the *onlineshop*.

Based on the results of an interview with one of shop owner in Bireuen City regarding the implementation of the agreement between the business owner and *the celebrity* in promoting a product online, in this case as the product owner will contact *the celebrity* by *chatting* via *direct message (DM)* on *Instagram* social media, the *online shop* will contact *the celebrity* and then send a photo of the product to be promoted. *The celebrity* is free to determine which product to choose and allows *the online shop* to determine the concept desired by *the online shop*, either in the form of photos or videos. After that, *the celebrity* will determine the costs that must be incurred by *the online shop*, as well as the *schedule for broadcasting endorsement posts*. If both parties have agreed, *the online shop* will make the payment and then *the online shop* can send the product to the address provided by *the celebrity* for an *endorsement photo shoot* by *the celebrity*.⁸

endorsement agreement mechanism begins with a discussion via *Instagram* social media which gives birth to an agreement between the two parties. then continued with the *online shop* party fulfilling its performance by sending the product to the *celebgram party* and transferring the promotion fee. After the goods are received by *the celebgram*, the *celebgram party* fulfills its performance by promoting the product on its social media accompanied by a *caption* (information) to attract consumer interest. In accordance with Article 1313 of the Civil Code, the agreement is binding on both parties.

Endorsement agreement made by *the celebgram* on *Instagram* social media is done without a written agreement made and signed by both parties. So far, the *endorsement agreement* has been made with an agreement on the terms and conditions whose contents have been made unilaterally by *the celebgram* in the form of a form sheet via *Direct Message (DM)* on his *Instagram* social media which was then shared with the *online shop*. Furthermore, the online shop only agreed to follow

⁷ Uzkiya Fahira, Bireuen Celebrity, *Interview*, October 17, 2024.

⁸ Haryanti, Owner of Ayadehashop Cosmetics, *Interview*, Bireuen, October 20, 2024.

the directions and provisions that had been made unilaterally by the *celebrity*, without any negotiation. Based on Articles 1313, 1320, and 1338 of the Civil Code, the agreement is still legal but there are weaknesses because there are things that cause losses to the *online shop* and are contrary to propriety and morality in the provisions of the principles freedom of contract. The freedom of contract in an *endorsement agreement* must stem from the position of both parties being equally strong, and having the same bargaining position so that each party is in the same position.⁹In fact, in the *endorsement agreement*, one of the parties or celebrity parties has made several clauses (terms and conditions) of the agreement in advance without any room for negotiation from the online shop.

Therefore, the agreement made does not reflect justice, where the online shop is not given the opportunity to negotiate in the agreement, they can only agree or reject the provisions that have been made unilaterally by the celebrity. So that the endorsement agreement made by the celebrity can cause losses borne by the online shop, as well as one-sided benefits, namely only the celebrity benefits. The agreement also does not include the responsibility of the celebrity if the celebrity commits a violation, this creates legal uncertainty due to the imbalance of position between the celebrity and the online shop, and it can be said that there is a legal vacuum.

3.2 Forms of Breach of Contract Between Business Owners in Endorsement Agreements Through Social Media in Bireuen City

The implementation of this agreement, there may be a default which means not fulfilling the obligations that have been jointly determined in the agreement. Default is a condition where one party does not fulfill its obligations, is late or does not perfectly fulfill its obligations. The condition of default is different from a condition beyond the control or ability of the party that cannot fulfill its obligations. The elements of default include: The existence of a valid agreement (1320), the existence of an error (due to negligence and intent), the existence of a loss, the existence of sanctions, which can be in the form of compensation, resulting in the cancellation of the agreement, transfer of risk, and paying court costs (if the problem is brought to court). Default is a term that refers to the absence of performance by the debtor.

Default is not knowing or neglecting to carry out obligations (performance) as stipulated in the agreement made between the creditor and the debtor. Default is a situation where one party does not carry out obligations. This default is caused by intent.

The forms of default are:

1. Not fulfilling the performance at all. In relation to the debtor who does not fulfill his performance, it is said that the debtor does not fulfill the performance at all;
2. Fulfilling the performance but not on time, If the debtor's performance can still be expected to be fulfilled, then the debtor is considered to have fulfilled the performance but not on time; and
3. Fulfilling achievements but not appropriate or wrong.

So it can be concluded that there are forms of default that occur in the implementation of the agreement. Where the parties sometimes commit default in the form of late payment of what was agreed or not making payments resulting in losses to one of the parties. With the loss, the injured party can claim compensation for the losses suffered in the manner determined by law.

Based on the results of research by conducting interviews, the forms of default that occurred were:

1. Carry out *the endorsement*, but it's too late. In carrying out *endorsements* between *online parties shop* with *endorser*, the parties have agreed on a schedule for uploading products to be promoted. However, when the schedule for uploading photos or videos of products

⁹ Andi Lesmana, Academician of UNIKI Faculty of Law, Interview, October 20, 2024

online shop, the *endorser* does not upload the photos or videos on *the platform instagram endorser* according to the schedule and time agreed by both parties. The factor of not uploading the product is because the *endorser* experienced several obstacles in carrying out his obligations. *Endorsers* who work with @ayadehashop are constrained by determining the right location to take photos, the editing process that requires long time, and have to adjust the room lighting to get a good photo. This obstacle has been conveyed by @uzkiafahira as *an endorser* to @ayadehashop. The obstacle experienced by the endorser Uzkiarahira who collaborated with @ayadehashop was that there were still many products that had to be promoted. While the endorser Uzkiarahira was negligent and rarely contacted via WhatsApp regarding *endorsements*. Based on these obstacles, it affected the upload schedule for the product to be promoted. The product experienced a delay in uploading to the *Instagram account endorser*. The *endorser* still carries out his/her obligations, namely uploading and promoting *online products shop*, but the obligation was not carried out according to the time agreed in the agreement. From the explanation, it can be seen that *the endorser* committed an act of default, because he did not fulfill the performance according to the agreement, namely being late in carrying out the performance.

2. *Endorsement cooperation*, the parties have made an agreement. The agreement is carried out virtually, more precisely on the *Instagram* and *WhatsApp platforms*. According to the principle of consensualism, the agreement is considered valid because all parties have agreed to the agreement. The agreement contains the number of products, fees for endorsement services, the size of the product to be sent, and the schedule for displaying the goods. Regarding the number of products, product sizes, and fees, each online shop has different rules. Meanwhile, regarding the product upload schedule, @ayadehashop has made an agreement with the endorser, *namely* that the product upload is carried out in *the story instagram* with a duration of 24 hours. This duration is the standard duration created by *instagram*. However, *the endorser* with the initials Uzkiarahira did not upload the product for 24 hours. The *endorser* deleted the *product endorsement* photo or video less than 24 hours. Meanwhile, in the *endorsement agreement* that has been agreed, the product must be uploaded for 24 hours. From this explanation, it can be seen that *the endorser* Uzkiarahira committed a breach of contract, namely not uploading the product according to the promised time limit.

3.3 Settlement of Default Between Business Owners in Endorsement Agreements Through Social Media Reviewed from the Civil Code in Bireuen City

online parties shop @ayadehashop against the breach of contract committed by Uzkiarahira was carried out non-litigation, namely through negotiation without any demand for compensation from the *online party shop @ayadehashop*, the settlement of this default was resolved through deliberation and family, because of the good faith of the *celebrity uzkiarahira*, so in this case the *online party shop @ayadehashop* did not demand compensation from the *celebrity party uzkiarahira*, or it could also be said that the settlement of the breach of contract was peaceful.¹⁰

The term negotiation is stated in Article 1 Number (1) of Law 30/1999 concerning Arbitration, namely as one of the Alternative Dispute Resolutions. The definition of negotiation is not regulated comprehensively in the Law, but can be seen in Article 6 paragraph (2) of Law 30/1999 concerning Arbitration that basically the parties can and have the right to resolve disputes that arise in direct meetings and the results of the agreement are stated in a written form agreed to

¹⁰ Haryanti, Owner of Ayadehashop Cosmetics, *Interview*, October 20, 2024.

by the parties. Apart from these provisions, there are no further regulations regarding "negotiation" as one of the alternative dispute resolutions by the parties.¹¹

A dispute is a condition where one party feels aggrieved by another party, which then the party conveys the dissatisfaction to the second party. If a condition shows a difference of opinion, then what is called a dispute occurs. In the context of law, especially contract law, what is meant by a dispute is a dispute that occurs between parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. So in other words, there has been a breach of contract by the parties or one of the parties, because the obligations that must be carried out or fulfilled are not fulfilled but are lacking or excessive which ultimately results in the other party being harmed.

Disputes arising between the parties must be resolved so as not to cause prolonged disputes and to provide justice and legal certainty for the parties. In general, the form of dispute resolution can be done in two ways, namely litigation and non-litigation. According to the Civil Code, this is included in the act of breach of contract. Default means negligence, broken promises, and not fulfilling the agreed agreement. Default is also interpreted as the failure to fulfill performance, due to the fault of the debtor.

From the explanation above regarding the form of default, *the endorser's actions* can be categorized as an act of default that is detrimental to the *online party. shop*. With this action, the *online party shop* can only reprimand and remind *the endorser* via WhatsApp and *Instagram chat*. When reviewed by the Civil Code, the efforts to resolve default are as follows:¹²

1. Article 1243 of the Civil Code explains that creditors can request compensation from debtors, due to the creditor's negligence in carrying out their obligations. The negligence in question is carrying out their obligations beyond the specified time limit. In the context of an *endorsement agreement*, it means that the creditor is an *online party shops* that use *endorsement services* and suffer losses due to the actions of debtors who provide *endorsement services (celebrities or endorsers)*.
2. Article 1244 of the Civil Code states that the debtor must replace the loss if he cannot prove that he has not carried out his obligations on time and cannot prove that it was caused by an unforeseen cause. In an *endorsement agreement*, the *endorser* has done something but not on time due to *the endorser's mistakes and negligence*. Such negligence includes not arranging *endorsement preparations* well in advance, products to be promoted are missed and not uploaded because they are forgotten, and there are many products to be promoted. This is what causes *the endorser* not to carry out his obligations according to the agreed time and to do so after receiving a warning from the *online party. shop*, but in reality *the endorser* promotes the product beyond the specified time.

4. CONCLUSION

The implementation of the agreement between the business owner and *the celebrity* in promoting a product *online* has been carried out well where the *online business owner* of the @ayadehashop account as the *online business owner* with *the celebrity* Uzkiifahira has made an agreement to be able to help market the product. *The celebrity* Uzkiifahira was then asked to provide *endorsement appointment* for *online store products* by using the product and then documenting it in the form of photos accompanied by comments or comments about the product only, so that many followers of the *public's Instagram account figures* who are interested in the product. Although it has been implemented, it has not been maximized with several obstacles and problems, namely default. The

¹¹ Rizki Faza Rinanda, *Settlement of Sharia Business Disputes Through the National Sharia Arbitration Board (BASYARNAS)*, Pactum Law Journal, Vol. 1, No. 7, 2018.

¹² Andi Lesmana, Academician of the Faculty of Law, UNIKI, *Interview*, October 20, 2024.

problem in implementing the agreement between the business owner and *the celebrity* in promoting a product *online* is the occurrence of default, namely: Carrying out *endorsements* , but late; and Carrying out something, but not according to the agreement. The solution if there is a default in implementing the agreement between the business owner and *the celebrity* in promoting a product *online* , namely between @ayadehashop and *celebrity* Uzkiifahira, is to provide a warning and reprimand to the *endorser* for the actions that have been taken, namely, resolved through negotiation and family or with peace as one of the non-litigation dispute resolutions without any demands for compensation from the *online party shop* to the *celebrity*, namely Uzkiifahira.

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