

**SETTLEMENT OF DEFAULTS IN ENDORSEMENT AGREEMENTS  
BETWEEN BUSINESS OWNERS AND SELEBGRAM AS ONLINE  
PROMOTION MEDIA INSTAGRAM IN MALANG CITY PERSPECTIVE  
CIVIL CODE OF LAW AND COMPILATION OF SHARIA ECONOMIC  
LAW**

**Thesis**

**By:**

**Fina As'ada**

**Student ID Number 16220078**



**ISLAMIC ECONOMICS LAW DEPARTMENT**

**SYARIA FACULTY**

**MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY MALANG**

**2020**

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2020

## STATEMENT OF THE AUNTENTICITY

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**SETTLEMENT OF DEFAULTS IN ENDORSEMENT AGREEMENTS  
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PROMOTION MEDIA INSTAGRAM IN MALANG CITY PERSPECTIVE  
CIVIL CODE OF LAW AND COMPILATION OF SHARIA ECONOMIC LAW**

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Malang, 4<sup>st</sup> September 2020

Author,



NIM 16220078

## APPROVAL SHEET

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BETWEEN BUSINESS OWNERS AND SELEBGRAM AS ONLINE  
PROMOTION MEDIA INSTAGRAM IN MALANG CITY PERSPECTIVE  
CIVIL CODE OF LAW AND COMPILATION OF SHARIA ECONOMIC LAW**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, 04<sup>th</sup> September 2020

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| 5  | Wednesday, 24 <sup>th</sup> June 2020    | BAB I, II, III, IV                          |           |
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## MOTTO

وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْفُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا<sup>٩١</sup>

إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ

*“Dan tepatilah janji dengan Allah apabila kamu berjanji dan janganlah kamu melanggar sumpah, setelah diikrarkan, sedang kamu telah menjadikan Allah sebagai saksimu (terhadap sumpah itu). Sesungguhnya Allah mengetahui apa yang kamu perbuat”. (QS. An-Nahl: 91)*



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Malang, 31<sup>th</sup> June 2020 Author,

Fina As'ada  
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## TRANSLITERATION GUIDANCE

Latin Arabic Transliteration Guidelines which are the result of a joint decree (SKB) of the Minister of Religion and Minister of Education and Culture R.I.

Number:158 of 1987 and Number: 0543b/U/1987.

### A. Consonant

The list of Arabic letters and their transliteration into Latin letters can be found on the following page:

| Arabic letters | Names | Latin letters  | Names                      |
|----------------|-------|----------------|----------------------------|
| ا              | Alif  | Not symbolized | Not symbolized             |
| ب              | Ba    | B              | Be                         |
| ت              | Ta    | T              | Te                         |
| ث              | S/a   | S/             | Es (with the above point)  |
| ج              | Jim   | J              | Je                         |
| ح              | H[a   | H[             | Ha (with the above point)  |
| خ              | Kha   | Kh             | Ka dan Ha                  |
| د              | Dal   | D              | De                         |
| ذ              | Z/al  | Z/             | Zet (with the above point) |
| ر              | Ra    | R              | Er                         |
| ز              | Zai   | Z              | Zet                        |
| س              | Sin   | S              | Es                         |
| ش              | Syin  | Sy             | Es dan Ye                  |

|       |        |   |                            |
|-------|--------|---|----------------------------|
| ص     | S[ad   | S | Es (with the above point)  |
| ض     | D[ad   | D | De (with the above point)  |
| ط     | T[a    | T | (with the above point)     |
| ظ     | Z[a    | Z | Zet (with the above point) |
| ع     | ‘Ain   | ‘ | Apostrophe upside down     |
| غ     | Gain   | G | Ge                         |
| ف     | Fa     | F | Ef                         |
| ق     | Qof    | Q | Qi                         |
| ك     | Kaf    | K | Ka                         |
| ل     | Lam    | L | El                         |
| م     | Mim    | M | Em                         |
| ن     | Nun    | N | En                         |
| و     | Wau    | W | We                         |
| هـ    | Ha     | H | Ha                         |
| ء / أ | Hamzah | ‘ | Apostrof                   |
| ي     | Ya     | Y | Ye                         |

Hamzah (ء) located at the beginning of the word follows his vocals without being given any marks. If it is located in the middle or at the end, it is written with a sign (‘).

## B. Vocals



Arabic vocals, such as Indonesian vocals, consist of single or monofrong vocals and double vocals or difrong vocals.

Arabic single vowels whose emblem is a sign or harakat, transliteration as follows:

| Sign | Names   | Latin Letters | Names |
|------|---------|---------------|-------|
| اَ   | Fathah  | A             | A     |
| اِ   | Kasrah  | I             | I     |
| اُ   | Dlammah | U             | U     |

Arabic double vowels whose emblem is a combination of harakat and letter, transliteration in the form of a combination of letters, namely:

| Sign    | Names          | Latin Letters | Names   |
|---------|----------------|---------------|---------|
| اِ & اَ | Fathah dan ya  | Ai            | A dan I |
| اِ & اُ | Fathah dan wau | Au            | A dan U |

Example:

كَيْفَ : *kaifa*

حَوْلَ : *hauला*

### C. Maddah

Maddah or long vowels whose symbols are harakat and letters, transliteration in the form of letters and signs, namely:

| Harakat dan Huruf | Names                                     | Huruf dan tanda | Names                  |
|-------------------|---|-----------------|------------------------|
| ي / ا & َ         | Fath[ah and <i>alif</i><br>atau <i>ya</i> | a>              | a dan garis di<br>atas |
| ي & ِ             | <i>Kasrah</i> and <i>ya</i>               | i>              | i dan garis di<br>atas |
| و & ُ             | D]ammah and<br><i>wau</i>                 | u>              | u dan garis di<br>atas |

Contoh:

مَاتَ : *ma>ta*

رَامَ : *ra>ma*

قِيلَ : *qi>la*

يَمُوتُ : *yamu>tu*

#### D. Ta' Marbut]ah

The transliteration for ta' marbu>t]ah there are two, namely ta' marbu't]ah who live or get the letters fath]ah, kasrah, and d]ammah, the transliteration is [t]. As for ta' marbu't]ah who dies or gets a sukun harakat, the transliteration is [h].

If the word that ends with ta' marbu't]ah is followed by a word that uses the word sandang al- and the word reading is separate, then ta' marbu>t]ah is translitelitated with [h].

المَدِينَةُ : *al-madinah*

#### E. Shaddah (Tasydi)d

Shaddah or tasydid which in the Arabic writing system is symbolized by a sign of tasydi'd (ó), in this transliteration is symbolized by the iteration of letters (double consonant) given the sign of shaddah. Example :

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haaqq*

If the letter ì tasydid at the end of a word and preceded by the letter kasrah (i öÇ), then it is transliterated like the letter maddah (i).

Contoh:

عَلَى : 'Ali (bukan 'Aliyy atau 'Aly)

عَرَبِيٌّ : 'Arabi (bukan 'Arabiyy atau 'Araby)

#### F. Sandang said

The word sandang in the Arabic writing system is symbolized by the letter (alif lam ma'arifah). In this transliteration guideline, the word sandang is transliterated as usual, al-, both when it is followed by the letter shamsiah and the letter qamariah. The word sandang does not follow the sound of direct letters that

follow it. The word sandang is written separately from the word that follows it and is associated with a horizontal line (-). Examples:

الشَّمْسُ : *al-syamsu* (bukan *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (bukan *az-alزالah*)

الْفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bila>du*

### G. Hamzah

The transliteration of the letter hamzah becomes apostrophe (') applies only to hamzah located in the middle and end of the word. However, if hamzah is located at the beginning of the word, it is not symbolized, because in Arabic it is an alif. Examples:

مُرُونٌ : *ta'muru>na*

شَيْئٌ : *syai'un*

أَمْرٌ : *umirtu*

### H. Arabic word writing commonly used in Bahasa Indonesia

The word, istilah or Arabic phrase that is transliterated is a word, term or sentence that has not been deduced in Indonesian. Words, terms or sentences that are already prevalent and become part of the Indonesian government, or have often been written in Indonesian writing, are no longer written according to the above

transliteration means. For example, the word Qur'an (from the Qur'a>n), Sunnah, is special and common. However, if these words become part of a series of Arabic texts, then they must be transliterated in its entirety. Contoh:

*Fi Zilal al-Qur'an*

Al-Sunnah qabl al-tadwin

Al-'Ibarat bi 'umum al-lafz la bi khusus al-sabab

### 1. Lafadz al-Jala

The word Allah, preceded by particles such as jarr and other letters or positioned as mud}a>f ilaih (nominal phrase), is transposed without the letter hamzah. As for ta marbu't}ah at the end of the word that is encoded to lafz} al- jala'lah, transliterated with the letter [t]. Examples:

دِينُ اللَّهِ : *dinullah*

رَحْمَةِ اللَّهِ : *rahmatillah*

### 2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration the letters are subject to provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of the self-name (person, place, month) and the first letter at the beginning of the sentence. If the name of the self is preceded by the word sandang (al-), then written in capital letters remains the initial letter of the self's name, not the initial letter of the



word sandangnya. If it is located at the beginning of the sentence, then the letter A of the word is capitalized (Al-). The same provision also applies to the initial letter of the reference title preceded by the word sandang al-, both when it is written in the text or in the reference notes (CK, DP, CDK, and DR). Example:

وَمَا مُحَمَّدٌ إِلَّا رَسُولٌ : wa maa Muhammdun illa rasul

إِن أَوَّلَ بَيْتٍ وُضِعَ لِلنَّاسِ : Inna awwala baitin wu dli'a linnas

شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ : Syahru ramadhan al-ladziunzila fihil Quran



## TABLE OF CONTENTS

|   |              |
|---|--------------|
| <b>COVER .....</b>                        | <b>i</b>     |
| <b>STATEMENT OF THE AUTENTICIVY .....</b> | <b>ii</b>    |
| <b>APPROVAL SHEET .....</b>               | <b>iii</b>   |
| <b>CONSULTATION PROOF .....</b>           | <b>iv</b>    |
| <b>LEGITIMATION SHEET .....</b>           | <b>v</b>     |
| <b>MOTTO .....</b>                        | <b>vi</b>    |
| <b>A KNOWLEDGMENT .....</b>               | <b>vii</b>   |
| <b>TRANSLITERATION GUIDANCE.....</b>      | <b>xii</b>   |
| <b>TABLE OF CONTENT .....</b>             | <b>xix</b>   |
| <b>ABSTRAK .....</b>                      | <b>xxii</b>  |
| <b>ABSTRACT.....</b>                      | <b>xxiii</b> |
| <b>مستخلص البحث.....</b>                  | <b>xxiv</b>  |
| <b>CHAPTER I <u>INTRODUCTION</u>.....</b> | <b>1</b>     |
| A. Bacground of Problem .....             | 1            |
| B. Statement of Problem .....             | 7            |
| C. Purpose of Research.....               | 7            |
| D. Benefit of Research .....              | 8            |
| E. Operational Definition.....            | 9            |
| F. Discussion Structure.....              | 10           |
| <b>CHAPTER II LITERATURE REVIEW .....</b> | <b>12</b>    |
| A. Previous Research .....                | 11           |
| B. Theoretical Framwork.....              | 17           |

|  |           |
|--|-----------|
| 1. Review of the Agreement under the Civil Law .....   | 18        |
| 2. Review of Defaults .....  | 25        |
| 3. Endorsement .....   | 29        |
| 4. Agreement According to the Compilation of Sharia Economic Law.....  | 34        |
| <b>CHAPTER III RESEARCH METHOD .....</b>   | <b>41</b> |
| A. Type of Research.....   | 41        |
| B. Reserch Approach .....  | 42        |
| C. Location of Research.....   | 41        |
| D. Sampling Method .....   | 41        |
| E. Type and Data Source .....  | 43        |
| F. Data Collection Technique.....  | 43        |
| G. Data Analysis Technique .....   | 46        |
| <b>CHAPTER IV FINDING AND DISCUSSION .....</b>   | <b>51</b> |
| A. Research Object Description.....  | 50        |
| B. Research Result and Discussion.....   | 52        |
| 1. Implementation of the Endorsement Agreement in Malang City.....   | 53        |
| 2. Settlement of Defaults in Endorsement Agreement between Business Owner and Selebgram as an Online Promotion Media Instagram in Malang City Perspective the Civil Law.....                   | 61        |
| 2. Default and Solutin in Endorsement Agreement between Business Owner and Selebgram as an Online Promotion Media Instagram in Malang City Perspective Compilation of Sharia Economic Law..... | 73        |
| <b>CHAPTER V CLOSSING .....</b>  | <b>83</b> |
| A. Conclusion.....   | 83        |
| B. Suggestion .....  | 84        |

|                             |           |
|-----------------------------|-----------|
| <b>BIBLIOGRAPHY.....</b>    | <b>86</b> |
| <b>DOCUMENTATION.....</b>   | <b>90</b> |
| <b>CURICULUM VITAE.....</b> | <b>94</b> |



## ABSTRAK

Fina As'ada, 16220078, **Penyelesaian Wanprestasi dalam Perjanjian Endorsement sebagai Media Promosi Online di Kota Malang Perspektif KUHPerdara dan Kompilasi Hukum Ekonomi Syariah**, Skripsi, Jurusan Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Iffaty Nasyi'ah, M.H.

**Kata kunci:** Wanprestasi, Kitab Undang-Undang Hukum Perdata, Kompilasi Hukum Ekonomi Syariah

Perdagangan berbasis online yang semakin pesat banyak digunakan pelaku bisnis sebagai strategi dalam memasarkan produknya dengan penggunaan jasa selebgram yang dituangkan dalam perjanjian endorsement. salah satunya online shop yang menggunakan jasa endorsement yaitu Monokromstore Kota Malang, selain menguntungkan terdapat masalah pelaksanaan perjanjian, permasalahan yang terjadi yaitu, adanya pihak yang tidak memenuhi kewajiban sesuai dengan kesepakatan awal perjanjian sehingga menyebabkan kerugian salah satu pihak yang disebut wanprestasi. Penyelesaian wanprestasi yang dilakukan berdasarkan kesepakatan kedua pihak dan pihak yang melakukan wanprestasi harus bertanggungjawab.

Rumusan masalah yang terdapat dalam penelitian ini adalah 1) Bagaimana pelaksanaan perjanjian endorsement sebagai media promosi online antara pemilik bisnis dan selebgram di Kota Malang? 2) Bagaimana penyelesaian wanprestasi dalam perjanjian endorsement antara pemilik bisnis dan selebgram di Kota Malang perspektif KUHPerdara? 3) Bagaimana penyelesaian wanprestasi dalam perjanjian endorsement antara pemilik bisnis dan selebgram di Kota Malang perspektif Kompilasi Hukum Ekonomi Syariah?

Penelitian ini menggunakan jenis penelitian hukum empiris (*juridic empiris*), dengan menggunakan pendekatan yuridis sosiologis. Lokasi Penelitian ini berada di Kota Malang. Metode pengumpulan data-data dengan cara wawancara dan dokumentasi.

Hasil dari penelitian ini adalah 1) Pelaksanaan kesepakatan perjanjian endorsement dilakukan dengan tidak bertemu langsung, kesepakatan perjanjian endorsement melalui *direct message* di akun instagram untuk diajak bekerjasama. 2) Penyelesaian wanprestasi dilakukan diluar pengadilan secara damai dan diatur dalam KUHPerdara diatur dalam pasal 1243 bahwa “penggantian biaya, kerugian dan bunga karena tak dipenuhinya suatu perikatan mulai diwajibkan”. 3) Kasus ingkar janji yang telah dilakukan selebgram menurut KHES telah dinyatakan melanggar pasal 21 ayat 2 yaitu asas amanah dan penyelesaian ingkar janji dalam KHES terdapat dalam pasal 36, pihak yang telah melakukan ingkar janji dapat dijatuhi sanksi: membayar ganti rugi, pembatalan akad, peralihan resiko, denda dan membayar biaya perkara.



## ABSTRACT

Fina As'ada, 16220078. **Settlement of Defaults Endorsment Agreement as an Online Promotion In Malang City Media Instagram Perspective Civil Code of Law and the Compilation of Sharia Economic Law**, Skripsi, Jurusan Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Iffaty Nasyi'ah, M.H.

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**Keyword:** Defaults, Code of Civil law, Compilation of Sharia Economic Law

Online based trading is accelerating, many businesses market their products with the use of selebgram services that are included in endorsement agreements, especially online shops that use endorsement services namely Monochromstore Malang City, in addition to profitable problems implementation of the agreement. The problem is that the party does not fulfill its obligations in accordance with the initial agreement of the agreement resulting in the loss of one of the parties called default. This research aims to analyze how the settlement of defaults is carried out according to the Civil Code of Law and the Compilation of Sharia Economic Law.

The formulation of the problem contained in this study is 1) How is the implementation of endorsement agreement as an online promotional media between business owners and selebgrams in Malang? 2) How does the settlement of default in the endorsement agreement as an online promotional media in Malang perspective of the Civil Code? 3) How to resolve default in endorsement agreement as online promotional media in Malang perspective Compilation of Sharia Economic Law? This research uses empirical legal research (juridical empirical), using a sociological juridical approach. The location of this research is in Malang City. Methods of collecting data by means of interviews and documentation.

The result of this research are 1) Implementation of endorsement agreement struck through direct message on Instagram, whatsapp, or contact listed in cellebgram biodata to be cooperated, 2) The settlement of default in the Civil Code is regulated in article 1243 that "compensation of costs, losses and interest due to the un fulfillment of an agreement begins to be required". 3) The settlement of the Agreement (broken of promise) according to compilation of sharia economic law is contained in article 36, the party that has broken the promise can be punished: pay compensation, cancel the contract, risk transfer, fine and pay the cost of the case.

## مستخلص البحث

فيينا أسعد. ١٦٢٢٠٠٧٨. انتهاء التخلف عن السداد في اتفاقية المصادقة كوسيلة الترويج عبر الإنترنت بمدينة مالانج على منظومة كتاب القانون لأحكام المدني ومجموعة الحكم في اقتصادية الشريعة. بحث الجامعي. قسم القانون الاقتصاد الشرعي (المعاملة). كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرفة: عفتي ناشئة الماجستير.

**الكلمة الإشارية:** التخلف عن السداد، كتاب القانون لأحكام المدني، مجموعة الحكم في اقتصادية الشريعة

ترتقي التجارة عبر انترنيت ترقية جيدة يستخدمه كثيرا من التجار كاستراتيجية في تسويق المنتج باستخدام خدمة سيلبيجرام ويضع على اتفاقية المصادقة. احدى من دكان عبر انترنيت يستخدم المصادقة تعني مونوكروم ستور مدينة مالانج، إلى يجده كونها مربحة لديها مشاكل في تنفيذ الاتفاقية، المشاكل الموقعة تعني الحفل التي لا يعمل وظيفته كما الموافقة في الاتفاق الأول تسبب الخسارة على أحد الحفل يسمى التخلف عن السداد. انتهاء التخلف عن السداد يعقد حسب اتفاق حفلين ومسؤوله من الحفل الذي يعقد التخلف عن السداد.

الأئلة لهذا البحث يعني: (١) كيف عقد اتفاقية المصادقة كوسيلة الترويج عبر الإنترنت بين التجار وسيلبيجرام بمدينة مالانج؟ (٢) كيف انتهاء التخلف عن السداد في اتفاقية المصادقة كوسيلة الترويج عبر الإنترنت بمدينة مالانج على منظومة كتاب القانون لأحكام المدني؟ (٣) كيف التخلف عن السداد في اتفاقية المصادقة كوسيلة الترويج عبر الإنترنت بمدينة مالانج على منظومة مجموعة الحكم في اقتصادية الشريعة؟.

استخدم هذا البحث نوع البحث القانون التجريبي باستخدام المنهج القانوني الاجتماعي. موعد البحث في مدينة مالانج. أسلوب جمع البيانات تقع بالمقابلة والوثائق.

الحصول لهذا البحث يعني: (١) عقد اتفاقية المصادقة بوسيلة رسالة المباشرة لبرمج انستاغرام وواتساب أو وصول باتصال الموجود في رواية سيلبيجرام. (٢) انتهاء التخلف عن السداد في كتاب القانون لأحكام المدني يكتب في فصل ١٢٤٣ أن "يعتبر سداد التكاليف والخسائر والفوائد بسبب عدم الوفاء بالمهمة إلزامياً". (٣) انتهاء التخلف عن السداد في مجموعة الحكم في اقتصادية الشريعة توجد في فصل ٣٦ أن حفل الذي يعقد التنكير فعليه التعذير يعني: دفع التعويضات وفسخ العقد ومخاطر التحويل والغرامة ودفع رسوم المحكمة.

## CHAPTER I

### INTRODUCTION

#### A. Background of Research

The rapid development of technology has brought changes to the world community and has succeeded in creating new infrastructure. The development of science in the field of information and communication technology is able to create supporting tools, ranging from systems to increasingly sophisticated communication tools. Such progress has provided ease and well-being for human life. Information technology through the Internet transforms the physical element into a virtual world (cyber space). Such rapid changes also bring a significant influence on trading activities carried out electronically, trading activities by utilizing social media instagram is now known as Electronic Commerce or abbreviated e-commerce.<sup>1</sup> Many business people are interested in social media instagram, social media use instagram in Indonesia ranked fifth with a percentage of 38% most often.<sup>2</sup>

The ability of the internet today is not only to open the most information, but also as a land to make a profit through online businesses (online shop) for example. More and more businesses are emerging in the world of online-based

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<sup>1</sup> Ahmad M. Ramli, *Cyber Law dan HAKI dalam sistem Hukum Indonesia* ( Bandung: PT.Refika Aditama,2004), 1

<sup>2</sup>Katadata Statistik dan data portal,"ini Media Sosial Paling Populer di Indonesia, <https://databoks.katadata.co.id/datapublish/2018/02/01/media-sosial-apa-yang-paling-sering-digunakan-masyarakat-indonesia/>. Diakses tanggal 03 Maret 2020

trading causing increasingly intense business competition. Online-based trading activities run by business owners on social media are currently most in demand and accessed by the public, especially millennials, namely social media instagram. Based on Communication and Informatics Kemetrician revealed that internet users in Indonesia currently reach 63 million people from that figure 95 percent have used the Internet network not only as a medium of information and communication, but also as a trading media. According to Sembiring in the globalization era, the development of information and telecommunications is very rapid, technology makes distance no longer problematic in communicating and transacting.<sup>3</sup>

The number of emerging online shops makes business and business competition higher among traders. In the world of business trading business owners have many ways in marketing their products to attract the attention of consumers, one of which is to use the services of instagram artists or commonly called "celebgrams" to promote their online shop products this is what is called endorsement that is poured through a form of endorsement agreement directly message. Endorsement agreements can be called one of these modern 21<sup>st</sup> century advertising systems. Endorsement is one of the marketing strategies in inviting and promoting goods or services to the general public. This system is based on an agreement between two parties between the owner of the goods and endorse that will be used to market its products, social media that is the target of online store

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<sup>3</sup> Aptika Kominfo, Diakses dari link <https://kominfo.go.id/content/detail/3415/kominfo-pengguna-internet-di-indonesia-63> pada tanggal 09 maret 2020 pukul 13.37



merchants today is Instagram. Instagram is a social networking-based app for taking photos and videos by applying various filters and sharing them to various other social media.<sup>4</sup>

The implementation of endorsement cooperation conducted by business owners with celebgrams brings benefits for both parties. In the implementation of endorsement cooperation in addition to having advantages, sometimes there are also obstacles. Celebgrams on social networking sites instagram often can not provide certainty to online business owners, do not provide direct confirmation to business owners, do not provide guarantees if they can not carry out their duties and obligations to business owners, so this can harm one party that is the business owner. Other adverse matters may be, either party does not fulfill its obligations as promised or fulfills its obligations but is not in accordance with the contents of the agreement.

In practice, there are several problems, one of which is some celebgram actions that do not comply with the agreement. Like the research conducted by the author on online shop business owners in Monokromstore Malang in the field of fashion with a variety of beautiful styles. Businesses often use endorse services on instagram, because it is felt that it can increase consumer buying interest. The implementation of endorsement agreements for businesses in the city of Malang can be profitable with the help of celebgrams, but in fact in the implementation of

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<sup>4</sup> Pikiran Rakyat, "Situs Belanja Online yang paling banyak diminati", <https://www.pikiran-rakyat.com/diakses> tanggal 30 Februari 2020

the agreement there are problems that cause marketing targets to decrease so that this harms business owners. For example, delays in uploading product photos of business owners while goods and costs have been received first, the quality of photos or videos uploaded is poor so that the goods do not longer interesting, does not give a sign hashtag products or services from the business owner, negligence or does not confirm to the business owner of the product for some reason business.

Celebgram action not implemented obligations as the agreement is certainly detrimental, even in endorsement agreements business owners also have a weak position where business owners can only accept the terms proposed by an endorser, when it should be in a healthy business activity there is a balance of legal protection for the parties involved in it. The disproportionate position between the parties to the agreement creates imperfections in the implementation of the agreement. An agreement is an event in which a person promises to another person and carries it out in accordance with the agreed agreement, but in fact the implementation of the agreement is sometimes in accordance with the agreement that has been made for several reasons, so this may harm one party, in the law of the agreement this is called default.

Default has 4 forms, namely not fulfilling achievements at all, fulfilling achievements but not complying with the contents of the agreement, performing



achievements but not on time and doing what is prohibited in the agreement.<sup>5</sup> Default can cause losses Business owners who often experience problems, especially in conducting endorsement cooperation through social media networks. Endorsement agreements are not specifically regulated in law. This agreement is a development of the world of online trading in the community in accordance with the seriring of the increasingly sophisticated time. Under article 1338 paragraph 1 of the Civil Code "all contracts (agreements) made legally apply as laws to which they are made".<sup>6</sup>

According to the Compilation of Sharia Economic Law book II CHAPTER I article 20 paragraph 1 that "an agreement is an agreement in an agreement between two or more parties to perform and or not to perform certain legal actions". The imperfect implementation of the agreement or either party reneging on the promise of the agreement is stipulated in the Compilation of Sharia Economic Law article 38. Whereas in Islamic law anyone is obliged to honor and fulfill the agreement or carry out the mandate that has been entrusted to him., must be consistent, have a high sense of responsibility to the content of the agreement that has been agreed so that the parties to the agreement are not wronged. This is in accordance with the compilation of Sharia economic law that the agreement aims to meet the needs of life and business development of each party that entered into an agreement.

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<sup>5</sup> R.Subekti II. *Hukum Perjanjian*, (Jakarta: PT. Intermasa,1987), 98

<sup>6</sup> Pasal 1338 ayat 1 Kitab Undang-Undang Hukum Perdata

Every contract must be executed by the parties in accordance with the agreement stipulated by the concerned and at the same time avoided injury, as God said in the QS. Al-anfaal: 27:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ

He mean: "Hey those who believe, do not betray Allah and the Messenger (Muhammad) and (also) do not betray those who are entrusted to you, where you know". (QS. Al-Anfaal: 27).<sup>7</sup>

From the above problems, of course, it is necessary to note because in making an agreement must be implemented in accordance with the prevailing principles and regulations, a sense of responsibility and trust in order to avoid the loss of one party. The question of the author is whether the implementation of endorsement agreement in Malang city has fulfilled the elements of the agreement in the civil code of law and the compilation of sharia economic law? Based on the problem, the authors are interested in researching the above problems, while the researchers limit the problem in this study is about the implementation of endorsement agreements and settlement of defaults. The object of this research is in businesses that use endorse services. While the Book of Civil Law and Compilation of Sharia Economic Law as a source to resolve defaults. Thus, based on the background above, the researchers are interested in conducting a study under the title **“Settlement of Defaults Endorsment Agreement as an Online Promotion In Malang City Media Instagram Perspective Civil Code of Law and the Compilation of Sharia Economic Law”**.

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<sup>7</sup> QS.Al-Anfaal :27

## **B. Statement of Problem**

From the main problem, the problem that will be asked in a more specific research question is:

1. How is the implementation of endorsement agreement as an online promotional media between business owners and celebrities in Malang City?
2. How is the settlement of defaults in endorsement agreements between business owners and celebrities with instagram in Malang city perspective of the Civil Code?
3. How is the default in endorsement agreement between business owner and celebgram with instagram in Malang city perspective Compilation of Sharia Economic Law?

## **C. Purose of Research**

1. To analyze the implementation of endorsement agreements conducted by business owners and celebrities in malang city.
2. To analyze the form of default and its settlement in the endorsement agreement as an online promotional media between business owners and celebrities in the city of Malang perspective of the Civil Code.
3. To analyze the settlement of defaults in endorsement agreements as an online promotional media in the city of Malang perspective Compilation of Sharia Economic Law.

## **D. Benefit of Research**

### **1. Theoretically**

Theoretically this research can benefit academically for the development of knowledge and literature literature on the settlement of defaults in endorsement agreements as an online promotional media in the city of Malang perspective of the Civil Code and Compilation of Sharia Economic Law and can provide input for parties related to activities through social media

### **2. Practically**

In practical terms, this research is expected to be an information material and useful for researchers and the general public, especially for those who conduct business-based economic activities online, and can be a reference for various parties and as a comparison material on subsequent research in similar topics to improve subsequent research and develop further, especially online-based activities on social media.

## **E. Operational Definition**

### **1. Defaults**

The performance of obligations that are not fulfilled properly or une timely in carrying out the agreement, and the achievements of not carrying out due to the renegeing of promises, omissions, intentional or mistakes committed by either party.

### **2. Agreement**

An act in which one or more people bind themselves to one or more people where the parties to the agreement fulfill each other's rights and obligations to do so in accordance with the content of the agreement.

### 3. *Endorsement*

A form of cooperation in promoting products with instagram, a form of cooperation between one party and the other in promoting a particular product, so that both benefit.<sup>8</sup>

## **F. Discussion Structure**

To facilitate this research, researchers develop systematics of discussion as a reference in thinking systematically, as follows:

### CHAPTER I : INTRODUCTION

It is the first chapter in the research that explains the background of the problem, problem formulation, research objectives, research benefits, operational definitions, and systematics of the discussion.

### CHAPTER II LITERATURE REVIEW

Presenting the previous research as a comparison of research conducted by researchers with previous research, and theoretical studies explaining the concepts in the agreement, in general this chapter contains the theories of the

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<sup>8</sup> Diakses dari link [https://id.wikipedia.org/wiki/Celebrity\\_Endorsements](https://id.wikipedia.org/wiki/Celebrity_Endorsements) Pada tanggal 11 Juli 2020



completion of endorsement agreements as an online promotional media in malang city perspective KUHPERdata and KHES.

### CHAPTER III RESEARCH METHODS

It is a complete description of the research methods used in this research title covering the types of research, research approaches, research locations, sampling method techniques, types and data dummies, data collection methods, and data processing methods.

### CHAPTER IV RESULTS OF RESEARCH AND DISCUSSION

It is a presentation of the results of research and discussion, which explains the data obtained from the results of research that has been edited, clarified, verified, and analyzed for the answers to defined problem formulations.

### CHAPTER IV CLOSING

It is the final chapter of research consisting of conclusions, suggestions for research objects, advice for the wider community and subsequent research. At the end of this thesis is also equipped with a library list, attachments and résumé list of researchers.



## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

Previous research is used by researchers as reference material and also as a reference that there is a similar research but not the same as the research that will be done by researchers, researchers found several papers including:

1. Thesis by Yan Risa Alviano

Student of Faculty of Sharia and Law of State Islamic University Sunan Kalijaga Yogyakarta, in 2017 with the title "Settlement of Default in Car Rental Agreement (Case Study of Calysta Tour & Rent Car Bantul Regency)", with the aim of research to find out how the settlement of default in the lease agreement in Calysta & Rent Car. The type of research used is empirical juridical based on positive legal principles. The result of this research is the settlement of defaults made, namely paying fines according to violations committed and secondly by negotiating between parties to pay compensation.<sup>9</sup>

The similarity of the research written by Yan Risa Alviano with the author's research is both discussed about the settlement of defaults based on positive laws. While the difference from this research is in the object of research, namely on rental agreements according to positive law while the study authors in

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<sup>9</sup> Yan Risa Alviano "Penyelesaian Wanprestasi dalam Perjanjian Sewa Menyewa Mobil (Studi Kasus Calysta Tour & Rent Car Kabupaten Bantul)", (Yogyakarta: Universitas Islam Negeri Sunan Kalijaga, 2017)

endorsement agreements according to Book of Civil Law and Compilation of Sharia Economic Law.

## 2. Thesis by Lidya Savenallina

Students of the Faculty of Law Universitas Padjadjaran Economics Law Study Program in 2016 with the title "Protection for Online Business Owners In The Event of Default endorse agreement through Instagram Linked To The Law of Alliance And Law No.11 Year 2008 On Information And Electronic Transactions". The type of research used is normative juridical in the form of secondary data collection conducted through literature studies and legal searches both legislation and legal principles related to the issues examined include the principles of treaty law and legal systematics. The results in this study that the first endorser qualified as a party who committed a default based on article 1243 of the Civil Code and article 18 of the ITE Law and online business owners are protected as a party of good faith. Both legal actions are taken by online business owners based on the terms of the settlement stated in the endorsement agreement. If the agreement does not govern, then the online business owner can pursue litigation through a civil indemnity lawsuit in accordance with the provisions in article 1243 of the Civil Code and article 38

of the ITE Law as well as non-litigation settlements that are considered more effective.<sup>10</sup>

The similarities in this study are both discussed about the settlement of defaults in endorsement agreements. While the difference in Lidya Savenallina's research is more focused on legal protection of online business owners in the event of default in endorsement agreements linked to the Alliance Law and Law No.11 of 2008 on Information and Electronic Technology. While the research I wrote is the focus of the discussion on the settlement of defaults in the agreement endorsement perspective Civil Code of Law and Compilation of Sharia Economic Law.

3. Thesis by Marta Agustina Hutagaol

Student of Faculty of Law, Gadjah Mada University, in 2017 with the title "Implementation of Endorsement Agreement Between Online Shop and Instagram Social Media Artist". This legal research is normative-empirical, which combines normative research conducted with literature searches to obtain secondary data and empirical data conducted directly into the field to obtain primary data. The results in this first study, the implementation of endorsement agreement between online shop and artist on social media instagram has been valid as stipulated in article 1320 KUHPperdata. Second,

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<sup>10</sup> Lidya Savenallina "Perindungan Bagi Pemilik Bisnis Online dalam Perjanjian Endorse diInstagram Dihubungkan dengan Hukum Perikatan dan Undang-Undang No.11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik". (Bogor: Universitas Padjadjaran, 2016)

there are two forms of default that occur, namely the implementation of achievements but not in accordance with the agreement and the implementation of achievements but too late.<sup>11</sup>

The similarity of this research with my research is that the discussion focuses on the implementation of agreements and the settlement of defaults in endorsement agreements. While the difference in Marta Agustina's research only uses one point of view in reviewing it is based on positive law while the author uses two points of view, namely based on the Book of Civil Law and Compilation of Sharia economic law.

#### 4. Thesis by Af'idah Abadiyah

Student of Maulana Malik Ibrahim State Islamic University Malang Faculty of Sharia Sharia Business Law Study Program, Year 2018 With Title "Default in The Business of Buying and Selling Supplier Database In The Study of Civil Code and Islamic Law (Study In Social Media Group Line "Millionaire" Malang)". The type of research used is empirical. The result of this research is the occurrence of defaults on the practice of buying and selling supplier databases because the seller does not meet its obligations as in the agreed agreement, so that one of the parties is harmed, seen from the point of

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<sup>11</sup> Marta Agustina Hutagaol, "*Pelaksanaan Perjanjian Endorsement antara Online Shop dan Artis di Media Sosial Instagram*". (Yogyakarta: Universitas Gadjah Mada, 2017)

view of kuhPerdata then has violated article 1313 and article 1234 where the act is wrong.<sup>12</sup>

The similarity of my research with previous research is equally discussed about defaults in the business of positive legal perspective that is Book of Civil Law. While the difference lies in the object of his research, my research discusses the defaults in endorsement agreements in the city of Malang, East Java while previous research on defaults in the business of buying and selling supplier databases.

Table 2.1

| No | Name, Researchers/<br>College /Year   | Research title   | Similarities   | Difference   |
|----|---|--|--|--|
| 1. | Yan Risa Alviano/State Islamic University of Sunan Kalijaga Yogyakarta/2017 | Settlement of Default in Car Rental Agreement (Case Study of Calysta Tour & Rent Car Bantul District). | Previous research with study authors both discussed the completion of defaults in agreements       | The object of the research is different, i.e. the research focuses on lease agreements while the author's research is an endorsement agreement |
| 2. | Lidya Savenallina/University of Padjadjaran/ 2016                           | Legal protection for Online business owners in case of default endorsement agreement through           | Previous research with study authors both discussed endorsement agreements between online business | Different research studies, namely previous research focused more on legal protection for online business owners, while the study              |

<sup>12</sup>Af'idah Abadiyah, "*Wanprestasi Dalam Bisnis Jual Beli Database Supplier Dalam Kajian KUHperdata Dan Hukum Islam (Studi Di Grup Media Sosial Line "Jutawan" Malang)*". (Malang, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2018)



|    |  |  |  |  |
|----|--|--|--|--|
|    |  | Instagram linked to the law of the Alliance and Law No. 11 year 2008 on information and electronic transactions                                    | owners and selebgram   | authors focused on resolving defaults in endorsement agreements  |
| 3. | Marta Agustina Hutagol/University of Gadjah Mada/2016                            | Implementation of the endorsements agreement between Online Shop and social Media artist Instagram   | Previous research with study authors both discussed the implementation of endorsement agreements on social media on Instagram.                           | Research studies different, previous studies focused on analyzing the implementation of endorsement agreements, while the authors' research focused on resolving defaults in endorsement agreements. |
| 4. | Af'idah Abadiyah/ Islamic State University of Maulana Malik Ibrahim Malang /2018 | Default in business buying and selling Database Supplier in the study of Civil and Islamic law (Study in social Media group Line "Jutawan" Malang) | The study authors' similarities with previous research are equally discussed about cases of default in online-based business perspectives of Civil Code. | Research studies are different, previous research focused on defaults in the sale and sale of supplier databases while the study authors focused on resolving defaults in endorsement agreements.    |



## **B. Theoretical Framework**

The theoretical framework is structured based on the background of research supported by various theories derived from previous research and literature that relevant with legal issues in the field. Furthermore, researchers will formulate a useful conceptual framework to help the process of fact analysis of research results in the field based on applicable theories.

### **1. Review of the Agreement under the Civil Code of Law**

#### **a. Definition of Agreement**

Agreement is a Dutch translation of *verbinten*. An alliance is an act between two or more people that gives rise to a legal relationship, in which case the other party has the right to sue and the other party has an obligation to carry out the agreed claim.<sup>13</sup>

In the opinion of Peter Mahmud Marzuki, which has been quoted by Agus Yudha Hernoko stated that in the concept of anglo-American countries equate between agreements with contracts. In Dutch the agreement is called *overeenkomst* and in English it is called an agreement that has a broad meaning of the understanding of the contract, because it is not only related to

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<sup>13</sup> Mariam Darus Badruzaman, *Hukum Perikatan dalam KUH Perdata Buku Ketiga Yurisprudensi, Doktrin serta Penjelasan*, (Bandung: Citra Aditya Bakti, 2015), 9

business but to all fields. For agreements relating to business activities is often referred to as a contract.<sup>14</sup>

According to Agus Yudha Hernoko, that the understanding of the agreement with the contract has something in common, because in practice the use of the term agreement is often used for commercial contracts.<sup>15</sup> In kuhPerdata know the agreement with the terms of approval, which it is included Article 1313 of the civil code. The article specifies that “An Agreement is an act in which one or more person associates himself with another person or more”.<sup>16</sup>

In the opinion of Charless L. Knapp and Nathan M. Crystal quoted by Salim H.S. the contract is an agreement between two or more people not only giving trust, but mutual understanding to do something in the future by someone or both of them.<sup>17</sup> According to a new theory put forward by Van Dunne, an agreement is a legal relationship between two or more parties based on the word agreed to cause legal repercussions. According to the new theory, there are three stages in making an agreement, namely:

- 1) The precontractual stage, namely the supply and acceptance of

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<sup>14</sup> Agus Yudha Hernoko, *Hukum Perjanjian Asas Proposionalitas dalam Kontrak Komersial*, (Jakarta: Prenadamedia, 2010), 14

<sup>15</sup> Hernoko, *Hukum Perjanjian Asas Proposionalitas dalam Kontrak Komersial*, 15

<sup>16</sup> Abdul Ghofur Anshori, *Hukum Perjanjian Islam di Indonesia (Konsep, Regulasi, dan Implementasi)*, (Yogyakarta: Gadjahmada University Press, 2010).22.; Hernoko, *Hukum Perjanjian Asas Proposionalitas dalam Kontrak Komersial*, 15

<sup>17</sup> Salim H.S, Abdullah, Wiwiek Wahyuningsih. *Perancangan Kontrak & Memorandum of understanding (MoU)*. (Jakarta: Sinar Grafika, 2014), 8

- 2) The contractual stage, i.e. the conformity of the declaration of will between the parties
- 3) Postcontractual stage, namely the implementation of the agreement.

Therefore Salim HS gives the definition of the agreement or contract as follows: “The relationship of the law between the subject of one law by carrying out its achievement in accordance with the deal.”<sup>18</sup>

#### **b. Legal Terms of Agreement**

In continental European law, the terms of the Agreement shall be governed in article 1320 of the Civil Code, section 1320 of the civil law determines the four terms of the agreement, namely:

- 1) Those agreements that bind themselves

This agreement is governed by article 1320 paragraph 1 of the civil law. The meaning of a deal is the conformity of a statement of wills between one person or more with the other, as appropriate in that agreement is a statement, because the will cannot be seen or known by others. With the words agreed in agreement, both parties have the freedom of will.<sup>20</sup>

- 2) Proficiency to make an alliance

Proficiency is the ability to perform legal actions. Legal action is a legal act. The people who do the Covenant must be proficient and have the

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<sup>18</sup>Salim HS dkk, *Perancangan Kontrak dan Memorandum of Understanding (MoU)*, 7

authority to act, as prescribed by the law. People who do legal actions are adults.

### 3) A Specific Thing

In various literature it is mentioned that the object of the agreement is accomplishment (the Treaty point). Achievement is the implementation of the contract content that has been promised and agreed together. Achievements consist of:

- a) Give something
  - b) Do something
  - c) Not doing something (article 1234 of civil Law)
- 4) The presence of halal causa

In article 1320 the civil law is not explained the notion of Oorzaak (the halal Causa). In article 1337 civil law only mentioned Causa forbidden. A cause is forbidden when contrary to law, morality, and public order. The Hoge Raad since year 1927 defines Oorzaak as something that is the purpose of the parties. The first two conditions are called subjective terms, because both conditions are on the subject of research. While the latter conditions are called objective conditions because of the object of the agreement.

#### **c. Agreement Law Principles**

In the Book III of Civil Law recognizes three main principles in making and implementing an agreement. The three principles are:

1. Principle of freedom of contract (*partij autonomi freedom of contract*).

One of the principles in treaty law is the principle of freedom of contract. That is, the parties are free to make an agreement and manage the contents of the agreement themselves, and meet the following conditions: Memenuhi syarat sebagai suatu perjanjian

- a) Not prohibited by law
- b) In accordance with applicable customs
- c) As long as the agreement is executed in good faith.

With this principle the law of the agreement becomes open and everyone is free to make agreements that meet the terms of the validity of the agreement in Article 1320 of the Civil Code. Article 1338 paragraph 1 of the Civil Code reflects the principle of freedom of contract, which in that article makes it clear that all forms of agreements made lawfully will become law for the parties who make them.<sup>19</sup>

2. Principle of conformity of will (*konsensualisme*)

The principle of consensualism is basically agreements and alliances born from the moment an agreement is reached, the agreement is quite there is a word of agreement. In other words, the agreement is valid when it has been agreed on the subject matter and no specific formality is

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<sup>19</sup> J Satrio, *Hukum Perikatan tentang Hapusnya Perikatan*, (Bandung: PT Citra Aditya Bakti, 1996), 3



required, except for an agreement which is required by law a certain formality.<sup>20</sup>

### 3. Principle of Legal Certainty (*Pacta Sunt Servanda*)

This principle relates to the consequences of the covenant. The principle of *pacta sunt servanda* outlines that third parties must respect and should not intervene against the substance of the contract made by the parties, as described in article 1338 paragraph 1 of the Civil Code.

### 4. Principles of Good Faith

This principle of good faith requires that an agreement be executed honestly, i.e. by heeding the norms of propriety and decency because it is one of the most important joints of treaty law.<sup>21</sup> In good intentions here is to act as a good person, the parties to the agreement must carry out the substance of the agreement properly.<sup>22</sup>

### 5. Personality Principles

The principle of personality is the principle that determines that a person who contracts is for the benefit of an individual only.<sup>23</sup>

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<sup>20</sup> Abdul Halim dan Teguh Prasetyo, *Bisnis E-Commerce Studi Sistem Keamanan dari Hukum di Indonesia* (Yogyakarta: Pustaka Pelajar, 2005), 82-86

<sup>21</sup> Mariam Badrulzaman, *Hukum Perikatan dalam KUH Perdata Buku Ketiga Yurisprudensi, Doktrin, serta Penjelasan*, 90-91

<sup>22</sup> Ratna Arta Windari, *Hukum Perjanjian*. (Yogyakarta: Graha Ilmu, 2014), 2

<sup>23</sup> Ratna Arta Windari, *Hukum Perjanjian*, 10



#### d. When does the Contract Occur

The occurrence of a contract in the Civil Code is not expressly stated, but in article 1320 kuhPerdata is only mentioned sufficiently with the consensus of the parties, in various literature there are four theories of the occurrence of contracts, namely:<sup>24</sup>

##### a) Statement Theory (*Uithingstheorie*)

According to the theory of statement, the agreement (toesteming) occurred at the time the party stated that it accepted the offer.

##### b) Delivery Theory (*Verzendtheorie*)

According to shipping theory, the deal occurs when the party receiving the offer sends a telegram.

##### c) Theory of Knowledge (*Vernemingstheorie*)

In this theory, an agreement occurs when the offering party is aware of the acceptance, but that acceptance has not been received (not known directly).

##### d) Acceptance theory (*Ontvangstheorie*)

According to the theory of acceptance that the agreement occurred at the time the parties who offered to know directly the answer from the opposing side.

#### e. Consequences of the Agreement

The consequences of a legally made agreement are as follows:

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<sup>24</sup> Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan*, 74

- 1) Applies as a binding law to those who make it (article 1338 paragraph 1 of the Civil Code)
- 2) An agreement shall only apply between the parties making it (article 1340 of the Civil Code) and the agreement may be binding on third parties if previously promised (article 1317 of the Civil Code)
- 3) Consequently the parties to the agreement cannot unilaterally withdraw from the consequences of the agreement made by them (article 1338 paragraph 2 of the Civil Code)
- 4) An agreement made if it does not meet one or more of the terms specified in article 1320 of the Civil Code, then the agreement is invalid, which means that the agreement is threatened with cancellation.

## **2. Review of Defaults**

### **a. Definition oh the Default**

Understanding default has not received uniformity, there are still various terms so there is no agreed word where tang to be used. There are several terms about default, namely: breaking promises, breaking promises, and breaking promises. The word default comes from the Dutch word "wanprestatie" which means bad achievement / injury of promise. In English, default is called "breach of contract", which means no obligations as appropriate in accordance with the contract. Default is an attitude in which a

person does not fulfill or fails to perform the obligations specified in the agreement.<sup>25</sup>

Default is not fulfilling or failing to perform obligations (achievements) as specified in the agreement made between the business owner and endorsement.<sup>26</sup> Default or non-fulfilling of promises can occur either intentionally or unintentionally. Parties who accidentally default on this can happen because they are unable to fulfill the achievement or also because they are forced not to perform the achievement.<sup>27</sup> Wirjono Prodjodikoro said that default is the absence of an achievement in the law of the agreement, meaning a thing that must be implemented as the content of an agreement. Perhaps in Indonesian language can be used the term implementation of promises for achievements and the absence of implementation of promises for default.<sup>28</sup>

According to M. Yahya Harahap that "default" can also be intended as the implementation of obligations that are not in time or performed inappropriately.<sup>29</sup> Auxiliary forms of default according to R.Subekti can be:

- a) Not doing what he is expected to do.
- b) Carry out what he promised, but not as he should
- c) Carry out what he promised, but not as he should.

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<sup>25</sup> Abdul R Saliman, *Esensi Hukum Bisnis Indonesia*, (Jakarta: Kencana, 2004), 15

<sup>26</sup> Salim HS, *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*, 98

<sup>27</sup> R.Subekti dan R.Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT.Paradnya Paramita, 2004), 324

<sup>28</sup> Wirjono Prodjodikoro, *Asas-asas Hukum Perjanjian* (Bandung: Sumur, 2004), 17.

<sup>29</sup> M.Yahya Harahap, *Segi-segi Hukum Perjanjian* (Bandung: Alumnus, 2002), 60

- d) Do what he is able to do but it is too late.
- e) Do something that according to the agreement should not be done.<sup>30</sup>

According to Satrio there are three defaults, as follows:

- a) Not fulfilling achievements at all
- b) Fulfill achievements but not on time

If the fulfillment of achievements can still be expected to be fulfilled, it is considered to meet the achievements but not on time.

- c) Fulfill achievements but are not appropriate or incorrect

Debtor who fulfills the achievement but does not comply, and the achievement cannot be repaired then declared kliru and does not meet the achievement at all.

#### **b. Factors Causing of Defaults**

The causes of default are:

##### **2. Any negligence**

In connection with negligence, it should first be known the kinds of obligations that must be considered negligent if not carried out. Judging from the kinds of things promised, the debtor's obligations are basically three kinds, namely:

- a. Obligation to give something that has been promised.
- b. Obligation to do an act.

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<sup>30</sup> R.Subekti II. *Hukum Perjanjian*, 98

c. Obligation not to carry out an act.<sup>31</sup>

### 3. Due to Forcing Conditions (*overmacht*)

The state of force (*overmacht*) is the state of the debtor who does not carry out what is promised due to a completely unpre certain thing and where the debtor can not do anything about the circumstances or events that arise beyond the expectations. In the regulation of Civil Law the problem of force circumstances is stipulated in Article 1244 “If there is a reason for it, the debtor must be punished indemnity, and interest if the debtor can not prove”, if it is not appropriate at the time specified implementation of the alliance, due to an unexpected, insurable to him, all of it if bad faith does not exist on his part. It is not for the cost, loss and interest to be reimbursed, if the circumstances of coercive or an accidental occurrence the debtor is unable to give or do anything obligatory, or because the same things have been done forbidden.<sup>32</sup>

#### c. Legal Consequences of Defaults in Civil Code of Law

With the default, the party that feels harmed as a result of default in the implementation of the agreement, the party that feels aggrieved has the right to sue in an effort to enforce its contractual rights. This is stipulated in article 1267 of the Civil Code which states that: "the party to which the alliance is not

<sup>31</sup> R.Subekti, *Hukum Perjanjian*, Cet.ke-II (Jakarta: Pembimbing Masa, 2001), 55

<sup>32</sup> Subekti, R, dan Tjitrosudibio, R, *Kitab Undang Undang Hukum Perdata*, Cetakan ke-31,(Jakarta : PT Pradnya Paramita, 2001), 325



fulfilled, may choose, compel the other party to fulfill the agreement, if it is still done or demand the cancellation of the agreement, with reimbursement of losses and interest”.<sup>33</sup> An unfulfilled alliance is settled with compensation, in accordance with article 1239 of the Civil Code which reads “any alliance to do something, or not to do something, shall be settled by providing reimbursement of costs, losses and interest, if it does not meet its obligations”.<sup>34</sup>

The occurrence of default results in other parties who do not commit defaults are harmed, especially if the other party is a business person, then it can lose the expected profit. According to R.Setiawan, losses are real losses that occur due to defaults. The amount of loss is determined by comparing the state of wealth after default with the circumstances if there is no default. So by law it is expected that no one party is harmed due to default.<sup>35</sup>

In the agreement if the other party is harmed due to default, it must bear the consequences of the demands of the opposing party which can be in the form of demands: cancellation of the contract or fulfillment of the contract. According to Munir Fuady, the practice of indemnification due to the default of an agreement is carried out in various possibilities, where the matters requested by the injured party are:

- 1) Indemnity only

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<sup>33</sup> Soedaryo, *Kitab Undang –Undang Hukum Perdata*, (Jakarta: Sinar Grafika, 2015), 319

<sup>34</sup> Pasal 1239 Kitab Undang-Undang Hukum Perdata

<sup>35</sup> Setiawan, *Pokok-Pokok Hukum Perikatan*, (Bandung: Bina Cipta, 1977), 17

- 2) Cancellation of contract only
- 3) Cancellation of the contract with compensation
- 4) Fulfillment of contracts only
- 5) Fulfillment of the contract with compensation

The existence of a cause will inevitably cause repercussions, as well as in default. The consequences of default include:

2. Required to pay compensation (Article 1243 of Civil Law)
3. May request the cancellation of the contract through the court (Article 1266 of the Civil Code)
4. May request the fulfillment of the contract, or the fulfillment of the contract accompanied by compensation, and cancellation of the contract with compensation (Article 1267 of the Civil Code).<sup>36</sup>

### 3. Endorsement

#### a. Definition of Endorsement

Endorsement Literally, endorsement means support or advice.<sup>37</sup> In this endorsement practice directly supports a product of businesses to be purchased or used by the instagram user community. In *English Dictionary*, *endorsement* is: “(C or U) the fact of a famous person appearing in an advertisement saying

<sup>36</sup> Lukman Santoso, *Hukum Perikatan* (Malang: Setara Press, 2016), 75

<sup>37</sup> Kompasiana, “Pengertian Endorsement”, <http://www.pengertianmenurutparaahli.net/pengertian-endorsement/> diakses pada tanggal 12 Maret 2020, pada pukul 10.00

*that they use and like a product: products that carry an endorsement from a celebrity*". which the author of the free translation is: "the fact that famous people appear in an advertisement and say that they use and like the product: a product that brings the support of a celebrity".

In online marketing endorsements it is the support or advice given to a product or service where the support is done by someone who has influence, such as a public figure, celebrity or artist. In terms of business owners will benefit from using endorse services to advertise their products. Endorsement activities in online business today become a kind of cooperation between the two parties that are mutually beneficial. In addition, Kotler and Keller explained that celebrity endorsers are the use of source as an interesting or popular figure in advertising, it is a creative enough way to convey the message so that the message conveyed can get higher attention and can be remembered.<sup>38</sup>

#### **b. Endorsement Characteristics**

Shimp explained that endorsers are ad supporters or commonly known as ad stars that support the advertised product. A celebrity endorser is an ad that uses a person or a well-known figure or public figure in favor of advertising. According to Shimp there are five characteristics of celebrity endorsers called TEARS models. The five characteristics are:

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<sup>38</sup> Pratiwi Budi Utami, "*Strategi Komunikasi Pemasaran melalui endorsement pada online shop di Indonesia*". Tesis (Banten: Universitas Negeri Sultan Agung Tirtayasa, 2014), 2

- 1) Trustworthiness, referring to the ability to be trusted, honesty, and integrity, can convince consumers that they are not trying to manipulate and be objective in presenting a product or service.
- 2) Expertise, referring to the knowledge or skills possessed as an endorser. It is very important for companies to choose the right endorser because it is expected to be able to be more persuasive in changing consumer opinion.
- 3) Attractiveness, referring to a number of physical characteristics that can be seen in the celebrity, such as good looks or beauty, body shortness, and so forth.
- 4) Respect, referring to an endorser who is admired and respected by consumers for his personal qualities and achievements.
- 5) Similiarity, is an important attribute because it is easier for consumers to connect with an endorser who has the same characteristics as the consumer.

**c. The Positive Impact of Using Endorsement**

The use of endorse services in the world of online business has a lot of positive impact on the effectiveness of product marketing to consumers, here are some positive impacts of the use of endorse:

- 1) Known products in a relatively short time to introduce and promote a product to the community in seconds, minutes, products can be known by many people.

- 2) Increase sales and expanding the business network, product-related information offered can be spread more quickly so that product sales will increase more than ever before.
- 3) Consumer confidence is increased because the product is recommended by a public figure who has a positive image in the general public's point of view and makes it easier for the public to believe and be interested in the products used by celebgrams.
- 4) By doing endorse services, promotions will be more effective than promotions using brochures or flyers that can consume energy and many other materials because it will not take long for leboh products to be known in the wider community.
- 5) The use of endorse services can increase the number of online store followers and can get many loyal and profitable new consumers.

**d. The negative impact of using *endorsement***

- 1) Every celebgram has its own rules  
Each celebgram has its own rules in endorsement, the more followers generally the price offered is also higher.
- 2) Incompatibility between understanding between consumers and the message conveyed.
- 3) Ads do not last long because the high implementation of endorsement strategies makes these celebgrams also apply policies for the duration of



endorsement ads. This means that ads related to your product will be removed if they expire. For duration depends on their respective policies.

#### **4. Agreement According in the Compilation of Sharia Economic Law**

##### **a. Definition of Agreement (Akad)**

Compilation of Sharia Economic Law is a set of regulations that have been issued based on the supreme court regulation No.02 of 2008 on the Compilation of Sharia Economic Law, concerning alliances, taking legal resources originating in the Qur'an and Al Hadith, in the compilation of Sharia economic law has also undergone adjustments to existing sharia provisions, such as the Fatwa DSN (National Sharia Council). In the Compilation of Sharia Economic Law the agreement is referred to as an agreement stipulated in Article 20 number 1 of the compilation of sharia economic law the definition of akad is an agreement in the agreement between two or more parties to perform and or not to perform legal acts. An agreement is an agreement in the bond between two or more parties to perform an achievement or not to perform certain legal actions that have been mutually agreed upon. The principles in the Agreement in the Compilation of Sharia Economic Law Book II article 21 that there are thirteen principles used in the agreement are: <sup>39</sup>

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<sup>39</sup> Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syariah (Edisi Revisi)*, Tahun 2011), 15

- 1) *Ikhtiyari* or voluntary, each agreement is carried out at the will of the parties, avoided forced due to pressure from one party or another party.
- 2) Trust or keep the promise, every contract must be carried out by the parties in accordance with the agreement stipulated and at the same time avoided from injury of the promise.
- 3) *Ikhtiyati* or prudence, each contract is carried out with careful consideration and done carefully and appropriately.
- 4) *Luzum* or ungodly, each contract is required to determine a clear purpose and proper calculation to avoid various speculations or *maisir* in the agreement made.
- 5) Mutual benefit, each contract is carried out to meet the interests of the parties so as to prevent the practice of manipulation and harm one party.
- 6) *Taswiyah* or equality, the parties in each contract have an equal legal position, have a balanced portion of rights and obligations.
- 7) Transparency, each agreement is conducted with the responsibility of the parties openly.
- 8) Ability, the purpose of this principle that the agreement that has been made must consider the ability of both parties so that later no one feels objected and burdened.
- 9) *Taisir* or ease, each contract is carried out according to the ability of the parties so as not to become an excessive burden for the concerned.

10) Good faith, the contract is done to enforce benefit, does not contain bad deeds that can be detrimental.

11) For that which is lawful, has no element contrary to the law, is not prohibited by law and is not unlawful.

12) *Al-hurriyah* or freedom of contract, in the contract of all people are free to determine the content, form and with whom to do the covenant.

13) *Al-kitabah* (written)

#### **b. Terms of Agreement (akad) in Compilation of Sharia Economic Law**

In the Compilation of Sharia Economic Law an agreement can be said to be valid and has the force of law that is to fulfill the pillars in the agreement stipulated in Article 22 compilation of Sharia Economic Law, in the article states that the pillars in the implementation of the contract are:

- 1) the parties involved,
- 2) contract object,
- 3) the main objectives of the contract and
- 4) deal,

While the terms of the first agreement (contract) contained in article 23 are: the parties who berakad are individuals, groups of people, alliances, or business entities and people with legal ability, reason, and tamyiz. The terms of both agreements in article 24 make it clear that the object of the contract is amwal or the permitted services required by each party, the object of the contract must be sacred, perfectly owned and can be handed over. The terms of

the third contract in article 25 make it clear that the agreement aims to meet the needs of life and business development of each party that entered into the agreement. Agreement (*sighat akad*) can be done clearly, whether orally, written or deed.<sup>40</sup>

Pillars is an element that must be fulfilled in a certain thing. And conditions are elements that must be met to do certain things. In this case the pillars of the contract are as follows:<sup>41</sup>

- 1) *Aqid* is the parties to the contract. Where the party can be a party that has *haq* or a party that represents *haq* others.
- 2) *Ma'qud 'Alaih* is an object that is enslaved in an agreement
- 3) *Maudhu' al-'Aqd* is the purpose and purpose of the contract making, where the purpose must exist when the contract occurs.
- 4) *Shigat al-Aqd* is the utterance of the will of both parties with the sign of the *ijab* and *qobul* or offer and acceptance.

### c. Legal Category of Akad

In article 28 of the contract law is divided into three categories, namely:

- 1) a valid contract is an agreement that is fulfilled in harmony and its terms,

<sup>40</sup> Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syariah (Edisi Revisi)*, Tahun 2011, 16

<sup>41</sup> Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: RajaGrafindo Persada, 2002), 47.; Qomarul Huda, *Fiqh Muamalah*, (Yogyakarta: Teras, 2011), 28

- 2) a facade contract is an agreement that is fulfilled in harmony and conditions, but there are facets or other things that damage the contract due to consideration of maslahat, and
- 3) a canceled contract is a contract that lacks harmony and its terms”.

The disgrace of the Agreement in article 29 is: a valid contract as referred to in article 27 letter a is an agreement agreed in the agreement, contains no element of ghalath or error, is carried out under ikrah or coercion, taghrir or deception, and ghubn or disguise.

#### **d. Ungrateful the Promise and Sanctions**

Various treaty laws when an agreement has fulfilled all its terms and complies with islamic treaty law if it has fulfilled the pillars and conditions of the agreement is binding and must be fulfilled and act as law. In other words, the agreement has legal consequences that must be fulfilled by the relevant parties.<sup>42</sup>

In making an agreement (akad) agreed by the parties must contain provisions: a binding agreement, the ability to make an alliance, to a certain thing, and a reason that is lawful according to Islamic law. Ahmad Miru asserts in the Islamic Contract Law, that at the stage of the implementation of the agreement, if either party or both parties do not carry out obligations in accordance with the agreement he has made, then that is the so-called default.<sup>43</sup>

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<sup>42</sup> Syamsul Anwar, *Hukum Perjanjian Syariah Teori tentang Studi Akad dalam Fikih Muamalah*, (Jakarta: Raja Grafindo Persada, 2010), 263.

<sup>43</sup> Ahmad Miru, *Hukum Kontrak Bernuansa Islam*, (Jakarta: PT. Raja Grafindo Persada, 2013), 85



In the Compilation of Syaria Economic Law in the fourth part of article 36 it is stated that the party is considered to be renegeing on a promise if it is due to its mistakes:

- 1) did not do what was promised to do so,
- 2) carry out what he promised but not as promised
- 3) do as he promised, but it is too late,
- 4) do something that according to the agreement should not be done

Article 32 Compilation of Sharia economic law explains that the cause of the cancellation of an agreement is:

1. The pusher is able to carry it out
2. The forced party has a strong guess that the coercion will immediately carry out what it will threaten if it does not comply with the coercive order
3. The threatened weight suppresses the soul of the threatened person. It depends on the individual person
4. Threats will be implemented immediately
5. Coercion is against the law

A person is obliged to honor and abide by every covenant entrusted to him, so he has received a mandate from others. In Article 37 which reads: the party in the contract of renegeing on the promise, if by a warrant or has been given a warning has been declared to break the promise or by its own agreement stipulates or has been stipulated, that the party in the contract is considered to be renegeing on the promise by the end of the specified time. According to the

Compilation of Sharia Economic Law article 38 that parties to the contract or agreement that reneged on the promise can be penalized, namely: “Paying compensation, cancellation of the contract, transfer of risk, fines, and paying the costs of the case”. While in article 39 the penalty for payment of compensation may be imposed if:<sup>44</sup>

1. parties who break their promises after they have reneged on their promises, continue to break their promises
2. something that is required or made, can only be given or made in the grace period that has exceeded it
3. the reneging party cannot prove that the act of reneging on its promise is not under coercion.

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<sup>44</sup> Pasal 38-39 Kompilasi Hukum Ekonomi Syariah

## CHAPTER III

### RESEACRH METHOD

Research method is the steps that will be used during the research process.<sup>45</sup> Research method is an important factor in a research, whether or not a research is successful depends on whether or not the method used in the research. Therefore, in order for the research that the authors do meet scientific criteria, must use appropriate methods and not deviate from the applicable provisions. The methods used in this scientific work are:

#### A. Type of Reseach

This type of research uses a type of empirical legal juridical research or called field research. Empirical research is legal research by approaching existing facts by conducting observations and research in the field, research related to the opinions and behaviors of community members in the relationship of social life. In other words, empirical research reveals the implementation of living law in society through actions done by the community. This type of research goes into the scope of legal effectiveness. Research on the effectiveness of the law is a study that discusses how the law operates in society.<sup>46</sup> The object of the research is related to the default in some online

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<sup>45</sup>Soejono Soekamto. *Metode Penelitian Hukum. Cet. 3.* (Jakarta: Universitas Indonesia, 2007), 30

<sup>46</sup>Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011), 31

shope in the endorsement agreement boxing the Book of Civil Law and compilation of Sharia Economic Law.

## **B. Research Approach**

In legal research there are several approaches. With this approach, researchers will get information from various aspects of respecting the issue that will be tried to find answers.<sup>47</sup> Research approach according to Bahder John Nasution is an issue related to the way a person reviews and approaches the issue in accordance with his discipline, the research approach used in this research is, sociological juridical.<sup>48</sup>

The research that the authors use is sociological juridical research that is a legal system is a reflection of the social system, because the problem that occurs in this research is a social problem, namely with regard to the conflict that occurs between online business owners and endorsements.<sup>49</sup> In addition, this research also uses a qualitative approach, the data collected is data derived from the results of interviews.

## **C. Location of Research**

The research location is where the research is conducted. The research location chosen by the researchers was Malang City, East Java. Researchers

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<sup>47</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2007), 93

<sup>48</sup> Bahder Johan, *Metode Penelitian Hukum*, (Bandung: Mandar Maju, 2008), 123

<sup>49</sup> Soejono Soekamto, *Metode Penelitian Hukum. Cet. 3.* (Jakarta: Universitas Indonesia, 2007), 30

chose the location of the study because in practice many business owners in Malang use endorsement services to promote their products on Instagram.

#### **D. Sampling Method**

Sampling methods in this study cover what aspects, from what events and who is focused on a research. Sampling techniques are a way of picking or selecting a small number of all research objects even though only a few are interviewed. In general, sampling method is classified into 3 namely: Probability sampling, Non-Probability sampling, Combination of probability and non-probability sampling (multi stage sampling).<sup>50</sup>

In this study sampling techniques used are purposive sampling that belongs to the type of non-probability sampling. Purposive sampling is a sample selected based on subjective considerations or research from research, so in this case the study determines for itself which respondents are considered to represent the population.<sup>51</sup> So, the selection of subjects based on needs that have to do with research that takes place between online business owners and some celebrities in the city of Malang. Based on data or information obtained from onlineshops data of Malang City on Facebook stores that advertise their products through Instagram numbered 30 online stores with different fields including:

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<sup>50</sup> Burhan Ashshofa, *Metode Penelitian Hukum*, (Jakarta: PT Rineka Cipta, 2004), 78-80

<sup>51</sup> Burhan Ashshofa, *Metode Penelitian Hukum*, 91.



**Table 3.1**

| No | Store Name               | Description               |
|----|--------------------------|---------------------------|
| 1  | Monokromstore Malang     | clothing store            |
| 2  | Vee N vee Shop Malang    | clothing store            |
| 3  | Handmade Malang          | clothing store            |
| 4  | Ghealshyshoesid Malang   | clothing store            |
| 5  | Consina Raya Shop        | clothing store            |
| 6  | Wollesamstore Malang     | clothing store            |
| 7  | Hbd diamond clinic       | beauty clinic             |
| 8  | Hayyu syar'i skin clinic | beauty clinic             |
| 9  | Gloskin Aesthetic        | beauty clinic             |
| 10 | Beauty Rossa             | beauty clinic             |
| 11 | Umama Galery             | Hijab store               |
| 12 | Loozi Scarf Malang       | Hijab store               |
| 13 | Rabbani Fashion Malang   | Hijab store               |
| 14 | Rahma Appreal            | Hijab store               |
| 15 | Rumah tas lucu Malang    | Shop bags and accessories |
| 16 | Elizabeth Malang         | Shop bags and accessories |
| 17 | Miniso                   | Shop bags and accessories |
| 18 | Shopie Paris             | Shop bags and accessories |
| 19 | De lys Patisseries       | Shop bags and accessories |
| 20 | Kedai Herritage Malang   | Warung Kopi               |
| 21 | Kopi Wareg               | Warung Kopi               |
| 22 | Daksi Coffe              | Warung Kopi               |
| 23 | Kunil Coffe              | Warung Kopi               |
| 24 | Janji Jiwa               | Warung Kopi               |
| 25 | Ladang Coffe             | Warung Kopi               |
| 26 | Goedang oleh-oleh        | Food Stores               |
| 27 | Piaminirakkies Malang    | Food Stores               |
| 28 | Malang Strudel           | Food Stores               |
| 29 | Dessert Malang           | Food Stores               |
| 30 | Lapis tugu Malang        | Food Stores               |

Based on the data obtained, researchers determined the number of samples taken, namely 6 businesses from various fields, 7 celebgrams and 2 paid promote parties so the total number of samples was 16 respondents.

## E. Type and Data Sources

Based on the data obtained, researchers determined the number of samples taken, namely 6 businesses from various fields, 7 celebgrams and 2 paid promote parties so the total number of samples was 16 respondents..<sup>52</sup> The data sources conducted in this study:

### a. Primary Data Sources

Primary data is data obtained directly from the source, namely through interviews with informants. The primary data obtained in this study was obtained from interviews with several online business owners in Malang city and celebgrams.

### b. Secondary Data Sources

Secondary data is supporting legal material that is in line with primary legal materials and supports primary data in reviewing and internalizing research objects. Secondary data in this research is data on the legal provisions of the agreement in kuhPerdata and Compilation of Sharia Economic Law. The secondary legal sources that the author used as a source of reference and analysis in this study, among others in the Third Book On Alliances, Compilation of Sharia Economic Law book II Chapter III, alqur'an and fiqh muamalat books, as well as other written documents such

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<sup>52</sup> Soejono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1948), 49-50.

as books, journals, thesis, thesis related to the settlement of defaults in endorsement agreements.

c. Tertiary Data Sources

Tertiary data is a material that can provide information related to primary and secondary legal materials to be easily understood so that it can easily find the meaning of primary and secondary legal materials, tertiary data including wikipedia, legal dictionary, and other literature that can support primary and secondary data.

**F. Data Collection Technique**

In accordance with qualitative research methods, researchers collect data by:

1) Interview

The method used by researchers to collect primary data is through live interviews and through social media whatsapp using question and answer interview techniques, researchers set the theme of the problem to be asked. In this case, researchers conducted interviews with several online business owners in Malang, namely:

**Table 3.2**

| No | Name of Responden     | Description                |
|----|-----------------------|----------------------------|
| 1  | Mas Mas Aldysyahputra | Owner Monokromstore Malang |
| 2  | Mas Athockillah       | Owner Daksi Coffe          |
| 3  | Mas anwar             | Owner piaminirakkies       |
| 4  | Eva Alkaff            | Owner hbd_diamond          |

|    |                           |                        |
|----|---------------------------|------------------------|
| 5  | Mbak Sintya               | Owner loozi.scarf      |
| 6  | Mbak Putri Ayu Febriyanti | Owner Ghealsyshoesid   |
| 7  | Mbak Himma                | Owner Prabujaya outfit |
| 8  | Avluzzuytaysia            | Selebgram              |
| 9  | R.Khoirunnada             | Selebgram              |
| 10 | Ianah                     | Paid Promote           |
| 11 | Naely almuhfa             | Paid Promote           |
| 12 | Aghnea Punjabi            | Selebgram              |
| 13 | Brissia Jodie             | Selebgram              |
| 14 | Diviacita                 | Selebgram              |
| 15 | Diladncy                  | Selebgram              |
| 16 | Elya Nisa                 | Selebgram              |

## 2) Documentation

Documentation is one of the tools that serves as a data collector both in writing and illustrated by using analytical content. Written sources or images in the form of official documents, books, magazines, archives, personal documents, and photos related to research issues.<sup>53</sup> The documentation the authors took in the study was capturing conversations with respondents through social media and some images related to business owners' accounts and some celebgrams. This technique is done to obtain

<sup>53</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, 21

and understand the concepts and theories about endorsement agreements on instagram.

### **G. Data Analysis Technique**

When the entire data has been collected, the next step taken by researchers is to process and make an analysis of the data that has been with the approach used. Data processing is the activity of tidying up the data collection results in the field so that it is ready to be analyzed. In accordance with the approach method used in this research, the data analysis technique used by researchers is descriptive qualitative analysis. Where descriptive is a research report containing excerpts of data to give an overview of the presentation of the report.<sup>54</sup> Data processing needs to go through several stages to conclude reality and facts in answering an issue. The stages of data analysis that the author uses are:

#### 1) Data checks (*Editing*).

The stage of data examination is the stage of re-examination of data obtained, especially in terms of completeness, meaning, suitability, and relevance. In this editing technique, researchers will examine the completeness and accuracy of data obtained from respondents. Through

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<sup>54</sup> Lexy j Moleong, *Metode Penelitian Kualitatif*, (Bandung: PT Rosda Karya, 2002), 6



editing is expected to be able to improve the quality of reliability of data to be analyzed.<sup>55</sup>

2) *Classifying,*

Classifying the data by referring to research questions with elements contained in the focus of the research, as for the steps taken by researchers in this case by clarifying the answers of informants to make it easier to read and in accordance with the necessary needs, so that the data obtained correctly contains the information needed in the research.

3) *Verifikasi (Verifying)*

Data that has been classified based on problem formulation and research type is then compiled and linked, in this study the classified data will be adjusted to the theory in the research. Because in this study aims to find out how the settlement of defaults in endorsement or paid promote agreements as an online promotional media on instagram by online business owners.

4) *Analysing*

This stage is called the stage of data analysis and processing. The analysis stage, the interpretation of data based on the approach used. The next step is to describe the research results in good and correct language so that it can be easily understood. The approach used in this research is a

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<sup>55</sup> Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: RajaGrafindo Persada, 2006), 168-169

descriptive qualitative approach. This stage is also used literature studies in the form of reference books and other documents related to the completion of defaults in endorsement agreements to support analysis in order to obtain good results and easy to understand.

5) *Concluding*

Conclusion is the last step, namely by analyzing the data comprehensively and connecting the meaning of existing data with the formulation of problems and research objectives. Researchers filled the above problem with several points to take the answer to the question in the problem formulation in the form of conclusions from the entire data obtained from the research that has been analyzed.

## CHAPTER IV

### FINDING AND DISCUSSION

#### A. Description of Research Object

Malang is known as the city of education, this nickname is due to the large number of both schools and universities in the city of Malang. There are more than 80 campuses spread across Malang. In addition to the city of education, Malang is one of the cities that is visited by many tourists because of the many tourist attractions in Malang. The number of universities is what makes the attractiveness of businesses to increase consumer purchasing intentions with marketing carried out through Instagram, shopee apps, grab accounts and other applications that support increased marketing of businesses. In attracting the attention of consumers, businesses have initiatives in marketing their products as needed with increasingly sophisticated social media.

The Mayor of Malang Sutiaji said that the Malang City Government has designed the Online People's Market as an implementation of the 4.0 developments in the future of Malang, which is why he hopes that the online people's market can grow rapidly. Seeing the number of migrants from outside malang, businesses use online social media as an effort to market their products easily known as endorsement systems. With the endorse of the whole community will know better than celebgrams and want to own or feel the products of the celebrity account. With

the sophistication of electronics in this day and age consumers do not find it difficult to find information and if they want to order something.

In Malang city there are 30 shops selling clothing in the field of fashion that sells a variety of beautiful styles of millennial students in particular, women's fashion. The research was conducted Monokromstore\_Malang on jl. Sumpster No.23B Lowokwaru, Malang with 168,000 followers who use endorsement services with business owners on behalf of Aldisyahputra graduate students at Brawijaya University from Sumatra, the owner's intention to develop his business because of his experience, confidence and great motivation. Furthermore, businesses in the city of Malang engaged in beauty with a total of 10 clinics of various kinds. The research was conducted at hbddiamond beautycare located on Jl. Ade Irma Suryani No.7, Malang with 2,632 followers, this clinic uses endorsement services in marketing its products, with business owners on behalf of Eva Alkaff. Business in Malang city that moves difoodies, research conducted with Piaminirakkies in Lowokwaru, Malang city with Instagram piaminirakkies, business owners on behalf of Mas Anwar who use endorsement services as an introduction to new products. Furthermore, businesses around the campus provide a place to hang out for students known as coffee shops (warkop) with a very large number of about 15 coffee places that use endorse services. Researchers conducted research in Daksi Coffe with instagram daksicoffe located at Gajayana Street No. 50, Dinoyo Village, Malang City and business from hijab in Malang City,

researchers conducted interviews with lozzi. scarf via whatsapp chat with business owners on behalf of mbak sintya.

## **B. RESEARCH RESULT AND DISCUSSION**

### **1. Implementation of Endorsement Agreement as online Promotion Media**

#### **Instagram account in Malang City**

In online marketing, endorse or endorsement weighs the support or advice given to products or services carried out by someone who has a positive influence that is public figure or celebgram on social media instagram. Endorsement is also called a certain type of curling by using the services of celebgrams to provide reviews or say good things to the product of the owner of the product or brand and will benefit from the cooperation. In making sales online, many media options that can be done by business owners include, such as Facebook, Bukalapak, Shopee, Tokopedia, Kaskus, Line, Blog, Website, Twitter, Youtube, Email Marketing, Instagram, and others. What will be discussed in this study of social media networks that researchers use is instagram.

Instagram is a social networking-based app that takes photos and videos, applies various filters, and shares them on a variety of social media including through instagram itself. In practice today instagram accounts are not only used as personal accounts but also used as a land to do business online by creating an account on behalf of the online store. Because the feature provided by Instagram is limited to catalogs, business owners are interested in using endorse services or



artists on instagram called celebgrams that have a large number of followers with the advertising of a product by celebgrams will certainly make the product widely seen and then many are interested in buying, this is the purpose of endorsement.

In practice business owners will contact celebgrams to offer endorsement cooperation to be able to help market their products. If the celebgram agrees to endorse and there is a deal, then the product or item will be sent to the place of celebgram, then the celebgram must upload a photo of himself using the business owner's merchandise instagram accounted for by giving good testimonials to the item so that it attracts the attention of his followers, so that he is interested and of course wants to have the same item as his idol. Celebgrams must include the instagram account of the online shop so that followers can see and contact directly the online shop account used by the celebgram and in the end many followers of the celebgram who then buy the product.<sup>56</sup>

Endorsement activities in online business is currently a form of cooperation between the two parties and mutual benefit. Endorsement system offered also diverse, namely: free endorse (free), in this system business owners give products to endorsers for free without wages. Paid endorse (paid endorse system), in this system online business owners provide products that will be recommended at a predetermined rate at the beginning of the agreement. Paid promote, paid promote is done by online business owners by providing photos, articles, captions

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<sup>56</sup> Hasil wawancara dengan pemilik Monokromstore\_Malang pada 03 Maret 2020

and hastagh signs that will be promoted without giving products to endorsers by providing wages for their promotional services in accordance with the agreement agreement and can be done by anyone not to have to celebgram.

In conducting endorsement cooperation, the mechanisms carried out by online business owners also vary. There are celebgrams that handle themselves if there is a store that wants to offer cooperation to it, there are also celebgrams that use third parties or have management to handle the cooperation. Usually, business owners can only accept the procedures and requirements proposed by the celebgram, the terms proposed vary in managing their endorsement and include the rules used as well as various.<sup>57</sup>

Online shop in Malang that moves by using endorsement services on Instagram include:

#### 1) Implementation of the Endorsement in Monokromstore Malang

Promotional activities from Monokromstore fully use social media instagram also use paid promote services and endorse services with some artists as celebrities and some students who become celebrities around Malang. Endorsement services are very important for the progress of the store by using selected celebgrams, such as business owner statements:

*“Sangat membantu mbak, tapi sebelum endorse dipilih dulu mbak. Sekiranya yang timbal balik buat kita bagus, prospek kedepan bagus, dan kalau mau endorse gak bisa sembarang, liat profil kesehariannya yang mau diendorse mbak “perjanjian atau kesepakatan yang kami buat dengan beberapa selebgram sampai saat ini hanya melalui media elektronik karena*

<sup>57</sup> Hasil wawancara dengan Avluzzuytaysia pada 20 April 2020

*menurut saya kontrak tertulis itu ribet, biaya banyak dan menyita banyak waktu, jika selebgram sudah bersedia maka kesepakatan sudah terjadi, menurut saya perjanjian lewat pesan melalui instagram atau whatsapp tidak masalah”.*<sup>58</sup>

From the explanation above, business owners from Monokromstore themselves choose celebrities and are very careful and not boastful, conducted a survey on the celebrity account and look at the daily selebgram. The promotion is very influential for business owners, better known and interested buyers, and makes prospective customers more interested, increasing the number of followers after performing paid promote services and endorsement services. Owner Monokromstore also uses visualization marketing in marketing its products:

*“Saya menggunakan marketing visualisasi karena itu penting, seperti kata pepatah lama tentang sebuah gambar yang bernilai seribu kata, ini menyatakan bahwa hanya dengan gambar, kita menghemat kata-kata dan dapat menyampaikan seluruh maksud. Kekuatan visual akan membuat pemasaran lebih kuat dan lebih berkesan, dapat mengubah hal-hal tak berwujud menjadi sesuatu yang konkret membantu orang membayangkan pesan anda dan brand dialam pikiran mereka”*<sup>59</sup>

Paying attention to the above explanation of the benefits that can be obtained from marketing visualization is one way to communicate brands or products by using images, videos or other visual media, as well as to build connections and emotional approaches with customers. The use of endorser media becomes a perpetual promotional media and able to become a reactive

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<sup>58</sup> Aldysyahputra, wawancara Owner Monokromstore, (Malang, 03 Maret 2020)

<sup>59</sup> Aldysyahputra: Owner Monokromstore, *Wawancara* (Malang, 03 Maret 2020)

advertising media. So, they can view the appropriate and desired goods or products by viewing images, photos or videos. Endorsement agreements that have been done by monochromestore in the clothing business with artists Brissia Jodie and Aghnea Punjabi as public figures among the millennial community, as well as some students who have the potential to be celebrities with agreement agreements reached through instagram.

## 2. Implementation of the Endorsement Agreement in Hbddiamond Beautycare

Online business owners are using endorsement services achieved through instagram, as the owner said:

*“Pelaksanaan endorsement dengan selebgram lewat instagram setelah sepakat, selebgram datang ke klinik dengan menikmati treatment dan produk juga yang diterima endorse yang dipakai dirumah juga, dan tentunya dengan hastag ke @klinikdiamondbeauty dan @hbddiamond”<sup>60</sup>*

In a statement released by hbddiamond the endorse system implemented with a celebgram on behalf of Avluzzuytaysia was reached via instagram with the agreement that celebgrams are given treatments and products that can be used at home.

## 3. Implementation of the endorsement agreement in loozi.scarf

About how the mechanism in doing the agreement promotes the product that is endorsement services explanation of business owners:

*“Dalam memilih selebriti endorsenya, pemilik bisnis melakukan riset terlebih dahulu, melakukan survey terhadap keaktifan dan interaksi calon endorser dalam sosial media, memiliki kemampuan yang dapat dipercaya dan jujur, memiliki keterampilan yang lebih persuasive dalam mengubah*

<sup>60</sup> Hbddiamond, *Wawancara*, (Malang, 14 februari 2020)



*pendapat konsumen, memiliki citra yang baik dan memiliki karakteristik fisik serta memiliki followers yang banyak. Apabila dirasa cocok maka akan menghubungi calon endorser, pemilik bisnis akan menawarkan kerjasama untuk membantu memasarkan produknya.”*

It is understood that the mechanism of selecting an endorse conducted by the business owner with great care, after finding the appropriate celebgram, the monochromstore will contact the contact listed on the instagram information to cooperate, the parties can communicate via email, chat application, via whatsapp or other contacts. As the business owner said:

*“Iya mbak, kasarannya gini mbak “kita minta tolong ke selebgram, ya kita manut ketentuan yang dimintai tolong mbak. Gampangannya gini, kita kasih barang (kasih pilihan motif, warna barang yang mau di endorse, setelah itu kasih fee bayaran (sesuai ketentuan selebgram) selebgram baru iklanin produk kita, gitu mbak”.*

#### 4. Implementation of the endorsement agreement in piaminirakkies

Business owners of piaminirakkies use paid promote services of paid promotions and paid endorses with celebgrams in promoting their products, in the practice of implementing business owners contact first to offer endorse cooperation by contacting the contact listed on the instagram account, the business owner's conversation with the celebgram to help promote his product:

*“Kami menghubungi selebgram lewat Direct Message di instagram dan menanyakan prosedurnya, dan sepakat bahwa selebgram akan meriview+foto difeed/video produk kami, setelah sepakat maka produk kami kirim dan fee sudah ditransfer.”*

Like the statement from the business owner that when the celebgram agrees and has received the goods and fees or wages to cooperate then the celebgram



must carry out the contents of the deal by either uploading or reviewing the product from the business owner on his personal Instagram with a predetermined time.

#### 5. Implementation of the Endorsement agreement in Daksi Coffe

Daksi coffe uses endorsement in promoting its products in order to provide information to students in Malang raya, from this café, there is a great hope built by the owner, as the description conveyed:

*“Daksi itu sebenarnya akronim dari dakwah dan motivasi, Yakni, Inspiration for All (inspirasi untuk semua), selain membuat kerjasama dengan beberapa selebgram mahasiswa sekitar Malang, saya juga meminta bantuan seperti public figure Alfysaga, veve zulfikar untuk membantu mempromosikan daksicoffe mbak”.*

Selain kafe, Atho'illah juga punya beberapa bisnis lainnya. Semuanya dia beri nama Daksi. Antara lain, Daksi Tour and Travel (jasa travel), Daksi Butik (toko pakaian), Daksi Book (toko buku), dan Daksi Edu (les privat). ”Sementara tempatnya masih di sini (jadi satu dengan Daksi Coffee),” kata dia. Prinsip yang ditanamkan oleh mas Atho'illah sebagai seorang young entrepreneur adalah “keraslah pada proses, sabar pada hasil”.

Besides cafes, Atho'illah also has several other businesses. He named it Daksi after him. Among others, Daksi Tour and Travel (travel services), Daksi Butik (clothing store), Daksi Book (bookstore), and Daksi Edu (private tutoring). "While the place is still here (so one with Daksi Coffee)," he said. The principle instilled by Mas Atho'illah as a young entrepreneur is be the process, be patient with the results.

According to the statement of some business owners in malang city itself that the more use endorse services, the more followers, buyers, sales amount, and income received and it is undeniable that endorsement plays a considerable role for business owners. Stages of endorsement as an online promotional media instagrammed:

1. Using social media instagram which is a strategic application to market its products, The influence of Instagram makes the formation of a brand more attractive.
2. Choosing a celebgram to promote its products, by looking at the activeness and interaction of celebgrams on its personal instagram account, has a matching/relevant association with the brand, consumer perception of the celebgram, physical appearance and the number of followers of the celebgram.
3. Contact a celebrity with a contact listed on instagram celebgram with Dirrect Message, Whatsapp, Email or others to be invited to co-market his product instagram account, here's an example of endorsement cooperation:
4. After the agreement occurs, the goods to be promoted are sent to the celebrity address in accordance with the terms of the agreement in the agreement above for the step of uploading photos or videos of products owned by the business owner.
5. Example of endorsement agreement via Instagram Dirrect Message

PRICELIST ABOUT @diladncy INSTAGRAM

♥ENDORSE :

- foto feeds : 400k (1 bulan)
- video feeds (: 600k (1 bulan)

ABOUT JOB :

- Fatchul Aziz : +62 858-5583-8166 (manager)

Persyaratan kerjasama yang diberikan manager berupa:

- Tanggal upload endorse diberitahu sehari setelah barang datang ☺
- Tidak menerima semua macam suplement
- Harap bersabar untuk penguploadan
- untuk snapgram bisa request tanggal upload.
- Endorse tanggal Upload kami tentukan (mengatur feed)
- Mohon kirimkan barang yang akan diendorsekan



## 2. Settlement of Default in Endorsement Agreement as Online Promotion Media Instagram in Malang City Perspective of Civil Law

Promotional service agreements with instagram media called endorsement agreements, are generally done in an unwritten form because the agreement is only declared through electronic media and does not sign a written agreement. Agreements reached through electronic media are also valid and binding for both parties making them.<sup>61</sup> Although it is not written but in the conversation there must be agreement and agreement because the agreement itself is arranged with the aim of protecting the interests of each other. If the agreement is not clear it will cause all the contents of the agreement to become vague and unclear in accountability in the event of a problem.

Endorsement cooperation must be done on the basis of the agreement of the two parties, the cooperation is simply through direct message or in writing in accordance with the agreement of the two parties who made it. Endorse cooperation conducted through electronic media is usually through electronic agreements that in practice are standard with the principle of "take it or leave it" endorsement cooperation formed by the celebgram itself and the management who handle it, business owners in applying for cooperation can only accept or reject the terms of the celebgram. In the agreement after the agreement of the two parties, the rights and obligations of each party arise:

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<sup>61</sup> Danrivanto Budhijanto, *In IT Law, Hukum Telekomunikasi, Penyiaran dan Teknologi Informasi* (Bandung: PT Refrika aditama, 2010), 138

A. Rights and Obligations of Service Providers (selebgram)

a) Rights of Service Providers (selebgram)

1. Entitled to an honorarium or payment for the service
2. Determine the clauses in the agreement

b) Obligations of Service Providers (selebgram)

1. Upload content owned by service users in accordance with the agreement
2. Upload content according to the specified schedule

B. Rights and Obligations of Service Users (Business Owners)

a) Rights of Service Users (Business Owners)

1. Obtaining services
2. Expressing the desire of account content
3. Accept or reject clauses from service providers

b) Obligations of Service Users (Business Owners)

1. Make payments for the services used
2. Comply with the terms and conditions that have been made

Based on the description above with the agreement of both parties, each party has obligations that must be adhered to. Rights and obligations arise as a result of the agreement. In this agreement the agreement makes the agreement binding and applicable to the parties, but sometimes the contents of the



agreement do not work properly, either unintentionally or intentionally. In this case in the law of the agreement can be said to be a default on an agreement.

In the Civil Law article 1313 that “*suatu perikatan adalah suatu perbuatan dimana satu orang atau lebih mengikatkan diri terhadap satu orang lain atau lebih*”.<sup>62</sup> Endorsement cooperation is a form of agreement that is binding on one party with the other and must be implemented as well as possible. This Agreement is considered to have been born and binding since both parties agreed and made all rights and obligations in the agreement come into force for both parties. Walaiupun in the civil law endorsement agreement is not regulated specifically, but the validity of endorsement agreement still refers to the provisions of the validity of the agreement in general as stipulated in article 1320 of the Civil Law there are 4 terms of validity of the agreement, which in this case is applied in the endorsement agreement, namely:

- 1) Their binding agreement

In making an agreement must reach an agreement of the parties on the matters promised, this is stipulated in the Civil Law article 1339 namely: “*persetujuan tidak hanya mengikat apa yang dengan tegas ditentukan didalamnya, melainkan juga segala sesuatu yang menurut sifatnya persetujuan dituntut berdasarkan keadilan, kebiasaan, atau undang-undang*”.<sup>63</sup> Endorsement agreements between business owners

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<sup>62</sup> Pasal 1313 Kitab Undang-Undang Hukum Perdata

<sup>63</sup> Pasal 1339 Kitab Undang-Undang Hukum Perdata

and celebgrams are reached indirectly, but through electronic media. It is agreed that both parties are willing to accept the terms and conditions without the consent of the other party, and fulfill their rights and obligations properly.

2) Ability to make an alliance

Proficiency itself is stipulated in article 1329 of the Civil Code which reads: *“tiap orang berwenang untuk membuat perikatan, kecuali jika ia dinyatakan tidak cakap untuk hal itu”*. In the Civil Law itself is not explained by anyone who is capable of law but mentions the class who are not capable of the law contained in article 1330 of Civil Law, who are not capable to make an agreement, namely: *“anak yang belum dewasa, orang yang ditaruh dibawah pengampunan, dan perempuan yang telah kawin”*. People in the article are declared incapable of making an agreement, may demand the annulment they have made in the event that the power for it is not excluded by law. The research was conducted with several business owners and celebrants meeting the criteria for acting proficiency because it has been deemed qualified to make a business owner's own agreement married, mature, not under forgiveness. Business owners usually see a celebrity profile and post a photo of themselves on Instagram. Based on the description above, the parties to this endorsement agreement have legal ability.

3) A particular subject matter

In this case the third condition relates to the object of the agreement contained in article 1333 of the Civil Code, a certain thing namely: “(1) an agreement must have the subject matter of an item of at least determined type, (2) The amount of goods is not necessary to be certain, provided that the amount can then be determined or calculated”. The application of a particular thing in the endorsement agreement is instagram instagram, among others: “(1) promotion of paid promot, paid endorse of goods or services of business owners uploaded on instagram celebgrams at the agreed rate of the parties, (2) determination of the time or schedule of product uploads agreed by both parties”. Thus the endorsement agreement on instagram is in accordance with the legal terms of the agreement on certain subject matter.

4) There is a halal cause

The point is that an agreement is made with the purpose and purpose in accordance with applicable law. So no agreement may be made for matters contrary to applicable law and the contents of the agreement are not prohibited in law or do not conflict with decency public order as stipulated in article 1337 of the Civil Code.

Endorsement agreement as a promotional service on instagram aims to improve the economy of each party, the endorse party has the aim to earn income from providing product promotion services instagram accounted for, and for businesses the purpose of using this endorsement service to be known

to many people and in demand by many consumers so as to benefit from sales with endorsement promotion services carried out by celebgrams.

In general, the time of implementation of the agreement is after the occurrence of the agreement. Once there is an agreed word then the business owner sends the product, and the terms are agreed in advance to be implemented by the celebgram. If the obligation is not carried out by one party and results in loss to the other, then in this case it can be said as a default. Understanding default is the implementation of obligations that are not fulfilled or reneging on promises or omissions made by one of the good parties because it does not carry out what has been promised. While the purpose of the agreement or agreement is contained in article 1234 of the Civil Code which reads: *“perikatan ditujukan untuk memberikan sesuatu, untuk berbuat sesuatu atau untuk tidak berbuat sesuatu”*. In Malang City, the implementation of endorsement agreements in addition to having advantages there are also constraints in the implementation, here are examples of cases of default in the agreement:

1. The form and cause of default occurred in the endorsement agreement, as explained by the business owner Monokromstore\_Malang:

*“Kami menghubungi kontak yang tersedia diinstagran para endorsement, setelah terjadi kesepakatan maka produk dan fee akan dikirimkan berdasarkan kesepakatan, akan tetapi terkadang pelaksanaan perjanjian tidak dilakukan dengan semestinya karena beberapa alasan seperti terlambat untuk memposting, feed foto atau video yang tidak menarik,tidak konfirmasi, ya kami tau bahwa kesibukan masing-masing orang berbeda, dengan keterlambatan tersebut omset yang seharusnya*

*didapatkan dari endorse tidak sesuai target, ada rasa kecewa dengan selebgram tapi bagaimanapun kami juga minta tolong”<sup>64</sup>.*

From the explanation of business owners above shows disappointment to celebrities who do not make agreements in accordance with the contents of the agreement and the lack of responsibility of the celebgram. In the agreement should be done in good faith, the principle of good faith is stipulated in article 1338 paragraph 3 of the Civil Code: "The Agreement shall be executed in good faith". From the explanation of business owners the implementation of endorsement agreements conducted in Monokromstore did not go perfectly.

The mistake made by a celebgram with a @diladncy is not implementing the contents of a pre-agreed agreement. The agreement between monochromstore business owners and celebgrams on @diladncy that in the endorse upload date agreement is notified the day after the item arrives and the fee has been paid, with the terms of photo feeds:400k (1month) but the fact that after the goods are sent and received celebgrams and fees have been paid according to the agreement of the celebgram, but the celebgrams do not upload and do not immediately confirm with the owner Monokromsotre, after a few days the new celebgram can upload the photo feeds the item but not until one month the photo has been deleted

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<sup>64</sup> Aldisyahputra, Wawancara (Malang: 03 Maret 2020)



from the celebgram account, should be in the agreement of photo feeds endorsement done for one month.

Endorsement cooperation conducted with Aghnea Punjabi as a public figure also experienced a problem where the hashtag is not given so that consumers do not know the products of Monokromstore, in addition endorsement cooperation is also carried out with artist Brisia Jodie who provides video reviews of Monochromstore products. So in this case the celebrity wanprestai is on the point of “Doing what he promised but not as promised”. The settlement that business owners do is a celebgram willing to upload products with photo feeds as desired by the business owner by not being given a fee or paid and the celebgram gives a bonus posting instagrammed content from the business owner who has been harmed because of his or her default.

2. Based on the results of the interview at hbddiamond beauty clinic there is a default that occurred in the endorsement agreement conducted by the celebrity avluzzuytaynia. The default made by the celebgram with @avluzzutayinia the mistake was negligence resulting in a delay in uploading a photo of the product requested to meriview the beauty clinic products from hbddiamond, where the delay was caused by personal busyness, although the celebgram had no intention of not doing anything else or not doing the achievements that should have been done. Where not only take care of the job as an endorsement, in interviews conducted with

the account owner that the personal business that makes him negligent is his college assignment as a student. Unwittingly the act of celebrity resulting in harm to the business owner, in this case the celebgram has committed a default that is categorized in “performing achievements but it is too late”, based on the interview delay in this case done by accident but due to negligence factor.

In real terms, the celebgram has made a mistake, namely the delay in carrying out the achievement so that in posting the product is not in accordance with the time and schedule in accordance with the agreed agreement. Errors for negligence committed by celebgrams suffer losses in the form of expected profits from endorsement services, as described by business owners who have been interviewed:

*“Kerugian yang saya rasakan karena keterlambatan selebgram dalam mengupload foto, saya harus memikirkan strategi ulang dan omset penjualan tidak tercapai sebagaimana target yang seharusnya”.*

From the explanation above as a result of the negligence of celebgrams in carrying out the achievements of business owners feel aggrieved and have to rethink strategies for achieving sales targets. The settlement effort is the business owner reprimanded the celebgram via Direct Message Instagram to upload immediately because it was past the agreed deadline, the celebgram apologized to the business owner for the delay and re-uploaded the product content in accordance with the wishes of the business owner.

3. In the implementation of paid promote done by mbak ianah with piaminirakkies there are also some problems in posting content, where the service has been paid but the posting does not reach the target, the account is just posting with pictures or videos and capture of piaminirakkies uploaded on the personal instagram of each person carried out together by 50 people for 5000 one post with a duration of 24 hours on their personal Instagram. Paid promote done mbak ianah is done for seminar activities in the organization, but with the constraints that ya Ianah have to handle a lot of people, posts can not be done perfectly and only a few people, even though the fee has been transferred as much as 250,000.

The case between the business owner piaminirakkies and Ms. Ianah included a default that did not do what she was expected to do. Efforts made to solve this problem is the business owner contacted the party who agreed to carry out the agreement, ms. Ianah apologized for not reaching target as agreed and re-post with the number of people who desired the business owner either photos or videos and captions from the business owner.

4. Based on the results of interviews conducted with business owners looziscarf fashion hijab Malang there are also some problems in the implementation of endorsement agreements that have been done with celebgrams on behalf of Diviacita, not implementing the agreement as it should be, namely the delay in making instastory and review of hijab products from looziscarf due to personal busyness, the business owner's

settlement of the celebgram's actions is to reprimand him and remind him and ask for compensation for delays. The company apologizes to the business owner for his actions that are not in accordance with the agreement, as well as providing compensation as per the wishes of the business owner.

R. Subekti divides the default into 4, namely:<sup>65</sup>

1. Not doing what he's going to do.
2. Do what he promised but not as promised
3. Do what is promised but it is too late
4. Do something that according to the agreement should not be done

The default made by the celebgram in the case above is in point 3 which is: "do what is promised but it is too late". If a person is declared to have committed a default, then there are legal consequences that arise namely: paying damages (compensation).<sup>66</sup> And the type of loss that can be sued by the business owner is contained in article 1246 of the Civil Code: "*kerugian yang telah dideritanya dan keuntungan yang sedianya diperoleh dari hasil perjanjian*". Default in the first case is "doing the contents of the agreement but it is too late", the default in the second case is "doing what was promised but not as it should be done", the

<sup>65</sup> R. Subekti, *Aneka Perjanjian*, (Bandung: Penerbit Alumni, 1995), 98

<sup>66</sup> Mariam Darus Badruzaman dkk, *Kompilasi Hukum Perikatan*, 18-19

third case of default is "Not doing what it is supposed to do. Against sanctions imposed in the event of default in Article 1236 of the Civil Code states that, *“debitur wajib memberi ganti biaya, kerugian dan bunga bila ia menjadikan dirinya tida mampu untuk menyerahkan barang atau tidak merawatnya sebaik-baiknya untuk menyelamatkannya”*.<sup>67</sup> So in endorsement agreements that perform defaults in the implementation of the agreement at the beginning of the agreement so as to cause the business owner to suffer losses, in accordance with the rules stated, the celebgram must provide compensation to the business owner in accordance with the agreement of both parties. In the event of default in the implementation of endorsement agreements, then the party that commits default is certainly responsible for what it does which is the loss of the business owner, in article 1365 kuhPerdata that: *“tiap perbuatan melawan hukum, yang mendatangkan kerugian pada orang lain, mewajibkan orang yang karena salahnya menerbitkan kerugian itu, mengganti kerugian tersebut”*.

The Agreement gives birth to an achievement stated in the agreement as a reference for the parties in acting according to what is promised. In the case of endorsement agreements that occur, the liability in accordance with the problems faced is the responsibility of default, where one party is unable to fulfill the achievements in the agreement, then the aggrieved party can have the right to sue and can file a lawsuit in an effort to enforce its contractual rights. In the event of

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<sup>67</sup> Pasal 1236 Kitab Undang-Undang Hukum Perdata



default in the implementation of the agreement, then the party that commits the default shall be responsible and provide compensation, in article 1366 of the Civil Code that: *“setiap orang bertanggungjawab, tidak untuk kerugian yang disebabkan karena perbuatannya, tetapi juga untuk kerugian yang disebabkan karena kelalaiannya atau kurang hati-hatinya”*.<sup>68</sup>

To deal with the problem, the parties have their own authority in establishing the way or forum used to solve the problem. The settlement of default in the case that occurred in malang city was done out of court and done based on the agreement of the parties to compensate the losses. To overcome the default of endorsement agreements, business owners must have a strategy in evaluating, selecting and using celebrities who are spokespersons for products or brands from their stores. In completing the default, the business owner sanctioned the celebgram in the form of paying compensation. This has been stipulated in article 1243 of the Civil Code that: *“penggantian biaya, kerugian dan bunga karena tak dipenuhinya suatu perikatan mulai diwajibkan, bila debitur, walaupun telah dinyatakan lalai, tetap lalai untuk memenuhi perikatan itu, atau jika sesuatu yang harus diberikan atau dilakukannya hanya dapat diberikan atau dilakukannya dalam waktu yang melampaui waktu yang telah ditentukan”*.<sup>69</sup>

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<sup>68</sup> Pasal 1366 Kitab Undang-Undang Hukum Perdata

<sup>69</sup> Pasal 1243 Kitab Undang-Undang Hukum Perdata

### 3. Default and settlement in endorsement agreement between Business Owner and Celebgram with Instagram in Malang City Perspective Compilation of Sharia Economic Law

The Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2008 concerning the Compilation of Sharia Economic Law states that in book II chapter I article 20 paragraph 1 that: “an agreement is an agreement in an agreement between two or more parties to perform and or not to perform certain legal actions”.<sup>70</sup> In CHAPTER II on 13 principles contained in the agreement, namely: *ikhtiyari* (voluntary), trust (keeping promises), *ikhtiyati* (prudence), *luzum* (ungodly), mutual benefit, *taswiyah* (equality), transparency, ability, interpretation (ease), good faith, halal reason, *al-hurriyah* (freedom of contract), *al kitabah* (written).

This principle needs to be considered in the making of agreements in order to avoid problems that may occur in the process of implementing the agreement after it is later agreed. in this study the authors will discuss several principles suitable for research objects, namely:

- 1) Voluntary basics /*ikhtiyari*, endorsement agreements made by business owners and celebrities on the basis of the will of both parties without any element of coercion from any party. The basis of this principle in Qs. Al

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<sup>70</sup> Mahkamah Agung RI Direktorat Jenderal Badan Peradilan Agama, *Kompilasi Hukum Ekonomi Syariah*, (Jakarta, 2011), 10

baqarah verse 256: “There is no compulsion to (enter) the religion (Islam)”.  
(*Qs. Al baqarah;254*).

- 2) The principle of trust (keeping the promise) of each contract must be carried out by the parties in accordance with the agreement and avoided the injury of the promise. In the case of the defaults that occurred above, the celebgrams kept the promise but not as agreed. In alqur'an all promises of agreement are honored and obligations are fulfilled according to agreement because everyone will be held accountable in Qs.Al-maidah:1 and Qs. Al-isra: 34 “It means: O believers! Fulfill promises”.
- 3) Mutual benefit, each agreement is carried out to meet the interests of the parties so that the practice of default and harm to one party does not occur. In endorsement agreements business owners feel benefited by the existence of promotional services through celebgrams and celebrity account owners get fee or wages.
- 4) Ability, each agreement is carried out in accordance with the ability of the parties, where in the endorsement agreement the online business owner is willing to accept the terms and conditions and celebgrams are able to promote goods or products given from the business owner because it is the profession and duties of the endorse.
- 5) Tafsir (convenience), each agreement is done by mutually providing convenience and not complicating each other with endorsement agreements made through electronic media instagram then, business owners and

celebrities do not have to meet in person and do not take time, cost and energy, then the agreement in the agreement can still be implemented easily. The foundation of this principle Qs. Al Qasas verse 27: "It means: then I will not obey you. And you Will find me one of the good." (Qs. Al Qasas:27).<sup>71</sup>

In CHAPTER III which consists of 34 articles starting from article 22 with article 55. In general, the agreement or agreement in the Compilation of Sharia Economic Law regulates: the pillars and conditions, the legal category of the contract, 'Disgrace of the agreement, the renegeing of its promises and sanctions and the interpretation of the contract. In the Compilation of Sharia Economic Law mentioned the pillars and conditions in the agreement agreement consists of:

*First:* The parties to the agreement, where the terms set forth in article 23: " (1) the parties to the agreement are individuals, groups of people, alliances or business entities, (2) people with legal ability, reason and tamyiz", where in the endorsement agreement the parties who are berakad are business owners and celebgrams who are already capable of the law.

*Second:* The object of the contract, for the terms of the contract in Compilation of Sharia Economic Law is stipulated in article 24 that: "(1) the

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<sup>71</sup> Qs. Al Qashas:27

object of the contract is amwal or the permitted services required by each party, (2) the object of the contract must be sacred, useful, perfectly owned and can be handed over". in the endorsement agreement the object of the contract is the service of the celebgram to promote the goods or products on the instagram account.

*Third:* the main objective of the contract, where the terms of the objectives of the agreement are stipulated in article 25 of the Compilation of Sharia Economic Law: "(1) the agreement aims to meet the life needs and business development of each party that entered into the agreement, (2) the agreement can be done clearly, either verbally, in writing, or deed".<sup>72</sup> In endorsement agreements made by business owners with celebgrams aimed at the business development of each party in the business, and the agreement reached is through a message sent via instagram. the implementation of endorsement agreements made by business owners is to introduce products or goods to the wider community in order to add customers and benefit from celebrity promotion services.

*Fourth:* agreement, in endorsement agreement between business owner and celebgram reached agreement through electronic media namely instagram.

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<sup>72</sup> Pasal 25 Kompilasi Hukum Ekonomi Syariah (KHES)



The second part of the category of contract law described in articles 26 and 27 that the contract is invalid if it is contrary to Islamic law, legislation, public order and or decency. In article 27 “the law of the contract is divided into three categories, (a) a valid contract, (b) an agreement that is facade/cancelable and (c) an agreement that is null or void”, the understanding of a valid contract in article 28 paragraph 1 “a valid contract is a contract that is fulfilled in harmony and its terms”.<sup>73</sup> In the Compilation of Sharia Economic Law article 29 of the third section on the 'disgrace of the agreement of paragraph 1 that: *“akad yang sah sebagaimana dimaksud dalam pasal 27 huruf a adalah akad yang disepakati dalam perjanjian, tidak mengandung unsur ghalath atau khilaf, ikrah/paksaan, taghrir/tipuan, dan ghubn atau penyamaran”*.

The agreement in the endorsement agreement is a valid agreement because the pillars and conditions have been fulfilled and the creation of endorsement agreements made in Monokromstore is not with the element of coercion because the parties are mutually beneficial and carried out on a voluntary basis. In the law of the agreement, if an agreement has fulfilled the pillars and conditions are binding and must fulfill the contents of the agreement agreed by both parties, if either party or both parties do not carry out obligations in accordance with the

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<sup>73</sup> Pasal 28 ayat (1) Kompilasi Hukum Ekonomi Syariah (KHES)

agreement that has been made then this is called default (reneging on the promise).<sup>74</sup>

According to the Compilation of Sharia Economic Law reneging on its promises and sanctions are stipulated in the fourth section of articles 36-39. The Party may be deemed to have defaulted if its error is stipulated in article 36 that:<sup>75</sup>

*“(a) tidak melakukan apa yang dijanjikan untuk melakukannya;(b) melaksanakan apa yang dijanjikannya tetapi tidak sebagaimana dijanjikannya;(c) melakukan apa yang dijanjikannya, tetapi terlambat; atau(d) melakukan sesuatu yang menurut perjanjian tidak boleh dilakukan”.*

In the case that occurred between the business owner and some celebgrams categorized in the practice of default (reneging on the promise), the implementation of the endorsement agreement according to the Compilation of Sharia Economic Law is said to be a default (reneging on the promise) because one of the parties to the agreement does not fulfill the achievement perfectly as previously promised and harms others, reneging on the promise in this kasis described in point (a) did not do what he promised , point (b)carry out what he promised but not as promised, and point (c) do what he promised but it is too late. And it is explained in chapter 37 that: *“pihak dalam akad melakukan ingkar janji, apabila dengan surat perintah atau dengan sebuah akta sejenis itu telah dinyatakan ingkar janji atau demi*

<sup>74</sup> Ahmad Miru, *Hukum Kontrak Bernuansa Islam*, (Jakarta: PT Raja Grafindo Persada, 2013), 33

<sup>75</sup> Pasal 36 Kompilasi Hukum Ekonomi Syariah (KHES)

*perjanjiannya sendiri menetapkan, bahwa pihak dalam akad harus dianggap ingkar janji dengan lewatnya waktu yang ditentukan”.*<sup>76</sup>

The practice of default (reneging on promises) in the implementation of the agreement according to the Compilation of Sharia Economic Law in article 38 that: “parties to the contract who break the promise can be penalized in the form of: paying compensation; cancellation of the contract; risk shift; fines; and or pay the costs of the case”. If it does not carry out its obligations in the agreed agreement, then the party violates the principle of trust or keeping the promise in Islam and can be sanctioned actions according to the conditions and reasons because he has committed a default or reneging on the promise so that it has caused harm by one party. Reneging on its promises and sanctions has also been stipulated in the Compilation of Sharia Economic Law that the party in the contract that reneged on the promise and has been declared reneging on the promise or by its own agreement stipulates, that the party in the contract is considered to be reneging on the promise by the time specified.

Based on the rules in the Compilation of Sharia Economic Law section 4 article 38 concerning sanctions for reneging on the promise of an agreement agreed from the business owner with several celebgrams in order to be mutually beneficial in business development. But, the reality is that the agreement has not been executed perfectly from the celebgram so that the celebgram can be penalized for

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<sup>76</sup> Pasal 37 Kompilasi Hukum Ekonomis Syariah (KHES)

the break of the promise because it harms one of the parties, namely the business owner by not achieving the profit of selling turnover that should be obtained from the celebgram. Efforts to solve the problem made by both parties is by means of family, namely deliberation. As explained in Qs. Ali Imran:159 as follows::

فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ

*Meaning: "Therefore, forgive them and ask forgiveness for them, and consult with them in that matter". (Surah Al Imran 159)*

In doing business we should pay attention to business ethics in the business economy in Islam. There is not much expressed in the Qur'an and many fundamental principles only, because the basics yag very precise, the Quran and sunah a lot of talk about how muslims should behave as consumers producers and owners of capital in the world of Islamic business itself. Based on the above verses deliberation is a very noble way of solving problems. By means of deliberation the problem can be solved with good decisions and does not harm any party. From the case of renegeing on the promise in the endorsement agreement case above, the celebgram apologizes for the unfulked agreement, and the celebgram is willing to provide compensation as desired by the business owner for his/her mistake.

Based on the results of the author's interviews with several business owners in the city of Malang efforts to resolve the defaults made by the celebgrams in endorsement agreements through instagram media, namely efforts to resolve peacefully or family, the celebgram apologized for not implementing the agreement

as well as possible. Endorsement agreements are made on the basis of the belief that the agreement can be implemented in good faith and not to the detriment of the other party even if only through electronic media. The settlement efforts made by the two parties are by deliberation to reach consensus in order to maintain good relations and win-win solution decisions because they agree with each other. Deliberation is a negotiation in solving a problem. By peaceful means in solving the problem of default is the easiest and most effective way in business to maintain good cooperation relations and remain harmonious.





## CHAPTER V

### CLOSSING

#### A. Conclusion

Based on the above exposure related to endorsement agreement as an online promotion media in Malang city with civil law book and compilation of Sharia economic law can be concluded that:

1. Implementation of endorsement agreement as a promotional media in malang city between business owners and celebgrams in general is done by not meeting in person, endorsement agreement agreement is done through direct message diakun Instagram, whatsapp, or contact the contact listed on the celebrity biodata to be invited to cooperate.
2. Settlement of cases of default in endorsement agreements in the city of Malang perpekti civil law book is conducted out of court peacefully with parties who have committed defaults are held liable for damages in accordance with violations and based on agreements between the two parties. The occurrence of default in endorsement agreements as an online promotional media in the city of Malang is the celebgram party does not meet the obligations as agreed in the agreement. So that the business owner feels aggrieved, in article 1243 of the Civil Code that: “reimbursement of costs, losses and interest due to the non-compliance of an agreement begins to be required, if the debtor, even though it has been declared negligent, remains negligent to fulfill the

agreement, or if something to be given or done can only be given or done within a time that exceeds the specified time”.

3. The settlement of defaults reached between business owners and celebgrams according to the Compilation of Sharia Economic Law is carried out by deliberation in accordance with Qs. Ali Imran:159 and the party that has committed a default and apologizes for its mistakes and is willing to provide compensation according to the wishes of the business owner. The practice of default in the implementation of endorsement agreements according to the Compilation of Sharia Economic Law has been considered to be a default due to its errors in accordance with article 36. So the party that has reneged on the promise can be penalized: paying compensation, cancellation of the contract, risk transfer, fines and paying the costs of the case.

#### **B. Suggestion**

Based on the results of the study, the author would like to convey the following suggestions:

1. For the Sharia Economic Law Study Program of Maulana Malik Ibrahim State Islamic University Malang that in the implementation of the agreement must pay more attention to the principles and regulations that apply and not ignore it.
2. For businesses should, in conducting endorsement agreements impose regulations on sanctions, fines, compensation in the event of default and included in the agreement, in the sense that the fines given can provide a

deterrent effect to the infringing party, thus the parties will be more careful in fulfilling their rights and obligations and will not repeat the same mistakes.

3. For academics, that we as students can apply existing rules with the practice of daily life and carry out the mandate with a sense of responsibility in order to avoid renegeing on promises and not harming others.



## BIBLIOGRAPHY

Al-Qur'an Al-Karim

### Books

Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2011.

Amirudin dan Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2006.

Anshori, Abdul Ghofur. *Hukum Perjanjian Islam di Indonesia (Konsep, Regulasi, dan Implementasi)*. Yogyakarta: Gadjahmada University Press, 2010.

Ashshofa, Burhan. *Metode Penelitian Hukum*. Jakarta: PT Rineka Cipta, 2004.

Badruzaman, Mariam Darus. *Hukum Perikatan dalam KUH Perdat Buku Ketiga Yurisprudensi, Doktrin serta Penjelasan*. Bandung: Citra Aditya Bakti, 2015.

Badruzaman, Mariam Darus dkk. *Kompilasi Hukum Perikatan*. Bandung: PT Citra Aditya Bakti, 2001.

Hernoko, Agus Yudha. *Hukum Perjanjian Asas Proposionalitas dalam Kontrak Komersial*. Jakarta: Prenadamedia, 2010.

HS, Salim. *Perancangan Kontrak & Memorandum of Understanding (MoU)*. Cet-7, Jakarta: Sinar Grafika, 2017.

J.Satrio. *Hukum Perikatan tentang Hapusnya Perikatan*. Bandung: PT Citra Aditya Bakti, 1996.

- Johan, Bahder. *Metode Penelitian Hukum*. Bandung: Mandar Maju, 2008.
- M. Ramli, Ahmad. *Cyber Law dan HAKI dalam sistem Hukum Indonesia*. Bandung: PT.Refika Aditama, 2004.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2007.
- Moleong. Lexy j. *Metode Penelitian Kualitatif*. Bandung: PT Rosda Karya, 2002.
- Setiawan. *Pokok-Pokok Hukum Perikatan*. Bandung: Bina Cipta, 1977.
- Soekanto, Soejono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 1948.
- Soimin, Soedharyo. *Kitab Undang-Undang Hukum Perdata*. Jakarta: Sinar Grafika, 2016.
- Subekti, R. dan R.Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. Jakarta: PT Paradnya Paramita, 2004.
- Subekti, R. II. *Hukum Perjanjian*. Jakarta: PT. Intermasa, 1987.
- Subekti, Rachmat. *Fiqh Muamalah*. Bandung: Pustaka Setia, 2001.
- Subekti, Salim. *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika, 2003.
- Suhendi, Hendi. *Fiqh Muamalah*. Jakarta: RajaGrafindo Persada, 2002.
- Susanto, Burhanuddin. *Hukum Kontrak Syariah*. Yogyakarta: BPFE-Yogyakarta, 2009.



## **Journals & Thesis**

Abadiyah, Af'idah. "*Wanprestasi Dalam Bisnis Jual Beli Database Supplier Dalam Kajian KUHperdata Dan Hukum Islam (Studi Di Grup Media Sosial Line "Jutawan" Malang)*". Skripsi. Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2018.

Alviano, Yan Risa. "*Penyelesaian Wanprestasi dalam Perjanjian Sewa Menyewa Mobil (Studi Kasus Calysta Tour & Rent Car Kabupaten Bantul)*". Skripsi. Universitas Islam Negeri Sunan Kalijaga, 2017.

Anshori, Abdul Ghofur. *Hukum Perjanjian Islam Di Indonesia (Konsep, Regulasi, dan Implementasi)*. Skripsi. Gajah Mada University Press, 2010.

Halim, Abdul dan Teguh Prasetyo. *Bisnis E-Commerce Studi Sistem Keamanan dari Hukum di Indonesia*. Skripsi. Pustaka Pelajar, 2005.

Hutagaol, Marta Agustina. "*Pelaksanaan Perjanjian Endorsement antara Online Shop dan Artis di Media Sosial Instagram*". Skripsi. Universitas Gadjah Mada, 2017.

Pratiwi Budi Utami, "Strategi Komunikasi Pemasaran melalui endorsement pada online shpp di Indonesia ". Tesis. Univesitas Negeri Sultan Agung Tirtayasa, 2014),

Savenallina, Lidya. "*Perlindungan Bagi Pemilik Bisnis Online Dalam Hal Terjadi Wanprestasi Perjanjian Endorse Melalui Instagram Dihubungkan Dengan*

*Hukum Perikatan Dan Undang-Undang No.11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik*". Skripsi. Universitas Padjadjaran, 2016.

### **Undang-Undang**

Lembaran Negara Republik Indonesia Tahun 2012 No. 189 Peraturan Pemerintah Nomor 82 Tahun 2012

Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syariah (Edisi Revisi)*, Tahun 2011.

Kitab Undang-Undang Hukum Perdata

### **Website**

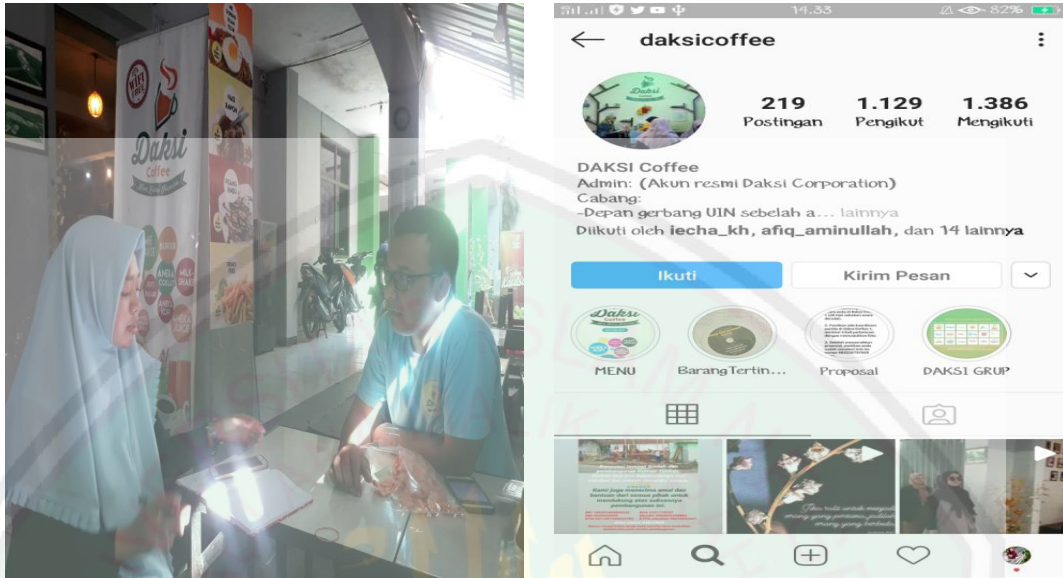
Aptika Kominfo.go.id, <https://kominfo.go.id/content/detail/3415/kominfo-pengguna-internet-di-indonesia-63> pada tanggal 09 maret 2020 pukul 13.37.

Kompasiana,“ <http://www.pengertianmenurutparaahli.net/pengertian-endorsement/> diakses pada tanggal 12 Maret 2020, pada pukul 10.00.

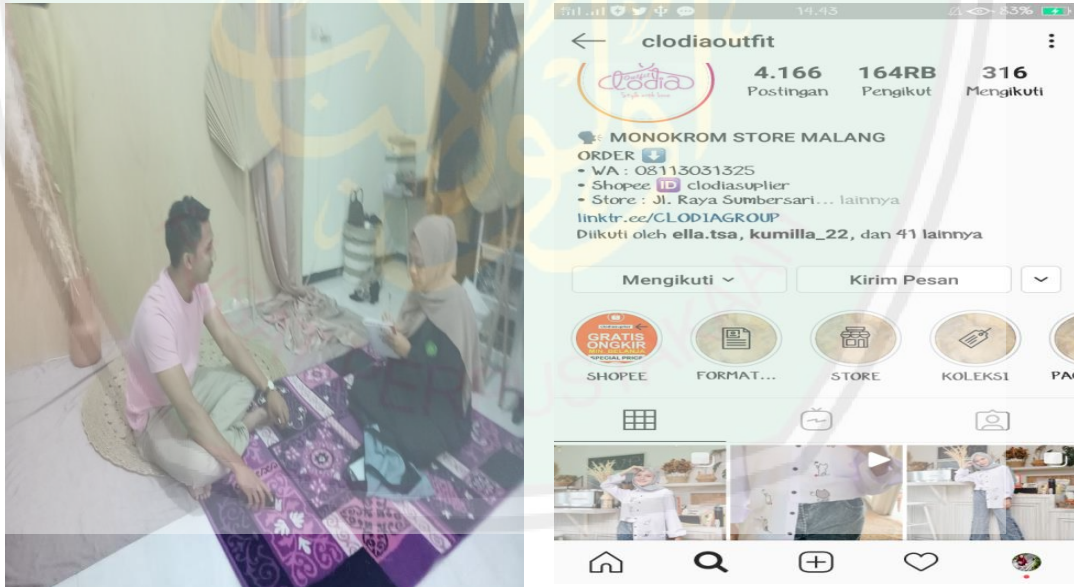
Pikiran Rakyat, “Situs Belanja Online yang paling banyak diminati”, <https://www.pikiran-rakyat.com/,diakses> tanggal 30 Februari 2020.

Wikipedia, [https://id.wikipedia.org/wiki/Celebrity\\_Endorsements](https://id.wikipedia.org/wiki/Celebrity_Endorsements) diakses pada tanggal 11 Juli 2020.

## ATTACHMENT DOCUMENTATION



Picture 1: Interview with Mas Atho'illah (Owner Daksi coffe)

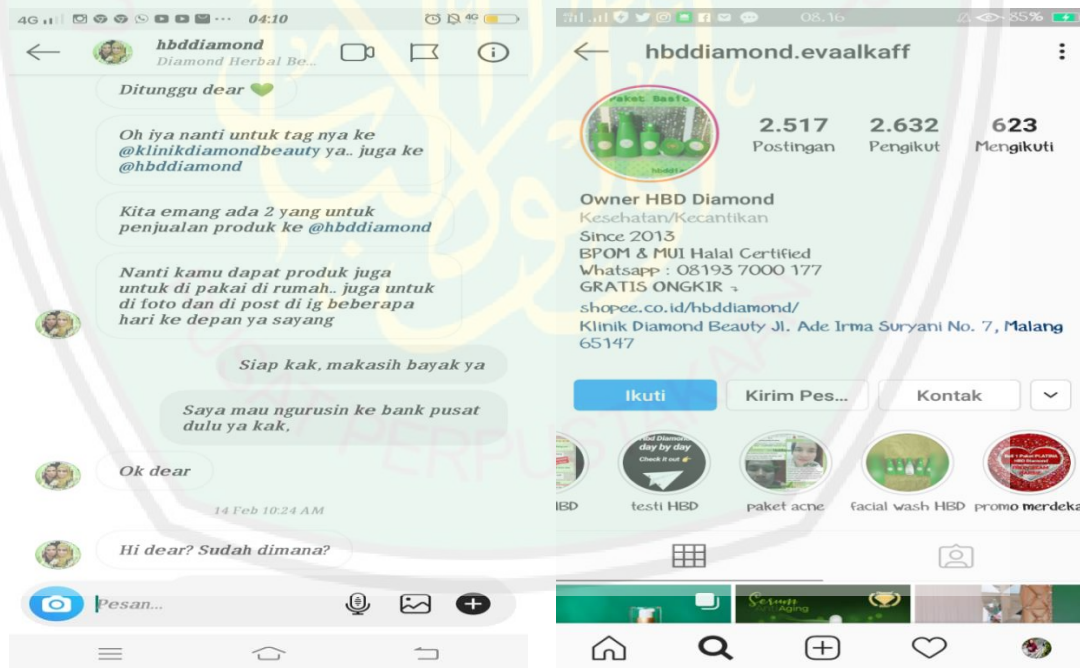


Picture 2: interview with Mas Aldysyahputra (Owner of Monokromstore\_Malang)

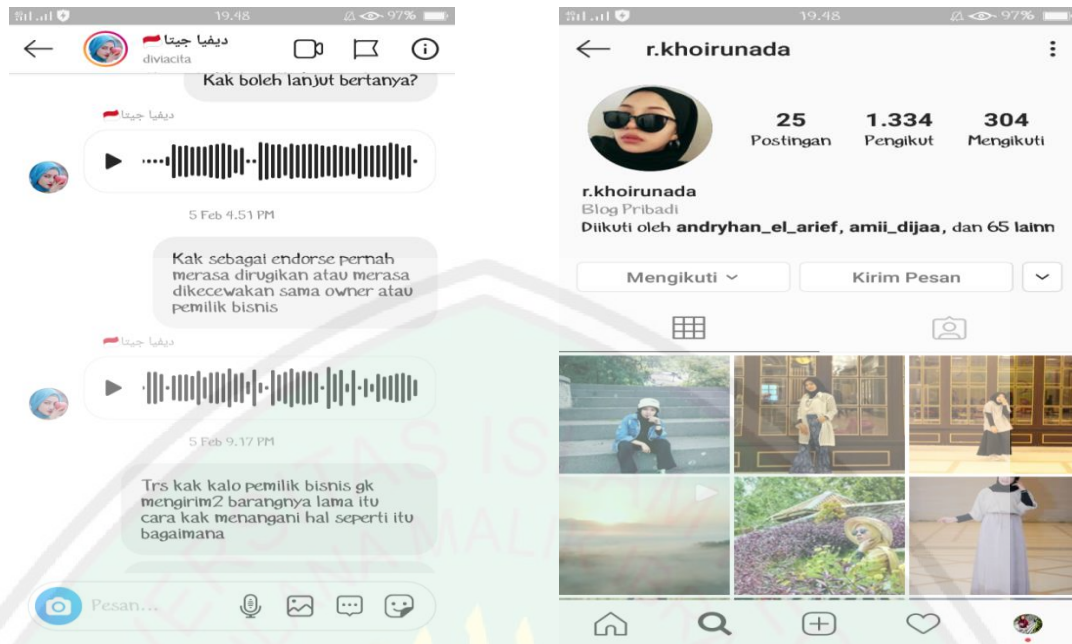




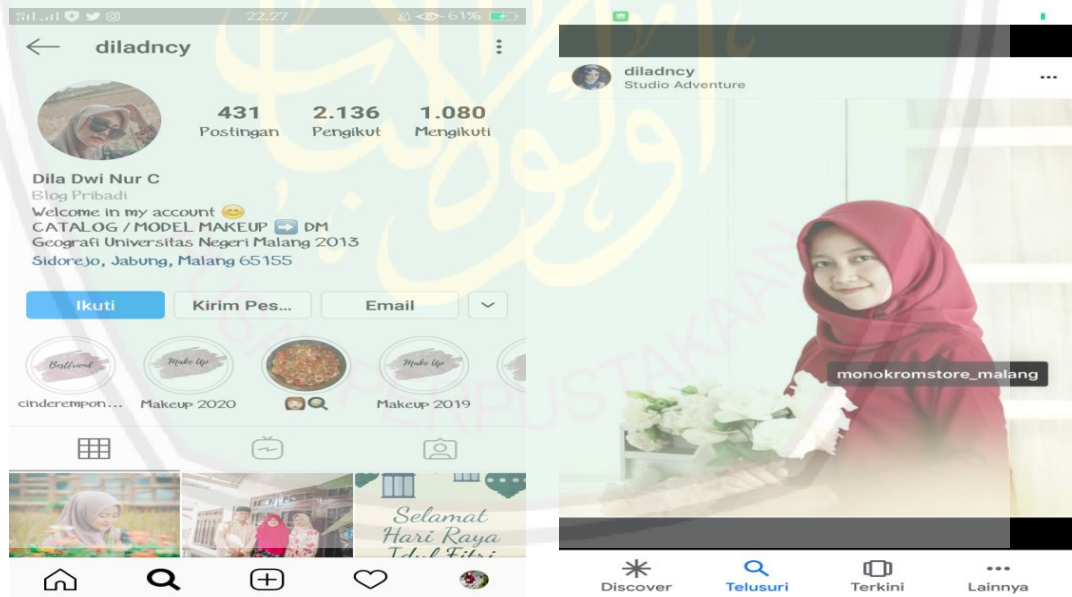
Picture 3: Interview with owner Loorzi.scarf Hijab Malang via Whatsapp



Picture 4: Conversations on instagram with owner Hbdddiamond with selebgram

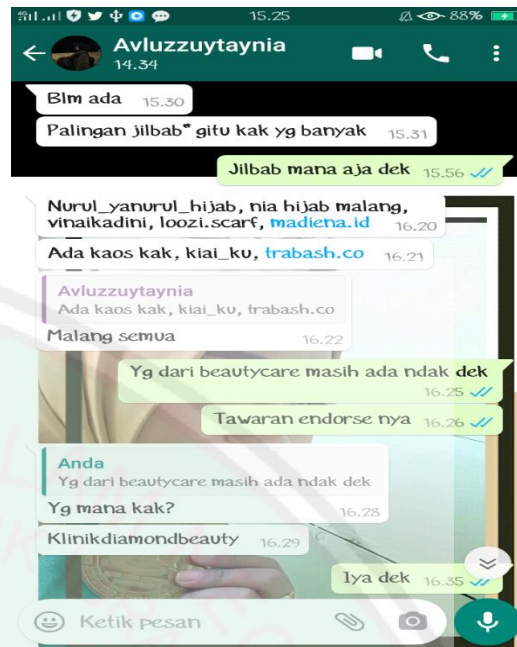
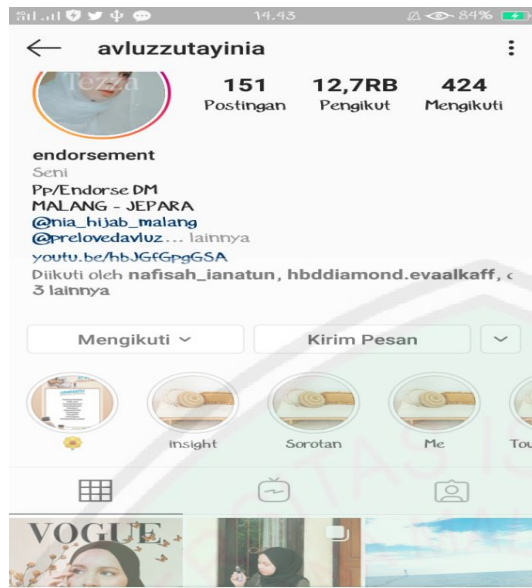


Picture 5: Interview with selebgram @diviacita and profile selebgram with akun @r.khoirunnada



Picture 6: Profile and celebrity photos with products from Monokromstore\_Malang





Picture 7: Profil Selebgram with akun @avluzzutaynia and interview via whatsapp



photo of Aghnea Punjabi with products from Monokromstore\_Malang



Conversation with owner Piaminirakkies Malang with celebgrams

## CURRICULUM VITAE



### PERSONAL DATA

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4. MA Darul Qur'an wal Irsyad(2012 – 2015)  
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