

# When AI Meets Advertising: The Potential of Misleading and Regulatory Framework on Consumer Protection

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**Abstract.** This essay examines AI Advertising in the context of consumer protection. It reviews how is the impact of artificial intelligence on consumer protection and how can the Regulatory Framework on Consumer Protection counteract Misleading Information by AI. This paper analyses regulatory Framework on Consumer Protection when faces AI Advertising. This study uses normative methods with conceptual and statutory approach. This research suggests that Indonesian regulations should define AI's legal status and liability to ensure legal clarity. Law enforcement focuses on numerous areas to prepare for AI Advertising. The legislation should cover many promotional activities, reevaluating puffery legal rules may be necessary due to the growth of AI Advertising, and the law should interpret more broadly, this safeguards consumers against technology advances.

## 1 Introduction

The advancement of technology and communication has led to a wider variety of telecoms infrastructure and more advanced information technology products capable of integrating all forms of content. Amidst the process of industrialization and the growing interconnectedness of communication, internet usage is gaining popularity and causing the world to become more compact.[1] This is resulting in the erosion of state boundaries, sovereignty, and society order.

Technological advancements in the trade industry have created opportunities for businesses to increase their market penetration without the need to establish physical branches. Additionally, leveraging advancements in information technology allows businesses to save significant capital as opposed to establishing conventional retail branches. Merchants can promote the things they offer on a larger scale with the implementation of new business models like affiliate programs.[2]

AI systems are significantly contributing to the spread of disinformation in today's world. These systems exacerbate the issue by not only enabling the creation of realistic AI-generated fake content but also by making it easier to distribute disinformation to specific audiences. This raises various ethical, legal, and human rights concerns related to human dignity, legal autonomy, democracy, and peace. In response, other AI systems have been developed to

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identify and moderate disinformation online. However, these detection systems also raise ethical and human rights issues, particularly concerning freedom of expression and access to information[3].

The widespread adoption of AI by enterprises presents novel issues to consumer law and policy. The combination of artificial intelligence (AI) with big data strengthens the influence of producers and intermediaries, giving them greater control over consumers. Artificial intelligence (AI) systems have the capability to leverage large amounts of data to predict and influence customer behavior. Therefore, people can be deceived, controlled, and influenced to make poor purchases or other choices without realizing it[4].

The commercial sector has played a significant role in driving the recent growth in AI development, particularly in customer-oriented applications. However, other sectors, such as defense, could also benefit from utilizing similar capabilities in their operations. Simultaneously, discerning between the actions of governmental and non-governmental entities is becoming progressively more challenging. This has lately been evidenced by a surge of ransomware attacks specifically aimed at public infrastructure in numerous nations. Furthermore, programs and applications created with benign intentions can also be utilized or altered with malevolent motives, resulting in potential harm[5].

One of the concerns surrounding the presence of AI is how easily it can deceive users and the potential future impacts of this capability. AI is increasingly described as a technology proficient in misleading consumers. Furthermore, some AI systems tend to "hallucinate" information, creating false or fabricated details. This flaw in the operation of AI systems raises concerns that these capabilities could be expanded, allowing AI to deceive people on a broader scale.

This paper aims to assess the role of AI in the degradation of consumer protection on commerce platforms. It examines the current landscape of AI as promotional tools in the media. The paper argues that AI poses a threat to consumer guarantees and protection. It is believed that the failure to regulate AI could worsen the reputation of commerce platform and lead to consumer harm in the future. To enhance the existing AI regulations and address misleading aspects in advertising, it is crucial to gain a comprehensive understanding by analyzing recent research as a valuable perspective. Therefore, this article explores the following research questions; how is the impact of artificial intelligence on consumer protection? And how can the Regulatory Framework on Consumer Protection counteract Misleading Information by AI?

## **2 Research Method**

This research uses normative juridical research, which is legal research that places the law as a building system of norms.[6] This research is conducted with a conceptual approach and statute approach. The data collection method used in this research is collecting research data through literature study.

## **3 Discussion and Analysis**

### **3.1 The Impact of Artificial Intelligence on Consumer Protection**

In the age of digital commerce, driven by the vast amount of data and enhanced by machine learning algorithms, many existing hazards to consumers have been intensified or changed, while certain new threats have arisen. The potential negative consequences of employing AI in corporate settings on business-to-consumer interactions have been a topic of discussion. These risks encompass the potential for consumer behavioral advertising to manipulate

consumers into making purchases that are not in their best interest, as well as the exclusion of certain consumer groups from accessing certain goods and services in a discriminatory manner, resulting from the mass-personalization of advertisements, prices, and displayed content. Over 60% of marketers have employed generative AI in their digital marketing endeavors, with 44.4% utilizing AI for the purpose of content creation. The usage of AI in marketing is projected to have a significant impact of \$1.4 trillion to \$2.6 trillion on marketing and sales processes across all industries, according to projections from McKinsey Global Institute.[7]

Elizabeth Handsley contended that there has been longstanding worry regarding the possible influence of advertising on families. In 2004, the Task Force on Advertising and Children, a group of six highly respected researchers from the American Psychological Association, compiled and evaluated the psychological evidence about the influence of advertising on children. According to the Task Force, evidence indicates that youngsters under the age of around 5 lack the ability to differentiate between advertising and amusement. Children typically begin to comprehend the purpose of advertising, which is to influence them into buying products, around the age of 8. Even older individuals, even some adults, often fail to employ the requisite level of skepticism when they come across advertisements. Specific types of advertising have been identified as particularly impactful on children and are hence considered to require specific regulations. Examples of effective advertising strategies include utilizing endorsements from attractive celebrities and delivering additional rewards or giveaways, particularly those of a collector type, in conjunction with a product or service.[8]

Marco Lippi et al stated that it is evident that consumers are subjected to a variety of risks. Some of these hazards are novel, resulting from the emergence of AI, while others are pre-existing dangers that have become increasingly perilous because of advancements in AI and information technology. From a consumer policy standpoint, it is important to regard AI as just one of several technologies that corporations employ to optimize their financial gains. Consumer law and policy must address the whole transformation of the marketplace, including the emergence of corporate usage of AI, as well as other socio-technological phenomena that significantly impact market participants and their skills.[9]

Ads fraud is a major obstacle to the digital advertising sector, resulting in large monetary losses and undermining trust among advertisers, publishers, and consumers. To effectively tackle the prevalent issue of ad fraud, new and adaptive techniques are necessary due to its complexity and ever-evolving nature. Artificial intelligence (AI) is becoming increasingly valuable in combating ad fraud due to its sophisticated features in identifying irregularities, analyzing behavior patterns, and providing continuous monitoring. Artificial intelligence-powered anomaly detection and behavioral analysis are essential in recognizing suspicious trends and deviations from standard user engagement metrics. Machine learning models can be trained to consistently observe ad traffic, click-through rates, conversion rates, and navigation paths, identifying any abrupt increases or strange geolocation patterns that suggest fraudulent behavior. Shobhit Agarwal argued by adopting proactive approach, advertisers may promptly respond and minimize the negative effects of ad fraud on their products.[10]

Christian Peukret argues that AI can be used as a tool for ethics washing, highlighting the detrimental impact of ethics washing methods on consumer trust. Our findings indicate that technology companies that provide AI-powered products or services should be mindful of the phenomenon of ethics washing and make efforts to prevent ethics washing in their marketing communication. Furthermore, ethics washing significantly impacts consumer uncertainty and perceived risk, thereby impacting consumer trust in the organization that is supplying the product or service. Nevertheless, we also demonstrated the areas where the model requires modification to accurately capture the phenomenon, with particular emphasis on the variations in the risk component.[11]

AI is closely connected to the utilization of advanced techniques for extracting data from large datasets, also known as big data mining. Artificial intelligence and big data are utilized to analyse the personal data of users to identify trends that may be used to inform future decision-making processes. Common instances are recommendation systems that provide product suggestions to consumers, decision support systems in the banking and loan industry that strive to analyse and categorize consumer and tracking tools for monitoring content viewing. However, in these situations, the utilization of automated systems frequently has the potential for adding user bias based on factors such as race, gender, socioeconomic standing, or cultural background.[12]

### **3.2 Artificial Intelligence and Misleading Information**

According to Katarina Kertysova, the advancement of AI systems poses both benefits and risks for a democratic society. AI technologies will enhance human processes and duties in the online world, including the identification of disinformation, bots, modified text and images, and manipulated audio and video content. Conversely, if opponents adopt the same technologies, it will empower them to enhance the efficacy and scope of information operations. As the ideological and geopolitical tensions between democratic and authoritarian regimes intensify, it is quite probable that AI and computational propaganda will be employed as instruments of political warfare against democratic countries. There is a need for a more extensive international endeavor to develop methods for identifying and addressing AI-generated content. Efforts to address inaccurate and harmful content should already be directed towards the upcoming wave of disinformation, which is expected to propagate more rapidly, possess greater complexity, and be more challenging to identify due to advancements in AI and decentralized computing.[13]

AI algorithms employed in advertising, if not meticulously crafted and supervised, have the potential to inadvertently sustain prejudice and discrimination, particularly in the realm of targeted advertising. Moreover, excessive dependence on AI in advertising has the potential to undermine consumer confidence, particularly if individuals believe that their privacy has been breached or if they see the advertisement content as deceitful or deceptive. Hence, addressing these ethical considerations necessitates the conscientious and open utilization of artificial intelligence in advertising, while also adhering to privacy legislation and ethical guidelines. Simge Aksu asserted that adhering to privacy legislation and ethical guidelines can potentially enhance customer trust in marketing including artificial intelligence applications.[14]

Jeannie Paterson identifies three primary methods via which the promotion of Artificial Intelligence (AI) in digital information intermediaries can potentially deceive customers.[15] One form of deceptive artificial intelligence (AI) occurs when tools designed to help consumers make decisions only give them incomplete information, while concealing other options that may be better in terms of products or prices. This is done to benefit the provider of the advice service. Another type of deceptive occurrence arises when consumers are provided with false information on the capabilities of the technology they are utilizing. This can happen when customers believe they are receiving guidance from an agent with high-level and human-like intelligence, while they are being directed by less advanced or subtle methods. Another type of deceptive artificial intelligence (AI) occurs when consumers are provided with false information regarding the identity of the entity they are engaging with. This leads consumers to believe they are communicating with a human, when they are conversing with a bot. This type of deceptive artificial intelligence (AI) is made possible by the growing ease of interactions with AI systems, as well as humans' inclination to attribute human-like qualities to objects that communicate with them.

However, Noémi Bontridder asserted that while disinformation has been a persistent issue, AI systems in the contemporary digital landscape of the internet exacerbate the problem primarily through two means. Initially, they can be exploited by malevolent parties to control folks in an exceptionally efficient method and on a vast magnitude. Furthermore, they directly enhance the dissemination of such content. The primary objective of programming these AI systems is to optimize user engagement. Consequently, the predominant cause responsible for the proliferation of disinformation is the underlying economic paradigm of the internet. In addition, the prevalence of social media bots is extensive, and the authenticity of fraudulent information is progressively more convincing.[16]

Advanced generative AI technology can now rapidly produce replicated human voices and highly realistic images, films, and audio with minimum expenses. When harnessed by potent social media algorithms, this fabricated and digitally generated content can rapidly disseminate and specifically target people, perhaps bringing misleading information deceit to an unprecedented level.

Melaney Ricardo, an Indonesian star, was recently targeted by a deceptive weight reduction advertising that employed deepfake technology. An artificially manipulated video of her delivering a fabricated endorsement for a weight loss product gained widespread attention, leading to perplexity and harm to her reputation. Scarlett Johansson initiates legal proceedings regarding an advertisement featuring an artificial intelligence replica of herself. An AI-generated image of her shown in a 22-second advertisement shared on a social media platform was considered an attempt to influence consumer perception. The estate of Tupac Shakur is issuing a legal threat against Drake about his latest Kendrick Lamar diss track. They are accusing Drake of using an AI-generated rendition of the deceased rapper's voice, which they consider to be a clear and disrespectful exploitation of his memory. This case exemplifies the susceptibility of technological technology to the dissemination of misinformation and the manipulation of consumers. According to a survey by Juniper Research, over 22% (equivalent to USD 84 billion) of the total online advertising expenditure was lost due to fraudulent activities in 2023. It is projected that this figure would exceed USD 170 billion during the next five years.[17]

### **3.3 Developing a Regulatory Framework on Consumer Protection to Counter AI Misleading: Notice for Indonesia**

The legal frameworks that enforce the prohibition of misleading and deceptive practices towards customers are specifically designed to function effectively in the context of in-person retail transactions. Moreover, these regulations are also very applicable in addressing the dissemination of false or inaccurate information in the present digital landscape. Regulating the internet world poses challenges due to its worldwide character, leading to complications in determining applicable laws and jurisdictions. Furthermore, there are emerging possibilities for consumer manipulation resulting from commercial communications that cunningly disguise themselves as online news, online entertainment, or social media posts.

A regulatory framework that specifies the fundamental principles for regulating false information and advertising by AI should serve as the initial framework. Thus far, advancements in AI have been gradual, particularly in relation to the legal system. The growing prevalence of automated systems has not required significant alterations to current legal principles. If the advancement of AI continues at its current rate, it is possible that we will not need to search beyond the common law tort system to discover methods of incorporating the expenses linked to AI. However, if artificial intelligence technology advances, its progress could significantly speed up. This highlights the necessity of a

common law doctrine that considers and prepares for future technological advancements in AI systems, to prevent these systems from being left in a legal void.[18]

Mathew Scherer emphasizes the importance of establishing certainty in several aspects when it comes to incorporating AI into legal frameworks. These aspects include determining the legal status, legal duty, and oversight bodies. The Act would establish the aspect of liability, which may give rise to certain potentially complex difficulties. AI might be perceived as either a product or a service, depending on the situation. This distinction can affect whether the rules of strict liability or negligence would be applicable in cases of harm caused by AI. In addition, if the behavior of a learning artificial intelligence (AI) is influenced by the AI's experiences while being used by the end user, courts will need to ascertain whether and when those experiences might be considered a superseding cause.

The proposed legislation aims to create an organization that would be responsible for verifying the safety of AI programs. Additionally, it would define the extent of the agency's authority to intervene in AI research and development. Due to the highly technical nature of AI, legislators lack the necessary expertise to ascertain which forms of AI provide a potential threat to the public. Hence, it is advisable to assign the responsibility of developing comprehensive AI policy to an organization comprising AI experts who possess pertinent academic and/or industry expertise.

Martin Ebers shares Scherer's view that establishing the responsibility of artificial intelligence in domestic legislation is highly significant. The clarity framework attempts to resolve individual tort claims resulting from harm caused by AI by utilizing the expertise and fact-finding capabilities of the courts. Under the liability framework, courts would utilize the regulations pertaining to negligence claims for instances involving certified AI, while using the laws of strict liability for cases involving uncertified AI. In cases falling within the latter category, the primary focus of this endeavour will be to assign culpability among the designers, makers, distributors, and operators of AI systems that cause harm. In instances involving several defendants and claims for indemnification or contribution, the distribution of culpability should be decided using the same method as in regular tort proceedings.[19]

Kate Tokeley explained how regulations should be implemented in dealing with misleading AI.[20] First, extend the broadening of promotion category. Legislation should apply to a broad category of promotional activities, not just some old-fashioned view of an advertisement. It should be drafted in such a way as to include all forms of communication, where the goal is to modify a consumer's purchasing behavior in any way. If any of that kind of communication is in any way misleading, then the assumptions underlying neoliberal economics model fall apart. Accurate, non-misleading information is needed for consumers to make free and informed choices. Second, Disclosure Requirements on camouflaging advertising. Ideally the consumer protection laws of each country should be assessed, and where necessary reformulated, to explicitly require sufficient disclosure to enable consumers to recognize when marketing manipulation is the purpose of the message being delivered by their Internet of Things devices. This at least gives consumers a chance to approach the message with a degree of skepticism. Third, revisiting puffery on AI era. Any attempt to reform the law to prevent deception in an era of IoT advertising will need to re-consider and update the legal rules surrounding puffery. Certainly, the assumptions that underlie the current approach to regulating puffery need to be revisited. Fourth, interpreted law more broadly. In contemplating a future where invasive manipulative advertising via AI-driven IoT is no longer tolerated, it is worth considering the possibility that new laws are not in fact needed, and instead the old laws just need to be interpreted more broadly.

Indonesia has well-defined legal regulations pertaining to consumer protection. The Consumer Protection Law provides a comprehensive explanation of the rights of consumers and the obligations of business actors. It also outlines the legal liability that emerges in the event of a loss. In addition to this, there is specific legislation that controls consumer

protection within different sectors. For instance, both the Health Law and Food Law outline the rights, obligations, and responsibilities of consumers and businesses (producers or service providers) in their respective sectors, while adhering to the regulations set forth in the Consumer Protection Law as the primary guideline. Concerning the frequency of deceptive information in product advertisements circulating across society, it has been addressed and regulated in the regulations. Furthermore, both the Broadcasting Law and the Press Law include explicit guidelines against misleading advertisements in products. The utilization of AI in advertising has led to the proliferation of deceptive adverts. In relation to this matter, Indonesia has already established regulations concerning technology and information, specifically through the Information and Electronic Transactions (ITE) Law.

Nevertheless, it appears that the regulations are insufficient to adapt to the progressively intricate era, particularly in relation to the advancement of AI in deceptive commercials that undoubtedly pose a threat to consumers. Mathew Scherer argues that establishing regulations is crucial for managing the functioning of artificial intelligence. The regulations should establish the legal position of AI and its corresponding liability. According to Kate Tokeley, to prepare for the upcoming wave of AI Advertising, law enforcement should focus on many key aspects. She contends that legislation should encompass a wide range of promotional endeavors. This necessitates ensuring that the article elucidating the definition of advertising accommodates all current forms of promotion. However, there is still a lack of consistency between different laws in explaining the concept of advertising. This is evident in the continued use of terms such as "advertising," "promotion," and "news." Regarding the reevaluation of updating the legal regulations of puffery, it can be argued that considering the rise of AI Advertising, there should be no conflicting norms. The Consumer Protection Law should serve as the primary standard for sectoral legislation. However, it appears that its implementation has been inadequate due to the inherent flaws within the Consumer Protection Law itself. Alternatively, if the current legislation is unable to address the challenges posed by AI and Misleading Information, the judiciary should adopt a more expansive interpretation of the law. This is done to ensure consumer protection from technological advancements.

## **4 Conclusion**

Advertising fraud is a significant impediment to the digital advertising sector, as it undermines the trust of advertisers, publishers, and consumers and results in substantial financial losses. The complexity and ever-evolving nature of ad fraud necessitates the development of new and adaptive techniques to effectively address the prevalent issue. The current state of advanced generative AI technology allows for the rapid production of highly realistic images, films, and audio, as well as replicated human voices, with minimal expenditures. This digitally generated and fabricated content has the potential to swiftly disseminate and specifically target individuals when leveraged by powerful social media algorithms. This could potentially elevate consumer deception to unprecedented levels.

However, the restrictions seem insufficient to adapt to the more complex period, especially with AI in deceptive advertising that threatens consumers. AI regulation is essential, the regulations should define AI's legal status and liability. Law enforcement focuses on numerous areas to prepare for AI Advertising. The legislation should cover many promotional activities. This requires ensuring that the advertising definition article covers all current promotion methods. The laws explaining advertising in Indonesia Legal System are still inconsistent. The use of "advertising," "promotion," and "news" shows the inconsistency. Reevaluating puffery legal rules may be necessary due to the growth of AI Advertising. The Consumer Protection Law should guide sectoral legislation. Due to the Consumer Protection Law's faults, its implementation appears to have been inadequate. If current legislation cannot

address AI and Misleading Information, the judiciary should interpret the law more broadly. This safeguards consumers against technological advances.

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