



LEGAL PROTECTION FOR BANK CUSTOMERS WHO SUFFER LOSSES DUE TO THE OFFERING OF INSURANCE PRODUCTS VIA TELEPHONE (TELEMARKETING)

Erlina, Alip Rahman, Gusti Yosi Andri
Swadaya Gunung Djati University, Cirebon, Jawa Barat, Indonesia
Email gusti.yosi@ugj.ac.id

Abstract

Background. Insurance is integral to human civilization, arising from the fundamental human need for security and protection against potential risks. In the modern financial landscape, the sale of insurance products through telemarketing has become a common practice within the banking sector.

Objectives. This research aims to analyze the legal protection afforded to bank customers who suffer losses resulting from insurance product solicitations via telemarketing. The analysis focuses on the validity of insurance agreements concluded over the telephone and the corresponding consumer protection.

Methods. This study employs a normative juridical research method, exclusively utilizing secondary data relevant to the research object.

Results. The findings reveal that insurance agreements concluded via telemarketing are considered legally valid even without a physical signature, as they are based on the verbal consent of the parties involved. This is supported by Article 258 of the Indonesian Commercial Code (KUHD), which stipulates that evidence of an agreement, such as a preliminary note or a recorded conversation, is sufficient to prove the contract's existence. The overarching principle of legal protection in Indonesia is rooted in the recognition and protection of human dignity as derived from Pancasila.

Conclusion. Based on the analysis of existing regulations, legal protection for customers in this context manifests in two forms: preventive and repressive legal protection.

Implications. Preventive protection is designed to avert disputes before they arise, whereas repressive protection focuses on resolving disputes after they have occurred.

Keywords: Insurance, Contract Validity, Bank Customer, Legal Protection, Telemarketing.



© 2025 The Author(s). This article is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source.

INTRODUCTION

Insurance is an integral part of human civilization, stemming from the fundamental human need for security and protection against potential risks. It is the result of a rational effort to achieve a state of stability that fulfills essential needs, particularly the need for safety. The concept originates from the desire to provide protection against uncertainty, a constant in

human life. When this uncertainty is managed, a sense of security is achieved, fulfilling a critical human requirement (Sri Rejeki, 1997).

The concept of insurance, born from this need for protection, has continuously evolved in line with the development of societal needs, cultural progress, and economic growth. The explanatory notes of Law No. 40 of 2014 concerning Insurance highlight the rapid development of the insurance industry, both nationally and globally. This growth is marked by an increase in business volume and greater public utilization of insurance services, which have diversified to meet the growing demand for integrated risk and investment management in both personal and business activities.

In the current economic climate, competition among corporations is undeniably intensifying. In Indonesia, various companies vie for competitive advantage, and the insurance sector is no exception. The proliferation of insurance companies has created a highly competitive market. This is compounded by the inherent human need for protection at all times (Heri Sudarsono, 2003), although the perception of well-being is relative and varies from one individual to another.

Marketing via telephone, or telemarketing, is a method that utilizes technology to contact potential customers. This strategy is employed across various sectors, including service providers, banks, insurance companies, and travel agencies. The popularity of telemarketing among businesses is due to its cost-effectiveness and efficiency compared to other marketing approaches, as it allows for a higher volume of customer contact.

The practice of telemarketing falls within the scope of the Law on Information and Electronic Transactions (ITE Law). This is affirmed in Article 1, number (10) of the ITE Law, which defines an electronic transaction as a legal act conducted electronically through an interconnected network, including communication via telephone. Such electronic transactions are considered a form of agreement between parties, as stipulated by Article 1233 of the Indonesian Civil Code, which recognizes agreements arising from contracts or laws.

A significant problem arises when telemarketing is conducted without providing detailed and transparent education to potential consumers, often resulting in financial losses. According to Article 1321 of the Indonesian Civil Code (BW), an agreement is invalid if consent is obtained through duress, fraud, or mistake. However, telemarketing practices often treat a mere verbal statement as binding acceptance.

In principle (*das sollen*), every contract must fulfill the subjective and objective

requirements for a valid agreement as stipulated in Article 1320 of the Civil Code to be legally binding. It must be free from any element of fraud, mistake, or duress (Badrulzaman, 2011). In practice (*das sein*), however, many customers are victimized by telemarketers who provide ambiguous product information or misuse customer data to secure sales. This has led to an erosion of public trust in the banking sector. Compounding the issue, banks often refuse to compensate for these losses, arguing that the customer willingly entered into a valid agreement (Pratama et al., 2017).

METHOD

Research Approach

The research approach employed in this study is the normative juridical method. According to Soerjono Soekanto and Sri Mamudji, normative legal research is defined as research conducted by exclusively examining library materials or secondary data. The legal materials and secondary data analyzed are directly related to the research problem, focusing on the legal principles of insurance contracts and the application of the principle of consensualism to agreements made via telemarketing (i.e., agreements based on verbal consent over the telephone).

Type of Research

This study is qualitative in nature. The objective is to identify, describe, and analyze legal norms, which include legal principles, specific legal rules, and concrete legal regulations. The research also explores the legal system and engages in legal discovery relevant to the topic. As the data and materials in this study are not numerical, a qualitative approach is used to generate descriptive data. The aim is to describe and analyze phenomena, particularly the behaviors and perceptions of individuals or groups (Moleong, 2000). Specifically, this research seeks to describe the application of the principle of consensualism within insurance agreements formed through telemarketing.

Object of Research

According to Soerjono Soekanto and Sri Mamuji, the object or focus of a normative legal study can include research into legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law.

The object of this particular study is related to the research problem and focuses on the legal principles of contracts, specifically as they apply to insurance agreements established

through telemarketing.

Analysis of Legal Materials

Primary Legal Materials

Primary legal materials are binding legal sources. For this study, the relevant primary materials include:

- The Law on Information and Electronic Transactions (ITE Law)
- The Indonesian Civil Code (KUH Perdata)

Secondary Legal Materials

Secondary legal materials provide support and clarification for the primary materials. The secondary materials used in this research include other relevant regulations, academic books discussing insurance law, and scholarly journals related to the topic of insurance.

Data Collection Technique

The data collection technique used is a literature and documentary study. This method focuses on gathering and analyzing laws and regulations relevant to the research topic. This is supplemented with interviews with relevant institutional parties, namely insurance agents and marketing personnel. The purpose of these interviews is to confirm and clarify the secondary legal materials obtained by the researcher to ensure a consistent and accurate understanding.

LITERATURE REVIEW

The Insurance Agreement

A common thread in the definitions provided in Article 246 of the Indonesian Commercial Code (KUHD) and Article 1, number 1 of Law No. 40 of 2014 concerning Insurance (hereinafter the Insurance Law) is the characterization of insurance as an agreement. Wirjono Prodjodikoro defines insurance as an agreement wherein the guaranteeing party (the insurer) promises the guaranteed party (the insured) to provide compensation for a loss that may be suffered by the insured in exchange for a sum of money (the premium), as a result of an uncertain event (Prodjodikoro, 1987).

Tuti Rastuti offers a modern understanding of insurance, stating, "insurance is a form of risk management or risk control, achieved by transferring risk (*transfer of risk*) or distributing risk (*distribution of risk*) from the party likely to suffer from a risk to another party (the insurance company) that is willing to protect against the potential occurrence of that risk."

Thus, insurance is a reciprocal agreement where both parties have obligations: the insured is obligated to pay a sum of money in the form of a premium, and the insurer is obligated to compensate for losses experienced by the insured due to an uncertain event (Tuti Rastuti, 2011).

In addition to being a reciprocal agreement, the insurance agreement has other characteristics that are defined by Article 246 of the KUHD, including:

1. Indemnity Agreement: An insurance agreement is fundamentally a contract of indemnity (*schadeverzekering* or *indemniteits contract*). The insurer commits to compensating for a loss because the insured has suffered a loss, and the amount of compensation is equivalent to the actual loss suffered (Principle of Indemnity).
2. Conditional Agreement: The insurer's obligation to compensate is only triggered if the specified uncertain event, for which the insurance was arranged, actually occurs.
3. Reciprocal Agreement: The insurer's obligation to indemnify is balanced by the insured's obligation to pay the premium.
4. Uncertain Event: The loss suffered must be the result of the specific uncertain event against which the insurance was provided.

Furthermore, Sri Redjeki Hartono explains that although Article 1774 of the Indonesian Civil Code classifies insurance as an aleatory agreement (an agreement of chance), it cannot be equated with a mere gambling contract. Insurance has a more definite purpose: to transfer an existing risk related to a specific economic interest, thereby maintaining the insured's financial position.

The Validity of an Insurance Agreement

In addition to the specific requirements in the KUHD, the general provisions of Article 1320 of the Indonesian Civil Code (KUH Perdata) also apply to insurance agreements. This reflects the legal principle of *lex specialis derogat legi generali* (a specific law overrides a general law). Since the legal relationship in an insurance agreement creates rights and obligations for the parties, any contractual matters not regulated in the KUHD are subject to the general contract provisions in the Civil Code.

Article 1320 of the Civil Code stipulates four conditions for the validity of an agreement: consent of the binding parties, capacity to enter into an obligation, a specific subject matter, and a lawful cause. These conditions can be compared to the common elements of an insurance contract in English law: "offer and acceptance, consideration, legal object, competent parties,

and legal form," as detailed below:

1. **Consent (Offer and Acceptance):** The agreement of the binding parties begins with a process of offer and acceptance. In insurance contracts, unlike general contracts, the offer originates from the insured, while the acceptance (of the risk) comes from the insurer.
2. **Capacity (Competent Parties):** The parties must have the legal capacity to enter into a contract. This means they must be of legal age, of sound mind, and not under duress or guardianship.
3. **A Specific Subject Matter (Consideration):** The "specific subject matter" in Article 1320 refers to the object of the agreement. In insurance, this is the insurer's promise to provide a guarantee to the insured in return for a premium that is considered proportional to the risk being covered. The premium is the consideration that validates the insurance agreement and gives it legal force. The object of the insurance itself is the insurable interest.
4. **A Lawful Cause (Legal Object):** An insurance agreement that aims to provide coverage for a cause prohibited by law, that violates morality, or that is contrary to public order, as stated in Article 1337 of the Civil Code, is void by law.
5. **Legal Form:** This additional element means that an insurance agreement is valid in form if the issued insurance policy is identical or substantially similar to the standard policy form approved by the relevant authorities.

The Formation of an Insurance Agreement

An insurance agreement is formed once a consensus is reached between the insured and the insurer. At that moment, reciprocal rights and obligations arise, even before the policy is signed (Article 257(1) KUHD). The policy serves as a written instrument of proof that the insurance agreement has been concluded (Article 285(1) KUHD).

Article 257 KUHD clarifies that even if a policy has not yet been issued, the insurance agreement exists as soon as consensus is reached. This consensus can be evidenced by a cover note signed by the insured, as per Article 258 KUHD. While the law generally requires written proof in the form of a policy, a cover note serves as temporary evidence of the agreement before the formal policy is issued by the insurer. Therefore, Articles 257 and 258 KUHD establish that the policy is not a constitutive requirement for the validity of the insurance agreement; it is merely evidence of its existence.

Principles of Contract Law in Insurance

The insurance contract, being a special and unique type of agreement, is governed by principles that are more pronounced than in other contracts. It must adhere to both the general requirements of contract law and specific principles that define its unique characteristics.

Because the KUHD governs insurance as a special contract, the general provisions of the KUH Perdata also apply. The key principles of contract law from the Civil Code that are relevant to insurance are:

- Principle of Consensualism
- Principle of Freedom of Contract
- Principle of Trust
- Principle of Legal Equality
- Principle of Balance / Pro Rata
- Principle of Legal Certainty
- Principle of Good Faith

Specific Principles of Insurance

As a special agreement regulated in the KUHD, an insurance contract must also apply the following specific principles in addition to the general principles of contract law:

- Principle of Insurable Interest
- Principle of Utmost Good Faith
- Principle of Indemnity
- Principle of Subrogation
- Principle of Contribution
- Principle of Proximate Cause

DISCUSSION

The Legal Validity of Insurance Agreements Made via Telemarketing

Telemarketing serves as a marketing channel that utilizes telecommunications to engage with customers for the purpose of promoting a company's products. An insurance agreement established through telemarketing is a legally binding contract, as it involves an Insurer and an Insured who mutually agree to bind themselves to the terms concerning the offered insurance

object. Consequently, for an insurance agreement made via telemarketing to be considered legally valid, it must not only comply with specific insurance-sector regulations but also adhere to all principles of general contract law. The element of consent is a primary condition for the validity of an agreement under Article 1320(1) of the Indonesian Civil Code, reflecting the foundational principle of consensualism in every contract.

In the context of banking, telemarketing is classified as an electronic transaction under the Law on Information and Electronic Transactions (ITE Law). In practice, these transactions are conducted orally over the telephone, without a written agreement.

A common product offered through this channel is bancassurance. While banking regulations, such as Bank Indonesia Circular Letter No. 12/35/DPNP, generally prohibit banks from engaging in the business of underwriting insurance, specific rules govern the marketing of such products. OJK Regulation No. 23/POJK.05/2015 (Article 45(1)) clarifies that an insurance company is permitted to market its products through various channels, including bancassurance (i.e., through a bank).

Regarding the formation of consent in telemarketing, a consensus is deemed to have been reached when the prospective customer or insured party provides a clear and unequivocal verbal statement of agreement. According to legal expert Ms. Lina, at this moment, rights and obligations are created for both parties: the insurer becomes obligated to issue a policy, and the insured becomes obligated to pay the premium.

From the perspective of the ITE Law, a telemarketing agreement can be classified as an electronic contract. Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) further stipulates in Article 46(2) that an electronic contract is valid and binding if it meets the requirements laid out in Article 1320 of the Civil Code.

Therefore, the validity of an agreement arising from telemarketing is determined by its compliance with the four conditions of Article 1320: subjective requirements (consensus and capacity) and objective requirements (a specific subject matter and a lawful cause). If a subjective requirement is not met, the agreement is voidable at the request of the aggrieved party. If an objective requirement is not met, the agreement is void by law (*batal demi hukum*), meaning it is considered never to have existed from the outset.

Legal Protection for Consumers in Insurance Telemarketing

The principle of legal protection in Indonesia is derived from Pancasila and is founded on

the recognition and protection of human dignity. This protection manifests in two forms: preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, while repressive legal protection is designed to resolve disputes after they have arisen.

A case illustrating the need for such protection involved a bank customer named Ahida Istihfarabillah. The customer believed she had explicitly rejected an insurance product offered by a telemarketer from a private bank, yet her bank account was subsequently debited for a premium payment. The customer's grievances were that:

1. She had never signed a transfer slip or debit authorization.
2. There was no follow-up confirmation before the debit was made.
3. She had not even received the insurance policy.

Upon discovering the debit, the customer visited a local BRI bank office to inquire. A teller advised her to go to the BRI Life office to formally cancel the policy and prevent future debits. Based on this case, it is evident that the practice of telemarketing creates significant ambiguity for the public and is prone to violating the principle of consensus. Consumers are being enrolled in insurance policies and having their accounts debited without having given clear and informed prior consent. The automatic debiting of funds without notification is particularly detrimental to the consumer.

In the author's view, the widespread complaints regarding insurance are often rooted in aggressive sales tactics. Insurance companies and their agents may present overly enticing offers that ensnare potential customers. In such situations, customers often overlook the need to scrutinize the rights and obligations detailed in the policy. A more severe issue is that, in many cases, insurance agents fail to provide a comprehensive explanation of the policy or even give the customer an adequate opportunity to review its terms, thereby undermining the principle of informed consent.

CONCLUSION

The validity of an agreement arising from a bank's telemarketing activities is contingent upon fulfilling the conditions for a valid contract as stipulated in Article 1320 of the Indonesian Civil Code (BW). Although in principle, telemarketing practices may fulfill the formal elements of an agreement, it is undeniable that in their implementation, errors or mistakes (*kekhilafan*) frequently occur. If the resulting agreement is detrimental to the bank customer due to such a mistake, it is subject to cancellation.

Legal protection for the Insured in the telemarketing of insurance products is provided for in accordance with applicable laws and regulations. One key protection is afforded by Article 1321 of the Indonesian Civil Code, which stipulates that if an agreement is found to contain a defect of consent (*cacat kehendak*), either party has the right to file a petition for its cancellation with the local court.

BIBLIOGRAPHY

- Agustina, Rosa. *Hukum Perikatan (law of obligations) bagian 1 Perbuatan Melawan Hukum*. Denpasar: Pustaka Larasan.
- Badruzaman Marius Darus. 2011. *Kompilasi Hukum Perikatan*. Bandung: Citra Aditya Bhakti.
- Hartanto Sri Sedjeki. 1997. *Hukum Asuransi dan Perusahaan Asuransi*. Jakarta: Sinar Grafika.
- Kasmir. 2004. *Bank dan Lembaga Keuangan Lainnya*. Jakarta: Raja Grafindo Persada.
- Moleong Lexy J. 2000. *Metodologi Penelitian Kualitatif*. Bandung: Rosdakarya.
- Prodjodikoro Wirjono. 1987. *Hukum Asuransi di Indonesia*. Jakarta
- Rastuti Tuti. 2011. *Aspek Hukum Perjanjian Asuransi*, Yogyakarta: Pustaka Yustisia.
- Sudarsono Heri. 2003. *Bank dan Lembaga Keuangan Syariah*. Yogyakarta.
- Soekanto Soerjono dan Sri Mamudji. 2010. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Grafindo Persada.
- Vaughan, Emmet J dan Therese Vaughan. 2003. *Fundamentals of Risk and Insurane*.

Legislation

- Undang Undang Nomor 40 Tahun 2014 tentang Perasuransian.*
- Undang-Undang No 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik, Pasal 1 Angka 17, 2008*

Jurnal Articles

- Adyan Agit Pratama, Bambang Eko Turisno & Suradi, *Perlindungan Hukum Bagi Konsumen Terhadap Perjanjian Perpanjangan Asuransi Melalui Telemarketing*, Diponegoro Law Journal, Vol.6, No.1, 2017, hal. 1
- R.M. Panggabean, *Keabsahan Perjanjian dengan Klausul Baku*, Jurnal Ius Quia Iustum, Vol.17, No.4, Oktober 2010, hal. 654

Online Sources

- <https://ppjp.ulm.ac.id/journal/index.php/MC/article/view/5450/4601> diakses pada tanggal 13 mei 2023 pukul 13.48
- <http://www.jurnal.unsyiah.ac.id/kanun/article/view/6207/5103> diakses pada tanggal 13 mei 2023 pukul 13.58.