

THE LEGALITY OF TELEMARKETING RECORDING AS AN EVIDENCE FOR INSURANCE AGREEMENT

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ABSTRACT

Marketing is an important thing that will determine the success of a product in community. This encourages insurance companies to take advantage by using technology and information for supplying and marketing which they call telemarketing. Telemarketing has helped many companies, especially in reducing the cost of sales, such as travel expenses and expenses to increase sales volume, and also telemarketing can expand the marketing area for increasing the selling volume of the traded products / services. In telemarketing, the insurer offers insurance products over the phone and the consumer can immediately buy the insurance products without having to meet face to face and the agreement already occurs when the consent of the consumer. As a proof that consumers have approved their product offerings, the insurance company will record the conversation on the grounds so that there won't be any manipulation and also become the basis for the birth of the agreement and the engagement for the insurance company. This research is a normative juridical research which is a research deductively starting from the analysis of the articles in the legislation that regulate the problems mentioned above. This research will discuss and explain about the telemarketing recording as and evidence for insurance agreement according to our legal system. Legal system of evidence in Indonesia were mentioned in the Criminal Code and Criminal Procedure Code. Today evidences of crime very difficult to detect without using electronic evidence. That's why this research will interpret and analyze all of the related regulation and how's the implementation of telemarketing recording as an evidence for business assurance agreement in Indonesia.

Keywords: Telemarketing, Insurance, Phone Recording

Introduction

1. Background

Insurance companies today take advantage of the use of technology and information to offer and market through telemarketing. Telemarketing is defined as a marketing promotion strategy that uses trained communication and personal technology to take a stand in planned marketing activity in targeted consumer groups (Subroto, 2011: 255). With telemarketing, the insurer offers insurance products over the phone and the consumer can immediately buy insurance products without having to meet face to face but later the insurance company still must provide insurance policy to the consumer. Insurers will basically record such conversations on the grounds that there will be no manipulation and become the basis of birth agreements and engagements for insurance companies.

YLKI as a foundation that protects consumers receives considerable complaints in the insurance sector related to the offering of insurance products by telephone. In 2012, YLKI notes that there are only 25 complaints related to insurance services which are basically mostly spamming telemarketing via phone or SMS (short message), then it increases in 2013 and 2014 by 53 and 58 complaints. This proves that more attention needs to be paid to the legitimacy of insurance product offerings via telephone. One highlight in this study is whether the insurance company has the authority in recording percakapan between the insurer and the consumer? This is still a question given the absence of unification of understanding related to electronic evidence and its implementation in the field of insurance.

2. Research Question

What is the legality of telemarketing records as evidence in the insurance agreement?

REVIEW OF RELATED LITERATURE

1. Agreement

The Law Scholars in Indonesia use different terms for the agreement. Agreement is an event in which a person promises to another or where two persons promise to do one thing (Subekti, 1985: 10). The agreement is a legal act in which one or more persons bind themselves to one or more persons (R. Setiawan, 1999: 49). The Agreement is a legal relation of property between two parties, in which a party pledges or deems promised to do something not to do something, while the other party has the right to demand the execution of that promise (Prodjodikoro 2000: 4).

2. Insurance

Insurance is an agreement whereby the guaranteeing party pledges to the guaranteed party, to receive some money in lieu of damages which may be suffered by the guaranteed as result of an unclear event (Prodjodikoro 1981: 43). According to Article 246 of the Criminal Code, insurance or coverage is an agreement by which an insurer binds himself to an insured by accepting a premium, for reimbursement to him because of a damage or loss of expected profit which he may suffer from an event that is not certain.

While in Article 1 paragraph 1 of Law Number 40 Year 2014 concerning to Insurance is an agreement between two parties, namely insurance companies and policyholders, which became the basis for premium revenue by insurance companies in return for:

- a) Provide reimbursement to the insured or the policyholder for any loss, damage, expense arising, loss of profits, or liability to any third party who may be subject to the insured or the policyholder due to the occurrence of an uncertain event
- b) Provide payments based on the death of the insured or payments based on the life of the insured with the benefits of which the amount has been determined and / or based on the results of fund management.

3. Telemarketing

Telemarketing is a new way of marketing that uses telecommunication technology as part of a regular and structured marketing program. Telemarketing is the use of telephony and call centers to attract prospects, sell to existing customers and provide services by taking orders and answering questions by phone. Telemarketing helps companies in increasing revenue, reducing sales costs and increasing customer satisfaction (Kotler, 2009: 245).

In other words, telemarketing uses the phone as a medium for direct marketing so that various sales and market research activities can be implemented. When combined with information and management systems, telemarketing can bring trained personnel into computerized contact with potential customers and keep those contacts profitable.

According to Kelly Holden (2004: 4), the concept of telemarketing system work is divided into 3 parts, namely:

- a. Knowing who to call
- b. Make a phone call
- c. Call back when potential customers are not available.

4. The Legal Basis of Recording

Recording is a process of re-copying an object, whether the object is a sound image or anything, using a particular media or recording device whose results can be stored on a storage media or not, according to KBBI recording is a process, a way, a recording action. Basically, the principle of legality is also called the terminology of the principle of legality, legaliteitbeginsel, non retroactive, de la legalite or ex post facto laws. P.A.F. Lamintang and C. Djisman Samosir formulated with the terminology as, "No act can be punished unless it is based on criminal provisions according to the law which has been held first" (Lamintang, 1997: 132). Andi Hamzah (2008: 39) translates with the terminology, "There is no feat which can be criminalized other than on the strength of the provisions of the preceding criminal legislation". Moeljatno also mentioned that, "No act can be criminal except on the strength of the criminal code in existing legislation, before the act is done". According Moeljatno (2002: 25) usually the principle of this legality contains three terms, namely:

- a. No act is prohibited and threatened with crime if it has not been declared in law beforehand
- b. To determine the existence of a criminal act should not be used analogy (kiyas)
- c. The rules of criminal law do not apply retroactively.

5. Evidence

According Yahya Harahap (2013: 286) states that evidence (bewijsmiddel) is a form of form and type that can be helpful in terms of giving explanations and explanations about a case problem to assist judge judgment in court. Thus, the litigants can only prove the truth of the arguments and arguments of argument as well as the facts they express with certain types or forms of evidence. The law of evidence prevailing in Indonesia to date still adheres to certain types and evidence only.

Understanding Evidence Tools according to Hari Sasangka and Lily Rosita (2003: 11) is anything that has to do with an act, where with the tools of evidence, can be used as evidence to raise the judge's belief in the truth of a crime that has been done Defendants. Whereas the definition of valid evidence is the means connected with a criminal offense, in which the means can be used as evidence, in order to generate confidence for the judge, on the truth of a crime committed by the defendant (Prinst, 1996: 135).

RESEARCH METHOD

1. Research Method

Experiment Research Method is a method used to look for certain treatment influence.

Survey Research method: is used to get data from certain natural places (not artificial), but the writer runs treatment to collect data for example structured interview, test, etc.

2. Research Type

Method Approce used in this research is juridical normative, it is a research which is deductively begun by analyzing chapters and rules which control the problems above. Researching law juridically means the research which is referred to available literature review or secunder data. Normative means the research which has purpose to get normative knowledge about relations of one rule to another it its practice.

In normative law research, secondary data are studied first, then primary data are studied on the field or towards their practice. This research will study the legality of telemarketing as an evidence for insurance agreement.

3. Research Location

The research was done in Insurance Company in Semarang and District Court of Semarang.

Instrumen yang digunakan (data primer/sekunder) Instrument for collecting, organizing, and analyzing data.

1) Collecting Data

In effort to collect data for this research, the writer used two methods, they were:

Literature study was done by reading, writing, and quoting books, news, and analyzing rules which were related to this research.

2) Organizing Data

The data collected were then organized and studied. Those data were organized through processes:

Editing, re-checking collected data to know their completeness and clearly.

Interpreting, connecting, comparing, and elaborating data and describing them, then getting conclusion.

Systemizing data, ordering and placing data in each main topics done systematically to ease the discussion.

3) Analyzing Data

In this step, the data collected were then analyzed qualitatively by describing the results in accordance with field study in the form of systematic explanation so that they had meaning and conclusion. This analysis result could be concluded inductively; thinking based on the general facts then getting specific conclusion and then this conclusion was submitted many suggestions.

RESULT AND DISCUSSION

Responding to telemarketing practices that have been widely used by insurance companies or other marketing channels, OJK regulates telemarketing related in Article 19 Duties of Authority Services Number: 1 / POJK.07 / 2013 on Consumer Protection in Financial Services Sector to offer products and / or services to consumers and / or the public through private means of communication without Consumer approval. Where is meant by "means of personal communication" in this paragraph is a means of personal communication such as email, short message system, and voicemail. Article 47 number 1 Regulation of The Authority of Financial Services Number 23 / POJK.05/2015 concerning Insurance Products and Insurance Product Marketing explains that the marketing channel referred to may use the medium of telecommunication communication.

Examples of long-distance communication media include mail, telephone (telemarketing), internet, television, radio, or short message service (SMS). In accordance with the Letter of the Chairman of the Board of Commissioners of OJK Number S-31 / D.01 / 2014 dated May 14, 2014, OJK requested all financial service business actors to stop offering financial products / services via SMS / Telephone without the consent of the concerned customer. Can be concluded that in fact, OJK has given legitimacy for the insurance to conduct telemarketing with terms and conditions that have been accommodated by various regulations by OJK. Based on the Law that we have reviewed both Law no. 36 of 1999 on Telecommunications and Law No. 11 of 2008 concerning ITE, there is no provision which expressly prohibits the recording of talks without the consent of all parties. That is, according to the context of this study, in the Indonesian legal system, it is possible for a person to record a telephone conversation with the consent of one party only.

This is consistent with the results of our interviews with our resource persons from PT Jasindo. There is basically no legal basis underlying phone recording between a potential customer and an insurer. PT Jasindo in 2002 ago used telemarketing system, but because this method is less effective in attracting potential customers, PT Jasindo started to leave this way and prefer the conventional way (face to face) with the prospective customer. In the legal system of evidence in Indonesia, evidence is contained in the Criminal Code and Criminal Procedure Code. In article 1866 Civil Law there are 5 kinds, namely: Written Proof Tool (Surat), Proof of Witness, Proof of Conjecture, Proof of Recognition, and Proof of Oath. Whereas in Article 184 Criminal Procedure Law regulates the evidence in the criminal procedure law namely: testimony of witnesses, expert statements, letters, instructions, and description of the defendant. Today evidences of crime are increasingly difficult to detect without the use of electronic evidence.

Electronic Proofing Equipment is Electronic Information and / or Electronic Document where in Article 5 paragraph (1) of ITE Law states that Electronic Echkronic and / or Electronic Document and / or printed result is legal legal proof. Electronic Information and Electronic Documents will be the Electronic Evidence (Digital Evidence). While the prints from Electronic Information and Electronic Documents will be a proof of letter. So the position of electronic documents as mentioned as expansion. The meaning of the expansion here shall be related to the type of evidence set forth in Article 5 paragraph (1) of the ITE Law.

However, since by their nature of digital evidence is very inconsistent, digital evidence can not be directly used as evidence for the trial process, so that standard is required so that digital evidence can be used as evidence in court, namely: Acceptable, ie data must be acceptable And used by law from the interest of investigation to the interests of the court; Original, ie the evidence must be related to the incident / case that occurred and not engineering; Complete, that is proof can be said to be good and complete if in it there are many clues that can help the investigation; Trustworthy, that is, the evidence can say what goes on behind it, if the evidence is credible, then the investigation process will be easier, and this requirement is a must.

CONCLUSION

Actually, the legality of phone recording on telemarketing as an evidence for insurance agreement is not clearly written in Indonesia national legal system. Gentle agreement between client and insurance company in the form of phone agreement is available as long as both of them are agree with it. Indonesia national legal system restructure a regulation talking about evidence outside code law for example electronic document, phone recording, etc. are included on legal evidence in court. Since by their

nature of digital evidence is very inconsistent, digital evidence can not be directly used as evidence for the trial process, so that standard is required so that digital evidence can be used as evidence in court

SUGGESTION

The policies made by government, no matter how good they are, will not run well without any support or participation from everyone surround them. Society premise are needed instead all sides are expected to actively help realizing the policies made by government.

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