

## Criminal Policy in Problems of Insurance Fraud (Sales of Insurance Policies) using the Telemarketing Method Based on Law No.11 of 2008 Concerning Electronic Information and Transactions



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**ABSTRACT:** A new form of crime which is a white-collar crime is Insurance fraud in telemarketing the delivery of insurance products. The crime is a criminal act that violates the law against an insurance company with the aim of illegally obtaining financial benefits from closing a risk. This writing, apart from being a final project assessment, also aims to explain insurance marketing through telemarketing which causes many legal problems, especially in terms of its engagement in the cyber world. The results of this paper indicate that criminal policy through penal (criminal means) and non-penal (prevention means) in providing protection to ensure the protection of consumer rights so that they are not violated by business actors which can cause harm to consumers.

**KEYWORDS:** Criminal Policy, Insurance, Telemarketing

### A. INTRODUCTION

Technological developments in the land, sea and air transportation industry are developing very rapidly. Developed and developing countries are currently using the results of high-tech production in the field of transportation, even though only some groups of society enjoy these production results. People who are going to join or become customers of an insurance company need to know the criteria and guidelines that are worth considering when choosing an insurance (Adhimaz kondang pribadi, 2021).<sup>1</sup>

Along with the development of the economy and the increasing need to market insurance products, insurance companies develop mutually beneficial partnerships with banks as a channel for product marketing known as bancassurance. In this modern era, bancassurance uses a long-distance communication medium, namely the telephone, which is called telemarketing. Insurance marketing through telemarketing has been regulated in the Financial Services Authority (*Otoritas Jasa Keuangan*) Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products. This regulation specifically regulates the types and criteria for insurance products, insurance policies, marketing channels for insurance products, and insurance consumer protection (Mentari, 2021)<sup>2</sup>

One of the new forms of crime which is a white-collar crime is insurance fraud in telemarketing the delivery of insurance products. This crime is a criminal act that violates the law of insurance companies with the aim of illegally obtaining financial benefits from closing a risk (Setyono, 2017)<sup>3</sup>

Insurance marketing through telemarketing causes many legal problems, especially in terms of the agreement. This is caused by the delivery of insurance products by telemarketers does not convey all the information to prospective customers regarding the products offered, and the delivery is rushed and directs the conversation so that the prospective customer immediately approves the insurance products offered and the insurance company immediately performs an autodebit (direct debit) to a prospective customer's account without issuing a policy in advance (Mentari, 2021)<sup>4</sup>. This can be a problem because when the agreement is made there is no clear agreement, it was only an initial agreement and there is an open possibility of fraud which could harm the public who use insurance services. If this telemarketing practice is reviewed based on Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, can be classified as a form of electronic transaction because it is carried out via telecommunication facilities namely telephone.

Meanwhile, regarding the case that befell the community, Bank BNI itself said that the deduction for insurance and the debit

<sup>1</sup> Adhimaz kondang pribadi. (2021). Perjanjian Asuransi Melalui Telepon *Legal Protection Of The Insured On Insurance. Justice Law :Jurnal Hukum*, 1(2).

<sup>2</sup> Mentari, P. (2021). Penggunaan Telemarketing Sebagai Pemasaran. *Juris and Society*, 1(1), 59–75.

<sup>3</sup> Setyono, R. A. (2017). Tinjauan Kriminologi Dan Hukum Pidana Mengenai Kejahatan Dalam Kegiatan Asuransi. *Jurnal Hukum Khaira Ummah*, 12(4), 967–974

<sup>4</sup> Mentari, P. *Op.Cit*

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program did occur from the central system. The Head of BNI Natuna Cash Office, Dekli Tomi, analyzes that there is indeed a system currently used by insurance companies, which is called telemarketing. It is considered valid. So far, there is such a system according to information technology law in Indonesia, it's called telemarketing, and valid based on Law of Information Technology with all its quality and control. Even though there is no signature on paper, transactions by telephone can be considered valid (Kondang). The problems that occur because of telemarketing are reviewed from the conditions and engagement. Marketing through telemarketing is basically just a pre-contract/covernote agreement made through telecommunication facilities, while the certainty of an agreement between the customer or the insured and the insurance company is still carried out through signing the policy. (Adhimaz kondang pribadi, 2021)<sup>5</sup>

### **B. FORMULATION OF THE PROBLEMS**

Based on the background that has been stated, the formulation of the problems can be identified as follows:

1. What is the Criminal Law Criminal Policy in Telemarketing Sales of Insurance Policy Products?
2. How is the legal power of telemarketing in selling insurance policy products based on Law no. 11 of 2008 concerning Information and Electronics?

### **C. THEORETICAL FRAMEWORK**

#### **1. Criminal Policy Theory**

Criminal policy as an effort to prevent and overcome crime must support the goals, social welfare (SW) and social defense. Prevention and control of crime by means of Penal is a Penal Policy or penal law enforcement policy which functionalization/operationalization goes through several stages: (Hendra, 2016)<sup>6</sup>

- 1) formulation stage (*legislative policy*);
- 2) application stage (*judicative/judicial policy*);
- 3) execution stage (*executive/administrative policy*)

The use of criminal law as an effort to overcome social problems (crime) is included in the field of law enforcement (especially criminal law enforcement). Therefore, it is often said that politics or criminal law policies are also part of law enforcement policies.

The task of the state in dealing with a crime requires an appropriate step to overcome the crime. When the state is present in these countermeasures using criminal policy, appropriate and integral handling is needed between penal policy and non-penal policy. In dealing with a crime, criminal law is the last means of overcoming this crime, so criminal law must be effectively enforced by considering the principles of good criminal law. So, it can be concluded that criminal policy must be carried out using an integrated approach between criminal politics and social politics as well as integration between penal and non-penal crime prevention efforts. In addition to the limitations if only penal is used, non-penal means are needed because they indirectly have a preventive impact on crime. Therefore, Barda Nawawi Arief stated <sup>7</sup> :

- 1) there is integration between crime prevention policies and the overall policy for the development of the socio-cultural political system;
- 2) there is integration between the "treatment of offenders" (with crimes/actions) and the "treatment of society";
- 3) there is integration between "symptomatic healing/treatment" and "causative healing/treatment";
- 4) there is integration between "treatment of offenders" and "treatment of the victim";
- 5) there is integration between "individual/personal responsibility" and "structural/functional responsibility";
- 6) there is integration between penal and non-penal means;
- 7) there is integration between formal means and informal/traditional means; integration between the "legal system" and the "extra-legal system";
- 8) there is integration between the "policy-oriented approach" and the "value-oriented approach".

Fraud in the insurance business can be committed by all related parties, namely the insurance company, the insured, and insurance support companies, namely reinsurance, brokers, and insurance agents. From year to year, frauds in the insurance industry tend to increase in all lines of business, such as property and surety bonds. The insured is getting smarter, the competition between companies is getting tougher, the economy is getting more difficult so that the health insurance business can become one of the fields that grows and develops rapidly.

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<sup>5</sup> Adhimaz kondang pribadi. (2021). Perjanjian Asuransi Melalui Telepon *Legal Protection Of The Insured On Insurance. Justice Law : Jurnal Hukum*, 1(2).

<sup>6</sup> Hendra, W. S. R. (2016). Kebijakan Penal dan Non Penal Dalam Menanggulangi Kekerasan Antar Perguruan Pencak Silat (Studi Kasus Di Eks Karisidenan Madiun). Retrieved from <http://etd.lib.metu.edu.tr/upload/12620012/index.pdf>

<sup>7</sup> *Ibid*

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## 2. Insurance Fraud Theory

In the insurance industry, it is known as "insurance fraud", namely a criminal act that violates the law against an insurance company with the aim of obtaining illegal financial benefits from covering a risk. Fraud in the health insurance industry can be categorized as a crime act that can be charged with fraud under Article 381 of the Indonesian Criminal Code (KUHP) and forgery as stipulated in Article 21 (5) of Law Number 2 of 1992 concerning Insurance Businesses joct. Article 263 of the Criminal Code. Fraud in the insurance business can be committed by all related parties, namely the insurance company, the insured, and insurance support companies, namely reinsurance, brokers, and insurance agents. From year to year, frauds in the insurance industry tend to increase in all lines of business, such as property and surety bonds. The insured is getting smarter, the competition between companies is getting tougher, the economy is getting more difficult so that the health insurance business can become one of the fields that grows and develops rapidly. (Sarwo, 2015)<sup>8</sup>

## 3. Telemarketing Theory

A new form of marketing that is now being frequently used by several insurance companies in offering their service products is by using a telephone communication network, commonly known as telemarketing. Telemarketing in the insurance business is a method of marketing insurance products carried out by insurance companies to prospective insurance customers through communication medium telephone (Didik Wahyu Sugiyanto, 2017).<sup>9</sup> Electronic transactions are seen as part of the agreement of the parties (Article 1233 of the Civil Code, namely engagement, born because of an agreement or because of a law). The transaction will refer to all types and mechanisms for carrying out legal relations electronically which will include buying and selling, licenses, insurances, auctions and other agreements that are born in accordance with the development of trading mechanisms in society. Remote marketing is often used to support sales channels and sometimes to handle tasks that cannot be handled through the main channels in a cost-effective manner (Mentari, 2021)<sup>10</sup>

## 4. Insurance Theory

The term "Asuransi" (*insurance*) or "Pertanggungan" (*coverage*) is a translation from the Dutch language, namely from the word "verzekering". In Indonesia, there is no uniformity in the use of the term "coverage". In the discussion of this thesis, the terms insurance or coverage will not be distinguished, both are used interchangeably. Wirjono Prodjodikoro (Adhimaz kondang pribadi, 2021), said that: Insurance or in Dutch "Verzekering" means coverage. In an insurance, two parties are involved, namely one which is able to bear or guarantee that the other party will receive compensation for a loss, which he may suffer as a result of an event that was not certain at first or when it could not be determined at first. A counter-performance of this insurance, the insured party is required to pay a certain amount of money to the insured party. If later it turns out that the intended event did not occur. 3. The insurance or coverage agreement is an agreement that has special and unique characteristics, so that this agreement has certain characteristics that are unique compared to other agreements. In general, insurance agreements must comply with certain principles that embody the specific nature or characteristics of the insurance agreement itself. 4 Insurance or coverage agreements are specifically regulated in the Commercial Code (KUHD).<sup>11</sup>

## RESULTS AND DISCUSSION

### 1. Criminal Law Policy in Telemarketing Sales of Insurance Policy Products

Criminal policy or criminal politics is a rational and organized effort from society to prevent crime. This definition is taken from Marc Ancel who describes it as "The rational organization of the control of crime by society". Meanwhile G. Peter Hoefnagels defined "Criminal policy is the rational organization of the social reactions to crime". Furthermore, G. Peter Hoefnagels put forward several definitions of criminal policy: (Hendra, 2016)<sup>12</sup>

- a) Criminal Policy is the science of response
- b) Criminal policy is the science of prevention
- c) Criminal policy is the science of designating human behavior as crime
- d) Criminal policy is a rational total of response to crime

Criminal politics is essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. Therefore, the ultimate goal or main goal of criminal politics or criminal policy is the protection of society to achieve people's welfare. Thus, it can be said that criminal politics is also an integral part of social politics.

<sup>8</sup> Sarwo, Y. B. (2015). Tinjauan Yuridis Terhadap Kecurangan (Frauds) Dalam Industri Asuransi Kesehatan Di Indonesia. *Jurnal Kisi Hukum Unika*, 14(1), 1–15.

<sup>9</sup> Didik Wahyu Sugiyanto. (2017). Perjanjian Asuransi Melalui Telemarketing Ditinjau Dari Undang-Undang Nomor 11 Tahun 2008. *Mimbar Yustitia*, 1(1), 36–45.

<sup>10</sup> Mentari, P. (2021). Penggunaan Telemarketing Sebagai Pemasaran. *Juris and Society*, 1(1), 59–75.

<sup>11</sup> *Ibid*

<sup>12</sup> Hendra, W. S. R. (2016). Kebijakan Penal dan Non Penal Dalam Menanggulangi Kekerasan Antar Perguruan Pencak Silat (Studi Kasus Di Eks Karisidenan Madiun). Retrieved from <http://etd.lib.metu.edu.tr/upload/12620012/index.pdf>

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The penal policy that can be implemented in preventing the crime of insurance fraud in the sale of insurance policies is by claiming that the insurance service provider is not only suing in a civil manner. If the insurance service provider is proven to have committed a crime, the insurance service provider can be criminally prosecuted through the courts. This is regulated in Article 61 of Law Number 8 Year 1999 concerning Consumer Protection. These criminal sanctions are regulated in Articles 62 to 63 of Law Number 8 Year 1999 concerning Consumer Protection. This criminal penalty is clearly regulated so that criminal liability can be carried out against business actors or their management. (Adyan Agit Pratama , Bambang Eko Turisno, 2015).<sup>13</sup> Related to consumer protection for the products offered are also regulated in Article 9 paragraph 1 of Law Number 11 Year 2008 concerning Information and Electronic Transactions. The regulation aims to ensure the protection of consumer rights so that they are not violated by business actors which can cause harm to the consumers.<sup>14</sup>

Meanwhile, Institutions or related parties can undertake preventive efforts in non-penal policies in the following ways: (Solaiman, 2018)<sup>15</sup>

- a) OJK in carrying out its duties, this institution (supervisory board) coordinates and cooperates with Bank Indonesia as the Central Bank that will be regulated in online insurance arrangements.
  - b) OJK conducts regulation and supervision in an integrated manner (integration approach) on particular online insurance.
- Parties wishing to use insurance need to be vigilant and read more thoroughly to understand the benefits of insurance that will help the insured 'take care' of the insured themselves and the family, to know the types of protection that will be more helpful in choosing what type of insurance is suitable for the insured, and knowing the magnitude of the need of protection will maximize the function of the insurance so that you and your family are optimally protected.

### **2. The legal power of telemarketing in selling insurance policy products based on Law Number 11 Year 2008 concerning Electronic Information and Transactions Law**

Regarding the provision of electronic evidence, this far there has been no concrete regulation regarding electronic evidence at the formal legal level (law of procedure). However, electronic evidence has been introduced since online trading activities existed on the stock exchange and is regulated in microfilm provisions and various electronic means as data storage and company document information set forth in Law Number 8 Year 1997 and Law Number 11 of 2008. The law is material law. 10 with regard to electronic evidence, there is no evidentiary law provision in Indonesia that regulates a formal juridical manner which accommodates that electronic documents or information are determined as one of the various types of evidence available in dispute resolution through civil courts as well regarding the use of teleconference technology in witness examinations. Civil procedural law has not yet firmly stipulated provisions regarding electronic evidence, but in Indonesia matters relating to files and documents in electronic networks have begun to be accommodated slowly and have been implemented into several applicable laws (Rahmatan, 2021)<sup>16</sup>

Principles of Evidence in Civil Disputes According to the Electronic Information and Transactions Law in Article 163 HIR jo 1865 BW which is the principle of proof in civil procedural law which states that: whoever claims to have a right, or puts forward an event (circumstance) to strengthen his rights or refute the rights of another person, then he must prove the existence of a right or event that in the Electronic Information and Transactions Law, the principle of proof is related to matters that must be included in events or rights that contain disputes or disputes submitted by one party and denied by the other party, as in Article 1865 BW, it is also in Article 7 of the Electronic Information and Transactions Law, which states that: everyone who declares rights, reinforces existing rights, or rejects the rights of others based on the existence of electronic information and/or electronic documents must ensure that electronic information (Didik Wahyu Sugiyanto, 2017).<sup>17</sup>

Regarding whether or not the conversation recorded by the computer as evidence is valid or not, it is justified by Law no. 11 of 2008 concerning Information and Electronic Transactions as regulated in Article 5. Even though it applies as valid evidence it does not mean that the insurance agreement is considered valid for granted but must still be followed by a written document signed by the relevant customer to be used as legal evidence of the agreement. So that in this case the recording is made for the purpose of providing evidence in which the telemarketer has provided an explanation to the customer regarding the characteristics, benefits and risks of the product being offered. With this recording, it can be seen when the relationship between the insured/policyholder and the insurer as the insurer occurred, this connection was present since there was an agreement from both parties even though the policy had not been issued but protection had been given since the agreement was made (Adyan Agit Pratama , Bambang Eko Turisno, 2015).<sup>18</sup>

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<sup>13</sup> Adyan Agit Pratama , Bambang Eko Turisno, S. (2015). *Perlindungan Hukum Bagi Konsumen Terhadap Perjanjian Perpanjangan Asuransi Melalui Telemarketing*. Diponegoro Law Journal, 6(1), 1–21.

<sup>14</sup> *Ibid*

<sup>15</sup> Solaiman, A. A. (2018). *Perlindungan Hukum Pembeli Polis*. Hukum Bisnis, 2(2), 52–66.

<sup>16</sup> Rahmatan, R. (2021). *Perlindungan Hukum Terhadap Tertanggung Dalam Perjanjian Asuransi Melalui Sarana Telemarketing Legal Protection Of The Insured In Insurance Agreement ( Means In Review Of Law Number 11 Of 2008 Concerning Elektronik Information And Transactions )*. Jurnal Ilmiah Mahasiswa, 5(2), 210–217.

<sup>17</sup> Didik Wahyu Sugiyanto. (2017). *Perjanjian Asuransi Melalui Telemarketing Ditinjau Dari Undang-Undang Nomor 11 Tahun 2008*. Mimbar Yustitia, 1(1), 36–45.

<sup>18</sup> Adyan Agit Pratama , Bambang Eko Turisno, S. (2015). *Perlindungan Hukum Bagi Konsumen Terhadap Perjanjian Perpanjangan Asuransi Melalui Telemarketing*. Diponegoro Law Journal, 6(1), 1–21.

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## CONCLUSION

The penal policy in cases of insurance fraud (sale of insurance policies) is to use Article 61 of Law Number 8 of 1999 concerning Consumer Protection. These criminal sanctions are regulated in Articles 62 to 63 of Law Number 8 of 1999 concerning Consumer Protection. At the same time Article 9 paragraph 1 of Law Number 11 of 2008 Concerning Information and Electronic Transactions. This rule aims to ensure the protection of consumer rights so that they are not violated by business actors which can cause harm to consumers. The non-penal policy efforts can be carried out by: 1. OJK in cooperation with Bank Indonesia as the central bank in arranging online insurance. 2. OJK conducts regulation and supervision in an integrated manner. 3. Parties wishing to use insurance need to be vigilant and read more carefully in understanding the benefits of insurance, as well as understanding the types of insurance protection that are appropriate for the insured.

Regarding whether or not the conversation recorded by the computer is valid as evidence legalized by Law No. 11 of 2008 concerning Electronic Information and Transactions is regulated in Article 5, where valid evidence does not mean an insurance agreement that is considered valid for granted, but must still be followed by written documents in the hands of the relevant customer to be used as legal evidence of the agreement.

## REFERENCES

- 1) Adhimaz kondang pribadi. (2021). Perjanjian Asuransi Melalui Telepon Legal Protection Of The Insured On Insurance. *Justice Law : Jurnal Hukum*, 1(2).
- 2) Adyan Agit Pratama , Bambang Eko Turisno, S. (2015). Perlindungan Hukum Bagi Konsumen Terhadap Perjanjian Perpanjangan Asuransi Melalui Telemarketing. *Diponegoro Law Journal*, 6(1), 1–21.
- 3) Didik Wahyu Sugiyanto. (2017). Perjanjian Asuransi Melalui Telemarketing Ditinjau Dari Undang-Undang Nomor 11 Tahun 2008. *Mimbar Yustitia*, 1(1), 36–45.
- 4) Hendra, W. S. R. (2016). *Kebijakan Penal dan Non Penal Dalam Menanggulangi Kekerasan Antar Perguruan Pencak Silat (Studi Kasus Di Eks Karisidenan Madiun)*. Retrieved from <http://etd.lib.metu.edu.tr/upload/12620012/index.pdf>
- 5) Mentari, P. (2021). Penggunaan Telemarketing Sebagai Pemasaran. *Juris and Society*, 1(1), 59–75.
- 6) Rahmatan, R. (2021). Perlindungan Hukum Terhadap Tertanggung Dalam Perjanjian Asuransi Melalui Sarana Telemarketing Legal Protection Of The Insured In Insurance Agreement ( Means In Review Of Law Number 11 Of 2008 Concerning Elektronik Information And Transactions ). *Jurnal Ilmiah Mahasiswa*, 5(2), 210–217.
- 7) Sarwo, Y. B. (2015). Tinjauan Yuridis Terhadap Kecurangan (Frauds) Dalam Industri Asuransi Kesehatan Di Indonesia. *Jurnal Kisi Hukum Unika*, 14(1), 1–15.
- 8) Setyono, R. A. (2017). Tinjauan kriminologi dan hukum pidana mengenai kejahatan dalam kegiatan asuransi. *Jurnal Hukum Khaira Ummah*, 12(4), 967–974.
- 9) Solaiman, A. A. (2018). Perlindungan Hukum Pembeli Polis. *Hukum Bisnis*, 2(2), 52–66.



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