

Analysis of The Principle of Fairness on The Validity of Consumer Consent in Telemarketing Agreements in The Banking Sector in Indonesia

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Abstract

This study examines the validity of consumer consent in banking telemarketing agreements through the approach of fairness theory and modern contract law doctrine. The analysis shows that telemarketing communication patterns create an information imbalance that affects the quality of verbal consent, so that the elements of agreement as stated in Article 1320 of the Civil Code are not substantively formed. This study also confirms that not providing consumers with copies of recorded conversations or written contracts weakens the evidence, reduces the effectiveness of the cooling-off mechanism, and contradicts the principles of consumer protection in the Consumer Protection Law (UUPK), the Electronic Information and Transactions Law (UU ITE), and POJK 6/2022. This study proposes the obligation to provide recordings, written contracts, and supporting documents as a mechanism to restore balance and ensure fairness in the formation of telemarketing agreements.

Keywords: Fairness; Agreements; Telemarketing and Banking.

I. INTRODUCTION

The digital era has brought about significant changes in transaction systems and legal relations in the financial sector (Lord Situngkir et al., 2025). Transactions that were previously conducted face-to-face have now shifted to electronic contracts through online platforms. Interestingly, amidst the rise of e-contracts and digital banking services, telemarketing remains a primary means for banks to offer financial products such as credit cards, insurance, and personal loans. The effectiveness of this method lies in its ability to influence consumer decisions through direct communication, albeit unilaterally and quickly. This situation raises questions about the validity of verbal consent, as consumers are often simply asked to say "Yes, I agree" without fully understanding the terms (Poernomo, 2019). Recordings of conversations are then used as evidence of the validity of the contract, even though no written document is received by the consumer. This situation raises questions about the validity and transparency of the consent process within the framework of Indonesian civil law. The Indonesian civil law system, as regulated by Article 1320 of the Civil Code, remains based on the classical contract law paradigm, which places the parties on an equal footing and is based on the principle of freedom of contract. This paradigm emphasizes that each party has complete freedom to determine the content and form of an agreement as long as it meets the requirements for a valid contract (Ayu Artanti et al., 2020). However, this equality is difficult to achieve in telemarketing, as banks have far greater control over information than consumers. This inequality has the potential to violate the principle of balance, especially if consumers express consent without adequate understanding (Irayadi, 2021). Substantive justice is needed to limit contractual practices that can disadvantage the weaker party in the legal relationship structure (Fuady, 2021).

Therefore, telemarketing practices need to be reexamined not only from a formal legal perspective but also from a substantive justice perspective. This evaluation is crucial to ensure that verbal agreements do not create injustice in contractual relationships. While previous research has focused extensively on electronic contracts and consumer protection, it has not specifically examined fairness in telemarketing agreements. Previous findings suggest that one-way communication prevents consumers from fully understanding contracts (Poernomo, 2019). Meanwhile, studies on electronic contracts highlight the importance of digital evidence as a guarantee of legal certainty in business transactions (Herianto Sinaga et al., 2020). Studies on fintech services also reveal that information inequality is a major barrier to consumer protection (Lord

Situngkir et al., 2025). However, no research has yet examined the validity of verbal agreements in telemarketing from a fairness perspective. This indicates a research gap in the discourse on modern Indonesian contract law, particularly regarding procedural fairness in non-document-based transactions. These issues have led to three key issues that require further examination in banking telemarketing practices. First, the verbal consent verification mechanism does not guarantee that consumers fully understand the substance of the contract, especially when explanations are given quickly and unilaterally. Second, consumer access to recorded conversations or copies of consent data remains very limited, creating an unequal bargaining position and obstacles to providing evidence in the event of a dispute.

Third, the application of the principle of fairness has not been fully integrated into product offering procedures, so that aspects of substantive justice are often overlooked even when consent is formally declared valid. These three issues demonstrate that the telemarketing process still leaves a structural imbalance between businesses and consumers, necessitating a more comprehensive legal analysis of its validity and fairness in practice. To address this issue, this study utilizes John Rawls's theory of Justice as Fairness, which emphasizes equality of starting positions and equal opportunity in decision-making (Rawls, 1971). This perspective is relevant considering that telemarketing often occurs without a balanced bargaining position between banks and consumers. Modern contract law theory also adopts Rawls's perspective by emphasizing protection for the weaker party to achieve substantive justice (Sjahdeini, 2019). Using a normative and conceptual approach, this study analyzes the compatibility of positive law with the values of justice that have developed in the digital society (Muhaimin, 2020). This study is expected to serve as a reference for the Financial Services Authority (OJK) and the banking sector in formulating more transparent and balanced consumer protection policies, while also strengthening the development of an adaptive, balanced, and equitable contract law paradigm. Referring to the explanation of the background of the previous problem, the formulation of the problem of this research is, namely (1) How is the validity of consumer consent in telemarketing agreements in the banking sector reviewed from the principle of fairness based on the theory of modern contract law based on the theory of Justice as Fairness? and (2) What are the implications of not providing a copy of the recorded conversation to consumers for consumer protection in telemarketing agreements?

II. METHODS

This study uses a normative (doctrinal) legal approach that focuses on the study of legal norms, principles, and doctrines (Marzuki, 2017). This approach was chosen to assess the validity of consumer consent in telemarketing agreements based on the principle of fairness. The study was conducted through a legislative approach by interpreting the Civil Code, the Consumer Protection Law (UUPK), the ITE Law, the Financial Services Authority (OJK) Law, and POJK 6/2022 to identify the conformity of banking telemarketing regulations with the principle of contractual justice, as well as a conceptual approach to link modern contract law theory, the principle of freedom of contract, balance, good faith, and John Rawls's notion of justice as fairness. This study relies on primary, secondary, and tertiary legal materials collected through literature review, then systematically compiled and analyzed using qualitative normative-prescriptive techniques through systematic and teleological interpretation. The analysis is descriptive to describe the positive legal conditions, analytical to assess the compatibility of norms with the principle of fairness, and prescriptive to offer legal recommendations that can strengthen substantive justice for consumers in banking telemarketing practices.

III. RESULT AND DISCUSSION

The Validity of Consumer Consent in Telemarketing Agreements in the Banking Sector Reviewed from the Principle of Fairness Based on Modern Contract Law Theory Based on the Theory of Justice as Fairness

Banking telemarketing is a form of direct communication that relies on scripted conversations to verbally offer financial products over the telephone. This communication pattern places the telemarketer in

control of the flow of the interaction, including determining the sequence of information and emphasizing specific aspects of the product being offered (Poernomo, 2019). This control of the conversation structure results in consumers receiving information in a format unilaterally designed by the business actor, thus preventing consumer understanding from the very first seconds of the conversation from being formed through equal interaction. In many cases, explanations of product benefits are placed more prominently at the beginning of the conversation, while information about financial risks, costs, coverage limitations, and contractual consequences is presented at the end with less intensity (Aprilianti et al., 2023). This imbalance in information structure creates an initial perception that the product carries no significant risk, even though the substance of the contract being offered has quite serious financial implications. The dominance of telemarketing narrative control is also evident in the way telemarketers frame product explanations in positive narratives that minimize potential risks and lead consumers to a less-than-objective understanding (I. Rahmawati, 2020).

This framing typically involves shifting consumers' focus to seemingly minor benefits, such as additional protection or service bonuses, thus diminishing the financial obligation aspect. Furthermore, telemarketing communication patterns leave very little room for consumers to ask questions, as the conversational pace is strictly controlled through scripts designed to minimize interruptions (R. Rahmawati, 2022). This asymmetrical rhythmic structure weakens consumers' ability to gain a balanced understanding of the overall content of the offer. Persuasive communication techniques are a key element in banking telemarketing practices, where the use of language that creates urgency, such as "promotion valid today only" or "active immediately if approved now," serves as a tool to encourage a quick response from consumers (Tri Hidayati, 2020). The use of persuasive language makes consumers feel time pressured even though there is no objective need to make a decision immediately. Persuasive techniques are reinforced by marketing strategies that frame products positively and simplify complex information to make it sound light and risk-free (Ikhwan Taher, 2024). The combination of temporal pressure and positive framing creates a decision-making environment that is more influenced by emotional impulses and situational pressures than rational and deliberative considerations. Another aspect that undermines fairness is the consumer's cognitive state when receiving a telemarketing call. Calls are often received while consumers are working, resting, or even driving, meaning their attention and analytical capacity are not optimal for evaluating the information conveyed (Bank, 2012).

This condition makes consumers unable to process product details such as additional fees, cancellation terms, or the consequences of automatically activating a policy or service. This situation structurally benefits businesses because consumers give their consent when they are not in a position to conduct independent evaluation. Consumers' cognitive unpreparedness also diminishes their ability to firmly refuse when persuasive pressure increases toward the end of the conversation. From a civil law perspective, the validity of an agreement depends heavily on the fulfillment of the legal requirements stipulated in Article 1320 of the Civil Code, particularly the element of agreement between the parties. This agreement must arise from free will (*vrije wil*) formed through a comprehensive understanding of the agreement's contents, not simply the word "agree" uttered spontaneously (Martono et al., 2016). The principle of consensualism cannot be interpreted textually as mere verbal agreement, but must be understood as an agreement born of a reasonable assessment process free from pressure, information manipulation, or cognitive barriers. In contract law doctrine, free will can only be said to exist if consent is given after the consumer has received complete, clear, and proportional information regarding the benefits and risks of the product (Fuady, 2021). When consumers give consent through a stressful telephone conversation, with minimal repetition of information, and under less than ideal circumstances, the quality of that free will becomes questionable.

Furthermore, Article 1321 of the Civil Code stipulates that an agreement is invalid if it is obtained through mistake, coercion, or fraud. Although telemarketing does not always involve physical coercion, the practice of selective information in product delivery can be seen as a form of mistake caused by an imbalance of information. This mistake is not a simple misperception, but rather a structural condition in which consumers are kept unaware of the full risks of the contract. In the context of telemarketing, this deliberate imbalance of information can be categorized as a defect of will because consumers do not have a

reasonable opportunity to assess whether the product is suitable for their needs and capabilities. The principle of good faith, which must be present from the pre-contractual stage, is also violated when business actors only convey partially beneficial information and withhold or minimize the disclosure of potentially detrimental information. Objective good faith requires the complete and honest delivery of material information, while subjective good faith requires an attitude of not deceiving or exploiting the other party's ignorance (Stone, 2009). In telemarketing, information selectivity deprives consumers of the opportunity to adequately understand the financial consequences because they do not receive a complete picture of the obligations that will arise. Such practices also violate the principle of contractual balance, which requires both parties to have equal information before giving consent (Sjahdeini, 2019).

This lack of balance ultimately impacts the fulfillment of the principle of propriety, as consumers may be bound by financial obligations they never fully understood (Irayadi, 2021). The justice as fairness framework provides a normative perspective that suggests that telemarketing consent mechanisms fail to meet standards of procedural or substantive justice. The principle of equal basic liberties requires that every individual have the basic freedom to make autonomous decisions, but persuasive pressure and suboptimal cognitive conditions diminish consumers' ability to make free decisions (Rawls, 1971). The principle of fair equality of opportunity requires proportional access to information between businesses and consumers, but telemarketing provides structural advantages to businesses through control of the narrative and sequence of information. The difference principle requires additional protection for those in the weakest position, but in telemarketing, businesses exploit consumers' ignorance to expedite consent without providing any opportunity for evaluation. In a simulation of the original position, rational parties would never agree to a contractual mechanism that only provides one-sided information and forces consumers to make decisions under time pressure, making telemarketing incompatible with Rawls's principles of fairness. This information imbalance and the pressures of the contractual process increase the risk of substantive losses for consumers. Consumers may be bound by additional premiums, protection costs, or penalty provisions even though they never received or read the contract documents directly (Irayadi, 2021). This situation creates what can be called a quasi-agreement, namely an agreement that exists formally but does not meet the substantive quality resulting from a free and rational contractual process (Sjahdeini, 2019).

When the only evidence of a contract is a recording of a conversation held by the business actor, consumers are in a very weak position because they have no comparative documents to review after the conversation is over. From the perspective of modern contract doctrine, fairness in a contract can be analyzed through three main dimensions: informational fairness, process fairness, and bargaining position fairness. Informational fairness requires businesses to convey benefits and risks proportionally so that consumers can fully understand the consequences of the product, but telemarketing fails to meet this standard due to selective information structures (Aprilianti et al., 2023). Process fairness requires consumers to have the opportunity to consider, ask questions, and refuse without pressure, but telemarketing creates temporal pressure that causes consumers to respond spontaneously (Martono et al., 2016). Bargaining position fairness requires both parties to be on equal footing, but businesses have a structural advantage through script mastery and information control (Fuady, 2021). This three-dimensional analysis indicates that consumers do not receive adequate contractual protection in telemarketing transactions. To address these structural weaknesses, a corrective mechanism needs to be implemented in the form of sending a written contract after the consumer has expressed their agreement by telephone. Delivering a written contract provides an opportunity for consumers to consciously review the agreement, examine the details of financial obligations, and compare them to their personal needs without time pressure. A written document also provides a verification tool for consumers to ensure that the verbal offer aligns with the substance of the applicable contract.

Delivery of written documents can be done through easily accessible media, such as email or everyday communication applications, including WhatsApp, so consumers have documentary evidence that they can review independently before the contract becomes materially binding. Thus, although agreement in banking telemarketing can be considered formally valid according to the Civil Code, the mechanism does not reflect substantive fairness. Information inequality, persuasive pressure, less-than-ideal cognitive conditions,

and the dominance of business actors indicate that the agreement does not arise from free will and complete understanding, which are fundamental requirements in forming an agreement. Both philosophically through the framework of justice as fairness, doctrinally through the principles of modern contracts, and normatively through national legal provisions, the telemarketing agreement mechanism does not meet the standards of fairness that should underlie contractual relationships. This understanding forms the basis for entering into the next discussion regarding the evaluation of voice recordings as evidence in proving telemarketing agreements.

Implications of Not Providing Copies of Recorded Conversations to Consumers for Consumer Protection in Telemarketing Agreements

The lack of copies of recorded telemarketing conversations creates a structural problem in consumer protection because these recordings are the primary documents that factually record how offers are delivered and how verbal agreements are formed (Poernomo, 2019). In telemarketing practices, businesses retain these recordings, while consumers lack independent access to reassess the substance of the conversation after the transaction has taken place. This situation creates an unequal contractual relationship because the most decisive evidence resides exclusively with one party (Rizan et al., 2022). This unequal distribution of evidence also makes it difficult for consumers to identify any discrepancies between verbal explanations and the product terms and conditions that subsequently apply, increasing the potential for contractual losses (R. Rahmawati, 2022). Telemarketing recordings serve not simply as a record of verbal agreement, but as a tool to verify the bidding process's compliance with the transparency standards that underpin modern contract formation (Aprilianti et al., 2023). When recordings are not provided, consumers lose the means to independently verify the information provided, including risks, costs, and limitations of protection. This lack of access to evidence makes it difficult for consumers to raise objections, especially when claims arise that consumers have agreed to terms that were never fully explained (Budi, 2022). In such situations, consumers are entirely dependent on the business actor's unilateral interpretation of the conversation's content, substantially eroding the principle of balance in electronic contractual relationships (Herianto Sinaga et al., 2020).

Within the context of national regulations, the Consumer Protection Law (UUPK) guarantees consumers' rights to obtain accurate, clear, and honest information, including regarding any conditions that burden consumers (UUPK, 1999). The Electronic Information and Transactions (ITE) Law recognizes electronic recordings and documents as valid evidence, so consumers have the right to access evidence related to themselves (UU ITE, 2016). This framework is reinforced by POJK 6/POJK.07/2022, which requires Financial Services Business Actors to ensure transparency, accuracy, and traceability of product information and provide effective means for resolving complaints for consumers (POJK 6/2022). When copies of recordings are not provided and supporting documents are not sent, these regulatory obligations are not met, thus the principle of consumer protection in the financial sector is not implemented consistently (Bank, 2012). The next implication is seen in the cooling-off mechanism, which gives consumers a short period of time to cancel a transaction if there are any discrepancies. Without access to recordings or written documents, consumers lack authentic data to assess whether the telemarketer's explanation is accurate or misleading (Sjahdeini, 2019). Consequently, the cancellation deadline becomes ineffective because consumers have no basis to discover and prove any errors before the time period expires (Irayadi, 2021). Thus, the cooling-off mechanism, which should provide additional protection, becomes a mere formal procedure with no significant practical value for consumers (R. Rahmawati, 2022).

To prevent such situations, providing a written contract is a crucial element in establishing more substantial legal protection. Written contracts provide clarity regarding rights and obligations, including detailed costs, benefits, coverage limits, and cancellation provisions, allowing consumers to make more objective assessments and not rely solely on memory of telemarketing conversations (Fuady, 2021). Furthermore, written documents allow consumers to ensure that the contents of the agreement align with the initial explanation, allowing potential discrepancies to be identified before the contract progresses further (Lord Situngkir et al., 2025). Written contracts also have more robust evidentiary force than recordings, which can only be listened to, because documents submitted to consumers cannot be unilaterally manipulated

once they are in the consumer's possession (Stone, 2009). Other supporting mechanisms such as key facts statements, benefit summaries, or confirmation letters are also important tools for ensuring alignment between verbal offers and product substance. These supplementary documents provide a concise summary of key product elements so consumers can understand the overall picture without having to read the entire contract (Ikhwan Taher, 2024).

Providing this concise information also helps reduce the risk of contractual oversight because consumers can immediately see the costs, risks, and coverage limits, which are often briefly communicated in telemarketing conversations (Hazhin et al., 2019). Thus, these mechanisms enhance transparency and help consumers make informed decisions. Sending these documents via electronic channels such as email or instant messaging expedites consumer access to evidence and ensures traceability of information at every stage of the transaction. This ease of access provides sufficient space for consumers to conduct self-review, seek the opinion of others, or prepare objections if discrepancies are found (Rawls, 1971). Ultimately, the combination of written contracts, supporting documents, and access to electronic evidence provides a mechanism that ensures that verbal telemarketing agreements are not only formally valid but also substantially meet the fairness principle required by modern contracts.

IV. CONCLUSION

An analysis of banking telemarketing practices shows that the consent mechanism formed through verbal communication does not meet the fairness standards required by modern contract doctrine and the justice as fairness framework. The structure of the conversation controlled by the telemarketer results in an information imbalance that impacts the quality of the consumer's free will. Although verbal consent may be considered formally valid under Article 1320 of the Civil Code, this condition does not reflect an agreement formed through a transparent, proportional, and pressure-free process. Therefore, from a substantive perspective, telemarketing consent does not meet the quality of an ideal agreement.

The implications of this imbalance are further exacerbated by the failure to provide consumers with copies of recorded conversations. Recordings retained entirely by business actors leave consumers without evidence to verify the information's compliance with applicable product provisions. This weakens consumers' position in disputes, reduces the effectiveness of the cooling-off mechanism provided in POJK 6/2022, and hinders consumers' efforts to recover losses. The lack of evidence also contradicts the principle of transparency in the Consumer Protection Law and the recognition of electronic documents in the ITE Law. Therefore, it can be concluded that current banking telemarketing practices fail to provide adequate consumer protection. The lack of information at the contract formation stage and the lack of access to evidence at the verification stage result in structurally imbalanced contractual relationships. For telemarketing agreements to be substantively valid and meet the principle of fairness, strengthening supporting mechanisms such as written contracts, benefit summary documents, and access to recorded conversations are necessary.

V. SUGGESTION

Consumer protection in financial services telemarketing requires strengthening operational standards and regulatory reform to ensure a transparent and balanced relationship between Financial Services Business Actors (PUJK) and consumers. PUJK should require copies of recorded conversations to be sent immediately after verbal transactions are completed, demonstrating transparency and fulfilling consumers' right to access evidence, while preventing unequal access to information. Furthermore, PUJK are required to send a written contract, summarizing benefits, detailing costs, risks, coverage limits, and cancellation provisions no later than 24 hours after verbal consent is given, so consumers have a clear and documented basis for evaluation. At the same time, the Financial Services Authority (OJK) needs to revise POJK 6/2022 to include the requirement to submit recordings and written documents as a minimum standard for consumer protection, along with strict administrative sanctions for violations.

To prevent abuse of business actors' dominant position in controlling recordings, it is necessary to establish an electronic evidence repository that consumers can access through a formal request mechanism as

a means of independent verification. PUJK should also develop telemarketing communication standards that require all material product points to be clearly read before requesting consent, so that the contract formation process meets the principles of propriety and good faith. In addition, the cooling-off period should be made more realistic by ensuring that all documents and transaction evidence are received by consumers before the cancellation deadline, allowing for evaluations without time pressure and the risk of misinformation. With the comprehensive implementation of these measures, consumer protection in financial services telemarketing can be substantially strengthened and aligned with the principle of fairness in modern contract law.

REFERENCES

- [1] Aprilianti, F., & Sudiro, AA (2023). Balance of parties in electronic contracts (e-contracts). *Jurnal Posita Hukum*, 8(2), 276–298.
- [2] Artanti, DA, & Widiatno, MW (2020). The validity of electronic contracts in Article 18 paragraph (1) of the ITE Law as reviewed from civil law in Indonesia. Jakarta Jalan Arjuna Utara, 1(1).
- [3] Banks, T. W. (2012). Good practices for financial consumer protection. World Bank.
- [4] Budi, A. (2022). Legal protection for customers in bank insurance product offering agreements via telemarketing (Study of PT BNI Life). *Journal of Private Law*, Faculty of Law, University of Mataram, 2(3). <http://journal.unram.ac.id/index.php/privatelaw>
- [5] Fuady, M. (2021). Contract law (from a business law perspective) (2nd Edition). Citra Aditya Bakti.
- [6] Hazhin, UM, Saputra, H., Gaol, L., & Kata, A. (2019). Abuse of circumstances (misbruik van omstandigheden) in insurance agreements through telemarketing. *Kertha Patrika Journal*, 41(2), 95–111. <https://doi.org/10.24843/KP.2019.v41.i02.p02>
- [7] Herianto Sinaga, D., & Wiryawan, IW (2020). The validity of electronic contracts (e-contracts) in business agreements. Kertha Semaya: *Journal of Legal Science*, 8(9), 1385–1396. <https://doi.org/10.24843/ks.2020.v08.i09.p09>
- [8] Ikhwan Taher, G. (2024). Analysis of marketing communication strategies and implementation between conventional banking and Islamic banking. *Journal of Communication Science*, 8(2). <https://doi.org/10.30596/ji.v8i2.19304>
- [9] Irayadi, M. (2021). The principle of balance in contract law. *Hermeneutics*, 5(1), 98–107. <https://doi.org/10.33603/hermeneutika.v3i2>
- [10] Martono, E., & Nugroho, SS (2016). Contract law and its development (Elviandri, Ed., 1st Edition). Iltizam Library.
- [11] Marzuki, PM (2017). Legal research. Kencana.
- [12] Muhaimin. (2020). Legal research methods (First edition). Mataram University Press.
- [13] Poernomo, SL (2019). Legal protection of customers in bank telemarketing agreements. *Journal of Law & Development*, 49(4), 805–826. <https://doi.org/10.21143/jhp.vol49.no4.2341>
- [14] Rahmawati, I. (2020). A juridical-normative analysis of the role and actions of telemarketing in digital transactions. *Jurnal Cakrawala Hukum*, 11(1). <https://doi.org/10.26905/idjch.v11i1.4047>
- [15] Rahmawati, R. (2022). Legal protection for credit card holders who are harmed by insurance offers using electronic media. *Jurnal Cakrawala Hukum*, 13(1), 78–87. <https://doi.org/10.26905/idjch.v13i1.7439>
- [16] Rawls, J. (1971). A theory of justice (Revised ed.). Harvard University Press.
- [17] Rizan, LS, S., N., & Erwin, Y. (2022). Legal analysis of the position and legal certainty of electronic evidence in civil case examinations. *Jurnal Pro Hukum*, 11(5), 410–425.
- [18] Sjahdeini, SR (2019). Freedom of contract and balanced protection for parties in bank credit agreements in Indonesia. Graffiti Main Library.
- [19] Situngkir, WL, & Napitupulu, DR (2025). Legal certainty of electronic agreements in fintech services. *Journal of Legal Dimensions*, 9(4), 39–46.
- [20] Stone, R. (2009). The modern law of contracts (8th ed.). Routledge-Cavendish.
- [21] Tri Hidayati, AG (2020). Persuasive communication strategy for marketing telemarketing credit cards at Bank DBS Branch Semarang. Faculty of Information and Communication Technology, University of Semarang.