

CHAPTER I

INTRODUCTION

A. Context of Study

Insurance agreement is an agreement between two or more parties in which the insurer bound themselves to the insured by accepting the insurance policy, to cover the loss of the insured, damage or loss of expected profits, or legal liability to the third parties that might be suffered by the insured, which is arising from an uncertain events, or to provide a payment based on the death or birth of someone who become the insured.¹

Insurance relationship that happens between the insurer and the insured are legally bound which arise because of an agreement. That relationship is in the form of voluntary willingness from the insurer and the insured to fulfill each rights and obligations towards one and another reciprocally, which means since the insurance agreement reaches the consent of the parties, the insured is bound and the insured has the obligation to pay insurance premium to the insurer. As the result, the insurer accepts the transfer of risk. If the uncertain risk (*evenement*) happens which cause losses of the insurance object, the insurer has the obligation to pay as much as the losses suffered according to the provisions of the insurance

¹ Act No. 2 of 1992, regarding *Insurance Business*, General Regulation, Article 1 point (1)

policy. However, if the *evenement* does not happen, the premium which have been paid by the insured owned by the insurer.²

A contract is defined as a promise or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.³ It is fundamental that there must be a promise or, in some cases, several promises, of such a nature as to create legal duty of performance on the part of the person or persons making the promise.⁴

In terms of the subject, agreements are also divided into several kinds of agreements, insurance agreement is included in Conditional Agreement (*Voorwaardelijke Verbintenis*) Article 1253-1271 BW.

Conditional agreement is an agreement in which the implementation depends on something in the future which is unsure to be happen. Therefore, there are two elements in conditional agreement, as follows:⁵

1. An agreement in which depends on (*afhangen*) an event or action in the future (*toekomstig*).
2. Such event is uncertain to happen (*onzekere gebeurtenis*).

However, life insurance agreement only has the first element, which is the agreement depends on an event in the future. Death is something that will definitely happen, yet the time of death cannot be predicted. Therefore, life

² Abdulkadir Muhammad, *Hukum Asuransi Indonesia*, PT. Citra Aditya Bakti, Bandung, 1999, p. 9

³ Baker, *Williston on Contracts*, Voorhis & Co., Inc., New York, 1957, vol. 1, p. 1

⁴ Janice E. Greider and William T. Beadles, *Law and The Life Insurance Contract*, Richard D. Irwin., Inc., Illinois, 1979, p. 3

⁵ M. Yahya Harahap, *Segi-Segi Hukum Perjanjian*, Alumni, Bandung, 1986, p. 45

insurance agreement is a punctuality agreement (*mettijdsbepaaling*), not an conditional agreement.⁶

In order to create legally bound agreement, it shall fulfill the requirements as it set in the Article 1320 Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesie/BW*), as follows:⁷

1. Consent from the parties
2. Capable to create an agreement
3. A certain object
4. Permissible cause

If the insurance agreement fulfill the requirements as mentioned above and follow rules based on the Indonesian Civil Code and the applicable law, it will acquire legal power and bind the involved parties, which are the insured and the insurer who are a part of the insurance elements.

There are several elements in insurance, as follows:⁸

1. There are two involved parties in the insurance, they are the insurer and the insured;
2. Transfer of risk from the insured to the insurer;
3. Premium which is shall be paid by the insured to the insurer;
4. An uncertain event element (*onzeker vooraf, evenement*); and
5. Indemnity element if the uncertainty event is happen.

⁶ *Ibid*, p. 46

⁷ Lista Kuspriatni, *Aspek Hukum dalam Ekonomi* (in Jurnal Hukum Perjanjian, 2008-2009), p. 1

⁸ Ridwan Khairandy, *Pengantar Hukum Dagang*, FH UII Press, Yogyakarta, 2006, p. 194

In simplest way, a risk (*evenement*) can be interpreted as the possibility to gain losses. However technically, risk cannot be easily restricted. It is supported by Vaughan and Elliot argument, they stated that:⁹

“Economists, statisticians, decision theorists, and insurance theorists have long discussed the concept of ‘risk’ and ‘uncertainty’ in attempt to arrive at a definition of risk that might be useful for analysis in each field of investigation. Up to the present time, they still disagree on a definition that can be used in each field with the same facility.”

A death of someone cannot be predicted by anyone except Allah SWT. The time of death cannot be predicted, if it happens it might cost an unexpected expenses. Therefore, people start to insure their own life or other persons through the life insurance.

“Life insurance is an agreement to pay a sum of money because the insured party acceptance on the premium which related to the death of someone, reinsurance is included in it, while accident insurance is not included in life insurance.” In Article 27 of Act No. 2, 1992, determined that with the enactment of this law, therefore *Ordonantie op het Levensverzekering Bedrijf* is no longer applicable. In addition, the applicable law used is the first definition based on the Act No. 2 of 1992.¹⁰

There are some ways in offering an insurance and products. First, traditional method done through face-to-face or meeting with the consumer directly. This

⁹ M. Suparman Sastrawidjaja, *Aspek-Aspek Hukum Asuransi dan Surat Berharga*, Alumni, Bandung, 1997, p.3

¹⁰ Catatan Kampus Unhalu, *Asuransi Jiwa*, Hukum Asuransi, accessed from <http://hukumasuransi.blogspot.com/>, on October 2nd 2012, 05:59 pm.

method is often encountered in our daily life. Second, the customers come by themselves to meet the insurance party, but it rarely happens. Third, nowadays likely to lead into legal issues in the future, is telemarketing which is performed by using phone.¹¹

In traditional method of life insurance promotion, is a personal selling or face-to-face meeting between the insurance salesperson and the prospective consumer to offer their life insurance services and product. According to Kotler, personal selling is a face-to-face interaction with one or more prospective purchasers for the purpose of making sales.¹²

Some advantages of personal selling (face-to-face) as follows:¹³

1. Face-to-face communication process makes the prospective costumers give more attention to the salesperson explanations;
2. Personal selling can design the method in conveying the message according to the situation and condition of the audience;
3. In personal selling, two-ways communication takes place, an interactive dialogue could happen between the salesperson and the consumer;
4. Personal selling is more likely to convey a complex message about a product that cannot be conveyed through advertising.

¹¹ Rina Andriana, *Analisis Yuridis Perjanjian Asuransi Jiwa Melalui Telemarketing Ditinjau dari Aspek Hukum Perikatan*, (in Tesis Pascasarjana USU, Medan, 2011).

¹² Budi Sutrisno, *Pengaruh Bauran Promosi Terhadap Keputusan Pembelian Polis Asuransi Jiwa Prodana pada Asuransi Manulife Cabang Bandung*, (in Tesis Pascasarjana UNIKOM, on September 22nd 2005).

¹³ Ceu Ipah, *Kelebihan dan Kekurangan Strategi Pemasaran*, Saling Berbagi, accessed from <http://ceuipah.blogspot.com/2012/05/kelebihan-dan-kekurangan-strategi.html>, on October 17th 2012, 02:50 pm.

Meanwhile, some disadvantages of personal selling are:¹⁴

1. Only reach a few of prospective costumers;
2. Relatively expensive
3. Difficult to get a salesperson that are qualified and suitable with the interests of the insurance company.

Meanwhile, telemarketing is a direct marketing method, which is done by telemarketer with prospective consumer (insured). Telemarketing is using phone connection without meeting face-to-face between the prospective costumer and the insurance salesperson, which is unusual for life insurance matter in general. They bring an issue of the legal basis of the agreement and the risks of a dispute that might happen in the implementation of the concept or method of telemarketing obligation that arises in between the insured and the insurer.¹⁵

Therefore, it can be concluded that telemarketing is included into Electronic Transaction, which means a legal action is done through computer, computer devices, or other electronics media.¹⁶

Telemarketing that is one of marketing methods belongs to direct marketing category. Telemarketing has several advantages, as follows:¹⁷

1. It is expected a goods or services could reach the market target;
2. The expenses are far more effective because the sales marketing method is repeat sales with clear market target;

¹⁴ *Ibid*

¹⁵ Rina Andriana, *loc.cit*

¹⁶ Act No. 11 of 2008, regarding *Information and Electronic Transaction*, Article 1 point (2)

¹⁷ Ceu Ipah, *loc.cit*

3. Direct marketing can be done through many kinds of media, for example is telephone;
4. Direct marketing can easily calculate the response arising from marketing activities as well as to facilitate the making of promotional budgets;
5. With direct media, the feedback can be obtained directly from the costumers;
6. With direct marketing, price research activities, promotion, and the timing can be easily done;
7. By using direct media, the message can be customized for intended consumers;
8. Consumer database can be easily set up in direct marketing. Therefore, the repeat sales from one costumer can be achieved;
9. The opportunity in establishing a long-term relationship with consumers can be done by using the existing consumer database;
10. Consumer database can be used to create consumer profile, to divide the consumers in different segments, collecting information about a goods or services, and even find someone's reason whether they buy the goods/services or not.

Besides the advantages, there are many disadvantages, they are:¹⁸

1. Direct marketing which is done by phone might cause a negative image for the insurance company, because some people or the consumers need their privacy or they did not want to be disturbed;

¹⁸ *Ibid*

2. Level of accuracy of the list that is used to designate the intended market target is sometimes poor, because the list is not used in accordance with the market target;
3. In order to implement direct marketing an adequate facilities are needed, such as on-line telephone facilities, and also qualified human resources who are mastered the information of a goods or services. The insurance company expense a lot of money in fulfilling those facilities;
4. Sometimes, it might cause misunderstanding or miscalculation of the policy activation, with the tardiness of insurance policy acceptance by the insured.

There are a lot of dispute arise complaining about insurance telemarketing procedure. One example of a case is experienced by the consumer of BCA (Bank Central Asia) credit card. She got phone called on February 2012 from Cigna Life Insurance Company telemarketer, who offered her Cigna Easy Blue Care program. She agreed to join in that program with the amount of payment Rp 85,000 per month by debiting her BCA credit card bill. On March 2012, she called Cigna Life call center to check how far the progress was. The CS (Customer Service) told her that her insurance policy was still on process and had not been approved. The CS gave her the insurance policy number to make it easier if she wanted to check again later. On March 15, she received an email from e-statement BCA credit card. Cigna Easy Blue Care was listed in the debit list twice, on February 24 and March 6. The debiting was done before she called the call center, but at that time she was told that her insurance policy was not active

yet. On March 19, she called Cigna to ask why there was debiting while her insurance policy has not been active yet. However, the CS just answered that the first insurance policy debiting had been activated. On April 10, the third debiting had been done but she had not receive the insurance policy yet. On April 23, she called the call center to ask about her insurance policy. On 30 April, Cigna call center called her to follow-up her question several days before. PT Cigna had checked the transcripts of the conversation between her and the telemarketer from the phone recording, and they admitted that the telemarketer did not confirmed about the 30 days guarantee after the first debiting. On 1 May, she did not receive her insurance policy softcopy yet. Therefore she decided to closed her policy by phone. On 4 May, the debiting of her insurance policy still listed on her BCA credit card bill, even though according the CS, debiting would not be done if the cancellation of insurance policy done before debiting date. On 16 May, she realized that there was debiting again, then she sent an email to Cigna customer service to report it.¹⁹

Because most of Indonesian people are consumptive credit card holders, it becomes the opportunity for the Bank and Insurance Company to cooperate marketing their services using technology as their media. That is why telemarketing issue becomes interesting to be learned from legal perspective.

The problems which are caused by telemarketing method are analyzed from it requirements and obligations. It is because telemarketing method basically is just

¹⁹ Insani Roefliana, *Asuransi Cigna EasyCare Blue Belum Aktif, Sudah Didebet*, Surat Pembaca Online, accessed from <http://suratpembacaonline.wordpress.com/2012/06/24/asuransi-cigna-easycare-blue-belum-aktif-sudah-didebet/>, on October 2nd 2012, 07:30 pm.

a pre-contract agreement done through telecommunication media. Meanwhile, the certainty of the agreement between the insurer and the insured still need policy signature.²⁰

Pre-contract period is a period before the parties get into a consent on the transaction plan. It is the period when the negotiation is made. Negotiation is a start to achieve consent between one party and another.²¹ It is not a phase when the agreement is carry out or performed.

Regardless of whether the applicant pays the initial premium at the time the application is submitted or when the policy is issued and delivered, there is always some delay between the date of the application and the date of the insurer approves it. It is apparent that it would be to the advantage of the applicant (or beneficiary) to provide some coverage, if at all possible, during the period in which the underwriting procedures were being completed. It was just as clearly to the advantage of the agent and the insurer to provide such coverage. Without coverage, there is no compelling reason for the applicant to pay the initial premium before the policy was delivered.²²

Even so, if there is a dispute arise the phone recording is one of the evidence whether there is a transaction done through phone or not. Act No. 11 2008 of Information and Electronic Transaction (UU ITE).²³ Article 5 (1) stated that

²⁰ Rina Andriana, *loc.cit*

²¹ Ridwan Khairandy, *Periode dalam Kontrak*, (in Jurnal Hukum Kontrak Indonesia dalam Perspektif Perbandingan), p. 52

²² Janice E. Greider, *op.cit*, p. 109

²³ Act No. 11 of 2008, *loc.cit*

“electronic information and or electronic document and or it printings are valid legal evidence.”

In civil law process, a duty of the judge is to investigate whether a legal relationship that becomes the basic of the suit is really exist or not. Therefore, a verification is needed with the help from any kinds of existed evidences such as oral statement, which is in phone recording (telemarketing).²⁴ However practically, in verification process of private law procedure a phone recording (electronic evidence) is weaker than a legitimate deed, with notaries, and or signature and a stamp.

Verification presents legitimate evidences, according to the law, for the judge who investigates the case in order to give certainty toward the truth of the event that has been told in the court.²⁵

Based on the case above, bank and insurance company that do marketing cooperation, called as *bancassurance*. The marketing method and it legal protection toward the consumer in the *bancassurance* product, are set in Bank of Indonesia (BI) form letter No. 12/35/DPNP on the Application of Risk Management for Banks Doing Marketing Cooperation Activities with Insurance Company (*bancassurance*) on December 23, 2010 (“SEBI 12/35”).²⁶

²⁴ Vanderik Wailan, *Analisis Yuridis Tentang Kekuatan Bukti Rekaman Suara dalam Penyelesaian Sengketa Phone Banking*, Ilmu Hukum, accessed from <http://vwailan.blogspot.com/2012/05/normal-0-false-false-false-in-x-none-x.html>, on November 7th 2012, 09:13 pm.

²⁵ H. Riduan Syahrani, *Buku Materi Dasar Hukum Acara Perdata*, PT. Citra Aditya Bakti, Bandung, 2004, p. 83

²⁶ Diana Kusumasari, *Apakah Rekaman Pembicaraan Telepon Bisa Jadi Bukti Perjanjian Bank dengan Nasabah?*, hukumonline.com, accessed from <http://www.hukumonline.com/klinik/detail/lt4dc43cb2836e5/apakah-rekaman->

In SEBI 12/35, the bank is allowed to conduct marketing the *bancassurance* product by giving explanation on insurance product through communication media (telemarketing), besides using traditional method of marketing. In addition of *bancassurance*, SEBI 12/35 also confirmed that the Bank's role is not only as intermediary in transmitting information of the insurance products from the insurance company that cooperated with the Bank, to the consumer, but the Bank also provides direct explanations related to the insurance products such as the characteristics, profits, and risk of the product that offered.²⁷

Based on the explanation above, the Bank has the obligation to make a clear and direct explanations to the consumer. It is not only the Bank that should make clear explanation, but also the insurance company as the business actor. It is explained and set in the Article 9 of Act No. 11 2008 (UU ITE) "business actor who offers the product through electronic system should provide details and true information regarding the contract requirements and the offered product."

B. Statement of Problems

1. How does the legal validity of life insurance contract through telemarketing?
2. What kinds of legal protection that is provided to the insured based on the confirmation done by phone recording?

pembicaraan-telepon-bisa-jadi-bukti-perjanjian-bank-dengan-nasabah, on November 7th 2012, 06:47 pm.

²⁷ *Ibid*

C. Research Objectives

1. The aim of this thesis is to know further on the procedure of telemarketing agreement that is applied in Indonesian life insurance business. It will explain about the validity of the life insurance telemarketing agreement, based on the applicable law in Indonesia.
2. This thesis will also analyze about how does the legal protection for the consumer or the insured govern on phone recording evidence in telemarketing dispute.

D. Theoretical Framework

A contract is defined as a “promise or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty”.²⁸ It is fundamental that there must be a promise or, in some cases, several promises, of such a nature as to create legal duty of performance on the part of the person or persons making the promise.²⁹ It is fundamental that there must be a promise or, in some cases, several promises, of such a nature as to create legal duty of performance on the part of the person or persons making the promise.³⁰ In order to create legally bound agreement, it shall fulfill the requirements as it set in the Article 1320 Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesie/BW*), as follows:

²⁸ Baker, *op.cit*, p. 1

²⁹ Janice E. Greider, *op.cit*, p. 3

³⁰ H.C. Black, *Black's Law Dictionary*, Fifth Edition, West Publishing, 1979, p. 291

1. Consent from the parties
2. Capable to create an agreement
3. A certain object
4. Permissible cause

According to Abdul Kadir Muhammad, insurance is a guarantee or a protection of an object from dangerous threat that might cause losses.³¹ There are different kinds of insurance, one of them is Life Insurance. Purwosutjipto defines life insurance as a reciprocal agreement between the insured and the insurer, in which the insured bound him or herself during the time of the insurance and pay for a sum of money as a premium to the insurer. Meanwhile, the insured has the obligation to pay a sum of money to the appointed insurer as the result of the death of someone whose life be insured or the stipulated period has past.³² Government Regulation No. 73 of 1992 Article 19 point (1) defines that, policy or insurance agreement, following its attachment, cannot contain words or sentence that could cause different interpretation about the risk, obligations of the insurer and the insured, also should not cause difficulty to the insured in attend his or her rights.³³ Life insurance attracts many people, because life is uncertain thing and something that cannot be predicted by anyone except Allah SWT. As the result, there is an unexpected expenses or risk that they should bear in anytime.

³¹ Abdulkadir Muhammad, *op.cit*, p. 5

³² *Ibid*, p. 169-170

³³ *Ibid*, p. 57-58

Regarding to the previous statement, Vaughan and Elliot stated that risks can be interpreted as follows:³⁴

1. Chance of loss;
2. The possibility of loss;
3. Uncertainty;
4. The dispersion of actual from expected result;
5. The probability of any outcome different from the one expected.

In many literatures, such as Dickson & Steele, Mehr & Cammack, Magee & Bickelhaupt, and also Emmy Pangaribuan Simanjuntak & Gunanto, they discuss about several ways to overcome a risk. If there is no insurance, human does not want to do anything especially the risky one. Therefore, since they do not want to bear the risk, they do not achieve anything. As stated by Gunanto, the risk can be avoided by cancelling all of the activities which might result some risks, for example not buying, no one rent the house, did not accept goods storage, no one built up, etc. It is clearly that the economical cycle does not only happen when there is someone who has the courage to responsible.³⁵ Purwosutjipto define life insurance as, reciprocal agreement between the insured or the one who will close to the insurance, and the insured. In which the insured bind himself during the insurance period in paying the premium to the insurer, while the insurer as a direct result by the death of someone whom his life is being insured, or by the end of the period that had been agreed, bind himself to pay a certain sum of money to the

³⁴ M. Suparman Sastrawidjaja, *op.cit*, p. 3

³⁵ *Ibid*, p. 7

person appointed by the insured.³⁶ Insurance company of course considered about their marketing method in order to gain costumers and reach their target, one of the marketing method that used nowadays is telemarketing, in which they offer their insurance product to the prospective costumer by phone. According to Philip Kotler, telemarketing is a new marketing method using telecommunication technology as a part of structured marketing program. Telemarketing is the use of phone and a call center to attract prospective consumer, sale to the existing consumer and gives service on taking an order and answering question by phone. Telemarketing help a company in increasing their income, decreasing their selling fee, and increasing their consumer satisfaction. Act No. 11 of 2008, regarding Information and Electronic Transaction (UU ITE).³⁷ Article 5 (1) stated that:

“Electronic information or documents, and its print out are valid legal evidence.”

Practically, insurance company cooperate with Bank in doing their business, with appointing the Bank costumer and most of them are a consumptive credit card user who usually has bigger interest in insurance rather than the common costumer who only has saving account in the Bank. It is regulated in Circular Letter No. BI. 12/35/DPNP concerning Application of Risk Management in Banks Doing Marketing Activities Cooperation with Insurance Company (*bancassurance*) dated December 23, 2010 ("SEBI 12/35"). SEBI (*Surat Edaran Bank Indonesia*) in 12/35, which allowed the Bank to engage in *bancassurance* product marketing by providing an explanation of insurance products by using the

³⁶ Abdulkadir Muhammad, *op.cit*, p.70

³⁷ Act No. 11 of 2008, *loc.cit*

means of communication (telemarketing).³⁸ Most of the time, the telemarketing method could cause confusion, miscommunication, or misinterpretation toward the prospective costumer during the limited in phone, for the telemarketer to explain the insurance product. Therefore, the consent from the costumer is questionable in which the consent from both parties is important as the requirement both in contract in general and insurance contract in particular, then the validity of the insurance contract is questionable as well.

E. Definition of Technical Terms

The terms used in this thesis will be clearly explained in order to make the analysis understandable.

Insurance is an agreement between two or more parties in which the insurer bound themselves to the insured, by accepting the insurance policy to cover the loss of the insured, damage or loss of expected profits, or legal liability to the third parties that may be suffered by the insured, which is appears from an uncertain events, or to provide a payment based on the death or life of someone who become the insured.³⁹

Life Insurance Company is a company that gives service in countermeasures the risk related with the life or death of a person who are insured. The insurance

³⁸ Diana Kusumasari, *loc.cit*

³⁹ Act No. 2 of 1992, *loc.cit*

company act as the insurer that is bound to provide a payment based on the death or life of someone who become the insured.⁴⁰

Insured is the person who paid the insurance company and bound him or herself into a certain legal relationship set in the contract (act), work relationship or public transport passenger for examples. If he or she get into an accident when doing their job or along the way inside that public transport, they (or their heirs) will get payment from the insurer, which is the amount of payment has been set in the contract (act).⁴¹ The insurer can be a person, partnership, legal entity, whether as a company or non company.⁴² A person who transfer his or her risk of her life or wealth to the insured.

Insurer is the one who bear the risk transferred to them and they have the right to claim premium payment from the insurer. The insurer must be a legal entity, which is can be in the form of corporate, limited liability company, and etc.⁴³

Uncertain risk or *evenement* is an event that cause losses to the insurance object and in the event of someone's death.⁴⁴ The Article 246 KUHD (Indonesian Trade Law Act) did not mention about the event of the death of someone.

Telemarketing is derived from Tele and Marketing words. Tele means far, marketing means marketing activities. If it is interpreted as a whole, telemarketing (commonly abbreviated as TM) is an activity to market the products and or

⁴⁰ Act No. 2 of 1992, *loc.cit*

⁴¹ Abdulkadir Muhammad, *op.cit*, p. 15

⁴² *Ibid*, p. 8

⁴³ *Ibid*

⁴⁴ Act No. 2 of 1992, *loc.cit*

services through distant communication channels (telecommunications) for example communication by phone.⁴⁵

Obligation is a relationship between two parties as a result of which one parties (the debtor) is bound to a certain conduct (performance) in favor of the other (the creditor).⁴⁶

F. Research Procedure

1. Object of Study

- a. The validity of Indonesian life insurance contract done through telemarketing (by phone).
- b. The legal protection for the consumer (the insured) based on the confirmation of life insurance agreement on the phone recording.

2. Classification of Data

This research used secondary data taken from the documents or archives that related to the problem discussed in this research. The purpose of this data is to identify the data systematically in order to answer the problems. Secondary data are divided into:

- a. Primary Legal Materials
 1. Indonesian Civil Code
 2. Indonesian Commercial Code

⁴⁵ Deteksi Info, *Telemarketing*, Mencerdaskan Kehidupan Bangsa, accessed from <http://deteksi.info/2010/01/telemarketing/>, on October 2nd 2012, 01:02 pm.

⁴⁶ H. Riduan Syahrani, *Seluk Beluk dan Asas-Asas Hukum Perdata*, Alumni, Bandung, 2006, p. 196

3. Insurance Act No. 2 of 1992

4. Electronic Information and Transaction Act No. 11 of 2008

5. Consumer Protection Act No. 8 of 1999

b. Secondary Legal Materials

1. Literatures

2. Law Journals

3. Text books

4. Internet sources

3. Data Collection

The method of gathering legal materials was using library studies and documentation. The data collected from books that are related to the contract in general and insurance contract in particular and also about the validity of telemarketing procedure as a media which is used by insurance company in creating an insurance agreement.

4. Approach of The Study

This research was a juridical normative research that identified legal norms and legal views. The objective was to understand and answer the object of study by using juridical normative approach method.

5. Data Analysis

The data collection was organized by selecting the data related to the discussed problem in this research. It is structured descriptively in order to answer the problem in a descriptive analysis. The data were collected, managed, and used

to answer the problems. The method of analyzing the data was qualitative method. It means that the data achieved were not in the form of numbers and statistic. Collected data were analyzed qualitatively and descriptively. Moreover, it also portrays facts, legal enforcement, and bears with the applicable legal aspects. The steps are defined as follow:

- a. Classification of the data collection based on the problems of the research
- b. Systematic of data collection
- c. Systematic data is analyzed to achieve conclusion

G. Systematic of Writing

Chapter I contains an introduction that encompasses these following parts: context of study, problem statement, objective of the study, theoretical frameworks, research methodology, and systematic of writing.

Chapter II contains theoretical review on definition of contract according to Indonesian Civil Code (KUHPer), definition of contract according to scholar, elements of contract according to scholar, elements of contract in common law, definition of insurance according to the according to Indonesian Commercial Code (KUHD), definition of insurance according to Indonesian Insurance Law, definition of insurance according to scholar, definition of insurance contract according to New York Insurance Law, definition of insurance contract according to Indonesian Commercial Code, definition of contract according to Indonesian Insurance Law, validity of contract in general according to Indonesian

Commercial Code validity of insurance contract according to Indonesian Commercial Code, validity of insurance contract according to Indonesian Insurance Law, and insurance policy.

Chapter III contains the validity of life insurance contract through telemarketing. Furthermore, the capability of Indonesian Law to protect the costumer based on the confirmation done by phone recording in the making of life insurance contract through telemarketing.

Chapter IV provides the conclusion and recommendation that are made based on the previous analysis that has been done.