



## Short Message Services (SMS) Fraud Against Mobile Telephone Provider Consumer Review From Law Number 8 Of 1999 Concerning Consumer Protection

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### ABSTRACT

*Technological advances, especially in the telecommunications sector, are growing very rapidly. One of the communication products/tools created is a cellular phone/mobile phone. The development of this technology does not rule out the possibility of fraudulent short message service (SMS) via cellular phones against consumers. The presence of Law Number 8 of 1999 concerning Consumer Protection as a form of protecting consumers against fraud via SMS. The problems raised in writing this thesis are how to protect the rights of consumers of cellular phone providers, then how to protect personal information and data of cellular phone provider consumers, and how to protect consumers from fraud through short message service (SMS). The research method used in writing this thesis is a normative juridical legal research method, namely by collecting data from various references either through books, legislation, websites, and other reference sources. Based on the results of the study, it is known that the rights of consumers of cellular phone providers refer to Law Number 8 of 1999 concerning Consumer Protection. While the protection of personal information and data is not specifically regulated, but partially regulated in Law Number 36 of 1999 concerning Telecommunications and Law Number 11 of 2008 concerning Information and Electronic Transactions. Furthermore, legal protection efforts for cellular phone provider consumers against fraud committed via SMS, can be in the form of preventive legal remedies and repressive legal remedies, and preventive actions can be taken for fraud through SMS.*

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### 1. Introduction

Humans as living beings have different needs. These needs can be classified into three parts, namely: primary, secondary, and tertiary needs. Along with the times, the needs of the community are increasingly varied. Items that were previously not a primary need are now felt to be very important. As social beings, humans cannot be separated from their need to communicate with each other. In other words, to survive there is always a need to interact with other humans. Humans live in friendship with other humans.<sup>2</sup> When talking about the human need to interact with other humans, humans also cannot ignore social contact and communication. The need for cellular telephones makes telecommunications networks to be established by business actors providing telecommunications services. In Indonesia, there are several business actors who compete in this telecommunications business field. Telecommunications activities in Indonesia were initially controlled by the state through State-Owned Enterprises, namely: PT. Telkom, Tbk. which has a monopoly on domestic telecommunications services, and PT. Indosat, Tbk.

In 1993, the era of private participation and the telecommunications industry began with the presence of PT. Cellular Telekomunikasi (Telkomsel), which was then followed by the presence of PT. Excelcomindo Pratama, where until 2003 these operators controlled cellular telecommunications services in Indonesia.<sup>6</sup>After 2004, more and more operators entered the telecommunications market such as PT. Hutchison CP Telecommunications, PT. Bakrie Telecom, PT. Sampoerna Telekomunikasi Indonesia and PT. Natrindo Cell Phones.

The large number of telecommunications network operators has made the telecommunications operators or operators more creative in creating the latest service products, one of which is Short Message Service (hereinafter abbreviated as SMS). Short Message Service (SMS) is a facility to send and receive a short message in the form of text through a wireless device used is a cellular phone.

Currently, telecommunications operators/operators are competing in creating low-cost SMS tariff products. Cheap SMS tariff service products that have been created for consumers, increasingly attract consumers to use these products consumptively. Each operator has advantages in each product it creates, which results in business competition between operators providing cheap SMS services. On the one hand it benefits consumers because they get low SMS rates, but on the other hand it also makes it easier for users to abuse the services provided by these operators. One form of abuse is fraudulent actions carried out via SMS.

Fraud via SMS is common among consumers of cellular phone providers. Fraud can be carried out by business actors and consumers who use cellular phone providers. One of these frauds is in the form of credit withdrawals carried out by business actors (in this case telecommunication network operators) by providing information to their customers, and without realizing it, the credit will be deducted via SMS originating from the network operator's SMS service. the amount can not be controlled by consumers who become victims.

Cases of fraud via SMS that often occur, one of which is the case of SMS fraud with prizes. Fraud perpetrators usually ask the victim for a certain amount of funds to be transferred to the intended account number. Victims of fraud without seeing the truth of the information, immediately carry out transactions ordered by the perpetrators of SMS fraud. However, victims of fraud try to call the mobile phone number that sent the SMS and the number often cannot be called back.

Fraud through SMS is very detrimental to consumers of cellular phone providers. Consumers are every person who uses goods/services available in the community, both for the benefit of themselves, their families, other people and other living creatures and not for trading.<sup>9</sup>Cheap SMS service products cannot be used properly. The lower the tariff, the tendency for fraud to be carried out via SMS. The protection of the confidentiality of consumers' personal information and data (security of mobile phone numbers of consumers of cellular phone providers) is very difficult to do.

The fact shows that various important factors are the cause of the weak position of consumers in this case. According to the results of research by the National Legal Development Agency (BPHN), the factors that weaken consumers are the low level of consumer awareness of their rights, the unconditioned consumer community because as a society they do not know their rights and where their rights are channeled if they get difficulties or shortcomings from reasonable standards of goods or services, the unconditioned community of consumers becoming people who have the will to demand their rights, the judicial process which is often considered complicated and time-consuming, makes the consumer's position weaker.

The current regulations do not fully reward the perpetrators of fraud via SMS. The protection factor for the confidentiality of information and personal data of cellular phone provider

consumers is also still very weak. The things mentioned above, make incidents of fraudulent actions via SMS interesting to study. Many things can be studied from this problem. How are efforts to protect consumers as users of SMS services provided by operators, protection of consumer personal information and data, and the responsibility of business actors (telecommunication network operators) in terms of losses suffered by consumers.

## **2. Method**

In compiling this thesis, a normative juridical legal research method was used. Normative juridical law research is research by processing and collecting secondary data, which consists of primary legal materials, namely binding legal materials, for example: basic regulations, statutory regulations, and other related regulations. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, for example: the results of legal research and scientific work from legal circles, and even tertiary legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, for example: dictionaries - legal dictionary and encyclopedia.

The data obtained from the literature research are arranged systematically, then analyzed descriptively using deductive and inductive methods. The deductive method is done by reading, interpreting, and comparing. While the inductive method is carried out by translating various sources related to the topic.

## **3. Analysis And Results**

### **3.1 Protection Of Mobile Phone Provider Consumer Information And Personal Data**

#### **a. Definition Of Personal Information and Data**

Personal information is information about an individual, including name, date of birth and other information about it, or a number, symbol, code, image or sound associated with it, that identifies a person (also includes information that does not by itself identify a person, but can, if verified with other information). In addition, it will not only be limited to personal identity, but also includes any information that shows facts, acknowledgments, and judgments about a person's attributes, including physical character, property rights, occupation, or status.

#### **b. Terms of Use of Personal Information and Data According to Laws and Regulations**

Information is data that has been processed into a form that is important to the recipient and has real and perceived value. As the definition of personal information and data previously explained, Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as UU ITE) also provides an understanding of information. Definition of Information contained in this law provides a limitation only to information electronically. Article 1 number 1 of the ITE Law states: "Electronic Information is one or a set of electronic data, including but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters processed signs, numbers, access codes, symbols, or perforations that have meaning or can be understood by people who are able to understand them".

Law Number 11 of 2008 concerning Information and Electronic Transactions also provides limitations on the meaning of data. The data referred to in this law is an electronic document. Article 1 number 4 of the ITE Law states that: "Electronic Documents are any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard. through a Computer or Electronic System, including but not limited to writing, sound, pictures, maps,

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designs, photos or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them ".

### **c. Efforts to Protect Cellular Phone Provider Consumer Personal Information and Data**

The rapid development of information and communication technology in Indonesia requires people to be able to adapt to the changes that occur as a result of the advances in information technology. Information technology is currently a double-edged sword because on the one hand, information technology has contributed to the welfare of human progress and civilization, while on the other hand information technology has also become a very effective means to commit acts against the law.

The increasingly fierce competition in the business world makes business actors try various ways of promoting the goods/services that they will sell to consumers. One of the current abuses is promoting goods/services via SMS. Business actors send messages to many cellular phone numbers to offer goods and/or services for sale. This method is done by business actors because of the low costs incurred compared to having to use advertising services in print media or electronic media.

## **3.2 Legal Protection Measures For Consumers Against Fraud Through Short Message Service (Sms)**

### **a. Types of Fraud Through SMS and Their Disadvantages for Cellular Phone Provider Consumers**

The forms of fraud through SMS are not only carried out by the provider as a service provider, but SMS fraud can be carried out by consumers who use the services of a cellular phone provider. Fraud through SMS makes consumers of cellular phone providers feel disadvantaged. The forms of fraud via SMS are as follows:

#### 1) SMS fraud committed by providers against consumers.

Various kinds of SMS fraud committed by providers can be carried out with the following modes:

- a) Sending SMS for sporadic promotions where the provider will send messages containing random promotions to all cellular phone numbers. Sending SMS is done does not know the time. So that without being noticed by the consumer, the credit will be deducted by receiving the promotional SMS;
- b) Delivery of Premium SMS which contains services provided by content providers (CP) in collaboration with providers who have unknowingly subscribed to premium SMS it. When consumers register not to subscribe, the premium SMS will still be sent to consumers.

#### 2) Fraud committed by consumers against consumers.

Fraud can not only be done by the provider, but with sophistication and various SMS services at low rates provided by the provider are used by consumers in committing fraud. SMS fraud committed by consumers with the following modes:

- a) SMS requesting to be sent credit by pretending to be acquaintances or relatives of the victim. For example, by referring to yourself as mama, papa, or child. Fraudsters create emergency stories so that consumers are pressed for time and panic. This is intentional by the fraudster with the aim that the victim does not think for a long time;
- b) SMS containing pretending to be interested in buying a house. Fraudsters usually obtain and collect data from property sales advertisements such as those published in print or online. They sent an SMS to the bidder's number, pretending to have called but it didn't go through. Fraudsters pretend to have conducted a survey on the object for sale and are interested in buying;

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- c) SMS asking to transfer some money. Example: "just transfer the money to (account number) at (name of bank) a/n (name of account holder)". This SMS is a trap for people who are planning to transfer some money to other people. Because if it is not investigated, then he assumes that the account number belongs to someone he knows;
  - d) SMS ticket sales for cheap flights. Fraudsters send SMS offering cheap tickets. When the SMS recipient responds, the fraudster will ask the destination and departure date, then provide the flight booking code. After that, the perpetrator will ask the victim to provide information on the name that will be listed on the ticket. Usually they also ask age

#### **b. Legal Protection Efforts for Consumers for Fraud Through Short Message Service (SMS)**

SMS fraud has a detrimental impact on cellular phone provider consumers. There are various forms of fraud committed by providers and consumers with various modes. Various efforts to provide legal protection for consumers against fraud via SMS can be carried out in various ways, including the following:

##### 1) Preventive legal protection efforts

Preventive legal protection efforts can be interpreted as all efforts made to prevent the occurrence of an unwanted event or situation. Preventive legal protection efforts can be carried out by:

- a) Consumer Development. Law Number 8 of 1999 concerning Consumer Protection Article 29 paragraph 1 states that the government is responsible for fostering the implementation of consumer protection which guarantees the acquisition of the rights of consumers and business actors as well as the implementation of obligations of consumers and business actors.
- b) Supervision and Protection by the government and related parties. The government's obligation to carry out supervision and protection is stated in Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 40 paragraph 2 states that the government protects the public interest from all kinds of disturbances as a result of misuse of electronic information and electronic transactions that disrupt public order, in accordance with the provisions of the legislation.

##### 2) Efforts to protect repressive law

Repressive legal protection efforts are legal efforts taken to resolve a legal problem that has occurred. This legal remedy is used if there has been a dispute between business actors and consumers, as well as between consumers and consumers. One of the rights of consumers guaranteed in Article 4 point e of Law Number 8 of 1999 concerning Consumer Protection is that consumers have the right to get advocacy, protection, and efforts to resolve consumer disputes properly.

#### **c. Submission of Claims When Short Message Service (SMS) Fraud Occurs**

Cases of fraud through short message service (SMS) that occur at this time are the attention of all parties. Various forms of fraud that are carried out make consumers suffer losses in large amounts. There are still many victims of fraud who do not report this case in a resigned manner without reporting it to the authorities. Perpetrators of fraud via SMS are scattered in areas where the victim is domiciled.

One of the forms of SMS fraud carried out by cellular phone providers is by siphoning credit. This form of fraud clearly harms consumers in terms of material. The presence of existing laws and regulations has provided various forms of protection to consumers whose rights have been impaired. Law Number 8 of 1999 concerning Consumer Protection Article 19 explains that business actors are responsible for providing compensation to consumers for damage, pollution, and/or losses due to consuming goods and/or services produced or traded. The

provision of compensation does not eliminate the possibility of criminal charges based on further evidence regarding the element of error.

#### **d. Preventive Measures Against Fraud Conducted Through Short Message Service (SMS)**

Fraud through Short Message Service (SMS) is rife among the public, especially users or consumers of a network operator. With the existence of cheap tariff services between network operators, on the one hand it benefits consumer users but on the other hand makes it easier for fraud perpetrators to send SMS in the form of fraud. The various forms of fraud that have been discussed previously illustrate that the protection provided has not been able to cover all aspects.

#### **4. Conclusion**

The rights of consumers contained in the agreement between the provider and the consumer are not specifically regulated, but refer to the general provisions that apply. As stated in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). The rights of consumers as stated in Article 4 of the UUPK are as follows: the right to comfort, security, and safety in consuming goods and/or services, the right to choose goods and/or services, and to obtain the goods and/or services in accordance with their value. exchange and conditions, as well as the promised guarantees, the right to clear and honest information regarding the conditions and guarantees of the goods and/or services, the right to have their opinions and complaints heard on the goods and/or services used, the right to obtain advocacy, protection, and efforts to properly resolve disputes over consumer protection, rights to receive guidance and consumer education, rights to be treated or served in a correct, honest and non-discriminatory manner, rights to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as it should be, and the rights regulated in the provisions of other laws and regulations. This clearly can provide security and convenience for cellular phone provider consumers for the protection provided through the rights that have been regulated in the laws and regulations. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly, and the rights regulated in the provisions of other laws and regulations. This clearly can provide security and convenience for cellular phone provider consumers for the protection provided through the rights that have been regulated in the laws and regulations. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly, and the rights regulated in the provisions of other laws and regulations. This clearly can provide security and comfort for consumers of cellular phone providers for the protection provided through the rights that have been regulated in the laws and regulations.

Protection of consumer's personal information and data is less protected by law. This is partly due to the absence of legislation that specifically regulates the protection of consumer personal information and data. However, partially, the protection of personal information and data has been regulated in several applicable laws. Law Number 36 of 1999 concerning Telecommunications Article 42 paragraph 1 explains that telecommunications service providers are required to keep the information sent and/or received by telecommunications service customers through the telecommunications network and/or telecommunications services provided secret.

Legal protection efforts for cellular phone provider consumers against fraud via SMS, can be in the form of preventive legal protection efforts, namely by conducting consumer guidance and supervision by the government and related parties, and repressive legal protection efforts, namely by filing lawsuits by consumers in accordance with with the applicable procedural law, and preventive measures can be taken against fraud committed via SMS.

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