

# LEGAL RECONSTRUCTION OF THE PRINCIPLE OF JUSTICE IN CONSUMER FINANCING AGREEMENTS IN THE INDONESIAN LEGAL SYSTEM

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## Abstract

This study aims to review; 1) How is the implementation of the provisions of the principle of fairness as in the consumer financing agreement? 2) How is the legal reconstruction of the principle of justice in consumer financing agreements in the Indonesian legal system? The research method used is normative juridical research, which is research focused on examining the application of rules or norms in positive law. The results showed that; 1) In consumer finance transactions, this consumer is domiciled as a debtor, namely the recipient of fees from the consumer finance company. Suppliers are sellers, namely companies or parties who sell or provide goods needed by consumers in the context of consumer financing. 2) The form of legal certainty and protection in the consumer financing agreement must be regulated in the consumer financing agreement itself which includes the rights and obligations of the parties, the terms of the agreement that lead to the application of prudential principal, installments, agreement period, insurance, and dispute resolution and still adhere to the protection of consumer rights and the rights of business actors proportionally.

**Keywords:** Legal Reconstruction, Justice Principles, Consumer Financing Agreement, Indonesian Legal System.

## INTRODUCTION

### Background

In line with the national development goals that aspire to, development is carried out thoroughly in various *sectors of life* by the government and society. The community as the main actors of development needs serious attention and support from the government which is obliged to direct, guide, and create a supporting condition, so that it can complement and complement each other in a real unity. Basically, the needs of human life are increasing along with the development of their standard of living. In order to meet the needs of life, humans are able to create various ways to meet their needs, such as buying and selling, leasing, buying rent, and so on. To be able to meet the needs of his life, a certain amount of funds is needed which in the economic world is commonly called capital.

Based on the standard of living in the community to meet the needs of life, there can be found different sides, on the one hand, there are people or legal entities who have excess funds and on the other hand there are so many people, both individuals and institutions / business entities that need funds.

Such conditions give birth to a reciprocal relationship between them. With the excess funds, a thought arises to invest these funds in a business that is economically and socially profitable. This is where financial institutions then appear as intermediaries that bridge between those who are excess funds and those who lack funds, so it can be said that financial institutions are community financial intermediaries.<sup>1</sup>

A financing institution is a special business entity that carries out financing activities in the form of providing funds and capital goods. A finance company is a business entity that carries out business activities of a Financing Institution. In finance companies, there are activities that carry out consumer financing activities; consumer finance *is* a financing activity for the procurement of goods based on consumer needs with payment in installments.<sup>2</sup>

In fact, the financial institutions called banks are not effective enough to overcome various fund needs in the community, considering the limited range of credit distribution, the limited sources of funds owned, this is increasingly evident from the number of banks that collapse and are liquidated.

With the birth of consumer financing institutions, people who previously had difficulty buying goods in cash will be overcome easily and quickly. However, there are shortcomings such as rules that are only administrative, while substantive ones do not yet exist. Credit systems using financing institutions, especially with consumer financing activities, are in great demand by the wider community, because the amount of costs provided by consumers is relatively small, but that does not mean that this consumer financing system has no risk.<sup>3</sup>

The balance of rights and obligations is indeed a principle contained in an agreement, including consumer-financing agreements. However, many parties have begun to criticize this consumer financing agreement, including motor vehicle financing agreements that are actually very detrimental to consumers. It is even said that the motor vehicle financing agreement is not balanced, and tends to only be a legal means to protect the interests of consumer companies from risks that may arise from the motor vehicle financing activities they run.

Efforts to protect the interests of finance companies can be seen from the clauses of consumer financing agreements signed by finance companies as creditors with consumers as debtors. One of the clauses of the agreement that serves to protect the interests of the finance company is the agreement by both parties related to the right of the finance company to withdraw forcibly when the consumer defaults. This forced withdrawal is indeed this consumer financing agreement if examined seriously is only used as an effort to protect the interests of finance companies. The financing agreement is more of a systematic effort to transfer business risk from consumer companies to consumers, rather than regulating the rights and obligations of the parties in a balanced manner as the agreement in general.

Of the various business fields of financing institutions mentioned above, which is as important as the business fields of other financing institutions is consumer financing or known as *Consumer Finance*. In the Civil Code itself discusses civil issues in which there are various kinds of problems, namely about people, objects, engagements, evidence, and expiration.<sup>4</sup>

From this fact, there will certainly be many problems that arise because the agreement is new in force in Indonesia, so that many people do not understand and understand the application of the agreement, even the determination of risks, so that there will definitely be imbalances between the parties, especially for debtors.

Based on the description above, it can be seen that the agreement is made with the knowledge and mutual will of the parties with the aim of creating or giving birth to obligations on one or both parties who make the agreement. Thus, the agreement as a source of engagement is based on the voluntary nature of the party obliged to perform the feat against the opponent of his party in the engagement.

In connection with the above, the author is interested in knowing how the application and legal consequences of consumer financing agreements in Indonesia, so the writing of this scientific paper is entitled "legal reconstruction of the principle of justice in consumer financing agreements in the Indonesian legal system".

### **Problem Statement**

1. How is the implementation of the provisions of the principle of fairness as in the consumer financing agreement?;
2. How is the legal reconstruction of the principle of justice in consumer financing agreements in the Indonesian legal system?

### **THEORETICAL FRAMEWORK**

The main theory or *Grand Theory* that is the basis of the analysis knife in this study is the Theory of Banking Law. The definition of a bank according to Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning banking is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people.<sup>5</sup>

And explained in Law Number 21 of 2008, which states that banks with conventional principles are banks that carry out their business activities conventionally whose activities provide services in payment traffic. In carrying out its activities, conventional commercial banks apply two methods, namely setting interest on selling prices and purchase prices on their products or known as spread based, and applying fees in other services known as fee based.<sup>6</sup>

Furthermore, *Middle Theory* in this study uses the Hierarchy Theory of Legislation. Hans Kelsen in the "General Theori of Law and State" translation of the general theory of law<sup>7</sup> and state elaborated by Jimly Assihiddiqie<sup>8</sup> under the title Hans Kelsen's theory of law among other things that legal analysis, which reveals the dynamic character of the system of norms and the functions of basic norms, also reveals a further peculiarity of law: law governs its own formation because one legal norm determines the way to create another legal norm, and also to some degree, determine the content of the other norms. Because, one legal norm is valid because it is made in a way determined by another legal norm, and this other legal norm is the basis for the validity of the first legal norm.

Legal protection is all efforts that can ensure legal certainty, so as to provide legal protection to the parties concerned or who take legal action.<sup>9</sup> Legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. In other words, legal protection as an illustration of the function of law, namely the concept where law can provide justice, order, certainty, expediency and peace.<sup>10</sup>

Legal protection aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection is born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relations between members of the community and between individuals and the government that are considered to represent the interests of the community.<sup>11</sup>

Legal protection for every Indonesian citizen without exception, can be found in the Constitution of the Republic of Indonesia Year 1945 (UUDNRI 1945), for that every product produced by the legislature must always be able to provide legal protection guarantees for everyone, even must be able to capture the aspirations of law and justice that develop in society. This can be seen from the provisions governing the existence of equal legal position for every citizen.<sup>12</sup>

## RESEARCH METHODOLOGY

### 1. Types of Research

This research was prepared using a type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.<sup>13</sup> Normative Juridical, which is an approach that uses a positivist legis conception. This concept views law as identical to written norms created and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and independent of real community life.<sup>14</sup> in legal research there are several approaches, the approaches used in legal research are *the statute approach*, *case approach*, historical approach, comparative approach, and conceptual approach.<sup>15</sup>

### 2. Research Data Sources

Data sources in this study are divided into two parts, namely primary data sources and secondary data sources. A primary data source is a data source that directly provides data to the data collector; while secondary data sources are data sources obtained by reading, studying and understanding through other media sourced from literature, books, and documents"<sup>16</sup>.

The primary data sources in this study were interviews and observations. The results of interviews with informants that have been specified in the research plan have been carried out at the time of the study.

Secondary data sources are: from scientific journals and books to support the research process.

### 3. Data Collection Techniques

This data collection method with literature research or commonly called literature study, this method is carried out to obtain secondary data both in the form of primary legal material and secondary legal material. After the inventory, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research conducted.<sup>17</sup>

### 4. Data Analysis

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).<sup>18</sup>

## RESEARCH RESULTS

### Implementation of the Provisions of the Principle Of Fairness as in the Consumer Financing Agreement

#### a. Parties to the Consumer Agreement

Consumer financing is a financing institution whose activities are in the form of providing funds by consumer finance companies to consumers for the purchase of an item from a supplier, whose payments are made periodically (installments) by consumers. Based on this description, in consumer financing transactions there are three parties involved in the legal relationship of consumer financing, namely consumer finance companies, consumers and suppliers. A consumer finance company is a business entity that finances the procurement of goods for consumer needs with an installment or periodic payment system.<sup>19</sup>

This consumer finance company in accordance with Presidential Regulation No. 9 of 2009 must be in the form of a legal entity, namely a Limited Liability Company or Cooperative. In consumer financing transactions, consumer finance companies are domiciled as creditors, namely the parties providing costs to consumers.

Consumers are buyers of goods whose funds are financed by consumer finance companies. Presidential Regulation No. 9 of 2009 does not regulate the status of consumers, thus these consumers can have individual status and also have the status of business entities. In consumer finance transactions, this consumer is domiciled as a debtor, namely the recipient of fees from the consumer finance company.<sup>20</sup>

Suppliers are sellers, namely companies or parties who sell or provide goods needed by consumers in the context of consumer financing. Goods sold or provided by suppliers are consumer goods, such as motor vehicles, electronic goods, computers, household needs, and so on. Payment of the price of goods needed by consumers is made by consumer finance companies to suppliers.

## b. Rights and Obligations of Consumer and Consumer Finance Companies

Taking into account the rights and obligations of consumer finance companies as well as the rights and obligations of consumers proportionally in accordance with the theory of distributive justice, that distributive justice requires everyone to get what is rightfully proportional and based on the principle of balance in the contract. This principle requires both parties to fulfill and execute the contract that has been made. This principle of equilibrium is a continuation of the principle of equality. Consumer finance companies have the power to demand performance and if necessary can demand repayment through consumer wealth. Consumer finance companies also bear the burden of executing the contract in good faith. The position of a strong consumer finance company is balanced with its obligation to pay attention to good intentions, so that the position of consumer finance companies and consumers is balanced.<sup>21</sup>

### **Legal Reconstruction of the Principle of Justice in Consumer Financing Agreements in the Indonesian Legal System**

Legal certainty is a very important thing, meaning that if there is no guarantee of legal certainty provided in an agreement, the agreement will certainly not run smoothly and tends to be legally defective because it does not follow the rules of laws and regulations. Legal certainty certainly has implications for the legal protection obtained by the parties involved in making agreements.<sup>22</sup>

Legal certainty in relation to consumer financing agreements lies in whether the agreement follows the rules of applicable laws and regulations and does not violate law, public order and decency. The normative rules in question are articles contained in the Rev. Code, especially regarding agreements such as Article 1320, and Article 1338, besides that there are principles that must be followed in making contracts such as the principle of justice, the principle of proportionality, the principle of freedom of contract.

The principle of fairness means that the parties to the agreement must be fair in the performance of the contract, especially with regard to profit sharing. The principle of proportionality must be viewed as a principle of balance that stems from respect in the exercise of rights and obligations, although in fact balance here does not mean everything is balanced but must be based on the portion of each party to the agreement. Furthermore, what is meant by the principle of freedom of contract is that in making an agreement the parties participate in determining the content, terms and implementation of the contract and are free to make or not make contracts. The problem that arises is especially in standard contracts or standard contracts in relation to consumer financing is that only consumer finance companies unilaterally make the agreement and are authorized to determine the amount of installments, rights and obligations of the parties, term, terms of contract and dispute resolution.

If it is related to the principle of freedom of contract, its application can be said to have no cause in the form of a standard contract, if it is associated with the principle of proportionality, this consumer financing agreement provides a balanced position but only limited to the portion of each party contained in the provisions of rights and obligations in the agreement, while regarding the principle of justice, justice should be seen as the main thing in the contract that



brings benefits to the parties so as not to to the point of distorting and tyrannizing the legal interests of one of the parties.<sup>23</sup>

The guarantee of certainty and legal justice contained in this consumer financing agreement is an absolute condition to provide protection to the parties, namely consumer finance companies and consumers themselves so as to create a mutual benefit. The conditions determined by the consumer finance company are the implementation of legal certainty and justice as well as protection for the parties. The requirements for individual consumer financing are:

- a). Photocopy of ID card.
- b). Photocopy of spouse's ID card of prospective customers,
- c). Photocopy of Family Card (KK),
- d). Fitting photos of potential customers,
- e). Payroll, if the prospective customer is an employee / employee.

Furthermore, Sunaryo stated that the conditions for consumer financing for consumers in the form of companies include:

- a). The Company's Articles of Association along with all amendments and additions,
- b). Photocopy of Identity Card of those who are given the right to sign the agreement,
- c). NPWP,
- d). SIUP,
- e). TDP,
- f). Bank Statement.

Based on the foregoing, it is clear that these requirements absolutely must be met by potential consumers, besides that the fulfillment of these requirements by prospective consumers will certainly help consumer finance companies in terms of administration and guarantees for installments to be paid by consumers.

Legal protection of the parties in consumer financing:

- a. Legal protection for consumers

The standard contract in consumer financing is a contract that has been determined and has been stated in the form of a form / written. This contract has been determined unilaterally by the consumer finance company (creditor). The drafter of the contract in this case the consumer finance company has a monopoly position; the consumer finance company is free to make its redactions, so that consumers are under the power of creditors. In a consumer-financing contract, the position of the parties is unbalanced; the consumer is not in a state that is completely free to determine what is desired in the contract. Consumer finance companies have a stronger position and use this opportunity to determine certain clauses in consumer finance contracts. The format and content of the contract are designed by the consumer finance

company<sup>24</sup> The format and content of the contract is designed by the party who has a stronger position, so it can be ascertained that the contract contains clauses that are favorable to him, or relieve or eliminate certain burdens or obligations that should be his burden commonly known as exoneration clauses.

Based on this, it is necessary to provide legal protection to consumers from arbitrary actions of consumer finance companies. In order to protect consumers, there is a prohibition for consumer finance companies to transfer the burden of liability from the consumer finance company to the consumer, any losses incurred in the future must still be borne by the parties who must be liable under the clause of the consumer financing contract, unless the clause is a prohibited clause under Article 18 of the Law.

It should also be noted that legal protection for consumers in the event of force majeure, such as a disaster (earthquake)<sup>25</sup>. The basis of force majeure in consumer financing is the provisions contained in:

1. Article 1244 Book III of the Civil Code:

"If there is reason to do so, the debtor shall be punished with costs, damages and interest if he is unable to prove that it was not or was not at the time at which the engagement was consumable, caused by an unforeseen thing, nor could it be accounted for to him, all if bad faith was not on his part."

2. Article 1245 Book III of the Civil Code:

"No cost of loss and interest, shall be reimbursed if due to force majeure or due to an accidental occurrence the debtor is unable to give or do something required or because the same has done the prohibited act."

b. Legal protection for consumer finance companies

The era of globalization has an impact on changes in various things including consumer capabilities and behavior. Certain conditions in consumer financing show that it turns out that those who need legal protection are not only consumers but creditors / consumer finance companies<sup>26</sup>.

This is because consumers in the current era are more critical and clever as well as "bad" (bad debtor) <sup>7</sup> as described in the previous chapter that in the post-contract stage the creditor's position is weak. In order to protect creditors/business actors, consumer finance companies also need to apply general principles that apply to credit.

The general principles in credit are Formula 4P (personality, Purpose, prospect, payment) and Formula 5C (collateral, capacity, character, capital, condition of economy). In general, this principle is often referred to as the prudential principle.<sup>8</sup> Consumer financing should follow these prudential principles, although it is not necessary to use all but only part of it, which is sufficient with Formula 3P and Formula 4C.<sup>27</sup>



The 3P formula can be described as follows:

1. Personality, Consumer finance companies must find complete data about the personality of prospective customers, including his life history, his behavior for example whether he runs only one of Ma 5 (Javanese terms: Maling, Madon, Madat, Drunk, Main) namely, stealing, playing women, opium / drugs, liquor, gambling. This needs to be considered because if someone does the above, then his honesty and good faith need to be questioned.
2. Consumer finance companies must also look for data on the intended use of goods by potential consumers.
3. Payment, Consumer finance companies must know clearly about the ability of prospective customers to pay off their debts in a predetermined amount and period.

The 4C formula can be decomposed as follows:

1. Character, Prospective customers must have good character, morals and personal qualities. This character assessment is carried out to determine the level of honesty, integrity and willingness of potential customers to fulfill obligations and complete debt payments.
2. Collateral, Guarantee for security facilities (back up), for risks that may occur for consumer defaults in the future, for example not being able to pay off their debts. This guarantee is expected to be able to pay off the remaining debt and interest.
3. Condition of Economy, General economic conditions and employment / income of prospective customers need to get attention from consumer finance companies to avoid risks that may occur due to these economic conditions.
4. Capacity, the ability of consumers to be able to pay off their debts in accordance with a predetermined amount and period of time.

In addition to the use of the precautionary principle, creditors / consumer finance companies must also foster cooperation between finance companies, so that they can provide information about bad debtors to each other, because in consumer financing practices bad debtors usually repeat their actions by switching consumer finance companies. If there is cooperation and mutual information about bad debtors, consumer finance companies can block the bad debtors through a black list, so that there is no fraudulent competition. As happened in other countries namely the UK, Pakistan and Pennsylvania, consumer finance companies are required to have a computerized system so that the list of bad debtors can be known by all parties / consumer finance companies.<sup>28</sup>

## CONCLUSION

Based on the results of research and discussion, several things can be concluded as follows:

1. In consumer finance transactions, this consumer is domiciled as a debtor, namely the recipient of fees from the consumer finance company. Suppliers are sellers, namely companies or parties who sell or provide goods needed by consumers in the context of consumer financing.

2. The form of legal certainty and protection in the consumer financing agreement must be regulated in the consumer financing agreement itself which includes the rights and obligations of the parties, the terms of the agreement that lead to the application of prudential principal, installments, agreement period, insurance, and dispute resolution and still adhere to the protection of consumer rights and the rights of business actors proportionally.

#### Foot Notes

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