

LEGAL PROTECTION FOR CREDIT CARD ISSUING BANKS IN CUSTOMER DEFAULT

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ABSTRACT

The purpose of this study is to discuss the legal protection for credit card issuing banks in cases of customer default. In practice, customer defaults frequently occur, causing financial losses for issuing banks. This research aims to identify the legal measures that banks can take to protect their interests. The research methodology used is normative juridical with a descriptive analytical approach. The results indicate that banks have several legal recourses, such as resolving disputes through litigation and non-litigation avenues, and implementing protective clauses in credit card agreements. Additionally, existing legislation provides a strong legal foundation for banks to assert their rights. The article recommends that banks be more proactive in drafting clear and detailed agreements, as well as strengthening monitoring and collection mechanisms to minimize the risk of default.

KEYWORDS

Legal Protection, customer default, collection mechanisms, bank rights, credit card agreements



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INTRODUCTION

The application of credit cards as the main means of payment in society is influenced by the regulation of the Decree of the Minister of Finance No. 1251/KMK.013/1988 which has expanded consumer accessibility in Indonesia. The support for the use of credit cards such as cashless transaction features, discount programs, and *point rewards* make this transaction tool very popular, because it is considered to facilitate transactions while increasing user prestige.¹

¹ Prabandari, Ni Putu Dyah Ayu K., Budiartam I Nyoman P., dan Dewi, Anak Agung Sangu Laksmi. "Perlindungan Hukum Bagi Konsumen Nasabah Bank Pemegang Kartu Kredit Yang Dibebankan Biaya Tambahan (*Surcharge*) Oleh Merchant Dalam Transaksi Pembayaran. *Jurnal Preferensi Hukum*, 3, No. 1: 126-131.

The development of credit card products has also begun to target transaction and consumption patterns based on Islamic sharia. Sharia credit card products, such as the Hasanah Card from Bank Syariah Indonesia (BSI), are present as an alternative transaction in accordance with Islamic principles to avoid usury. Created with a clearer and fairer fee calculation system, Hasanah Card offers transaction solutions that are regulated within the framework of Islamic principles.² iB Hasanah Card is a sharia credit card with a fixed fee and interest-free transactions, issued by BNI Syariah for transactions in accordance with Islamic principles, with a maximum spending limit to prevent overspending.³

Banks as fund providers have a dual role as a financing institution, which includes consumer financing with clear financing agreements.⁴ The issuance of credit cards involves an agreement between the bank and the customer, which is regulated in the Civil Code Article 1313 by providing a definition of an agreement as an act that binds one party to another.⁵ A credit card issuance agreement results in an agreement between the customer and the bank, which is a form of consumer financing for the procurement of goods with an installment payment system.⁶

In making a consumer financing agreement as the main legal document, the terms are legally made and regulated based on articles 1320 and 1338 of the Civil Code and have terms as the principle of freedom of contract.⁷ The principle of freedom of contract places consumer finance companies as fund providers and consumers as fund users, but in Consumer Financing Agreements, agreements are often made unilaterally by creditors with standard contracts, causing imbalances in bargaining between debtors and creditors.⁸ The problem of imbalance between creditors and debtors in Consumer Financing Agreements, caused by the lack of good faith of creditors to comply with the Consumer Protection Law, especially related to standard clauses, so that the rights of debtors in the agreement are reduced, creating default disputes.

The problem of imbalance between creditors and debtors arises due to the lack of goodwill on both sides in heeding the Consumer Protection Law, especially

² Firmanda, Hengki. *Sharia Card (Sharia Credit Card)*. Pekanbaru: Taman Karya, 2020.

³ Alfian, Fajar D., Mubarak, Muhamad I., and Brilliano, Yudistia. "Analysis of the concept of contract and its implementation on sharia credit cards in Indonesia". *Journal of Da'wah Management* 9, No. 2, 2021: 213-239

⁴ Hermansyah. (2020). *Indonesian National Banking Law*. Jakarta: Kencana, 2020.

⁵ Kosasih. (2019). *Credit Access and Variety of Credit Facilities in Bank Credit Agreements*. Jakarta: Sinar Grafika, 2019.

⁶ Perjanjian penerbitan kartu kredit menghasilkan kesepakatan antara nasabah dan bank, yang merupakan bentuk pembiayaan konsumen untuk pengadaan barang dengan sistem pembayaran angsuran.

⁷ Kair, Umul. Juridical Analysis of Consumer Financing Agreements and Legal Consequences in the Event of Default in Consumer Financing Agreements in Indonesia. *Journal of Legal Scholars* 3, No 1, 2017: 32-45

⁸ Anom Dimas Wiraputra, Anak Agung; Sri Indrawati, Anak Agung; Sukihana, Ida Ayu. Settlement of Default in the Car Consumer Financing Credit Agreement at PT. Clippan Finance Denpasar. i, [S.l.], feb. 2018. ISSN 2303-0569. Available at: <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/37425>>. Date accessed: 16 May 2024.

related to standard clauses.⁹ Therefore, it is likely that the creditor does not have good faith to heed the UUPK in the Consumer Financing Agreement so that the debtor's rights contained in the Consumer Financing Agreement are partially reduced. This results in an imbalance of rights between creditors and debtors in the Consumer Financing Agreement which has become a default dispute.

Good faith is a crucial aspect in the implementation of agreements, especially consumer financing agreements, to prevent disputes that may arise due to default, such as bad payments, which cause losses to one of the parties, so appropriate legal protection is needed to prevent and resolve such disputes in a timely manner.¹⁰ Legal protection is needed when a consumer financing agreement is disrupted by negligence, such as a bad payment causing a loss to one of the parties, so preventive measures and timely settlement are necessary.¹¹ The provisions on negligence and summons in Article 1238 and Article 1243 of the Civil Code refer to a situation when one party does not fulfill its obligations and summons is used as a legal instrument to encourage the fulfillment of achievements, especially if it is not fulfilled in accordance with the agreement that has been agreed.¹²

The research in this article aims to examine legal protection for credit card issuing banks in the event of default by customers, especially in the trial process that considers the aspect of default on the facts presented, especially in the decision of the Palembang District Court Decision Number 167/Pdt.G.S/2022/PN.Plg where PT Bank Negara Indonesia Tbk. (BNI) is the Plaintiff and Lie Luluk Lukianto Liono Rahardjo is the Defendant. In this case, the debtor as the Defendant has defaulted on the agreement that they have agreed to. The Defendant did not carry out the payment obligation for the use of the transaction using the Credit Card from the date of printing the bill for the BNI Credit Card with the card number 5241-2500-0083-3029; 4665-7400-0115-5083; and 3563-9300-0001-0687.

Research on the topic of credit card user defaults sued by card issuers, in this case banks, was conducted on several studies and published in scientific articles. First, a study by Anandita Sasni, I Gst. Ayu Puspawati, and Ni Putu Purwanti with

⁹ Praditama Setiana, Berly; Aryanti Ramadhani, Dwi. Responsibility of business actors for consumer losses in standard agreements. *Kertha Semaya: Journal of Law*, [S.l.], v. 9, n. 9, p. 1544-1552, July 2021. ISSN 2303-0569. Available at: <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/75044>>. Date accessed: 16 May 2024. Team: <https://doi.org/10.24843/KS.2021.v09.i09.p05>.

¹⁰ Azhari, Arfi and Nurbaiti, Siti. "The Principle of Good Faith as an Effort to Protect Business Actors in Consumer Financing (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 1041 K/Pdt.Sus-BPSK/2017)". *Adigama Law Journal* 2 No. 1, 2019. (2019): *Adigama Law Journal*

¹¹ BR. Tarigan, Agita Justisia; Utami, Putu Devi Yustisia. Legal Consequences of Default of Consumer Financing Agreement at PT MNC Finance (Case Study of Decision 1097/Pdt.G/2020/PN Dps)." *Kertha Semaya: Journal of Legal Sciences*, [S.l.], v. 11, n. 4, p. 857-871, Mar. 2023. ISSN 2303-0569. Available at: <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/84416>>. Date accessed: 16 May 2024. Team: <https://doi.org/10.24843/KS.2023.v11.i04.p13>.

¹² Runtunuwu, Riedel Timothy. *Kajian Terhadap Tanggung Gugat Karena Wanprestasi Dan Perbuatan Melanggar Hukum Berdasarkan Kitab Undang-Undang Hukum Perdata. Lex Privatum* 10 No. 1, 2022: 240-248

the title Legal Protection for Credit Card Issuers Related to Bank Indonesia Regulation Number 14/2/PBI/2012 concerning the Implementation of Payment Instrument Activities Using Cards provides an explanation that legal protection for credit card issuers is in the form of laws and regulations to protect certain interests of credit card issuers. Legal actions taken against credit card abuse can be in the form of criminal or civil sanctions according to the type of credit card abuse. Second, research by I Gusti Ngurah Krisna Suryana, Dewa Gede Rudy, and Anak Agung Gede Agung Dharma Kusuma with the title Bank Legal Remedies Against Credit Card Holders in the Event of Default at PT Bank Mandiri (Persero) Tbk Gajah Mada Denpasar provides an explanation of the results of the research that the factors that cause default in credit card repayment at PT. Bank Mandiri (Persero) Gajah Mada Denpasar is the absence of good faith from credit card holders, the existence of other urgent needs, credit card holders are laid off. Legal efforts carried out by PT. Bank Mandiri (Persero) Gajah Mada Denpasar against credit card holders in default is by carrying out non-litigation legal remedies for banks to negotiate by collecting credit card bills via telephone, warning letters, and making visits. Third, a study by Nyoman Shintya Purnama Dewi and Anak Agung Ketut Sukranatha with the title Efforts to Resolve Credit Card Agreement Violations explained that the credit card holder who commits a default cannot be sanctioned directly by the bank, because the replacement of the default can be carried out after the party who has experienced a default is reprimanded and enters into an agreement. In an effort to resolve credit card abuse, there are two ways, namely Litigation, which is prosecution through the court if mediation cannot be carried out, and Non-litigation, which is resolving a case outside the legal channel such as mediation.

For all acts of default committed by customers, the card issuer must have a position that can be protected by positive laws in Indonesia. Based on the background that the author has explained, the writing of this article will raise a theme regarding "Legal Protection for Credit Card Issuing Banks in Customer Default."

RESEARCH METHOD

The research conducted by the author is a normative juridical research because it is based on a starting point related to problems in consumer financing with credit cards where not a few customers have defaulted. It is also related to how a court decision on the issue of default by the customer is from the perspective of legal protection for the bank as a credit card issuer. The approach method used is a case approach with primary legal materials in the form of court decisions. Primary legal materials are collected by a systematic method and analyzed by an evaluative method.

RESULT AND DISCUSSION

Arrangement of Consumer Financing by Banks with Credit Cards in Indonesia

The legal basis for credit card arrangements includes several regulations. First, Law Number 7 of 1992 concerning banking which is accompanied by Law Number 10 of 1998. Second, the President of the Republic of Indonesia issued Presidential Decree Number 6 of 1998 related to financing institutions. Furthermore, the Decree of the Minister of Finance Number 1251/KMK.013/1998 provides provisions and procedures for the implementation of financing institutions, these rules become a legal basis for credit card regulation.¹³ Bank Indonesia launched Bank Indonesia Regulation No. 6/30/PBI/2004 in 2004, which provides legal clarity regarding the use of credit cards as a means of payment in Indonesia.

Bank Indonesia Regulation No. 11/11/PBI/2009 on the Implementation of Payment Instrument Activities Using Cards has been replaced by Bank Indonesia Regulation No. 23/6/PBI/2021 concerning Payment Service Providers, which specifically regulates Payment Service Providers, indicating a difference in the focus of the regulation, with the former regulating card use activities, while the second is more focused on the provision of payment services in general.¹⁴

Credit cards are a legal medium of payment for transactions of goods and/or services at various merchants, such as hotels, restaurants, shops, and other places that accept credit card payments. Bank Indonesia Regulation No. 11/11/PBI/2009, Chapter I Article 1, defines Payment Instruments Using Cards (APMK) as credit cards, ATMs, and/or debit cards; Credit Card as an APMK for payment of economic obligations with repayment by the acquirer or issuer; and Issuer as a Bank or Institution Other than a Bank that issues APMK.¹⁵

The definition of a credit card as regulated in Bank Indonesia Regulation Number 11/11/PBI/2009 concerning the Implementation of Payment Instruments Using Cards (PBI APMK) Article 1 number 4, states that a credit card is a means of payment that allows the holder to make payments for economic obligations, including purchases and/or cash withdrawals, where the cardholder is expected to pay off his obligations at a predetermined time. either in a lump sum or in installments, with payment obligations fulfilled in advance by the card issuer or acquirer.¹⁶

Chapter III of the Bank Indonesia Regulation stipulates several provisions related to the issuance of bank cards, credit cards, and debit cards. Article 14 emphasizes that the issuance of Credit Cards must be made based on an application signed by the prospective Cardholder. Article 16 stipulates that card issuers are

¹³ Riyanto, Agus. "Legal Protection for Credit Card Customers". *Petita*, 2 No. 2 : 133 - 143

¹⁴ Tangel, Karolus Kevin; Lumintang, Djefry W.; Kermite, Jeany Anita. "Kajian Yuridis Tentang Kartu Bank Dalam Transaksi Perbankan". *Lex Privatum* 12, No.3 2023:

¹⁵ PBI No. 11/11/PBI/2009 concerning the Implementation of Payment Instrument Activities Using Cards

¹⁶ Denata, Brigita Cynthia Liwandra dan Cahyarini, Luluk Lusiati. "Perlindungan Hukum Bagi Pemegang Kartu Kredit Atas Tagihan Yang Tidak Benar". *Notarius*, 16 No. 3 2023: 1483-1398

required to provide written information to cardholders, including procedures for using the card, important matters that must be considered, rights and obligations of cardholders, procedures for filing complaints, interest and fine components, and administrative fees. In addition, the issuer must also include information on the billing sheet, such as the minimum payment amount, payment due date, interest percentage per month and per year, late payment penalties, and the nominal interest charged on credit card transactions.

The credit card business, which is included in the scope of financing institutions, is affirmed in the Decree of the Minister of Finance of the Republic of Indonesia Number 1251/KMK.013/1988 concerning Provisions and Procedures for the Implementation of Financial Institutions, which affirms credit card business activities as one of the various business fields carried out by financing institutions, along with other business fields such as business leases, venture capital, securities trading, factoring, and consumer financing.¹⁷

Financial Services Authority Rules Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (hereinafter referred to as POJK Consumer Protection in the Financial Services Sector) Article 1 numbers 1 and 2 stipulate that banks as credit card issuers are business actors, while credit card holders are consumers.¹⁸ Credit card issuers, included in the category of financial services business actors in accordance with Article 1 number 1 of the POJK Consumer Protection for the Financial Services Sector which includes various entities, both conventional and sharia. Meanwhile, credit card holders are classified as consumers based on Article 1 number 2 of the POJK Consumer Protection for the Financial Services Sector, which refers to individuals who place funds or use the services of financial service institutions.

Legal Protection of Credit Card Issuers in the Condition of Defaulting Customers

Law is a set of rules that govern human behavior in society to create order and avoid conflicts of interest, while legal protection includes the implementation of laws to achieve the goals of justice, benefits, and legal certainty through preventive and repressive measures.¹⁹ In the implementation of agreements, such as Consumer Financing Agreements, there are disputes between creditors and debtors that can be in the form of default, causing losses to one of the parties, so it is important to provide legal protection, especially through repressive legal protection, to resolve disputes and compensate for losses incurred due to default.

In civil law, liability arises from the engagement made, although the definition of the engagement is not explicitly given in the Third Book of the Civil Code; experts agree that the source of the engagement, as stipulated in Article 1233 of the Civil Code, is incomplete because there are other sources such as doctrine,

¹⁷ Decree of the Minister of Finance of the Republic of Indonesia No. 1251 concerning Provisions and Procedures for the Implementation of Financing Institutions,

¹⁸ Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector

¹⁹ Amin, R. *Introduction to Indonesian Law*. (Yogyakarta: CV Budi Utama, 2019), 42.

unwritten law, and judges' decisions.²⁰ On the issue of consumer financing agreements with credit cards, there are still many credit card holders who do not fulfill their obligations, namely paying bills in accordance with the agreement, which results in payment congestion or bad credit card bills. Credit cards that are not repaid on time will cause complexity of problems for both parties, especially since credit cardholders are given a 20-day deadline for payment, with the possibility of late payments that can be considered a default, creating problems for credit cardholders if not used wisely.²¹

Default in a credit card agreement is a risk to the issuer caused by the credit cardholder's negligence or decision. Factors that cause defaults include the absence of good faith from credit card holders, the existence of urgent needs that prioritize other expenses, such as urgent medical needs, and termination of employment (PHK) that makes it difficult for credit card holders to pay bills due to the loss of sources of income.²² Default in the use of a credit card occurs when the cardholder does not pay the bill by the due date; however, the bank must give a warning and request payment before taking legal steps, in accordance with Article 1243 of the Civil Code which requires proof of negligence and a warning before compensation can be made.²³

Banks have two ways of resolving defaults by credit card holders. First, out-of-court settlement, which includes renegotiation between creditors and debtors by paying attention to certain conditions. Second, settlement through the court (litigation) is a last resort that banks rarely make because of the high costs and time required that are not proportional to the losses caused by default. If the out-of-court settlement is unsuccessful, the bank can continue the settlement through the district court by executing the guarantee in accordance with the applicable legal provisions, such as Article 1131 of the Civil Code and the Law on Dependent Rights Number 4 of 1996.²⁴ Settlement of credit card misuse can be through litigation or non-litigation; in litigation, the cardholder can be charged with default if it does not fulfill its obligations, while in non-litigation, the settlement is carried out out of court under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

²⁰ Mertokusumo, Sudikno. *Development of Civil Law in Indonesia*. (Yogyakarta: Genta Publishing, 2019), 22.

²¹ Suryana, I Gusti Ngurah Krisna; Rudy, Dewa Gede. "Upaya Hukum Bank Terhadap Pemegang Kartu Kredit Dalam Hal Wanprestasi Pada PT. Bank Mandiri (Persero) TBK Gajah Mada Denpasar. *Kertha Semaya : Journal Ilmu Hukum*, [S.l.], v. 5, n. 1, p. 1-14, oct. 2018. ISSN 2303-0569. Available at: <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/45596>>. Date accessed: 16 may 2024.

²² Ibid

²³ Shintya Purnama Dewi, Nyoman; Sukranatha, Anak Agung Ketut. "Upaya Penyelesaian Terhadap Pelanggaran Perjanjian Kartu Kredit". *Kertha Semaya : Journal Ilmu Hukum*, [S.l.], aug. 2013. ISSN 2303-0569. Available at: <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/6354>>. Date accessed: 16 may 2024.

²⁴ Febriyanto, Rakhmad Tisno. "Legal Review of Defaults in the Use of Credit Cards According to Law Number 10 of 1998 concerning Banking". *Dynamics, Scientific Journal of Law*, 26, No. 11, 2020: 1320-1334

The Application of the Principle of Good Faith in the Court Process in Decision Number of the Palembang District Court Decision Number 167/Pdt.G.S/2022/PN.Plg Reviewed from Laws and Regulations.

In this lawsuit, the Plaintiff PT Bank Negara Indonesia Tbk. (BNI) emphasized that they are a Legal Entity engaged in banking financial services. They have tied up financing to the Defendant Lie Luluk Lukianto Liono Rahardjo. Lie Luluk Lukianto Liono Rahardjo, as the Defendant, is one of the users of the Plaintiff's services, especially in the use of credit cards. The Defendant filed the Credit Card Application Form on its own behalf, which was subsequently signed by the Defendant itself, stating its agreement to comply with all terms and conditions imposed by the Plaintiff regarding the possession and use of the Credit Card. The Plaintiff then agreed to provide BNI credit card facilities to the Defendant as many as 3 (three) credit cards with card number a. 5241-2500-0083-3029; 4665-7400-0115-5083; and 3563-9300-0001-0687.

BNI alleged that the Defendant had committed a default with the argument that the signing of the Credit Card Application Form was carried out knowingly and without coercion from BNI, so that the legal relationship formed between them was considered valid and had legal evidentiary value. The defendant is also considered to have broken his promise by not paying the credit card bill he used, which is an obligation that must be fulfilled in accordance with the applicable provisions.

The Defendant submitted a credit card application on behalf of Lie Luluk Lukianto Liono Rahardjo to the Plaintiff, by signing a form stating an agreement to comply with all of the Plaintiff's terms and conditions. In the application, the Defendant's occupation is self-employed, the owner of Auto Niaga in Palembang, with an annual net income of Rp500,000,000. The Plaintiff's Power of Attorney from ESM & Partners Advocates & Legal Consultants and letters of reprimand from PT. Bank Negara Indonesia (Persero) Tbk. clearly shows that the Plaintiff has shown good faith by reminding the Defendant to fulfill its obligations. Despite being given a deadline of up to several times through a letter of reprimand, the Defendant has not yet responded, so the Plaintiff stated that it would take further action including blocking or debiting the Defendant's account.

The Defendant has agreed that in the event that it is proven to be negligent in fulfilling its obligations arising from the use of a credit card, it will voluntarily surrender its assets to the Plaintiff to settle all its obligations in accordance with the credit card opening application that has been signed by the Defendant. This is based on Article 1238 of the Civil Code which states that a person is considered negligent if he has been declared negligent through a warrant or similar deed, or if he himself declares that he is considered negligent by the passage of the specified time.

If the total acts committed by the Defendant result in losses to the Plaintiff amounting to Rp. 158,312,091,-, which is the amount of bills and interest based on the records in the Plaintiff's system, then the Plaintiff submits an application to the Chief Justice of the Palembang District Court through the Panel of Judges who examines and decides the case to declare the Defendant negligent in carrying out its obligations (default) to the Plaintiff for not paying off the arrears of payment products to the Plaintiff.

The defendant responded to the lawsuit from BNI Number W03/121/6027 by explaining that there was no intention to avoid credit card payment obligations, but because it had financial difficulties since 2019, it currently did not have the ability to pay off. He explained that his business capital came from Bank Panin's loan with the guarantee of his shop house and land, but in 2020 his loan credit at Bank Panin was stuck. Although in 2021 the guarantee of the shop house and his land was almost auctioned, he managed to cancel by paying off the sale of the shop house and declaring his intention to sell his land. The defendant is committed to paying off his obligations to BNI after his land is sold and is currently trying to pay in installments according to his ability of Rp. 50,000 per card, with the intention of paying off in full after the land is sold.

The panel of judges considered that the intent and purpose of the Plaintiff's lawsuit was clear, with the main point of the lawsuit asking whether there was a legal relationship between the Plaintiff and the Defendant in the form of an agreement, as well as whether the Defendant had committed a breach. The Defendant in his answer had admitted the default and arrears of debt to the Plaintiff, while asking for time and relief to pay off his obligations in installments and committed to paying off after his assets were sold. By not denying its obligation to pay credit card debts as disclosed in the Plaintiff's lawsuit, the Defendant is considered to have justified the postulate of the lawsuit. Therefore, the Plaintiff succeeded in proving the postulate of his lawsuit. The panel of judges granted the petition related to the Defendant's actions as default and sentenced the Defendant to pay the debt in cash. However, the petition related to the confiscation of bail was not enforced because it was not filed by the Plaintiff. Similarly, petition related to *dwangsom* and case costs are only partially granted, taking into account the relevant legal provisions and relevant laws and regulations.

The panel of judges ruled as follows: granted part of the Plaintiff's lawsuit by stating that the Defendant had committed a default and sentenced the Defendant to pay the debt from the use of credit cards in cash in the amount of Rp.158,312,091,-. In addition, the Defendant was sentenced to pay case costs of Rp.230,000,-. However, the Plaintiff's lawsuit other than and the rest was rejected.

The analysis that the author can provide in this case, is that the publisher must first show good faith in disclosing late payments by customers. Credit card issuers follow the Principle of Precaution, which requires banks to carry out their functions and business activities with care to protect public funds. Persuasive actions against defaulting credit card users can be carried out by banks through collection stages such as front-end collection to remind payment obligations, mid-range collection to normalize accounts with a firm approach, and hard-core collection that involves payment negotiation and restructuring according to bank policy.²⁵

To anticipate the risk of bad payment conditions, banks must take several steps: conducting strict selection and tiered verification from branches to the center of prospective customers before disbursing the credit card ceiling; ensure that the

²⁵ Febriyanto, Rakhmad Tisno. "Tinjauan Hukum Terhadap Wanprestasi Penggunaan Kartu Kredit Menurut Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan". *Dinamika, Jurnal Ilmiah Ilmu Hukum*, 26, No. 11, 2020: 1320-1334

proposed financing ceiling is in accordance with the customer's income to avoid bad financing; using the debtor information system to check the bad financing history of prospective customers at other banks; and assess the personality of potential customers.²⁶

As mandated in UUPK Article 6 letter (b), business actors have the right to receive legal protection from consumer behavior that is not in good faith, such as not carrying out payments or violating agreements. The UUPK provides an opportunity for business actors to prove the absence of consumer complaints about the products and services produced. Business actors can sue consumers civilly for compensation or criminally for unpleasant acts and defamation in accordance with Articles 310-311 of the Criminal Code. In civil law, business actors can file a default lawsuit, namely the debtor's negligence which includes not executing, performing inappropriately, executing late, or violating the agreement.²⁷

In the judge's consideration regarding the fact that the defendant did not deny its obligation to pay the credit card debt as submitted by the Plaintiff, so that according to the Civil Procedure Law, the Defendant is considered to have justified the Plaintiff's claim, resulting in the Plaintiff succeeding in proving his claim. Thus, since the Defendant has succeeded in proving its claim, the petition stating that the Defendant has committed a default against the Plaintiff is legally grounded and can be granted.

This can be analyzed from the perspective that proof is an effort made by the parties in a trial to convince the judge of the truth of the occurrence of a legal event, by using evidence recognized by law, to reach an appropriate determination or verdict.²⁸ In Civil Procedure Law, a confession is a statement or action from the defendant that acknowledges part or all of the plaintiff's postulation, which, according to legal theory, reduces or eliminates the burden of proof on the plaintiff because the admitted postulate no longer needs to be proven.²⁹ The Verb Principle *Voluntatis* states that the words of the litigants are considered to reflect their will, so that if the defendant admits certain obligations or postulates, it reflects his willingness to admit the truth of the plaintiff's claim. Consequently, a confession by the defendant, both implicit and explicit, can be used by the judge as a basis for granting a lawsuit without requiring further proof from the plaintiff.³⁰

The Plaintiff stated that the collateral for all of the Defendant's assets was confiscated as payment of obligations due to the use of BNI credit cards by the

²⁶ Dhirima, Silvia Anisa Dhirima; Susilawati, Tuti; and Mahipal. "Study on the Application of the Principle of Prudence in the Issuance of Credit Cards in Islamic Banks". *Journal of Human Education Kamil Al Ihya*, 2, No. 1 (2019) : 30-42.

²⁷ Pratiwi, Wiwik. "Negara Hukum, Pemenuhan Perlindungan Konsumen Dan Ham (Telaah Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen)". *J-PeHI: Jurnal Penelitian Hukum Indonesia* 1, No. 1 (2020): 29-46.

²⁸ Tiodor, Patricia Caroline; Tjahyani, Murendah; and Asmaniar. "Proving Default of Oral Debt and Receivables Agreement". *Krisna Law Journal* 5, No. 1 (2023): 27-39.

²⁹ Pasal 164 ayat (1) HIR (Herzien Inlandsch Reglement)

³⁰ Weller, Gleand Maryo; Rumimpunu, Dientje; dan Mohede, Noldy. Studi Terhadap Kedudukan Bukti Pengakuan Dan Sumpah Dalam Acara. *Lex Privatum* 9, No. 4 (2021): 25-32.

Defendant. However, because the Plaintiff did not apply for bail confiscation and the bail confiscation was not implemented, petitum point 4 was considered unreasonable and must be rejected. Before determining the bail confiscation, the Chief Court/Panel is obliged to hear the defendant. In granting the application for bail confiscation, the Judge must pay attention to several things, including hearing the defendant's statement, registering the minutes of the seizure according to the provisions, and keeping the confiscated goods in the possession of the confiscated persons. In addition, if there is peace between the parties to the lawsuit after the bail is confiscated, the bail must be lifted.

The analysis of the judge's consideration, that the legal aspects related to the application for bail confiscation in the Civil Procedure Law, especially regarding petitum that requests bail confiscation but is not accompanied by an appropriate application, refer to the regulation of bail confiscation which is regulated in Article 227 of the Civil Procedure Code and Article 261 of the RBG. The process requires a formal application submitted to the court with sufficient reasons and evidence. Without this application, the judge has no legal basis to order the bail confiscation, so the petitum is considered unreasonable and must be rejected because it is not supported by the necessary legal procedures.³¹ Petitum point 4 requesting the seizure of security for all of the defendant's assets is unreasonable and must be rejected because the plaintiff did not apply for bail, which is an essential step in the Civil Procedure Code and must be approved by the court to provide a valid legal basis.

Regarding the judge's consideration, the judge who sentenced the defendant to pay the credit card debt of Rp.158,312,091 could be granted because the defendant had admitted the plaintiff's lawsuit and had been declared in default. As in the previous analysis, in the Civil Procedure Law, the defendant's recognition of the plaintiff's postulates reduces the burden of proof on the plaintiff and provides a legal basis for the judge to grant the demand for debt payment. The theory of contract law and the theory of recognition support this view by asserting that the defendant's admission of default strengthens the plaintiff's right to demand the fulfillment of the obligations agreed upon in the agreement.³² Based on the above analysis, the petitum point 3 filed by the Plaintiff has reason to be granted because it meets the elements of default in accordance with Indonesian civil law. The Defendant has admitted default and the amount of debt and interest applied for by the Plaintiff must be supported by valid evidence. Therefore, the judge's consideration to grant this petitum can be considered reasonable and in accordance with the principles of justice and applicable legal provisions.

CONCLUSION

The legal basis for credit card regulation in Indonesia includes several

³¹ Santoso, Aris Prio Agus. *Civil Procedure Law*. (Yogyakarta: Pustaka Baru Press, 2022). 56.

³² Darmawan, Hari Arief; Abunawas; and Dewanto, Wishnu. "Analysis of Arrangements for Default (Case Study of District Court Decision Number 365/PDT. G/2020/PN. JKT. BRT)". *Publika Scientific Journal* 11, No. 1 (2023): 128-134.

important regulations. First, Law Number 7 of 1992 concerning banking and Law Number 10 of 1998 which accompanies it. Second, the President of the Republic of Indonesia issued Decree Number 6 of 1998 related to financing institutions. Furthermore, the Decree of the Minister of Finance Number 1251/KMK.013/1998 regulates the provisions and procedures for the implementation of financing institutions, which include credit card businesses. Bank Indonesia also launched Regulation No. 6/30/PBI/2004 which provides legal clarity regarding the use of credit cards as a means of payment. This regulation was updated with Bank Indonesia Regulation No. 23/6/PBI/2021 which emphasizes the provision of payment services in general, replacing Regulation No. 11/11/PBI/2009 concerning the Implementation of Payment Instrument Activities Using Cards. In addition, the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector also emphasizes the position of banks as credit card issuers and credit card holders as consumers.

In the implementation of consumer financing agreements, such as credit card agreements, there are often disputes between creditors and debtors due to default, which causes losses for one of the parties. Therefore, it is important to provide legal protection, especially through repressive measures, to resolve disputes and compensate for losses. In civil law, liability arises from the engagement made, although the definition of the engagement is not explicitly provided in the Civil Code. Default in a credit card agreement is a risk for the card issuer due to the cardholder's negligence or decision, with various causal factors such as lack of good faith, urgent needs, and termination of employment. Settlement of default can be carried out in two ways: out of court through negotiation or through court (litigation) if the out-of-court settlement is unsuccessful, with the execution of bail in accordance with the applicable legal provisions.

In this decision, the Plaintiff PT Bank Negara Indonesia Tbk. (BNI) emphasized that they are a Legal Entity engaged in banking financial services and have provided credit card facilities to the Defendant Lie Luluk Lukianto Liono Rahardjo. The Defendant filed and signed the Credit Card Application Form, stating an agreement to comply with the Plaintiff's terms. The Defendant was then considered to have committed a default because he did not pay the credit card bill, which caused a loss of Rp. 158,312,091 for the Plaintiff.

This decision is in accordance based on the defendant's recognition of obligations. In civil procedure law, the defendant's acknowledgment of the obligation to pay credit card debts is considered to reduce the plaintiff's burden of proof. The Verb Principle *Voluntatis* states that this enforcement reflects the defendant's willingness to admit the truth of the plaintiff's claim, which can be used as a basis by the judge to grant the lawsuit without the need for further proof. The judge sentenced the defendant to pay the credit card debt of Rp.158,312,091 because the defendant admitted the plaintiff's lawsuit and was declared to have committed a default. This is in accordance with the theory of contract law and recognition that supports the right of the plaintiff to demand the fulfillment of the obligations agreed upon in the agreement. Overall, the judge's decision to grant part of the plaintiff's lawsuit is reasonable and in accordance with the principles of justice and applicable legal provisions.

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