



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

Welcome to Participants on International Conference

"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

SPEAKERS :

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Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
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Sultas Agung Islamic University, Indonesia

Indonesia, September 05th 2017

WORLD CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : **Faculty of Law UNISSULA**
Semarang-Indonesia

5
September
2017

FACULTY OF LAW
Sultan Agung Islamic University

SPEAKERS :

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Nagoya University, Japan
2. Dr. Hilaire Tegnau, LL.M.
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5. Assoc Prof. Dr. Ahmad Zaharuddin S.
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6. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultan Agung Islamic University, Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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LEGAL PROTECTION OF CONSUMERS IN CONSUMER FINANCING AGREEMENTS

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Abstract

Consumer is every user of goods and or service, either self interest, family or others. Consumer protection is any effort that ensures the existence of legal certainty to provide consumer protection for the realization of consumer protection objectives in Indonesia. Consumer financing agreements in terms of their forms and contents are standard agreements or standard agreements. Consumer finance agreement one of the agreements is a loan agreement with the transfer of property rights fiduciary, namely the transfer of ownership (object pembiayaan) carried out in trust to the consumer only the proof of ownership held by the creditor. Consumer dispute settlement in consumer financing agreement can be done by taking one of the three ways of settlement offered by Article 45 paragraph (2) of Law No. 8 of 1999 on Consumer Protection, according to the wishes and agreement of the parties to the dispute so as to create a relationship that Both between companies / business actors and consumers.

Keywords: Legal Protection, Consumer, Consumer Financing Agreement, Motor Vehicle.

Discussion

In line with the intended national development goals, development is implemented in various sectors of life by the government and community. Community as the main actors of development need to get serious attention and support from the government, that is obligated to direct, guide and create a support condition so that it can fill and complement each other in one real unity. Basically the needs of human life is increasing along with the development of standard living.

In order to fulfill the various kinds of human life through various ways such as buying and selling, lease, lease purchase, and so forth. To be able to fulfill the necessities of life it is necessary a number of funds which is commonly called capital.

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

This condition creates a mutual relationship between them. With the existence of excess funds, then there is a thought to invest these funds in a business that is profitable economically and socially. Here then comes the financial institutions as an intermediary that bridges between the excess funds with the party lack of funds, so it can be said that financial institutions are public financial intermediaries.

Financial institutions in Indonesia can be divided into two, namely Bank Financial Institutions and Non-Bank Institutions. Bank is one form of financial institution that aims to provide credit, loans and other financial services so that it can be argued that the function of

banks in general is to serve the needs of financing and launched the payment mechanism for many sectors of the economy.

In reality the financial institution called the bank is not powerful enough to cope with various funding needs in the community considering the limited range of credit distribution and limited financial resources. This is increasingly evident from the many banks that collapsed and liquidated.

Responding to the weaknesses that existed in the bank's financial institution in channeling the need for funds, there emerged non-bank financial institutions that are more flexible and moderate funding institutions than banks which in certain respects the level of risk is even higher. This institution then became known as a financing institution that offers new formulation models in terms of channeling funds to the parties in need.

Understanding Non-bank Financial Institutions can be seen in Article 1 number 4 of The Presidential of Republic Indonesia Decree No. 61 of 1980 on Financing Institutions. Non-bank Financial Institution is a business entity engaged in financial activities that directly or indirectly collect funds by issuing securities and channeling it into the community to finance the company's investment.

The purpose of the issuance of the decision is in order to support economic growth which is necessary to expand the means provision of funds that is required by the community so that its role as a source of development funds is increasing.

According to the decision in the business field of the financing institution it includes:

- 1) Lease Flashing Leasing;
- 2) Venture Capital;
- 3) Securities Trading;
- 4) Debt Or Factoring;
- 5) Five Business Credit Card Or Credit Card;
- 6) Consumer Financing Or Consumer Finance.

From various business sectors above mentioned financing institutions as important as the other financing institutions is consumer financing or known as consumer finance.

Research methods

According to the problems and the goals of the study, the type of research is descriptive analytical, that is describe, represent, analyze and explain the analytical problems raised. This research is done by library research. Research material is obtained through normative juridical approach that is legal approach by looking at the rules, either primary law or secondary law or approach to the problem by looking in terms of applicable laws and regulations, literature, scientific papers and opinions of experts and others. Soerjono Soekanto said that normative legal research is a legal research conducted by examining library materials or secondary data only. Normative legal research includes research on legal systematics,

research on the level of vertical and horizontal synchronization, comparative law and legal history.

Form of Agreement Between Consumer and Financing Company

In practice the form of consumer financing agreement is generally made in the form of standard agreement or standard agreement standard agreement derived from the translation of the English standard contract standard agreement standard contract is a contract that has been determined and has been poured in the form. Preparation of the standard agreement has been determined unilaterally by one party, especially the strong economic party while the other party is only asked to accept or reject its contents. If the debtor receives the contents of the agreement he signs the agreement but if refusing the agreement is deemed absent because the Debtor does not sign the agreement.

In the standard agreement there is a standard clause which is a statement set unilaterally by one of the parties so that the consumer only has the choice to approve or reject his take it or leave it contract. This unilateral determination usually causes problems because it is one-sided. Among the standard clauses considered to be burdensome in a standard agreement are the exoneration clauses or the extension clauses in the consumer finance agreement agreement the party's desired relationship is the debt relation of the debtor between the unilateral automotive company as the second party second hereinafter called the buyer that the seller has delivered to the buyer as the buyer has received from the seller on the basis of the consumer financing agreement.

Article 4 concerning the recognition of debt stated in this consumer financing agreement states that:

The debtor now and for later claims to be legally indebted to the creditors of some money which from time to time is sufficiently proved by a written statement from the creditor stating the amount of debt based on the creditor's account of the record keeping of which statement becomes valid evidence and binding the debtor and is an inseparable unity of the covenant. From the above description can be said since the signing of consumer financing agreement then the consumer claimed to have owed to the business actors and obliged to settle the debt in accordance with the agreements that have been agreed.

Article 10 of the breach of contract stated in this consumer financing agreement states that:

The Events Below is an injury to the debtor's pledge in the execution of this agreement without the need to be preceded by a special warning letter or a stipulation of a court but sufficiently proven by:

- a) The debtor does not pay the installment of fines and or any other expenses in the expiration of a sum of money which has matured according to the agreement which in the course of time has provided sufficient proof that the debtor has neglected his obligations under this agreement so that the warning with the bailiff or the other is not necessary anymore.
- b) Sold vehicles, rented, transferred, diverted or secured to other parties.
- c) An information statement or documents provided by the debtor and or the owner of the guarantee to the creditor in connection with this agreement is not true or false.

- d) The debtor or the owner of the warranty does not perform any obligations or fails to comply with the terms and conditions of the agreement

From the above description can be said there is no need for a written warning from the business actor if the consumer is negligent or injured promise in carrying out its obligations.

From the above description it can be seen that the risk in the agreement charged fully to the previous consumer. This assumed in accordance with the provisions of Article 1460 of the Criminal Code that the risk to the sale of goods that have been determined the risk is borne by the buyer even though the delivery has not been made and the seller is entitled to the price .

Based on the description as mentioned above it can be seen that the consumer financing agreement form and its contents constitute basic agreement or standard agreement. The purchase agreement is made in writing and accompanied by stamp duty in accordance with the provisions of Article 13 paragraph 1 letter C of the decision of the Minister of Finance of the Republic of Indonesia Number 1251 / KMK.013 / 1988. Concerning the provisions and procedures for the implementation of a financing institution which stipulates that in order to obtain a business license the financing institution shall attach an example of a financing agreement to be used in the submitted petition to know the form and content of the consumer financing agreement.

The consumer financing agreement is a debt-indebted agreement with the transfer of fiduciary rights which is means that the transfer of ownership or financing object is done in trust to the consumer or customer, it is just the proof of ownership held by the creditor carrying the consumer purchase agreement is in accordance with the provisions of Article 1 of the Act No. 42 of 1999 concerning fiduciary assurances stipulating that fiduciary is the transfer of possession of an object on the basis of trust provided that an object whose ownership rights are transferred remains in the possession of the possessor of the object.

Fiduciary collateral in the financing agreement between the customer known as the *accessoir* or additional agreement due to the fiduciary agreement must be preceded by the principal agreement that is the agreement which generates the debt of the debtor between the debtor and the creditor in which the debt is then guaranteed repayment with the fiduciary guarantee.

Usually in lending money the creditor specifies the provision that the debtor or other parties approved by the debtor and the creditor are jointly obliged to deliver certain goods to the creditor or as the fiduciary receiver to guarantee the repayment of all debtor's debts. It can be explained that the function of fiduciary security is for the security of the creditor that is to provide legal certainty in the event of a dispute of ownership in the event of a vehicle transition from the debtor to another party and a dispute in court.

As in motorcycle financing agreements especially motorbikes have used a fiduciary guarantee agency where the fiduciary guarantee certificate is made by the notary. This is done because in the implementation of the agreement giving a lot of credit failure.

In the consumer financing agreement the agreement can be seen at the signing of the consumer financing agreement between the consumer or the customer with the debtor party where the consumer financing agreement has been arranged with the provisions of the standard agreement that has not been done only a few things. For example concerning the

type of price, the number of colors, places and time and some specific things of the object are dealt with in other words that are done not the agreement form but the clauses.

Based on the form of consumer financing agreement can be described the rights and obligations of business actors and consumers.

As for the rights of business actors are:

- a) The right to regulate provisions that must be fulfilled by consumers.
- b) The right to receive a sum of money in exchange for the right of the goods to be transferred to the consumer consisting of the first money and the installment money which must be paid regularly up to the time specified.
- c) The right to sell goods of the agreement object in the event that the customer is unable to continue his obligations again.
- d) The right to terminate the agreement under certain circumstances to withdraw the goods which is become the object of the agreement in the event that the consumer is late for payment.
- e) Right of ownership of goods as long as the price of the goods has not been paid.

While the rights of consumers include:

- a) The right to accept the transfer of power over goods to be used in accordance with the intent of holding the agreement.
- b) Receiving property right on behalf of the goods after settling the last installment.
- c) The right to cover the goods of the seller in the event of a hidden defect.
- d) Right of enjoyment and peace when there is a third party lawsuit on the item.
- e) The right to re-penetrate goods into objects.

The obligations of business actors are:

- a) Submitting the goods after payment of the first money and handing the property rights to the goods after the last installment payment.
- b) Bear the consumer's enjoyment and tranquility on the goods.

While the obligations of consumers include:

- a) Pay the first money and pay the remaining price of the goods in a regular installment in accordance with the time specified.
- b) Assume risks to the goods after being delivered to the lease buyer.
- c) Maintain, maintain or repair goods as well as possible.
- d) Not to assign rights to pledge or rent without the seller's consent.

- e) Bear any expenses incurred for this Agreement.
- f) Obey any provisions made by the seller.

Legal Protection Against Consumers in Consumer Financing Agreements

Development of Consumer Protection in Indonesia.

Consumers' interests have long been a concern, even explicitly stated on March 15, 1962 by United States President John F. Kennedy who convey a congressional message about the importance of consumer position in society.

Subsequent events of concern to the interests of consumers are expressly set forth in the Decision of the United Nations General Assembly on consumer protection (Resolution 39/248) has affirmed the interests of 6 (six) consumer follows:

- 1) Consumer protection from hazard on health and safety.
- 2) Promotion and protection on the economic interests of consumers.
- 3) Availability of sufficient information so as to enable does the options as desire
- 4) Consumer education.
- 5) Availability of effective remedies.
- 6) Freedom to form consumer organizations and give them the opportunity to express opinions from the time of decision-making process related to the interests of consumers.

At the present time, the tendency to extend the scope of consumer protection law has been made by The Economic Law Procurement System Project (ELIPS), which presents 9 legal formulations of consumer law protection materials, namely:

- 1) Non-participation in bargaining;
- 2) Freedom of contract versus justice in contract;
- 3) Requirements to provide information to consumers that include hints of wrong directions and duplicity in trade.
- 4) Regulations on sellers' behavior / conduct, including instructions, wrong directions and duplicity in trading;
- 5) Regulations on product quality, which are warranty and product safety;
- 6) Access to credit (reporting, credit and non-discrimination);
- 7) The limits of the right to terminate the guarantee period;
- 8) Regulations on pricing;
- 9) Rectification.

The International Consumer Protection Movement also has a fairly authoritative container called the International organization of Consumers Union and therefore the 15th of March is celebrated as the world's consumer day.

To guarantee and protect the interests of consumers on products of goods purchased previously born Law Number 8 of 1999 regulations that govern it is as follows:

- 1) Code of Civil Law or Civil Code which is a product of the Dutch colonial heritage but has become a guide line in solving cases to protect consumers who suffered losses for defects of goods purchased.
- 2) Law Number 10 of 1961 concerning the enactment of government regulation Law No. 1 of 1961 concerning the issuance of this law is intended to control and regulate any goods traded in Indonesia.
- 3) Government Regulation No. 9 of 1964 on Industrial Standard. This Government Regulation is the implementation of Law Number 10 of 1961. One of the objectives of the standard is to improve the quality in the industry.
- 4) Decree of the Minister of Industry No. 81 M / M / K / SK / 2/1974 regarding standard approval of methods of analysis and quality requirements of raw materials and industrial products.

In Indonesia, the issue of new consumer protection began to be heard in 1970 was mainly marked by the birth of YLKI Indonesia consumer institute foundation in May 1973. Theoretically at first this foundation related to self awareness of promotion to expedite goods in the country at the urgings of voices from promotional community activities must be balanced with surveillance measures so that the community is not harmed and its quality is guaranteed by the desire and insistence of the community to protect itself from the goods of low quality in spurring to think seriously efforts to protect consumers and begin the movement to realize that aspiration.

At that time the idea of Consumer Protection was widely disseminated to the public through various consumer advocacy activities such as complaint testing research education and consumer media publications. When YLKI stood, the political condition of Indonesia is still overshadowed by the campaign of the use of domestic products but over time consumer protection movements or that as YLKI is done through the official corridor that provides legal assistance to the public or the consumer that is after 1980 movement or struggle to realize the laws on consumer protection (UUPK).

In the new order government and the House of Representatives or DPR did not have the political power to make it happen because proven legalization of the bill on consumer protection or iupk always postponed. New in the reform era the desire for the realization of Consumer Protection law can be fulfilled.

During the reign of BJ Habibie on 20 April 1999, the Consumer Protection Law draft was officially legalized into Law Number 8 of 1999 on consumer protection. By the existence of the law is expected to be well fulfilled by either Consumer Protection issues are then placed in a corridor of the consumer protection law system that is part of the national legal system.

In the explanation of Law No. 8 of 1999 it is mentioned that the legal protecting Consumer device is not intended to shut down the business of the businessmen but quite the

contrary. Because the consumer protection can encourage a healthy business climate and the birth of a formidable company in the face of competition through the provision of goods and or services quality in the activities of business. Interests of consumers was born because of the role of consumers who have contributed greatly to entrepreneurs as providers and products. Consumers also have made a substantial contribution to the businessmen of goods and services purchased which is the decisive party in the capital fertilization required by the business formula to develop its business and ultimately the consumer becomes the determinant in moving the wheels of the economy.

In this case the life of the community progressed both in the field of science and technology in every progress there are various problems that are diverse and complex. Considering the complexity of the problems concerning Consumer Protection in the community then conducted various legal efforts to provide solutions in each of these problems. Therefore it was made consumer protection law.

Conclusion.

Based on the discussion in the previous chapters it can be concluded as follows:

1. Consumer financing agreement when viewed from the form and its contents

It is a basic agreement or a standard agreement. Consumer financing agreement is one of the forms is a debt payable agreement with the transfer of ownership (object of financing) done in trust to the consumer (customer) only the proof of ownership held by the creditor.

2. Consumer dispute settlement in consumer financing agreement can be done by taking one of the three ways of settlement offered by Article 45 paragraph (2) of Law Number 8 Year 1999 on Consumer Protection, in accordance with the wishes and agreements of the parties to the dispute so that it can create a good relationship between the company / businessmen with the consumer, that can be done through the following ways:

- a. The settlement of peace by the disputing parties (businessmen and consumers) without the involvement of a neutral court or third party. Settlement of consumer disputes through peaceful means may refer to the provisions of Articles 1851 to Article 1864 of the Civil Code.
- b. Settlement through court. Settlement of consumer disputes through courts refers to the applicable general judiciary.
- c. An out-of-court settlement through the Consumer Settlement Agency (BPSK).

Suggestion.

1. The government should further emphasize and improve the supervision of Financing Institutions, especially regarding the form and content of consumer financing agreements, where later for perpetrators of consumer finance violations can be strict of sanctions.
2. To avoid the occurrence of disputes between businessmen and consumers, the businessmen are expected to apply the provisions applicable in Law No. 8 of 1999 on Consumer Protection, while Consumers are expected to be more thorough and meticulous before implementing consumer financing agreements.

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