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RIGHTS AND OBLIGATIONS OF THE PARTIES TO A PROGRESSIVE AND EQUITABLE CREDIT AGREEMENT

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ABSTRACT

This study focuses on the Rights and Obligations of the Parties to a Progressive and Equitable Credit Agreement. The problems that will be studied in this study are the rights and obligations of the parties and about the legal implementation of the agreement in providing legal protection for the parties. The research method used is normative juridical with a legal approach and a conceptual approach. The results of the study show that; 1) The results of the study show that the rights and obligations of the parties to an agreement are the core of the binding legal relationship between the two parties. The right provides a basis for the party to demand the fulfillment of the agreement, while obligations are a form of responsibility that must be carried out according to the content of the agreement. In its implementation, equality, good faith, and legal certainty are the main principles so that the agreement runs fairly and balanced; 2) Legal means play an important role in settling the rights and obligations of the parties to the credit agreement. In practice, dispute resolution arising from the implementation of credit agreements can be pursued through litigation (court) or non-litigation, such as mediation, arbitration, or direct negotiation. The Banking Law, the Civil Code (KUHPerdata), and the Financial Services Authority (OJK) regulations are the main legal basis that regulates credit agreements, provides legal protection for creditors and debtors, and regulates settlement mechanisms in the event of default; 3) The concept of progressive law of justice in credit agreements in the future emphasizes a humanistic, responsive, and adaptive legal approach to the social dynamics and substantive justice needs of the parties. The law is not seen as a rigid norm, but rather as a tool that lives and develops with society. In the context of credit agreements, this means balanced protection between the rights and obligations of creditors and debtors, not solely based on the text of the agreement, but also taking into account the values of social justice, economic conditions, and good faith of the parties.

Keywords: Progressive Law, Fairness, Rights, Obligations, Credit Agreements.

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INTRODUCTION

Background

One of the means that has a strategic role in the procurement of funds is banking institutions, which have helped meet the need for funds for economic activities by providing money loans, among others, through banking credit, in the form of credit agreements between creditors as lenders or credit facilities with debtors as debtors. The risks that generally harm creditors need to be carefully considered by the bank, so that in the process of granting credit, it is necessary for the bank to have confidence in the ability and ability of the debtor to pay its debts and pay attention to the bank's principles of sound credit. To gain confidence in the debtor's ability, before granting credit, the bank must carefully assess the 7 (seven) things known as the 7 P's (Party, Purpose, Payment, Profitability, Protection, Personality, and Prospect).

One of the things required by the bank as a creditor in providing credit is the existence of protection in the form of collateral that must be provided by the debtor to ensure the repayment of his debt for the sake of security and legal certainty, especially if after the agreed period, the debtor does not expand his debt or defaults

The funds lent by the bank in providing credit facilities to the debtor are funds derived from the customer's deposits that must be returned along with the interest in accordance with the agreed agreement. To get certainty of the debtor's loan repayment, a definite guarantee is needed, so that the guarantee has an important role for the bank in providing credit facilities if one day there are obstacles in the repayment of credit by the debtor.

The agreement in the Banking Credit Agreement must be made in writing. This provision is contained in the Explanation of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks as lenders to make a written agreement. The requirement that the banking agreement must be in written form has been stipulated in the main provisions of banking by Bank Indonesia as referred to in Article 8 paragraph (2) of the Banking Law.

Based on the Explanation of Article 10 of Law Number 4 of 1996, it is explained that agreements that give rise to debt-receivables relationships that are guaranteed to be repaid can be made in 2 (two) forms, namely either in the form of deeds under hands and authentic deeds, depending on

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the legal provisions that govern the material of the agreement. The form of legal protection provided to creditors according to the provisions of the Law on Dependent Rights is in the form of the credit agreement itself. This credit agreement serves as evidence and provides limitations on the rights and obligations of each party[1].

The provision of credit gives birth to a legal relationship with all consequences that can cause losses or risks for the bank as a creditor if the basic things are neglected. Risk is the potential loss due to the failure of the customer or another party (debtor) to fulfill its obligations to the bank in accordance with the agreed agreement. Failure to pay committed by debtors can be divided into two types of default, namely those who are able (defaulting intentionally), and defaulting due to bankruptcy, which is not able to repay their debts.[2]

The agreement in the Banking Credit Agreement must be made in writing. This provision is contained in the Explanation of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks as lenders to make a written agreement. The requirement that the banking agreement must be in written form has been stipulated in the main provisions of banking by Bank Indonesia as referred to in Article 8 paragraph (2) of the Banking Law.

In the process of distributing funds (providing credit) to the community, two main principles must be met, namely the principle of trust and the principle of prudence. The principle of trust pays attention to the bank's efforts to put the community (debtor customers) in its main position in every banking activity so that the public (creditor customers) always believe in the role of banking as a means of investment. The principle of prudence puts pressure on banks' efforts to treat public funds carefully and safely in every activity. In order for credit not to be stuck, banks in providing credit, must be careful by analyzing and considering all relevant factors.[3]

One of the principles in providing credit is collateral or *collateral*, the guarantee principle is a form of prudence because collateral is a security in

[1] H.R. Daeng Naja. 2005. Credit Law and Bank Guarantees, The Bankers HandBook. Bandung : PT Citra Aditya Bakti.p, 183

[2] Bambang Rianto Rustam, *Sharia Banking Risk Management in Indonesia* (Jakarta: Salemba Empat, 2013), p. 30.

[3] Niniek Wahyuni, "The Application of the 5C Principle in Providing Credit as Bank Protection," *Unitomo Law Journal* 1, no. 1 (2014): 1–25.

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taking credit by the debtor, both material collateral and individual collateral. Before obtaining credit facilities, prospective debtors must meet the requirements of the bank, one of which is credit guarantee, because the function of providing credit guarantees is to give the bank the right and power to get repayment with these collateral items if the debtor is injured or does not pay his debt.[4]

In an agreement, in addition to having to pay attention to the conditions for the validity of an agreement, it must also be based on several general principles or principles contained in the law of the agreement, namely: the principle of freedom of contract, the principle of consensualism, *the principle of pacta sunt servanda*, the principle of good faith, the principle of personality (personality), the principle of belief, the principle of legal equality, the principle of balance, the principle of morality, the principle of propriety, the principle of custom, the principle of protection, and others. Before an agreement is signed, it generally begins with a negotiation process between the parties. In making an agreement, there are several things that must be considered: understanding of the legal provisions of the agreement, the expertise of the parties in making the agreement, the regulation of rights and obligations, and the consequences arising in an agreement. In treaty law, the principles of treaty law must be applied, this is necessary to avoid disputes or disputes in the future.

Problem Statement

1. What are the rights and obligations of the parties regarding the legal implementation of the agreement in providing legal protection for the parties?
2. What is the means of law enforcement to settle the rights and obligations of the Parties in the credit agreement?
3. How does the concept of progressive law do justice to the rights and obligations of the parties to credit agreements in the future?

THEORETICAL FRAMEWORK

The potential commercialization of INTELLECTUAL PROPERTY RIGHTS and the potential for losses due to INTELLECTUAL PROPERTY RIGHTS, so it is very wise to conduct *Intellectual Property Audits (IP Audits*) for

[4] Thomas Suyatno, *Banking Institutions* (Jakarta: Rajawali Press, 2012), p. 45.

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companies that are established in carrying out business activities. *IP Audit* is actually a review (a systematic review of the INTELLECTUAL PROPERTY RIGHTS owned, used, proposed to be used, or obtained by the company). The main objective is to identify all intellectual property rights owned or used by the company and consider appropriate ways to provide protection, especially from various forms of infringement. From the manager's perspective, such an audit can help the company to determine its development strategy and also optimize the results of the company's proprietary intellectual property unit. The process to conduct an IP audit usually goes through several stages, including: *Innitiation, identification, consolidation, valuation, transfer, and education.*[5]

Deborah herself added some strategic suggestions for protecting intellectual property assets in a corporate as follows:

1. *conduct periodic intellectual property audits to identify intellectual property assets and improvements thereto;*
2. *appoint committees made up of sales,marketing and research and development team members to periodically dicuss the company's product and services to ensure that company recognizes its intellectual capital;*
3. *determine the appropriate means to protect such assets from infringement and to use such assets to generate revenue;*
4. *control access and mark trade secret information as protected or confidential;*
5. *review periodicals and trade journals to monitor competitor's activities and to ensure that competitors do not infringe the company's intellectual property assets;*
6. initiate intellectual property compliance policies to provide information and training to employees and others on the proper use of the company's intellectual property asset;
7. *institute routine review of their own and competitor's websites to ensure that materials posted on such sites are not infringing;*
8. *retain experienced legal counsel as soon as intellectual property infringement claim may arise, whether an behalf of against the company;*

[5] Srijoy Das, *A practical Guide to Intellectual Property Audits*,At the level *Initiation* Action is taken to determine how far the scope of the audit will be. And *Identification* Actions are taken to identify all intellectual property rights owned or used by the company.*Consolidation* This means combining or consolidating the data obtained from the identification to further determine the actions to be taken for each asset that is successfully identified.*Valuation,* Once the intellectual property assets are identified, including regarding trade secrets (company., licenses, price estimates, new prices are made.*Transfer*, which is a step to prepare various documents needed for the transfer of intellectual property rights and register the agreement.

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9. *Investigate the possibility of obtaining insurance coverage for claims made against the company for intellectual property infringement*.[6]

Looking at intellectual property rights from an economic perspective, it is not uncommon for intellectual property rights to be able to contribute to the economic growth of a country. As written by **Stuart E. Eizenstat**, it is stated that the protection of innovation is essential for the growth of developed and developing countries in the future. There is a direct correlation between the protection of a country's intellectual property rights—patents, copyrights, trademarks—and the country's economic growth and development.

For developing countries, intellectual property rights initially seemed to be a temporary concept, but now it is beginning to be realized that if treated seriously, intellectual property rights can bring concrete and positive results. Without the protection of trade secrets, patents, copyrights, trademarks, the state in every stage of its development will squander their potential.

In case after case, the protection of intellectual property rights has become a runway for domestic and foreign investment, technology transfer, and economic growth. He further explained that due to good copyright protection, technology has improved in the software sector, which contributed nearly three-quarters of a million jobs in 1996-1997 and revenue from the tax sector is estimated at 21 billion US dollars in the same year. These job opportunities are enjoyed by almost all countries, starting from the alphabet, Argentina to Vietnam. Another example of the success of copyright protection in the field of audio-visual. Cyprus in 1990, before the implementation of copyright, had only two cinema halls, but after copyright protection efforts there are now 34 cinema halls and multiplex facilities are being developed.

In Asia in the world of sound recordings (cassette, CDs, Digital Video Discs/DVDs. The impact of copyright protection on economic growth is also visible. Ten years ago the music industry was estimated to have suffered losses of 400 million dollars per year. Since the introduction of legislative efforts and the enforcement of copyright, markets in Asia have grown admirably.

In 1996 Brazil was able to absorb two billion US dollars of investment in the pharmaceutical sector. India, on the other hand, is perhaps an interesting example of what can happen if the protection of intellectual

[6] Deborah, opcit p.14

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property rights is not done in a balanced manner. The skill, perseverance, and tenacity of Indian engineers are greatly admired by the world. However, why is the development of biotechnology and pharmaceuticals stagnant, even though the developing information technology sector is exploding? The answer is because India has not provided patent protection for pharmaceutical products. As a result, none of the scientists and companies based in India will develop or market innovative pharmaceutical products.[7]

Several *surveys* conducted by WIPO member countries related to the contribution of copyright to the national economy have been conducted by several countries. *This survey* aims to obtain exact data on the percentage of copyright contributions to certain copyright-based industries to the national economy so that relevant steps can be taken for appropriate policy making. *The survey* is known as *copyright-based industries*. Based on the results *of a 2015* survey conducted by several countries, it shows that the contribution of copyright-based industries to the GDP of the United States has increased by 11.25%. Meanwhile, in Australia, the contribution of copyright to GDP ranges from an average of 6.70-6.80%; In the Netherlands, the figure is 5.90%; for the year 2015. While in Finland it reached 4.90%.[8]

In 2019, Indonesia's Minister of Law and Human Rights stated that the contribution of intellectual property (IP) in the creative economy sector was recorded at Rp1,105 trillion in 2019. This figure is around 7% (percent) of Indonesia's average gross domestic product (GDP) in 2019. Indonesia is in third place in the world in terms of intellectual property (IP) achievements, below the United States and South Korea in the contribution of the intellectual property-based creative economy to BDP.[9]

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[7] Stuart E. Eizenstat, U.S. Deputy Secretary of the Treasury, *Protection of Intellectual Property Rights and Emerging Economies*, This article was created while the author was still serving as Assistant Secretary of State for Economy, Business and Agriculture of the United States.pp. 1-3

[8] WIPO, *Guide on Surveying the Economic Contribution of the Copyright-Based Industries*, Geneva 2015, pp. 14-16. WIPO has created guidelines or references that can be used by member countries in conducting a survey of copyright-based industrial contributions to the national economy. This book is 104 pages thick and contains complete procedures including implementation methods including the classification of haik cipta to make it easier to conduct surveys.

[9] CNN Indonesia, *Third Indonesian Intellectual Property in the World Behind the US and South Korea*, CNN Indonesia, April 26, 2021, https://www.cnnindonesia.com/ekonomi/20210426121213-92-634755/kekayaan-intelektual-ri-ketiga-di-dunia-setelah-as-dan-korsel accessed on Thursday, March 17, 2022 at 11.33 WIB.

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RESEARCH METHODOLOGY

This research is normative juridical. This research uses various approaches, with the aim of obtaining information from various aspects of the issue under study. [10] Therefore, to solve the problems that are the subject of discussion in this study, the following approaches are used: Statute *approach*, conceptual approach, and case study.

The data source of a study is primary data and secondary data. Because this research is empirical and normative legal research, the sources studied are primary data sources, secondary data, and tertiary data.[11]

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*).[12]

[10] Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Banyumedia Publishing, 2006), p. 101.

[11] Soekanto and Mamudji, *Normative Legal Research, A Brief Review*.

[12] Sugiyono, "Quantitative, Qualitative and R&D Research Methods," *26th* (Bandung: Cv. Alfabeta, 2018), p. 34.

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RESEARCH RESULTS

Rights and Obligations of the Parties on the Legal Implementation of the Agreement in Providing Legal Protection for the Parties

Law enforcement of the rights and obligations of the parties to a credit agreement is essential to ensure fairness and balance between lenders and borrowers. Law enforcement is inseparable from the existence of a legal relationship between the Bank as a creditor and the debtor's customer.

The Agreement must not be contrary to applicable laws, public order, customs, and morality. Article 1320 of the Civil Code, the conditions for the validity of the agreement: Agree of the parties, the competence of the parties, certain objects and halal causes. Conditions 1 and 2 are called subjective conditions, because they concern the subject who makes the agreement. If this condition is not met, the agreement can be cancelled (vernietigbaar), by the interested parties. Conditions 3 and 4 are called objective conditions, which concern the object of the agreement. As a legal result, if the objective conditions are not met, the agreement is null and void, meaning that the agreement has since been considered to have never existed. For example, if the agreement is contrary to the law, public order and morality.

In an agreement, in addition to having to pay attention to the conditions of validity, an agreement must also be based on several general principles or principles contained in the law of the agreement, namely: The principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, the principle of good faith, the principle of legal equality, the principle of balance, the principle of morality, the principle of propriety, the principle of custom, the principle of protection, and others. Before an agreement is signed, it generally begins with a negotiation process between the parties. In making an agreement, there are several things that must be considered: Understanding of the legal provisions of the agreement, Expertise of the parties in making the agreement, Arrangements about rights and obligations, Consequences arising in an agreement. In treaty law, the principles of treaty law must be applied, this is necessary to avoid disputes or disputes in the future.

An agreement gives birth to an alliance that has legal consequences for the parties. The legal consequence is in the form of reciprocal rights and obligations between the parties. One of the sources of treaty law in

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Indonesia is the Civil Code. Article 1338 paragraph 1 of the Civil Code which reads: "All agreements made legally shall be valid as laws for those who make them". This shows that the treaty law system in Indonesia adheres to an open system. The open system means that the parties are free to enter into agreements with anyone, determine the conditions, their implementation, or their written or oral form, etc.

With the existence of an agreement, it will give rise to rights and obligations for each party who makes the agreement. The parties will be bound to abide by the content of the agreement that has been made. In the business world, agreements are very important as a handle, guideline, and evidence for the parties. With a good agreement, it is hoped that it can prevent disputes, in the future, because everything has been clearly regulated. If there is a dispute in the future, it can help in resolving it. Agreements can provide legal guarantees and certainty for the parties. With the existence of an agreement, it is hoped that the parties involved in it can carry out in accordance with the agreements that have been agreed, doing so in good faith.

The benchmark for the implementation of an agreement can be seen to the extent to which the parties carry out their rights and obligations properly. However, in its implementation, it often does not go well and even causes conflicts. The problems that arise are related to the rights and obligations of the parties and about the implementation of the law of the agreement in providing legal protection for the parties. The parties often do not exercise their respective rights and obligations. This kind of thing requires legal means to solve it. The existence of the law is indispensable to be respected and the principles of law upheld.

The details of the rights and obligations of the parties are the part that constitutes the actual formulation of a business transaction. The preparation of the provisions on the rights and obligations of these parties requires foresight and trained care. In designing an agreement, it is required to understand business transactions not only from a normative theoretical aspect but also from an empirical side by conducting a field visit (site visit) so that they can fully understand the main and details of the business transaction.

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Means of Law Enforcement to Resolve the Rights and Obligations of the Parties to the Credit Agreement

Law enforcement is inseparable from the existence of a legal relationship between the Bank as a creditor and the debtor's customer. The legal relationship can not run as it should, such as one of the parties or both parties violating an agreement or agreement that has been mutually agreed. The position of the debtor customer is in a difficult position related to the existence of a legal relationship contained in the Bank Credit Agreement. It is said to be very difficult, because it is the debtor customer who violates the juridical documents contained in the Bank Credit Agreement.

Credit issuance is known in the banking world as loans given or credit given, which is the largest contributor to income in the bank's business. The track record of the healthy credit provided can be seen from the quality of productive assets (KAP). In assessing this KAP, Bank Indonesia uses two components, namely the ratio of classified productive assets to the number of productive assets, and the ratio of the reserve of write-off of productive assets to the classified assets (Bank Indonesia, 1991). Bank Indonesia, through the Decree of the Board of Directors of Bank Indonesia No. 31/147/KEP/DIR dated 12 November 1998, classified productive assets as current, in special attention, less current, doubtful and congested. Loans that are included in the current category and in special attention are considered as non-performing loans, while loans that are in the less current, doubtful and bad categories are considered as non-performing loans.

Problems in banking will arise if the ratio of non-performing loans is such a large percentage of the total productive assets and the bank does not have sufficient reserves as an obligation to anticipate credit risk in the form of the elimination of productive assets (PPAP). In terms of two credit quality classifications, namely non-problematic credit and non-performing credit, it actually contains juridical problems. Juridical logic will inevitably lead to the fact that non-performing loans hold a lot of problems or piles of problems *(palen problema)* and this is an attraction for law enforcers.

The liberalization policy in the credit sector also seems to be quite visible in the provision of credit in Indonesia. The government, in this case Bank Indonesia, leaves it entirely to the market mechanism, there are no restrictions on the provision of credit by banks. As a result, banks are increasingly encouraged to increase credit. Banks are only focused on implementing the principle of prudence without paying attention to the principles of economic democracy. Credit agreements that are based on

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freedom of contract and only prioritize the principles of prudence and efficiency, will ultimately cause injustice to society. Credit only prioritizes economic justice, even though what wants to be realized in national development is social justice.

According to Rawls it is unfair to sacrifice the rights of one or a few people just for the sake of greater economic gain for society as a whole. This attitude is contrary to justice as fairness that demands the principle of equal freedom as the basis for social welfare arrangements. Therefore, economic considerations should not be contrary in other words, social decisions that have consequences for all members of society must be made on the basis of rights *(right-based weight)* rather than on the basis of benefits *(good-based weight).* Only then can justice as fairness be enjoyed by all.[13]

There needs to be a balance criterion to realize commutative justice (justice of the parties) in a bank credit agreement. If these criteria are not met, then according to the law, the credit agreement becomes unbalanced, thus violating the principle of balance. Based on the principle of balance, these criteria can be used as a basis or guideline for the validity of the agreement, including in bank credit agreements. The determination of this criterion is important, if at any time there is an indication of inequality between the parties to an agreement, then this criterion can be used as a measuring tool to determine the conclusion of the indication.

The principle of balance as a principle that is currently developing should be considered in addition to the principle of agreement *(consensus),* the principle of its binding force *(pact sunt servanda)* and the principle of freedom of *contract.* "The criterion of balance cannot be sought whether the situation or target to be achieved is unbalanced, as in the reconciliation agreement. However, it is more deeply questionable whether at the time of the agreement there is a problem of imbalance in the way the contract is made and whether the agreement in question contains the content or intention of the agreement and the performance of the performance that can bring the contract to an unbalanced situation.[14]

Referring to Herlien Budiono's opinion above, the criteria for the balance of the agreement are emphasized to examine the process of making

[13] John Rawls, *A Theory of Justice,* London: Oxford University Press, 1973, which has been translated into Indonesian by Uzair Fauzan and Heru Prasetyo, *Theori Keadilan*, (Yogyakarta: Pustaka Siswa, 2006), pp. 12-13.

[14] Herlien Budiono, *Op. Cit.,* p. 543.

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and the content of the agreement. Regardless of the situation or goal to be achieved in an agreement can cause balance or not, but the scrutiny of the realization of the principle of balance in an agreement requires a measuring tool in the form of balance criteria as will be discussed in this study. Imbalances can only potentially occur in reciprocal or bi-party agreements, not in unilateral agreements as in grant agreements. A reciprocal or two-party agreement is an agreement that gives rise to rights and obligations to each party. While a grant agreement as a unilateral agreement is an agreement on the existence of a voluntary giving agreement and the recipient must also be voluntary without coercion, as well as pressure from any party.[15]

The principle of balance needs to be implemented in the preparation of agreements in order to realize justice for the parties (commutative justice) by referring to certain criteria. The purpose of the principle of balance is to realize justice for both parties because balance contains the meaning of harmony and there are no elements or elements that dominate each other, especially the domination of the strong over the weak. The principle of balance must be used as a basis for determining the validity of an agreement, so that if one day there is an agreement that violates the principle of balance and it can be proven, then the court can cancel the agreement.

The above description shows how important the principle of balance is in an agreement. Considering that the principle of balance is a principle to realize commutative justice for the parties, the bank credit agreement must be formed with reference to the balance criteria that can refer to the analysis of the author's ideas as follows:

a) No Dominating Party

Dominance is mastery, good and strong positioning, and great influence.[16] In the context of agreements, especially in reciprocal agreements, this position of dominance is related to the equality of the parties or equality. Inequality occurs because of the existence of one party whose position is economically stronger, for example in a bank credit agreement between the Bank as a creditor and a Microcredit Business trader

[15] See Article 1320 of the Civil Code
[16] M. Ridwan, et al., *Op. Cit.,* pp. 97-98.

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as a debtor, the Bank's position tends to be stronger than that of a Microcredit Business trader.[17]

A bank credit agreement is a standard agreement whose content has been determined unilaterally by the bank, with the aim of efficiency. On the one hand, small business actors certainly need funds to develop their businesses. This situation "forces" business actors to agree to the terms of the credit agreement, even though in fact the achievements that must be fulfilled by the debtor (business actor) are relatively burdensome.[18]

If this condition occurs, of course it will cause injustice. In fact, Pancasila as the philosophy of the State of Indonesia adheres to the principles of harmony and equality, both in human life as a person and in human relations with society.[19] Pancasila as noble values should be used as a guideline in every life activity. The imbalance of position between the parties to an agreement, often causes parties whose position is lower or weaker to experience a less favorable situation. Imbalances in the agreement can be exploited by the dominant party, thereby triggering the abuse of the situation. For example, the credit agreement contains an exaggeration/excision clause in the form of adding rights and/or reducing the bank's liabilities, or reducing the rights and/or increasing the obligations of the debtor customer.[20]

b) There is a Harmonization of the Content of the Agreement (Achievement)

Harmonization is an effort to harmonize, harmonize, harmonize.[21] The harmonization of the content of the agreement means that the rights and obligations of the parties are in accordance with the burden of its implementation. The agreement must reflect the common interest as a manifestation that the principle of agreement has been applied in the agreement. No rights of one party are in conflict with the rights of the other party and no obligations of one party are in conflict with the obligations of the other party. Everything must be based on a common will as the meaning

[17] Ricardo Simanjuntak, *Business Contract Design Techniques,* (Kontan Publishing, Jakarta, 2011), p. 183.

[18] Etty Mulyati, The Principle of Balance in Banking Credit Agreements with Small Business Customers, Bina Mulia Legal Journal, Vol. 1, No. 1, September 2016, p. 36.

[19] Arvie Johan, "Equality and Balance as a Manifestation of Good Faith Based on Pancasila", article in the Journal of Law, Vol. 14, No. 1, Vol. 14 March 2011, p. 130.

[20] Etty Mulyati, *Op. Cit.,* p. 38.

[21] M. Ridwan, et al., *Op. Cit.,* p. 171.

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contained in the principle of agreement (conformity of will). This is what the author means by harmonizing the content of the agreement.

The disharmony of the content of the agreement indicates an imbalance of burdens that must be borne by one of the parties. This can be seen from the obligations that are imposed on one party only, while the rights are reduced or limited. Inconsistency in the content of bank credit agreements has the potential to always occur. This is due to the influence of the party whose position dominates one of the parties, while the "weak" party only follows or agrees to the content of the agreement because it is driven by necessity.

Harmonization of the content of the agreement (achievement) is important, so that the rights and obligations contained in the agreement truly reflect the interests of the parties. If this criterion is met, it is certain that justice can be realized for both parties. Not the other way around, it only benefits one of the dominating parties without rights *(unjust enrichment).*

c) Does not violate the Principles of Justice

The principle of law contains values that reflect the highest legal principle of a positive legal system.[22] Justice is a fundamental discourse in law. Naturalists say that the ultimate goal of law is justice.[23] This is in line with the theory of the purpose of law, which is an ethical theory that teaches that law is solely about wanting justice.[24]In order for legal regulations to be applicable and accepted by all members of society, legal regulations must be appropriate and must not contradict the principles of justice.[25]

According to Aristotle, justice is *unicuique suum tribuere* (giving to everyone something to which he is entitled) and *neminem laedere* (do no harm to others), or in complete according to Kant is *honeste vivere, neminem laedere, suum quique tribuere/tibuendi*. If a person does not give something that is the right of others and commits an act that harms others, then it is certain that the person has acted unfairly. The state must ensure

[22] J.J.H. Bruggink translated by B. Arief Sidharta, *Rechts Reflecties (Reflections on Law),* (Citra Aditya Bankti, Bandung, 1999), p. 132.

[23] Dominikus Rato, *Philosophy of Law: Seeking, Finding, and Understanding Law*, (LaksBang Justitia, Surabaya, 2010), p. 54.

[24] Sudarsono, *Introduction to Law*, (Rineka Cipta, Jakarta, 2007), p. 52.

[25] C.S.T. Kansil and Christine S.T. Kansil, *Introduction to Indonesian Law*, (Rineka Cipta, Jakarta, 2011), p. 36.

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that justice can be realized in daily life because justice is a human right of every human being. Justice will be felt by the community when their rights have been fulfilled as they should.

Realizing justice is a form of protection of human rights, both individuals and groups to lead to a safe, peaceful and prosperous society. This can be done by balancing the rights and obligations of the parties to an agreement, for example in a bank credit reciprocity agreement. The realization of the principle of justice in contracting made by the parties must be accompanied by the principle of balance. The agreement between the parties is essentially inseparable from the issue of justice, because in the agreement there must be a fair exchange of rights and obligations.[26]

The law of the covenant was born from the idea of providing justice for the parties. The principle of balance in agreements is an important element in realizing justice, as well as an effort to enforce the law in the field of agreements.[27] The achievement of justice is the philosophy of the goal of the law because justice is the substantive goal of the law. The law feels "bland" if justice is not realized in every legal event, including in the event of a covenant law.

[26] Jonneri Bukit, Made Warka and Krisnadi Nasution, The Existence of the Principle of Balance in Consumer Contracts in Indonesia, Journal of Legal Science, Vol. 14, No. 28 August 2018, p. 28.

[27] Niru Anita Sinaga and Tiberius Zaluchu, The Role of the Principle of Balance in Realizing the Goals of the Agreement, Scientific Journal of Aerospace Law–Faculty of Law, Marsekantara Aerospace University Suryadarma, Vol. 8 No.1, September 2017, p. 43

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The concept of progressive law is fair to the rights and obligations of the parties to the credit agreement

Adequate legal protection can help customers to be more aware and understand their rights and obligations under credit agreements, so they can make smarter, more informed decisions. Customer protection in bank credit agreements is important to prevent unethical business practices or abuse by banks. Some banks may try to charge hidden fees or impose provisions that are detrimental to customers. With clear legal protection, customers can feel safer and avoid unfair or detrimental practices in credit agreements. Furthermore, customer protection in bank credit agreements helps to create trust in the financial system.[28]

The concept of equitable progressive law refers to a legal approach that aims to achieve social justice and the protection of the rights of individuals and broader groups, including in the context of credit agreements. In the future, the concept of progressive law can be applied to ensure that the enforcement of the rights and obligations of the parties to credit agreements continues to evolve in accordance with social, economic, and technological developments. Here are some aspects of progressive legal concepts that may be applied in the context of future credit agreements:

a) Public Legal Awareness

Bank credit agreements are a symbolic category where basically the substance of the credit agreement is a symbol created by both parties, namely the creditor (debtor) and the creditor (creditor) these symbols actually contain the expectations of the parties making them in the form of rights and obligations of the parties to be achieved. Furthermore, the understanding of the substance of the bank credit agreement is related to the ability of the parties to interpret the symbols that it has created. This interpretation is greatly influenced by the legal knowledge of the parties. This is based on the argument, that through legal knowledge, it will be easier to find the meaning behind the symbols reflected in the substance of the bank's credit agreement, so that the parties are expected to behave in a certain way in response to a symbol that they receive.

Theoretically, legal knowledge influences one's legal awareness to run the legal system because it works to find the meaning contained in the substance of the agreement. In an agreement, not only in a bank credit agreement, there is a possibility of default, that is, the non-implementation

[28] Korah, P. A. (2013). The Customer's Position in the Standard Agreement Entered Into by the Bank. Lex Privatum 1.1.

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of an agreement at all, or implemented but only partially, or implemented but the promised time has passed, or implemented but the implementation of the unagreed agreement. These four possibilities can occur in an agreement including a bank credit agreement. Default committed by one of the parties to the bank credit agreement is not merely a non-fulfillment of obligations as stated in the agreement, but a default is the nature of disobedience or non-compliance with a rule of law, which is actually the law for those who make it. Such non-compliance or non-compliance relates to the assessment—or non-compliance with the clauses of the agreement.

The perspective of legal awareness in default on the implementation of bank credit agreements in the form of a standard is seen as a standardization system. A normative system is actually an abstraction of values as a result of their assessment of the values that exist in their environment. Of course, the assessment is related to the good or bad whether something is done or not done. [29]

Default in the implementation of the bank credit agreement is related to the perception of the customer regarding the fulfillment or non-fulfillment of an agreement clause. According to Moskowitz and Orgel, perception is defined as the integral process of the individual to the stimulus he receives, or in other words perception is the process of organizing, interpreting the stimulus received by the individual so that it is something meaningful and an activity that is integrated in the individual.[30]

Based on the definition of perception mentioned above, everything that exists in an individual such as: feelings, experiences, thinking ability, frame of reference, and other aspects in the individual also determines or plays a role in the perception. The customer's perception of the substance of the bank credit agreement is related to the ability to understand which is based on the results of the customer's interpretation of the substance of the agreement which functions as a norm regulating the rights and obligations of both parties. This interpretation of the client's thinking ability related to his legal knowledge, is also based on the individual's experience that can be seen in his daily appearance, whether he realizes it or not, the

[29] Salim HS, Contract Law, Jakarta: Sinar Grafika, 2008, p. 105.

[30] Bimo Walgito, *Social Psychology (An Introduction),* (Yogyakarta, Andi Publishers, 2004), p. 46

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experience can be communicated to others in the form of language and actions.[31]

Low legal awareness in the form of non-compliance or non-compliance with the substance of the bank's credit agreement shows that the legal culture that exists in the customer is still in the sense of a negative legal culture. Furthermore, to create a positive legal culture, namely the obedience of the substance of the agreement, sufficient legal knowledge is needed so that it facilitates the process of understanding the substance of the agreement through interpretation. The failure to translate the symbolic meaning behind the substance of the agreement complicates the communication process of both parties, so that finally default as a communication failure is inevitable.[32]

b) Good Faith In Credit Agreements

Non-performing loans are part of bank credit management, because this is a risk faced by banks in terms of banking business. Almost all banks have non-performing loans, even in some cases non-performing loans in Indonesia end up with the closure of several banks. As a business institution in the macro scope, banks must be able to minimize these bad loans so that the public's trust in the banking community will be maintained.[33]

The case that is now happening in the Bank, the way it is resolved is by negotiation, the bank gives an extension of the credit repayment period to the debtor. The bank will make a new credit agreement, this step is intended to save the debtor's business because judging from the debtor's efforts it is still able to continue its business. The content of the credit agreement, if the debtor does not have good faith to pay the debt, then the bank will confiscate the debtor's collateral, before the collateral is confiscated first the bank gives a warning letter to the debtor, in this regard the Insurer or a third party in this credit agreement agrees to the agreements between the debtor and the bank. In this agreement, the insurer participates in the fulfillment of the debtor's debt if the debtor experiences bad credit for the second time.

The liability of the insurer in the credit agreement is only limited to the debt he bears, in this case the position of the insurer is the same as

[31] Irving M. Zaidin, *Reunderstanding Sociology (A Critique of Contemporary Sociology),* (Yogyakarta, Gadjahmada University Press, 1998), p. 265

[32] Soedjono Dirdjosisworo, Business Contracts, According to the Civil Law System, Common Law and International Trade Practices, Bandung: Mandar Maju, 2003, p. 29.

[33] Ade Erthesa and Edia Handiman, Banks and Non-Bank Financial Institutions, Pt. Indek Kumpulan Gramedia, Jakarta, 2006, p. 181

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that of the debtor. Therefore, the insurer can be billed to pay the debtor's debt. According to Hendermin Djarab[34], the settlement of bad loans depends on the culture of the community in some cases, such as today, very effective efforts to resolve bad loans are for the parties to try in a serious way to resolve the case. In field research, the usual thing that is carried out in the settlement of bad loans is negotiations carried out by the parties. Settlement by negotiation or deliberation for consensus, resulting in an agreement in the form of a win-win solition, meaning that both parties receive comparable benefits.

For debt security borne by the insurer, what is requested is a power of attorney to the insurer to collect debts from his heirs if the insurer runs away from his responsibility. If the insurer runs away from his responsibility, the collection is made to his heirs who are appointed in the power of attorney.

After this road is carried out, it will be easy for creditors to collect the insurer to pay off their liabilities. Therefore, if the heirs are not also responsible, then the insurer's property will be confiscated to pay off the debt he bears, but before the insurer's property is confiscated first, the debtor's collateral is confiscated to meet the debtor's debt, if it is not fulfilled, the insurer's property will be confiscated to fulfill the debt. With the existence of an insurance agreement between the creditor and the insurer, the legal consequences are born in the form of rights and obligations between the insurer and the creditor, the obligation of the insurer is to fulfill the achievements or pay off the debts he bears for the benefit of the creditors. However, in such a legal relationship there are rights for the insurer.

c) Legal Culture in Bank Credit Agreements

Almost everyone can say that a law and a legal product in the process of its enactment always refers only to its structure and substance, and pays little attention to the cultural aspect of the law. In observing a problem, they are always oriented to how the judicial process is and how the laws or regulations are, and never question what actually happens behind the event which is the values of people's attitudes in their interactions.

The understanding of the law that lives in society is always related to the legal culture. Through the culture of law, it can be seen the values, hopes, and ideas of the real society on the enactment of a law and its legal

[34] Hendermin Djarab, Prospects and Implementation of Arbitration in Indonesia, Citra Abadi Bakti, Bandung, 2001, p. 96

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system, without the culture of law a system will be helpless. The reason is that the three elements of the legal system can be likened to the performance of a machine. Legal structure is like a machine, substance is what is produced or worked by the machine, and legal culture is anything or anyone who decides and turns on and off the machine and decides how the machine is used,[35] Ftiedmann also describes that legal culture is the fuel that drives the motor of the drive. It is the values in society that can be used to explain why people use or do not use, or abuse legal processes and legal systems. Legal culture is translated as attitudes and values that have a positive or negative influence on behavior related to the law and legal institutions.[36]

Departing from what Friedmann described above, it can be said that legal culture is a manifestation of social forces *that* can determine that a law can be obeyed, violated or kept. Satjipto Raharjo said:[37] That the culture of absolute law is an effort of solidarity that serves to maintain a collective life as a very valuable commodity, the mechanism of which can be detailed as follows:

1. It does not give individuals the freedom to strive for personal gain;
2. Viewing the conflict negatively and when it exists, then it is not developed as it should be to find a solution;
3. Strive absolutely to achieve an atmosphere of togetherness and tranquility in society.

In an open legal culture there is freedom to make choices to be open, in the sense that each member of society is given the freedom to decide how he or she will accept the laws that the institutions apply to him. Furthermore, if these thoughts and attitudes are not or are not oriented to the legal community, then those thoughts or values are only a personal legal culture.[38]

Daniel S. Lev, defines legal culture as a concept that can draw attention to values related to law and legal process, but which can be analyzed from them and is considered stand-alone. Values related to law

[35] Lawrence M Friedmann, *American Law An Intruduction,* translated by Wisnu Basuki, (Jakarta, Tata Nusa, 2001), p. 8

[36] Friedmann, *On Legal Development, Ratgers law Reciew,* translated by Rahmad Djoko Soemadio, (Surabaya, Fak Hukum Unair, 1969), pp. 27-30

[37] Satjio Raharjo, *Legal Culture in Legal Problems in Indonesia*, was delivered at the IV National Seminar organized by BPHN Ministry of Health on March 26-30, 1979 in Jakarta.

[38] *Ibid,* p. 27.

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and legal processes are divided into procedural law values and material legal values. The value of procedural law is related to the means of social regulation and conflict handling, while the value of material law itself is based on fundamental assumptions about the distribution and use of resources in society, in the form of social good and bad.[39]

The basic cultural values of the community as one of the shapers of the community's legal culture. In daily life, everyone always deals with culture either directly or indirectly. Every day people see, use, even power and sometimes destroy culture, therefore it can also be said that there is no society that does not have culture, and on the contrary, there is no culture without society as a forum and support.

The basic argument for the importance of a legal cultural perspective in bank credit agreements is that in fact every human being has cultural diversity. In this cultural diversity there is a cultural system that is useful for interpreting experiences and developing social behavior. The entire cultural system is a macro system. Therefore, human behavior is not a kososng behavior, but a meaningful behavior. Meaningful human behavior is a tangible manifestation of social forces that are reflected in values, norms, ideas, beliefs, and hopes in a society that is actually a legal culture. Based on what has been described above, theoretically, it can be explained that very basic cultural values form the value of legal culture.

This is based on an argument that a cultural value can be a guide in behavior, thus giving birth to a positive or negative attitude. The patterns of behavior that are formed in the form of attitudes are manifested in an abstract conception in the form of norms or methods. A norm can be in the form of regulations or legislation or other written regulations that contain an expectation to be achieved. Both these values, norms or expectations in realization are always manifested in social forces that greatly influence the functioning of a legal system. The forces that influence the functioning of the legal system are called legal culture.

Based on chronological thinking, these fundamental values affect the culture of the law. A bank credit agreement in the form of a standard dependant is actually a norm that serves as a guideline for the parties, both creditor banks and debtor customers. The norm is an abstraction of the conception of values desired by the parties. However, in the implementation

[39] Daniel S Lev, *Indonesian Judicial Institute and Legal Culture, in Peter Koesriani Siswosubroto, Law and Social Development Textbook Sociology of Law II,* (Jakarta, Pustaka Sinar Harapan, 1988), p.193

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of bank credit agreements, there is a misunderstanding in the agreement that should be the norm in fulfilling rights and obligations, but by most customers and creditors that the agreement is more interpreted as a procedural requirement, not considered as a norm that regulates to obtain their respective rights and obligations.

d) Deliberation in Banking Credit Agreements

In an agreement, there are conditions for making an agreement as determined by laws and regulations Although the law of the agreement itself adheres to the principle of freedom of contract, the legal condition for the existence of an agreement must still follow the conditions that have been set in the law, for example Article 1320 of the BW, which contains subjective terms and objective conditions. The first two conditions in Article 1320 of the BW are called subjective conditions, namely the requirement that the parties who make the agreement must agree or reach an agreement in addition to being capable. An agreement or agreement is the agreement between a will and a statement of will.

Freedom of contract is basically a manifestation of free will, the emanation of human rights whose development is based on the spirit of liberalism that glorifies individual freedom. This development was in line with the preparation of BW in the Netherlands, and this spirit of liberalism was also influenced by the motto of the French Revolution "liberte, egalite et fraternite (freedom, equality and fraternity). According to individualism, everyone is free to obtain what he wants, while in the law this philosophical agreement is embodied in the principle of freedom of contract.

Article 1338 paragraph (1) of the BW does not stand in its solitude. The principle is in a complete and cohesive system with other related provisions. In today's practice, the principle of freedom of contract is often not fully understood, resulting in many (impressions) of unbalanced and biased contractual relationship patterns. Freedom of contract is based on the assumption that the parties to the contract have a balanced bargaining position, but in reality the parties do not always have a balanced bargaining position.

The lawmakers at that time were mistaken that the one dealing in the contract turned out to be two parties with different economic powers. Therefore, it is gradually felt that freedom of contract leads to injustice.

Freedom and equality are authorized by the order of the law of the nineteenth century, whose individualistic spirit does not guarantee the realization of the essence of substance or the existence of human beings as

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part of the majority of the people. State rulers have no power to interfere in civil relations because they are seen as violating the right to human freedom. Here we find the oddity. In order to maintain the nature of freedom, the largest group with a weak socio-economy must suffer greatly and sacrifice the opportunity to realize the essence of their own existence. Uncertainty about the existence of freedom of contract was also expressed by Soepomo who stated that,

"BW has the foundation of liberalism, a system based on individual interests. Those who have strong capital dominate those who are economically weak. In the liberal system there is so much freedom of competition that the weak are not protected."

However, in its development, the principle of freedom of contract has been reduced in its role as signaled by some scholars. Subekti stated that contract law after World War II was marked by increasing restrictions on the principle of freedom of contract. The influence of individualism began to fade at the end of the XIX century along with the development of ethical and socialist ideas. Individualist understanding is considered not to reflect justice. The community wants the weak to get more protection. Therefore free will is no longer given an absolute meaning, but is given a relative meaning, always associated with the public interest.

Book III of the BW adheres to an open system, meaning that the law gives the parties the freedom to regulate their own legal relationship patterns. What is regulated in Book III of the BW is just a regulation and complement. In contrast to the arrangement of Book II BW which adheres to a closed or coercive system, where the parties are prohibited from deviating from the rules in Book II of the BW.

The open system of Book III of the BW is reflected in Article 1338 (1) of the BW which states that, "all agreements made legally shall be binding on those who make them". According to Subekti, the way to conclude the basis of freedom of contract is by emphasizing the word "all" which is in front of the word "agreement". It is said that Article 1338 paragraph (1) seems to make a statement (proclamation) that we are allowed to make any agreement and that it will bind us as it is binding by law. The restriction on freedom is only in the form of what is called "public order and decency". The term "all" contained in it fully submits to the parties the content and form of the agreement they will make, including the pouring in the form of a standard contract. Freedom of contract here gives the parties the freedom to make agreements in any form or format (written,

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oral, authentic, non-authentic, unilateral, adhesion, standard/standard and others), as well as with the content or substance as desired by the parties.

Thus, according to the principle of freedom of contract, a person generally has a free choice to enter into an agreement. This principle contains the view that a person is free to make or not to make a covenant, free with whom he enters into a covenant, free about what is agreed upon and free to set the terms of the agreement.

If the two parties do not find a common ground as a way out with deliberation to reach an agreement, the cancellation of the agreement must be forwarded to the court session by filing a lawsuit to the court asking the judge to cancel the agreement. Deliberation to obtain an agreement that is truly agreed in the sense of the *real will* in making the agreement is absolutely necessary, because the agreement is not only a condition for the validity of the agreement, but also a condition for the occurrence of the agreement *(gelding voor waarden).*

In the event of an agreement, careful consideration is needed so that what will be made there is no defect of will in it. So that the agreement made must have time between those who make it to bargain with each other, both the first and second parties. This position of bargaining is very necessary to be able to know that the existence of the will is really the same as the statement of the will, the first party offers and the second party accepts the offer.

This bargaining position gives the parties the flexibility to pour out what they want, so that there will be a match between the will and the statement of their will of each party. The first party offers and the second party accepts the offer, and vice versa if the offer is not final, then the other party offers and the other party accepts the offer. This bargaining position is the only best way for the agreement to meet the sense of justice because there is a balance of position between the first party and the second party.

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CONCLUSION

Based on the results of analysis and discussion, it can be concluded as follows: 1) The rights and obligations of the parties to an agreement are the core of the binding legal relationship between the two parties. The right provides a basis for the party to demand the fulfillment of the agreement, while obligations are a form of responsibility that must be carried out according to the content of the agreement. In its implementation, equality, good faith, and legal certainty are the main principles so that the agreement runs fairly and balanced. 2) Legal means play an important role in settling the rights and obligations of the parties to the credit agreement. In practice, dispute resolution arising from the implementation of credit agreements can be pursued through litigation (court) or non-litigation, such as mediation, arbitration, or direct negotiation. The Banking Law, the Civil Code (KUHPercivil), and the Financial Services Authority (OJK) regulations are the main legal basis that regulates credit agreements, provides legal protection for creditors and debtors, and regulates settlement mechanisms in the event of default. 3) The concept of progressive law of justice in credit agreements in the future emphasizes a humanistic, responsive, and adaptive legal approach to the social dynamics and substantive justice needs of the parties. The law is not seen as a rigid norm, but rather as a tool that lives and develops with society. In the context of credit agreements, this means balanced protection between the rights and obligations of creditors and debtors, not solely based on the text of the agreement, but also taking into account the values of social justice, economic conditions, and good faith of the parties. In the future, progressive law encourages the reconstruction of credit agreement regulations to be more inclusive, transparent, and solutive. This includes the need for an active role for judges and law enforcement officials in interpreting and balancing contractual rights with the principle of substantive justice. Thus, progressive law not only maintains legal certainty, but also prioritizes alignment with human values, economic justice, and protection of the weak

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