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Integration of Customary Law and the Theory of Legal Pluralism of the Parties to a Bank Credit Agreement Based on the Principle of Balance

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Abstract

Introduction: *This article discusses the urgency of integrating customary law into banking credit agreements in Indonesia for all parties based on the principle of balance.*
Purposes of the Research: *This study aims to analyze the integration of customary law and the theory of legal pluralism of the parties in bank credit agreements based on the principle of balance.*
Methods of the Research: *This research is normative legal research with a conceptual and legislative approach.*
Results of the Research: *The integration of customary law into banking credit agreements in Indonesia, based on Article 1339 of the Civil Code, which recognizes fairness, customs, and laws as binding elements of an agreement. Customary law, which emphasizes the principles of collectivity, trust, and deliberation, provides a strong social foundation and local legitimacy in credit agreements. The legal pluralism approach with the principle of balance serves as a key strategy to accommodate customary law values and mechanisms within formal banking practices, thereby reducing normative conflicts and enhancing protection and justice for indigenous communities with limited access to formal law. The integration of customary law into credit agreements not only strengthens the pluralistic national legal system but also creates agreements that are fair, proportionate, and respect local wisdom, while simultaneously increasing social legitimacy and practical solutions in resolving credit issues within indigenous communities.*

Keywords: Credit Agreement; Customary Law; Legal Pluralism; Principle of Balance.

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INTRODUCTION

Agreements that are commonly carried out by people on a daily basis are an important aspect of social interaction and economic activities that aim to regulate the rights and obligations between two or more parties.[1] In everyday life, agreements often appear in simple forms such as buying and selling, renting, borrowing, or cooperation between individuals. Legally, an agreement is a legally binding agreement between parties, where each party has an obligation to fulfill what has been agreed upon.[2] Even though they are not always written, verbal agreements that occur in community life have legal force if they meet certain elements such as an agreement, a clear object, and the ability of the parties to be

[1] Samir D. Parikh, "Creditors Strike Back: The Return of the Cooperation Agreement," *Duke Law Journal Online* 73, no. 1 (2023): 7–9, https://doi.org/10.2139/ssrn.4410235.
[2] Masrofah Masrofah, "The Exoneration Clause Harms the Buyer Legal Protection for Consumers Against the Application of Exoneration Clauses in Online Sale," *UMPurwokerto Law Review* 3, no. 1 (2022): 19, https://doi.org/10.30595/umplr.v3i1.10730.

bound. Everyday agreements are very important because they can prevent conflicts and uncertainties in various activities, while ensuring that each party will be responsible for the commitments that have been made. In addition, agreements also increase mutual trust and cooperation between individuals in society so that social and economic life can run smoothly and harmoniously.[3] In drafting an agreement, there are essential elements that must be fulfilled in order to be legally valid, such as mutual consent, a clear object, and the ability of the parties to bind themselves.[4] Thus, agreements become the main foundation in guaranteeing the rights and obligations between interested parties in various activities of daily life, both verbally and in writing, and become an important pillar in maintaining social and economic stability in society.

Agreements in everyday community life are a basic mechanism for regulating social relations and economic transactions that function to provide legal certainty, prevent conflicts, and strengthen mutual trust among community members, thereby creating an orderly and harmonious life.[5] One type of agreement that is often made by the public is related to credit agreements in the banking sector. A banking credit agreement is a written agreement between a bank as the creditor and a customer as the debtor that regulates the provision of a loan of money by the bank to the customer within a certain period of time with provisions for repayment along with interest as compensation for services.[6]

A credit agreement is a form of legal relationship that binds both parties, where the debtor is obliged to return the loan funds in accordance with the agreed terms and time.[7] In Indonesia, this credit agreement is regulated by the Civil Code and Law Number 10 of 1998 concerning Banking (Banking Law) as amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. Credit agreements are usually made in a standard or standard form drawn up unilaterally by the bank, and contain various terms and conditions that must be adhered to by the debtor. The deed of this credit agreement can be made by a notary so that it has a higher legal force as an authentic piece of evidence in court.[8]

In practice, banking credit agreements cover various types of credit, such as working capital loans, investment loans, and consumer loans. Working capital loans are usually provided to finance the operational needs of a company in the short term, while investment loans are used for long-term financing such as business development.[9] Consumer credit is given to individuals to finance the need for goods or services.[10] As part of the credit granting process, banks apply the principle of prudence by assessing the debtor's ability and

[3] Suwinto Johan, "Implementation of Working Agreement with Probationary Period in Financial Industry According to Labor Law," *Sasi* 28, no. 1 (2022): 27, https://doi.org/10.47268/sasi.v28i1.709.
[4] Putu Indri Sri Giyanthi et al., "Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin," *Jurnal Preferensi Hukum* 3, no. 1 (2022): 37–41, https://doi.org/10.22225/jph.3.1.4621.37-41.
[5] Nina Semeryanova et al., "Settlement of Disputes upon Termination of Employment Contract by Agreement of Parties," *E3S Web of Conferences* 164 (2020), https://doi.org/10.1051/e3sconf/202016411028.
[6] I Gusti Agung Ayu Patrecia Marthavira, "Patents As Fiduciary Collateral in Bank Credit," *Notariil :Jurnal Kenotariatan* 5, no. 1 (2020): 33–38, https://doi.org/10.22225/jn.v5i1.1725.
[7] I Gede Agus Kurniawan, "Valuasi Merek Sebagai Jaminan Kredit Perbankan: Relevansi Dalam Pembentukan Lembaga Penilai Kekayaan Intelektual," *Jurnal Magister Hukum Udayana* 9, no. 4 (2020).
[8] Eko Rial Nugroho, Bagya Agung Prabowo, and Rohidin Rohidin, "Granting of Property During Marriage as an Inherited Property in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 310, https://doi.org/10.22373/ujhk.v7i1.22875.
[9] Ariza Umami dan Iskandar Samsul Arifin, "Perlindungan Hukum Terhadap Pihak Ketiga Akibat Adanya Pemberlakuan Actio Pauliana Dalam Hukum Kepailitan," *Justice Law: Jurnal Hukum* 2, no. 2 (2022): 1–9, http://scholar.ummetro.ac.id/index.php/hukum/index.
[10] Ranaswijaya Ranaswijaya and Soleha Soleha, "Analysis of Monzer Kahf's Thoughts on the Phenomenon of Consumption in Modern Society," *AL-FALAH : Journal of Islamic Economics* 8, no. 1 (2023): 119, https://doi.org/10.29240/alfalah.v8i1.6855.

requiring collateral to guarantee loan repayment. Therefore, the credit agreement not only regulates the rights and obligations of the parties, but also becomes an important instrument to protect the bank from the risk of bad credit. If the debtor does not fulfill their obligations, the bank has the right to demand the execution of its rights through legal channels based on the contents of the agreement.[11]

A banking credit agreement is a binding contract between a bank and a customer for borrowing and lending money with provisions for repayment along with applicable interest as compensation, legally regulated to protect the interests of both parties and support the smooth running of banking and economic activities.[12] Banking credit agreements, like agreements in general, must also refer to the principle of balance, which requires a balance of rights and obligations between the parties involved in an agreement.[13] This principle aims to ensure that the agreement made is not only legally binding but also reflects fairness and reasonableness, so that each party obtains proportional and balanced rights and obligations.

To achieve balance in banking credit agreements, one important aspect that needs to be considered is related to the integration of customary law aspects based on the theory of legal pluralism. The integration of customary law in banking credit agreements is very important to achieve a balance between the bank as the creditor and the customer as the debtor, especially in areas where communities still uphold local customs and cultural values. Customary law has characteristics that emphasize the principles of kinship, harmony, mutual assistance, and mutual trust, which are different from Western civil law, which is more contractual and individualistic. By integrating the principles of customary law into banking credit agreements, the balance of rights and obligations between banks and customers can be better maintained because there are social values that regulate the behavior and relationships of both parties in a more humane and contextual manner.

This research aims to analyze the integration of customary law and the theory of legal pluralism of the parties in banking credit agreements based on the principle of balance. There are two legal issues discussed in this research, namely: (i) the urgency of integrating customary law in banking credit agreements, and (ii) efforts to realize the integration of customary law based on the theory of legal pluralism in banking credit agreements based on the principle of balance.

METHODS OF THE RESEARCH

This research is a normative legal study that focuses on the analysis related to the integration of customary law and the theory of legal pluralism of the parties in banking credit agreements based on the principle of balance.[14] The primary legal materials used are laws and regulations, specifically the Civil Code and Law Number 10 of 1998 concerning Banking (Banking Law) as amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. The secondary legal materials used are journal

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[11] Suwinto Johan, "Will Data Protection Act Change the Use of Data in Indonesia Financial Services?," *Lambung Mangkurat Law Journal* 7, no. 1 (2022): 1–13, https://doi.org/10.32801/lamlaj.v7i1.297.

[12] Trisadini Prasastinah Usanti, Agung Sujatmiko, and Ari Kurniawan, "Trademark Rights As Credit Collateral To Strengthen The Self-Reliance Of Msmes," *Journal of Social Sciences and Humanities* 3, no. 2 (2024): 12–24, https://doi.org/10.56943/jssh.v3i2.534.

[13] Faadhilla Putri Aryanti, Fachradita Nurhalizah, and Hayatull KH Jannah UIN Raden Fatah Palembang Jalan Zainal Abidin Fikri Komp, "Pengaruh Kontribusi Pembiayaan Mikro Modal Kerja Di Dalam Lembaga Keuangan Perbankan Syariah Terhadap Pengembangan Usaha Mikro Kecil Dan Menengah (UMKM) Di Kota Palembang (Studi Kasus Bank Syariah Indonesia KC Demang)," *Ekonomis: Journal of Economics and Business* 6, no. 2 (2022): 699–709, https://doi.org/10.33087/Ekonomis.V6I2.566.

[14] and Wibren Van Der Burg Taekema, Sanne, *Contextualising Legal Research: A Methodological Guide* (Massachusetts, 2024).

articles, books, and other research results that discuss banking credit agreements, legal pluralism, as well as customary law values and norms. Non-legal material is a dictionary. The analysis of legal materials is carried out in a qualitative-prescriptive manner that emphasizes the existence of legal solutions to existing problem formulations.[15]

RESULTS AND DISCUSSION

A. The Urgency of Integrating Customary Law in Bank Credit Agreements

A banking credit agreement is a binding agreement between a bank as the creditor and a customer as the debtor that regulates the provision of a loan of money by the bank to the customer within a certain period of time with provisions for repayment along with interest as compensation for services.[16] This agreement forms the legal basis for the credit relationship between the two parties, which aims to provide certainty of rights and obligations, where the debtor is obliged to repay the loan in accordance with the agreed terms.[17] In Indonesia, credit agreements are generally regulated by the Civil Code and Law Number 10 of 1998 concerning Banking (Banking Law) as amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. This agreement is usually drawn up in written form and is often a standard contract drawn up unilaterally by the bank, so that the customer is deemed to agree to all the provisions when signing the document.[18]

Banking credit agreements can be of various types, such as working capital loans, investment loans, and consumer loans, each of which has different characteristics and purposes of use. Working capital loans are usually used for short-term operational needs, investment loans for long-term financing such as business development, and consumer loans for personal or family needs.[19] In credit agreements, banks apply the principle of prudence by conducting a creditworthiness analysis, including assessing the risk and repayment ability of the customer, and usually require collateral as a form of protection against the risk of bad credit.[20] The credit agreement also includes clauses governing the bank's right to take action if the debtor defaults, such as seizing collateral or collecting through legal channels.

With a banking credit agreement, the legal relationship between the bank and the customer becomes structured and clear, providing legal certainty and mechanisms for the implementation of the obligations and rights of each party. Although often in the form of a standard contract that tends to be one-sided, this agreement remains an important instrument in supporting banking activities and economic development because it allows for the systematic and legally protected distribution of credit. Therefore, the preparation

[15] Suteki and Galang Taufani, *Motodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)*, Cetakan 3 (Depok: RajaGrafindo Persada, 2020).

[16] I Gede Surya Winata and I Wayan Novy Purwanto, "Legal Protection of Patent Rights As Fiduciary Guarantees in Banking Credit," *Policy, Law, Notary and Regulatory Issues (Polri)* 2, no. 1 (2023): 88–95, https://doi.org/10.55047/polri.v2i1.549.

[17] Ar Rahiim Innash, Umar Ma'ruf, and Arief Cholil, "The Role of Notaries in Implementing the Provisions of the Compilation of Islamic Law (KHI) on the Distribution of Inheritance to Orphans, Victims of Natural Disasters Who Are in Trusteeship," *Sultan Agung Notary Law Review* 2, no. 4 (2020): 424, https://doi.org/10.30659/sanlar.2.4.424-440.

[18] Putri Wahyu Maulana, "Perjanjian Lisensi Berupa Konten Youtube Pada Jaminan Fidusia Menurut Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Ekonomi Kreatif," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 529–39, https://doi.org/10.53363/bureau.v3i1.199.

[19] Upik Mutiara, Rahmad Ramadhan Hasibuan, and Lupita Risma Candanni, "Perlindungan Data Dalam Layanan Perbankan Berbasis Teknologi (Fintech): Kerangka Regulasi Di Indonesia Dan Singapura," *Jurnal Magister Ilmu Hukum* 5, no. 2 (2021): 1, https://doi.org/10.36722/jmih.v5i2.788.

[20] R V Saragih and W S Widiarty, "Intellectual Property Rights as Bank Credit Guarantee," *International Journal of Artificial Intelligence …* 6, no. 1 (2022): 1–6, https://doi.org/10.29099/ijair.v6i1.394.

and implementation of credit agreements must be carried out with prudence and transparency in order to provide optimal benefits and reduce the potential for disputes between banks and customers.

As with agreements in general, banking credit agreements must pay attention to the essential elements in banking credit agreements. Essential elements in an agreement in general are the basic elements that must be present in order for an agreement to be considered valid and legally binding.[21] The essential elements in a banking agreement, especially a credit agreement, are the fundamental elements that must be fulfilled in order for the agreement to be valid and legally enforceable. First, the element of the identity of the parties, namely the bank as the creditor and the customer as the debtor, must be clear and legally valid so that a legal relationship can be formed validly. Second, the amount of credit granted must be explicitly detailed in the agreement so as not to cause disputes regarding the amount of the loan to be repaid.[22] Third, the agreed credit repayment period is important because it provides a time limit for the debtor to return the loan to the bank. Fourth, the amount of loan interest and how it is calculated must be announced and agreed upon in advance, as it is the bank's compensation for the risk of granting credit. Fifth, the need for guarantees or collateral to secure the bank's rights from the risk of bad credit is also a vital element, which can be in the form of mortgage rights, fiduciary security, or other forms of security that are legal in the eyes of the law.[23] Sixth, the installment payment and repayment mechanism must be detailed so that the refund process runs smoothly with a clear record of the terms, including clauses related to sanctions or fines in the event of delays or defaults.

Banking credit agreements must also contain special clauses such as an executorial clause that allows the bank to execute collateral if the debtor fails to fulfill its obligations.[24] The element of good faith is also emphasized in the implementation of the agreement so that both parties carry out the agreement in accordance with the trust and agreement that has been made.[25] All of these essential elements must be clearly stated in the agreement document, whether in the form of a notarial deed or a standard agreement letter, so that it has binding legal force and can be used as evidence in the event of a dispute. By fulfilling these essential elements, a banking credit agreement can function optimally as a formal instrument that protects the rights and obligations of banks and customers in credit transactions. Several aspects that must be fulfilled in a banking credit agreement include the basic elements that guarantee that the agreement is legally valid and protects the interests of both parties, namely the bank as the creditor and the customer as the debtor. This is also in line with the validity requirements of a credit agreement which basically has the same substance as the validity requirements of an agreement in general as regulated in Article 1320 of the Indonesian Civil Code.[26] This article explains four basic requirements that must be met in order for an agreement, including a credit agreement, to be considered valid and

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[21] Aisyah Defy R. Simatupang Abdul Rachman, Atiqi Chollisni, Muklis, Dewi Reni, "Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia," *Ilmiah Ekonomi Islam* 8, no. 1 (2022): 47–58.

[22] Shinki Katyayani Pandey, "A Study on Digital Payments System & Consumer Perception: An Empirical Survey," *Journal of Positive School Psychology* 2022, no. 3 (2022): 10121–31, http://journalppw.com.

[23] Álvaro Saiz-Sepúlveda and Álvaro Hernández-Tamurejo, "Exploring the Impact of Loans on Credit Risk Management in Spanish Systemic Banks," *The Journal of Risk Finance* 26, no. 1 (2025): 22–40, https://doi.org/10.1108/JRF-07-2024-0191.

[24] Edward Edward and Rodiatun Adawiyah, "Legal Review of the Validity of a Power of Attorney to Sell as an Executorial Guarantee in a Breach of Performance Case," *International Journal of Business, Law, and Education* 6, no. 2 (2025): 1151–57, https://doi.org/10.56442/ijble.v6i2.1170.

[25] Jan Halberda, "The Principle of Good Faith and Fair Dealingin English Contract Law," *Pravovedenie* 64, no. 3 (2020): 313.

[26] Niru Anita Sinaga, "Perspektif Force Majeure Dan Rebus Sic Stantibus Dalam Sistem Hukum Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 1–27, https://doi.org/10.35968/jh.v11i1.648.

legally binding, namely: first, there must be an agreement between the parties who bind themselves, which means that both parties, in this case the bank as the creditor and the customer as the debtor, must understand and accept the contents of the agreement consciously and without coercion, fraud, or error. This agreement is the main foundation for the occurrence of a valid legal relationship.

Second, the competence of the parties in making an agreement, where both parties must have sufficient legal capacity, namely not being underage, not being under guardianship, and being in good physical and mental condition to give consent. Third, there must be a specific thing promised or the object of the agreement which must be clear and can be implemented, for example the amount of credit money, the term, and the terms of repayment. Fourth, a lawful cause or purpose of the agreement that must not conflict with the law, morality, and public order. An unlawful cause, such as an illegal purpose or unfairly harming other parties, will render the agreement legally invalid. In the practice of banking credit agreements, these requirements are elaborated in more detail and adapted to the needs of the bank in carrying out the credit granting function, including special clauses such as interest, guarantees/collateral, and detailed payment methods. Although often in the form of a standard agreement unilaterally drawn up by the bank, the credit agreement must still meet these valid requirements in order to have binding legal force. By fulfilling the valid requirements as mandated by Article 1320 of the Civil Code, the credit agreement becomes a strong foundation in guaranteeing the rights and obligations between the bank and the customer so as to prevent disputes and provide legal certainty for both parties in the implementation of credit transactions.

The credit agreement must be prepared transparently and professionally by following the principle of prudence, and accommodating the principle of fairness so as not to burden one party, especially the debtor whose bargaining position is weaker. All of these provisions must be stated in written form which can become strong legal evidence in the event of a dispute in the future. By fulfilling these aspects, a banking credit agreement can function effectively as a legal instrument that regulates credit relations, minimizes the risk of bad credit, and maintains balance and trust between banks and customers.

The integration of customary law in banking credit agreements in Indonesia reflects a harmonious dialogue between the formal legal system and the values of local wisdom that guide indigenous peoples in carrying out economic transactions, including credit. In practice, credit agreements in indigenous communities are often not only seen as legal relations, but also as a manifestation of the principles of kinship, mutual cooperation, and mutual trust that underlie customary law.[27] This differs from the approach to credit agreements in modern civil and banking law, which is more individualistic and based on written documents and standard clauses. For example, in village credit institutions in Bali, the approval and involvement of traditional figures such as the Kelihan or Bendesa Adat is an important condition for the validity of a credit agreement.[28]

This customary approval not only guarantees the social legitimacy of the agreement, but also serves as a moral guarantee in the implementation and settlement of credit. This principle promotes agreement and consensus, so that credit is considered valid if

[27] Putu Vidya Shania Devi et al., "Prevention of Fraud Based on Spirituality in Village Credit Institutions in Badung Regency," *World Journal of Advanced Research and Reviews* 25, no. 2 (2025): 1052–62, https://doi.org/10.30574/wjarr.2025.25.2.0442.

[28] Dewa Ayu Eny Wulandari, "Manajemen Risiko Berbasis Budaya: Peran Nilai-Nilai Bali Dalam Penguatan Akuntabilitas LPD," *Journal of Principles Management and Business* 4, no. 01 (2025): 120–37, https://doi.org/10.55657/jpmb.v4i01.215.

accompanied by the approval of the authorized customary party, and the settlement of disputes or defaults is usually carried out through deliberation, not through formal litigation mechanisms.[29] Nevertheless, this integration also faces challenges in terms of formal legal certainty, especially regarding the necessity of written documentation in modern banking in accordance with national regulations. Therefore, synergy between customary law and formal banking rules is needed so that credit agreements that accommodate customary values can still receive legal guarantees while maintaining the social and cultural relevance of indigenous peoples. This integration not only enriches the substance of credit agreements with strong values of social justice and solidarity in indigenous communities, but also helps create more humane and fair credit problem solving mechanisms based on local wisdom, strengthening the sustainability of credit relations and the social stability of local communities. Thus, the integration of customary law in banking credit agreements is a real manifestation of national legal recognition of legal pluralism and the importance of respecting the rules and values that apply in indigenous communities as part of Indonesia's diverse and dynamic legal system.

Legally, Article 1389 of the Civil Code states that an agreement not only binds the parties to matters that have been expressly stipulated in the agreement, but also to all matters that, according to the nature of the agreement, are required by propriety, custom, and law. This article contains the principle that an agreement cannot be understood rigidly only based on the written words in it, but must also be seen in the context of broader social and legal norms, including customs that live in society. In relation to customary law, Article 1339 of the Civil Code provides an important space for the recognition and integration of customary norms as part of the customs inherent in the nature of certain agreements in indigenous communities.[30] This means that in the implementation of an agreement in an area with an indigenous community, in addition to written provisions, customary norms that have become habits can be considered as a binding part of the parties.[31]

These customary norms usually contain values of propriety and justice that are in accordance with the cultural and social context of the local community.[32] Therefore, Article 1339 of the Civil Code affirms that customary law is not merely a traditional rule that stands alone, but can act as a complement and balancer to formal legal provisions in an agreement. This integration allows the agreement to not only be valid under national law, but also relevant and enforceable in the cultural context of the community concerned, providing value of effectiveness and social justice in legal relations between parties. Thus, Article 1339 bridges the freedom of contract with the need to respect customary norms that live and apply in society, so that agreements can be implemented fairly and in accordance with local wisdom values. This principle shows that Indonesian civil law recognizes legal pluralism and gives legitimacy to customary law as an integral part of the regulation of agreements.

Article 1389 of the Civil Code provides space for the application of these principles by affirming that the repayment or fulfillment of obligations in an agreement cannot be forced

[29] Sudjana Sudjana, "Principle of Good Faith in Confidentiality Agreements of Trade Secret Information," *Dialogia Iuridica* 14, no. 1 (2022): 052–075, https://doi.org/10.28932/di.v14i1.5376.

[30] Eka Susykawati, "The Existence Of Customary Law In The Legal System In Indonesia," *Journal of Adat Recht* 1, no. 1 (2024), https://doi.org/10.62872/ygtdmb51.

[31] Dicky Eko Prasetio, "Perlindungan Dan Pengakuan Hak Ulayat Masyarakat Adat Biak Papua," *Realism: Law Review* 2, no. 1 (2024): 54–82.

[32] Dita Perwitasari Dicky Eko Prasetio, Fradhana Putra Disantara, Nadia Husna Azzahra, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law," *Rechtsidee* 8, no. 1 (2021): 4.

unilaterally; but must be based on clear agreement from the party entitled, which philosophically is also in line with the values of deliberation and consensus in customary law. Therefore, the integration of customary law in agreements based on Article 1389 of the Civil Code encourages harmony between formal legal norms and customary norms that emphasize agreement and social relations between parties, thereby strengthening the validity and applicability of agreements in the national legal system without ignoring local values that live and develop in indigenous communities. Thus, Article 1389 not only regulates the formal aspects of fulfilling obligations, but also opens up opportunities for customary elements that prioritize mutual agreement to be applied and respected in the settlement of agreements, including in terms of repayment or payments that may differ from the initial agreement, as long as there is agreement from the parties concerned. This integration makes customary law a source of values that can complement and harmonize the implementation of national civil law in relations between communities with different cultural and legal backgrounds.

The urgency of integrating customary law in banking credit agreements in Indonesia becomes very important when viewed from the provisions of Article 1339 of the Civil Code which accommodates aspects of customary law in the context of agreements. Article 1339 affirms that agreements not only bind the parties to what is written in the contract, but also to matters that, according to propriety, custom, and law must be obeyed. In indigenous communities, credit transactions are often based on the principles of togetherness, trust, and deliberation for consensus, which are noble values of customary law that run from generation to generation. The integration of these customary law values into banking credit agreements is important to maintain a balance between formal legal certainty and social justice that lives in indigenous communities. For example, in village credit institutions, the approval of traditional figures such as the kelihan or bendesa adat is a condition for the validity of a credit agreement, which shows that recognition of customary law strengthens the legitimate basis and acceptance of the agreement in the local community.[33] In addition, customary law often regulates dispute resolution mechanisms through deliberation which can be a more efficient alternative and have a positive impact on social stability in indigenous communities. Thus, integrating customary law into banking credit agreements can increase public trust and engagement, as well as reduce the potential for conflicts that may arise due to mismatches between formal and customary legal norms. This also supports the principle in Article 1339 of the Civil Code which places custom and propriety as an inseparable part of contract law. Overall, this integration is not only about recognizing pluralistic law in the national legal system, but also an effort to realize fair legal protection for indigenous peoples in banking practices, so that credit agreements can run on a strong legal basis while respecting existing values and local wisdom.

B. Efforts to Realize the Integration of Customary Law Based on the Theory of Legal Pluralism in Banking Credit Agreements Based on the Principle of Balance

The values and norms of customary law play an important role in banking credit agreements, especially in areas with strong indigenous communities. Customary legal values such as trust, deliberation, mutual cooperation, and togetherness become a social foundation that governs the relationship between lenders and borrowers, which differs

[33] Ni Kadek Marantina Dewi, Ni Luh Made Mahendrawati, and I Nyoman Sukandia, "Resolution Of Non-Performing Loans In Credit Agreements Without Mortgage Deed At The Customary Village Credit Institution (LPD) of Padonan Tibubeneng, North Kuta, Badung," *Journal of Court and Justice* 3, no. 1 (2024): 63–73, https://doi.org/10.56943/jcj.v3i1.503.

from the formalistic approach of modern civil and banking law.[34] These norms not only form the basis of a more effective and harmonious agreement because they are adapted to local socio-cultural conditions, but also provide justice and moral protection for both parties, especially for communities that are still economically vulnerable. In credit agreements, the application of customary legal values can increase the legitimacy and acceptance of the agreement in the local community, considering the existence of approval from traditional leaders who represent the will of the community.[35] In addition, customary legal norms often provide dispute resolution solutions through deliberation that are faster and more peaceful than formal litigation channels.[36] By accommodating customary values and norms in banking credit agreements, banks can build public trust and reduce the risk of legal conflicts arising from the gap between formal and customary law. Therefore, it is important for the banking system to integrate and respect customary legal values, so that credit agreements are not only legally valid in a positive sense, but also in accordance with local wisdom that emphasizes aspects of humanity and social justice. This integration is key in realizing effective, fair and sustainable credit agreements in the context of legal pluralism in Indonesia.

The acceptance of customary legal values and norms in banking credit agreements in Indonesia can be seen by referring to Law Number 10 of 1998 concerning Banking (Banking Law) which has been amended by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. In the Banking Law, especially in the provisions governing credit agreements and bank operations, there is respect for the existence of indigenous peoples and customs that live in their communities, although the form of credit agreements in practice may differ from modern banking standards.[37] This is demonstrated by the recognition of the role of traditional figures such as kelihan and bendesa in the credit approval process in village credit institutions, which is considered legally valid as long as it does not conflict with higher statutory provisions. The changes through the Development and Strengthening of The Financial Sector Law affirm the strengthening of financial sector inclusiveness which allows adaptation of local legal mechanisms, including customary law, in order to provide more appropriate and fair financial services for indigenous peoples and remote areas. By accepting customary values and norms in credit agreements, banks can build more harmonious and effective relationships with communities, while maintaining the social and cultural values that underlie the harmony of indigenous communities. This recognition is not merely a form of tolerance, but a strategic integration to strengthen legal certainty as well as the sustainability of inclusive and responsive banking practices to socio-cultural diversity in Indonesia. Therefore, the Banking Law together with the revisions in the Development and Strengthening of The Financial Sector Law provide an adequate legal foundation to accommodate customary legal values and norms in banking credit agreements, thereby supporting the realization of a national financial system that is inclusive, fair and civilized in accordance with the principles of a pluralistic rule of law.

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[34] Ni Nyoman Santi Dewi et al., "Strengthening Traditional Village Regulations for Anticipating Non-Performing Loans at Village Credit Institutions," *CONSEN: Indonesian Journal of Community Services and Engagement* 4, no. 2 (2024): 212–18, https://doi.org/10.57152/consen.v4i2.1572.

[35] Paul Atagamen Aidonojie et al., "International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges," *Fenomena* 23, no. 2 (2024): 131–44, https://doi.org/10.35719/fenomena.v23i2.188.

[36] Amirul Wahid RWZ, Bagus Prayogi, "Preservasi Budaya Osing Melalui Internalisasi Budaya Berbasis Sekolah Adat Sebagai Bentuk Pengabdian Masyarakat," *Journal Of Education And Teaching Learning (JETL)* 3, no. 2 (2021): 44–59, https://doi.org/10.51178/jetl.v3i2.214.

[37] Ni Putu Mita Ari Murti et al., "Penerapan Service Excellence Dalam Pelayanan Pada LPD Desa Adat Kukuh," *Jurnal Abdimas Mandiri* 8, no. 2 (2024): 104–10, https://doi.org/10.36982/jam.v8i2.4386.

The acceptance of customary legal values and norms in banking credit agreements can be understood in depth through the theory of legal pluralism which recognizes the existence of various legal systems that coexist in society. The theory of legal pluralism affirms that in addition to state law as positive law, the existence of customary law as part of the social reality of law cannot be ignored, but must be integrated harmoniously in legal practice, including in banking credit agreements.[38] In the context of banking, which generally uses a formal and written legal system, the existence of customary norms rooted in the cultural values of indigenous communities provides additional meaning that is not stated in official documents, but remains socially and morally binding in local communities. The acceptance of these customary legal values is important to bridge the mismatch between formal law and the concrete needs of indigenous communities, so that credit practices become more inclusive and just. The theory of legal pluralism also recognizes the dynamics of interaction, adaptation, and even competition between legal systems that must be managed in order to create legal certainty and justice for all parties.[39] Thus, the integration of customary legal norms in banking credit agreements not only enriches and strengthens the legitimacy of the agreement socially, but also becomes a concrete reflection of legal pluralism that is actually applied in legal life in Indonesia. At the same time, this strengthens the position of customary law as a legitimate legal system and receives recognition in a multicultural and pluralistic national legal scheme, especially in the development of a financial system that is inclusive and responsive to community diversity. This integration is an important strategy to strengthen legal protection and the sustainability of credit relations, especially in areas with strong indigenous communities, thereby guaranteeing social justice and broader socio-economic stability.

Werner Menski's theory of legal pluralism offers a very relevant conceptual framework for understanding the existence of various legal systems that coexist in a society, including in the context of banking credit agreements in Indonesia. Menski views legal pluralism as a dynamic interaction between three main pillars, namely state law, social law originating from moral, religious and cultural values, and social norms that empirically live in society.[40] In this framework, customary law rooted in local culture becomes an integral part of the legal system that interacts with formal law made by the state. When applied to banking credit agreements, Menski's theory shows the urgency of recognizing and integrating customary legal values that have been the social foundation of indigenous communities in credit transactions. On the one hand, banking law regulates formally based on state law, but on the other hand, customary law enriches and complements aspects of social justice, especially in dispute resolution and the implementation of credit obligations that are more humane and adaptive to local socio-cultural conditions. Menski's theory of legal pluralism emphasizes that no single legal system can meet all the needs of a pluralistic society, so the success of banking credit agreements in Indonesia depends heavily on harmonizing the interaction between formal law and customary legal values.[41] Thus, the acceptance of customary legal values and norms in the practice of credit agreements is a real manifestation

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[38] Dicky Eko Prasrtio Disantara, Fradhana Putra, Briggs Samuel, and Mawunyo Nutakor, "The Problematics of the Legal Standing of Deoxyribonucleic Acid (DNA) Test Results Concerning Civil Relationships of Illegitimate Children : A Legal Pluralism Perspective," *Mizani* 11, no. 02 (2024): 435–48.

[39] Ashok Brahma and Jhanin Mushahary, "Land Access and Conflict Issues of Tribal Peoples in Bodoland Territorial Region of Assam, India," *Linguistics and Culture Review* 6, no. 5 (2022): 80–91, https://doi.org/10.21744/lingcure.v6ns5.2075.

[40] M. Thahir Maloko et al., "Analyzing the Prohibition of Interfaith Marriage in Indonesia: Legal, Religious, and Human Rights Perspectives," *Cogent Social Sciences* 10, no. 1 (2024): 1–13, https://doi.org/10.1080/23311886.2024.2308174.

[41] Andrew Ikhayere Imiefoh and Andrew-imiefoh Ihuoma Joy, "A Comparative Analysis of Customary Law and English Law Marriages in Nigeria," *East African Journal of Law, Policy and Globalization* 1, no. 2 (2024): 58–75.

of legal pluralism that accommodates cultural and social diversity within the national legal framework, which ultimately strengthens the legitimacy, justice, and sustainability of legal relations in a multicultural society. This approach creates a legal system that is responsive to the local context without eliminating the general principles of formal law that apply nationally.

Werner Menski's theory of legal pluralism explains that law does not only consist of one formal state legal system, but there is a dynamic interaction between three main pillars, namely state law, social norms rooted in morality, religion, and culture, and customary law that lives in society. In the context of banking credit agreements, this theory illustrates the importance of recognizing customary law as an inseparable part of the national legal system. Formal banking law needs to be harmonized with customary legal values that prioritize aspects of social justice and community relations, especially in dispute resolution and the implementation of credit obligations. Menski's theory affirms that legal pluralism is the most appropriate framework for accommodating the needs of a multicultural and pluralistic society like Indonesia, by providing space for customary law to coexist and interact with formal law. Therefore, the integration of customary legal values and norms in banking credit agreements reflects the application of strong legal pluralism, which provides social legitimacy while guaranteeing justice and the sustainability of legal relations between parties in the context of local culture. This approach ensures that the banking legal system can be responsive to the socio-cultural context of society without sacrificing the certainty of formal law that applies nationally.

Efforts to realize customary law integration based on the theory of legal pluralism in banking credit agreements are very important to achieve the principle of balance in the agreement. In the theory of legal pluralism, various legal systems, including customary law and state law, coexist and interact dynamically. This approach recognizes that customary law, which contains local wisdom values such as deliberation, trust, and mutual cooperation, has a strategic role in maintaining social order and justice in indigenous communities. Therefore, the integration of customary law in credit agreements can provide space for local social and cultural norms to be recognized and respected in the context of formal banking law, creating a balance between legal certainty and social justice. In the context of banking credit agreements, the integration of customary law strengthens the relationship between the bank and indigenous communities by respecting dispute resolution mechanisms based on deliberation and consensus that are more in line with local culture. This also reduces the potential for conflicts that often occur due to inconsistencies between formal legal rules and customary norms. By realizing integration based on legal pluralism, banks not only carry out their economic functions but also contribute to strengthening social cohesion in society, so that the principle of balance in the agreement can be fully fulfilled—by paying attention to the interests and rights of all parties involved. This integration also demonstrates the national legal system's recognition of the plurality of Indonesian legal culture, strengthening the legitimacy and sustainability of credit agreements in a diverse socio-cultural context. As a result, banking credit agreements based on customary law integration are not only effective in terms of formal law, but also socially just in accordance with existing local values, thereby supporting broader economic and social stability in indigenous communities.

The principle of balance in banking credit agreements is a fundamental principle that demands equality and fairness between the bank as the creditor and the customer as the debtor.[42] This principle aims to avoid unilateral domination, especially because the economic position and legal power of the bank are usually superior compared to customers, especially small business customers. In the practice of credit agreements, this condition often creates imbalances that lead to injustice, where the clauses of the agreement are more beneficial to the bank and burden the debtor. Therefore, the principle of balance demands that the contents of the agreement must be made by considering the interests of both parties proportionally and avoiding the existence of exoneration clauses that transfer obligations or risks unilaterally to the customer. Furthermore, this principle also prioritizes agreements that occur voluntarily and in good faith, and provides space for the weaker party to negotiate the contents of the agreement so as to create a harmonization of fair rights and obligations. The implementation of this principle of balance is supported by regulations such as OJK Regulations and legal practices, where the arrangement of the contents of the agreement must not conflict with values of justice and fairness. The application of the principle of balance not only maintains contractual justice, but also plays a role in creating long-term credit relationship stability that benefits both parties and the economy in general.[43] With the principle of balance, credit agreements will be more transparent, impartial, and can prevent court decisions that cancel the agreement due to injustice or abuse of a dominant position. Therefore, the principle of balance is the main foundation for realizing fair, reasonable, and mutually beneficial banking credit agreements between creditors and debtors.

Efforts to realize customary law integration based on the theory of legal pluralism in banking credit agreements based on the principle of balance are a strategic step to create a legal system that is fair and responsive to socio-cultural diversity in Indonesia. The theory of legal pluralism affirms that the legal system is not only limited to state positive law, but also includes customary law that lives and is socially accepted by the community. This integration is pursued by accommodating the values, norms, and legal mechanisms of customary law in the practice of credit agreements that are usually regulated by formal banking law. By including elements of customary law based on the principle of balance, credit agreements not only pay attention to the economic interests of the bank but also to justice and protection for customers, especially indigenous peoples who have limited access to and understanding of formal law. The principle of balance becomes a guideline so that credit agreements are formed fairly, proportionally, and avoid imbalances that harm one party. In this context, respect for the customary approval process, deliberation and consensus, and dispute resolution through local wisdom mechanisms become an integral part of the credit agreement. This integration not only increases the social legitimacy of the agreement, but also provides practical solutions in resolving credit problems that are often complex in indigenous communities. This effort also supports social and economic stability by building trust between banks and indigenous communities through respect for local cultural values. Thus, the application of legal pluralism that accommodates customary law together with the principle of balance in banking credit agreements is an effective key to realizing agreements that are legally valid under national law and socially just, thereby supporting the inclusiveness and sustainability of the financial sector in Indonesia.

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[42] Arnos Dheo Vegha Simarmata et al., "Penerapan Asas Keseimbangan Perjanjian Kerja Sama Pemerintah Dengan Himbara Tentang Penyaluran Dana Bantuan Bidikmisi," *Binamulia Hukum* 13, no. 1 (2024): 45–53, https://doi.org/10.37893/jbh.v13i1.691.

[43] Wulf Gaertner et al., "Against the Proportionality Principle: Experimental Findings on Bargaining over Losses," *PLoS ONE* 14, no. 7 (2019): 1–18, https://doi.org/10.1371/journal.pone.0218805.

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CONCLUSION

The urgency of integrating customary law into banking credit agreements in Indonesia is very important, especially in the framework of Article 1339 of the Civil Code which recognizes propriety, custom, and law as binding elements of the agreement in addition to the written content. Customary law, which promotes the principles of togetherness, trust, and deliberation, is a strong social foundation in indigenous communities and is an important element in credit agreements, especially in village credit institutions. The approval of traditional figures such as kelihan or bendesa adat in the credit process strengthens the legitimacy of the agreement in the local community and maintains a balance between formal legal certainty and social justice. In addition, customary law also provides a dispute resolution mechanism through deliberation that is more efficient and has a positive impact on social stability. The integration of customary law in credit agreements helps build public trust, reduces the potential for conflict due to inconsistencies between formal and customary legal norms, and provides fair legal protection for indigenous peoples in banking practices. Thus, this integration not only strengthens the pluralistic national legal system, but also ensures that credit agreements run with a strong legal basis and respect for existing local values and wisdom. Efforts to realize customary law integration based on the theory of legal pluralism in banking credit agreements based on the principle of balance are a strategic step to create a legal system that is fair and responsive to socio-cultural diversity in Indonesia. This integration is carried out by accommodating the values, norms, and legal mechanisms of customary law into the practice of credit agreements that are generally regulated by formal banking law. By applying the principle of balance, credit agreements pay attention to the economic interests of the bank as well as

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justice and protection for customers, especially indigenous peoples who often have limited access to and understanding of formal law. The principle of balance becomes a guideline so that credit agreements are formed fairly and proportionally, preventing imbalances that harm one party. In this context, respect for the customary approval process, deliberation and consensus, and dispute resolution through local wisdom mechanisms become an integral part of the credit agreement. This integration not only increases the social legitimacy of the agreement, but also provides practical solutions in resolving complex credit problems in indigenous communities. The principle of balance in credit agreements ensures that the economic interests of the bank and justice for customers, especially indigenous peoples who often have limited access to formal law, can be fulfilled proportionally.

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