



# Legal Protection for Bank Customers Holding Credit Cards Who are Charged with Surcharges by Merchant in Payment Transactions

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**Abstract.** Advances in payment systems in credit card transactions have advantages, such as being more efficient, easier, faster and safer. Nevertheless, in its implementation merchants take advantage of this payment system by charging surcharges to the customers and in that condition the customers are powerless. Unfortunately, in Indonesia there is no regulation that is derived from the Consumer Protection Act (referred to as UUPK) which regulates legal protection for credit card holders. How is legal protection for consumers holding bank credit card customers who are charged with surcharges by merchants in payment transactions regulated? 2) What are the criminal sanctions against merchants who charge a surcharge for bank customers holding credit cards in payment transactions? Legal protection for bank customers who are charged with surcharges is regulated in Article 8 paragraph (1) of Bank Indonesia Regulation Number 16/1/PBI/2014. Legal settlement efforts for cases involving surcharges for customers are those customers can make a complaint to Bank Indonesia. After the matter is processed, Bank Indonesia will impose administrative sanctions up to the revocation of the license for the administration of Payment System services.

**Keywords:** Legal protection · Consumers · Credit cards

## 1 Introduction

Payment systems have evolved from payment transactions made through exchanges. Such a transaction system is known as barter. Then, the transaction system developed again with the emergence of cash payment systems, that is to say, in the form of commodity money, including gold to banknotes and metals issued by the central bank (fiat money). In subsequent developments, the payment system shifted to non-cash which as a development from a script-based (cheque, bilyet giro, etc.) and then to electronic-based payments (card and electronic money).

One form of payment using a card (APMK) is a credit card. The widespread use of credit cards began after the issuance of the Decree of the Minister of Finance Number 1251/KMK.013/1988, dated December 20, 1988. At that point, international credit card issuers developing networks in Indonesia, VISA cards and MasterCard, collaborated

with national banks in capturing market share. The unique nature of credit cards causes customer protection to be unclear, even the protection is invisible to customers. Along with the rapid trend in the use of credit cards, misuse also happens a lot. Bank Indonesia has prohibited merchants from charging customers for non-cash transactions. The prohibition is contained in a Bank Indonesia Regulation, which is referred to as Bank Indonesia Regulation Number 11/11/PBI/2009.

Nowadays, many stores or merchants charge fees to consumers who make non-cash payments. Merchants often charge a fee of three percent, so when the bill appears, the nominal is greater than the original product price. Ironically, shop (merchant) owners apply surcharges for all payment transactions made using credit cards. Holders of credit or debit cards and other products used as a means of non-cash transactions are often at a disadvantage due to the lack of clear information from the card issuing financial banks or institutions. In such conditions, legal protection is needed because credit card holders are in a powerless position, and therefore there is a need for a fair and firm legal arrangement to regulate the use of credit cards.

Protecting cardholders from unfair practices, such as the charging of surcharges to credit card holders, merchants who do double swipes and other things that are detrimental to cardholders is very urgent to do. Heretofore, credit card holders have felt aggrieved because legal protection has not been strict. This is due to the weak legal protection for credit card holders. Parties involved in a deal with credit cards want their position to be protected legally, with reasonable and transparent rights and obligations in the form of a legal protection provided by the State. The existence of the Consumer Protection Act has not been able to resolve various types of problems regarding credit cards in Indonesia. In addition, in Indonesia there is no regulation that specifically regulates credit cards, especially concerning legal protection for credit card holders, as contained in Article 7 letter a of Law Number 8 of 1999 concerning Consumer Protection.

Various regulations that are related to the legal substance of consumer protection cannot be considered perfect in facilitating the rules of legal responsibility, especially the protection of bank customers, the credit card holders. There are no laws and regulations that are derivatives of the Customer Protection Act that specifically regulates how credit card holders are legally protected.

## **2 Research Method**

Oriented to the formulation of the problem, the type of research used in this study is normative legal research, a research method that examines law from an internal perspective. The object of the research is legal norms, one of which examines the void of research norms that are focused on investigating the application of rules and norms in applicable positive law. Normative legal research is the daily activity of a law scholar and it can only be carried out by law scholars, and not scholars from other fields of science.

### 3 Results and Discussion

#### A. Arrangements of Legal Protection for Customers of Bank Holding Credit Cards Who are Charged with Surcharges by Merchants in Payment Transactions

Advances in goods/services industry bring both positive and negative impacts to society. The positive impacts include the availability of goods/services in sufficient quantities with better quality and the availability of alternative options for the community as consumers to fulfil their needs. Meanwhile, the negative impacts lie in the payment system itself and business actors arising from the increasing competition that affects the community. Business actors will also seek the maximum profit in accordance with the economic principles they operate. In general, the payment system is one of the prerequisites for achieving the major objective for Bank Indonesia, which is monetary and financial stability. In this case, a regulation is needed to protect the interests of consumers as the purpose of the law which in the opinion of ethical theory is justice in the sense that “everyone shall receive a share according to their respective rights”, and one of the rights of bank customers as consumers is to obtain legal certainty as regulated in Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Act.

Legal protection for credit card holders can be grouped into 3 (three) categories according to the stages, namely:

1. Pre-transaction legal protection

Pre-transaction is the stage of providing legal protection for credit card holders before they enter into a transaction agreement, a stage before the credit card holder decides to choose and use the product he/she chooses.

2. During transaction legal protection

During transaction refers to the transaction stage that occurs because of an application submitted by a prospective credit card holder in the issuance of a credit card. Prospective credit card holders will be provided with a form or app that was created by the bank.

3. Post-transaction legal protection

Post-transaction is the stage where solving the problem among the bank, merchant, and credit card holder has been carried out. In the event that there was a complaint by the credit card holder, it was a form of improvement in the protection of credit card holders in order to guarantee their rights in dealing with banks and merchants.

Protection for consumers as users of credit cards in a formal juridical manner has been stated in the provisions of the laws and regulations mentioned above. Credit card users have obtained strong legal protection, even consumers can refuse not to meet the surcharges charged to them. The form of legal protection for consumers, in this case credit card users, is based on the laws listed in Article 7 letter b, Article 9, Article 18 paragraph (1) letter g, and Article 29 paragraph (4) of the Consumer Protection Act.

From the description above, it can be claimed that legal protection for credit card holders is of high priority and needs to be enforced in order to avoid consumer losses and, at the same time, to create fair business competition. This is because there are still a number of merchants who charge surcharges to consumers. The amount

of surcharges does appear to be small in one transaction, but due to weak governing regulations and low legal awareness of the community, there is no knowledge of the rules governing the prohibition of the application of surcharges charged to consumers.

## **B. Sanctions for Merchants Who Charge Surcharges for Bank Customers Holding Credit Cards**

Sanctions regarding the charging of surcharges can be found in the explanation of Article 8 paragraph (2) of Bank Indonesia Regulation concerning Card-Based Payment Instruments (referred to as APMK). The Bank Indonesia Regulation on APMK does not explicitly prohibit the charging of surcharges. The regulation only regulates explicitly through the Acquirer's obligation to stop dealing with merchants who take actions that harm the parties involved in credit card transactions, that is to say, cardholders; in this case the merchants process the charging of surcharges in transactions.

Thus, in the event that any dispute that can harm the disputing parties occurs between consumers and business actors, there are already available legal remedies that can be taken, that is the one specified in Law Number 8 of 1999 concerning Consumer Protection, especially those contained in Article 45 to Article 48. The Consumer Protection Law provides 2 (two) alternative dispute resolutions, namely:

### 1. Out-of-Court Dispute Settlement (Article 47)

- a. Through banking, dispute resolution for consumers who hold credit cards can be done through an out-of-court channel, that is through customer submitting a complaint in the facilitation of the relevant banking party.
- b. Through the Alternative Dispute Resolution Institution, according to Article 1 point 1 of Financial Services Authority (OJK) Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions, the Alternative Dispute Resolution Institution - hereinafter referred to as LAPS – is an institution that carries out dispute resolution out of the court.
- c. Through the Alternative Dispute Settlement Agency (BPSK), definition of the Consumer Dispute Settlement Agency is regulated in Article 1 number 11 of the Consumer Protection Act, which states that the agency is the one that is in charge of handling and resolving disputes between business actors and consumers.

### 2. Dispute Settlement through the Court (Article 48)

Act Number 8 of 1999 concerning Consumer Protection facilitates efforts to proceed in public courts. It is in line with the provisions of Article 45 Paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection. For cases involving the charging of surcharges by merchants to consumers who are credit card users, it is not recommended to apply for dispute resolution through the judiciary, because the nominal value charged to credit card users is relatively small, so the losses suffered by the consumers concerned are also small, adjusted to the value of the Merchant Discount Rate that has been determined by each bank. The losses experienced by consumers who are credit cards users are not comparable to the court fees charged to the disputing parties. Generally, the cost of court cases can be said to be expensive.

Based on the regulations described above, related to the imposition of sanctions on merchants, who ignore the provisions in manners that can harm credit card holders in complaints of credit card holders who have been proven to have suffered losses, are deemed difficult because credit card holders are required to prove that the losses they suffered were really the result of the merchant's fault. In this case, in the event that the merchant is proven to have committed a violation, then of course they will be subject to sanctions and the sanctions imposed must be related to the prohibition of charging surcharges which is of course quite clear in Bank Indonesia Regulation and further emphasized in the "Merchant Cooperation Terms and Conditions" agreement. Sanctions received by merchants from complaints of credit card holders are only in the form of administrative sanctions such as warnings up to termination of cooperation with the Acquirers.

## 4 Conclusion and Recommendations

1. Legal protection arrangements for bank customers who are subject to surcharges have been regulated in Act Number 8 of 1999 concerning Consumer Protection. In terms of providing protection to customers, there are two kinds of legal protection to be provided, namely:

a. Preventive legal protection. Preventive legal protection aims to prevent a dispute from occurring.

b. Repressive legal protection, which is the protection that is more directed at efforts to resolve disputes carried out by applying sanctions to perpetrators of violations in order to restore the law to the actual situation.

Legal protection for credit card holders can be grouped into 3 (three) categories according to stages, such as:

1. Pre-transaction legal protection
2. During transaction legal protection
3. Post-transaction legal protection

2. Legal sanctions regarding surcharges imposed on credit card holders by merchants, as regulated in Article 8 paragraph (2) of Bank Indonesia Regulation on Card-Based Payment Instruments (APMK) that result in losses to credit card holders, can be resolved through non-litigation and litigation channels. If the loss suffered by the credit card holder cannot be recovered despite the reports having been submitted, then Bank Indonesia itself can impose administrative sanctions, starting from giving a warning to terminating the cooperation in the use of APMK. It is because merchants often ignore provisions which can then harm credit card holders. Complaints of credit card holders who have been proven to have suffered losses are deemed difficult because they are required to prove that the losses they experienced were really the result of the merchant's fault and this results in weaknesses in the enforcement of existing laws and regulations.

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