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THE BINDING POWER AND ADJUSTABILITY OF EARLY REPAYMENT PENALTIES IN INDONESIAN STANDARD-FORM CREDIT AGREEMENTS

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Abstract

This study aims to analyze the validity and legal consequences of early repayment penalty clauses in banking credit agreements in Indonesia, as well as to examine their conformity with the principles of justice, balance, and consumer protection. Early repayment penalty clauses are commonly applied by banks as a form of compensation for potential loss of interest income due to loan repayment before maturity. This research employs a normative juridical method with statutory and conceptual approaches, supported by empirical data obtained through interviews and case studies in banking practices. The findings indicate that early repayment penalty clauses are, in principle, valid under Indonesian civil law based on the principle of freedom of contract as stipulated in the Civil Code, provided that they meet the legal requirements for a valid agreement as outlined in Article 1320 of the Civil Code. However, in practice, such clauses are generally incorporated into standard form contracts drafted unilaterally by banks, resulting in an imbalance in bargaining power between creditors and debtors. The legal consequences of these clauses are binding but not absolute, as they may be annulled or adjusted if proven to violate the principle of good faith, fairness, and consumer protection regulations. Therefore, although early repayment penalty clauses are normatively valid, their implementation requires strengthening the principles of transparency, proportionality, and balance to ensure legal protection for debtors and achieve contractual justice in banking credit agreements in Indonesia.

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Introduction

The development of the banking sector in Indonesia plays a strategic role in driving national economic growth, particularly through the distribution of credit to the public and businesses (Agustina et al., 2022). Bank credit is a key instrument in providing access to financing that supports economic activity, both at the micro and macro levels (Abubakar & Handayani, 2018). In practice, the legal relationship between the bank as creditor and the customer as debtor is outlined in a credit agreement, which binds the parties based on civil law provisions, specifically as stipulated in the Civil Code (KUHPerdata) (Haspada, 2025). Credit agreements are generally structured in the form of standard clauses unilaterally established by the bank. This situation places the debtor in a relatively weak position due to limited room for negotiation regarding the agreement's contents (Meher & Sirait, 2018). One clause frequently found in credit agreements is a provision regarding loan repayment penalties, including prepayment penalties. This clause is implemented by banks as compensation for the potential loss of interest income due to loan repayment before maturity (Beltratti et al., 2017).

Normatively, the existence of an early repayment penalty clause is justified based on the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. However, in practice, this clause often raises legal issues, particularly regarding the principles of fairness, balance, and consumer protection. This is due to the nature of standard form credit agreements, which often prevent debtors from adequately understanding and negotiating the clause's contents (Nasution et al., 2021). The problem becomes even more complex when the early repayment penalty is deemed disproportionate and tends to burden the debtor, even in the absence of default (Rose, 2012). On the one hand, banks have an economic interest in maintaining projected profits from loan interest, but on the other hand, debtors have the right to repay their obligations early as a form of sound financial management. This imbalance of interests has the potential to create conflict and open up the possibility of disputes between the parties.

Some previous studies have shown that the use of standard clauses for penalties cannot be replaced or eliminated at the time of payment for customers. The bank's internal regulations cannot meet or respond to requests for changes to credit agreements. However, in some cases, there are customers who get a different service at the time of repayment for those who make the deposit, and the freezing system keeps the balance in the account (Nurudin & Mufidi, 2025). PT Bank Jaya Artha, which imposes fines on customers who pay off their debts early to prevent them from switching to a rival bank, even applies the clause to pre-existing loan agreements (Adamrah & Sunitiyoso, 2023). The concept of 'default' in contract law and its interpretation in Indonesian banking law is related to non-performing credit, especially when the debtor fails to pay according to the agreed payment date. The agreed settlement payment for the loan arrears is deducted by the penalty arising from late payment, which indicates the application of the penalty in the credit agreement (Auliandi & Simanjuntak, 2020). The power imbalance allows banks to exploit weaker parties, especially when debtors are in dire need of money and forced to accept burdensome criteria. Indonesia's Criminal Code needs to be revised to regulate the abuse of circumstances and balance the principle of freedom of contract with the principles of propriety, fairness, and balance (Haspada, 2025). The penalty clause for daily late payment of 1% in the SPH document and finds that although administratively valid under civil law, it is substantially contrary to Islamic Law due to its usury contentious nature (Rahmawati, Ulum, et al., 2026). The legal basis for banks to execute the guarantee in accordance with Article 6 and Article 20 of the Mortgage Law when the debtor defaults, while noting the practical obstacles of the debtor that hinder the execution of the guarantee (Vic S & Iryani, 2025). A court decision that applies the principle of Pacta Sunt Servanda to punish defendants for breach of contract, which requires them to fulfill their obligations and potentially pay damages and fines (Cahyo & Kurnianingsih, 2023).

Based on these conditions, there is a gap between normative provisions and actual implementation (law in action), particularly regarding the application of early repayment penalty clauses in bank credit agreements. Therefore, this research is crucial to thoroughly examine the validity of these clauses and analyze their legal consequences from a civil law and consumer protection perspective. This research aims to analyze early loan penalty clauses in bank credit agreements in Indonesia and examine the legal consequences of implementing these clauses for the parties.

Research Method

This research employs a normative juridical method with statutory and conceptual approaches, supported by empirical data obtained through interviews and case studies in banking practices. The Statute Approach is used in understanding several laws and regulations in Indonesia, such as the Civil Code, the Consumer Protection Law, the Banking Law, and the Financial Services Authority Regulations. In addition, it is necessary to take a conceptual approach to find a common thread in the doctrine of freedom of contract. This study uses primary materials of legislation and banking credit contract documents. Then, from the collected data, it will be analyzed descriptively to produce prescriptive conclusions.

Results and discussions

Validity of Prepayment Penalty Clauses from a Civil Law Perspective

Prepayment penalty clauses in bank credit agreements essentially reflect the parties' freedom to determine the terms of the agreement. In Indonesian civil law, this principle is based on the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, which states that every legally entered into agreement is valid as law for the parties making it. Therefore, normatively, a prepayment penalty clause can be declared valid as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely, agreement, capacity of the parties, a specific object, and a lawful cause. In this context, the penalty clause is positioned as a form of compensation for potential creditor losses due to the loss of interest income that should have been earned during the credit term.

However, this validity is not absolute. The implementation of the agreement must still adhere to the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code. This means that even if a penalty clause is formally agreed upon, its enforceability can still be questioned if it is proven to conflict with the principles of justice, fairness, and balance between the parties. In practice, penalty clauses for accelerated repayment are generally outlined in standard form contracts drafted unilaterally by the bank (Mishkin, 1998). This raises legal issues regarding the validity of the agreement, as the element of "free agreement" in Article 1320 of the Civil Code is often merely formalistic. Debtors generally lack sufficient room for negotiation and are faced with the choice of accepting or rejecting the agreement (take it or leave it) (Radbruch, 1950). Thus, although the penalty clause for accelerated repayment is legally valid, substantively, there is still potential for flaws in the agreement, particularly when associated with an imbalance in the bargaining power between creditors and debtors (Hermansyah, 2020).

Doctrinally, a debtor's early repayment cannot be categorized as a breach of contract under Article 1243 of the Civil Code (Tavera, 2025). Referring to the criteria for assessing the quality of contemporary national banking assets, accelerated fulfillment of debt obligations actually reflects good faith in completing all legal obligations, so that the debtor's credit position is classified as current with no operational arrears (Tavera, 2025). Provisions regarding compensation in the form of costs, losses, and interest in civil law can only be claimed if the debtor is negligent after an official written warning (Situmeang, 2025). The automatic imposition of penalty sanctions by banks without clear proof of real losses resembles a form of unilateral commercial sanctions that violate the principle of social accuracy in society (Tavera, 2025). As a legal consequence, this penalty clause has the potential to constitute an unlawful act if it conflicts with the principle of contractual propriety.

From a legal perspective, the inclusion of an early settlement penalty clause risks invalidating the agreement substantively because it is deemed not to fulfill the elements of a lawful cause (Situmeang, 2025). Based on the formulation of Articles 1335 and 1337 of the Civil Code, a cause is prohibited if it conflicts with the law, morality, or public order in force in Indonesia (Tavera, 2025). Standard clauses that deliberately exploit the weak bargaining position of the debtor to unilaterally secure projected bank interest profits are in stark contrast to the principle of normative legal balance (Hapsari & Kurniawan, 2020). The Financial Services Authority Circular also requires financial service providers to apply the principle of fairness in drafting contracts (Abubakar & Handayani, 2023). Violation of these key principles automatically renders the early settlement penalty clause substantively legally flawed and deemed null and void by the panel of judges examining the case in court.

The invalidity of this clause is reinforced by the doctrine's separation between compensation for actual losses and the imposition of unilateral fines that place an excessive financial burden on the public (Rahmawati, Saepul Ulum, et al., 2026). The accelerated repayment penalty mechanism is often implemented without detailed calculations of the actual operational losses suffered by banking institutions as a result of the unilateral repayment (Rahmawati, Saepul Ulum, et al., 2026). The practice of imposing massive and rigid penalty percentages places debtors in a position of multiple obligations to repay the principal debt along with additional financial penalties, which is highly detrimental (Parulianth Simamora, 2017). Civil law mandates that freedom of contract be limited to protect social justice, preventing contracts from being misused as instruments of unilateral economic oppression (Gomulja & Adjie, 2020; Nabila & Djayaputra, 2023). Therefore, reforming the formulation of national banking contracts is necessary to eliminate accelerated repayment penalty clauses that do not reflect the value of true justice for customers.

Penalty Clauses as Standard Clauses and Their Implications for Consumer Protection

From a consumer protection perspective, penalty clauses for early repayment can be categorized as part of the standard clauses regulated in Law Number 8 of 1999 concerning

Consumer Protection. This law expressly prohibits business actors from including clauses that place consumers in an unequal or unilaterally disadvantageous position (Harjono et al., 2024). The main characteristics of standard banking credit agreements create information asymmetry between banks and customers. Banks, as business actors, have advantages in terms of knowledge, experience, and access to legal information, while customers tend to be in a weaker position. This condition is exacerbated by low levels of financial and legal literacy, resulting in many customers not fully understanding the contents of the agreements they sign.

In the context of penalty clauses for early repayment, the main problem lies in the aspects of transparency and proportionality. In many cases, the amount of the penalty imposed is not explained in detail to customers at the time of signing the agreement, creating uncertainty and the potential for future disputes. Furthermore, the relatively high fines are often disproportionate to the actual losses experienced by the bank (Siddiq et al., 2022).

However, based on consumer protection principles, every clause in an agreement must meet the elements of clarity, fairness, and balance. Clauses that are opaque and disproportionate have the potential to violate the principle of good faith and can be classified as clauses that unilaterally harm consumers. In such circumstances, the clause can be declared null and void or at least can be adjusted through a dispute resolution mechanism.

The application of early repayment penalty clauses in standard banking contracts clearly conditions the abuse of circumstances due to the creditor's very dominant economic advantage over the debtor (Haspada, 2025). Banks take advantage of the helplessness of consumers driven by urgent financial needs by inserting rigid clauses containing penalty burdens without any balanced negotiation space for customers (Dewi & Gorda, 2021). Legally, this unilateral determination action is contrary to the provisions of Article 18 of the Consumer Protection Law, which strictly prohibits the inclusion of standard clauses that trigger unilateral losses (Haspada, 2025). The debtor's weak bargaining position forces them to sign the blank format agreement file to obtain the required financing facilities (Sinambela, 2023). This exploitation of information asymmetry confirms that banks tend to prioritize the interests of their own institution's commercial profitability rather than realizing the principle of overall contractual balance that is fair to both parties (Haspada, 2025).

The implication of the inclusion of this early repayment penalty clause directly eliminates the basic rights of banking customers that should be protected by national legal instruments (Sinambela, 2023). The fine provisions are categorized as hidden sanctions that greatly burden the debtor's financial burden without the opportunity to study the substance of the rules applied comprehensively (Sinambela, 2023). Through the analogy of surrendering to the absolute choice of banking contracts, customers lose the opportunity to defend their civil rights when filing complaints about the imposition of early repayment penalty fees (Sinambela, 2023). This seemingly misleading commercial practice violates the principle of transparency of financial information and harms the principle of justice in resolving national banking transaction disputes (Pratiwi & Irhamdessetya, 2023). The inability of debtors to evaluate long-term financial risks due to the low level of financial literacy in the community further exacerbates the potential for exploitation of consumer rights by banking institutions that have full control over the course of the contract ecosystem (Haspada, 2025).

Dogmatically, the legal consequences of violating the prohibition on the inclusion of a standard clause on detrimental penalties result in the clause being null and void (Dewi & Gorda, 2021). Based on Article 18, paragraph (3) of the Consumer Protection Law, any clause that does not meet the objective balance prerequisites has no binding force from the start of the agreement being signed (Dewi & Gorda, 2021). In order to restore equality of legal standing between business actors and consumers, the active role of supervisory institutions such as the Financial Services Authority is crucial in periodically providing guidance and supervision of the banking industry (Dewi & Gorda, 2021). Strict regulatory intervention and financial service transparency policies are needed to eradicate predatory banking practices that harm the wider community. Strict enforcement of civil compensation sanctions must be enforced in order to foster a healthy, accountable, inclusive, and socially just business climate for the entire banking ecosystem (Sinambela, 2023).

Legally, an agreed-upon early repayment penalty clause is binding on the parties, as stipulated in the principle of pacta sunt servanda. This means that the debtor is, in principle, obligated to fulfill the penalty payment obligation if payment is made before the due date (Elliehausen et al., 2008). However, the legal consequences of such clauses are not absolute. Courts and dispute resolution institutions have the authority to assess the reasonableness and fairness of such clauses. In certain cases, a penalty clause may: remain valid if it meets the principles of fairness and proportionality (Murray, 2010); reduced or adjusted if the penalty amount is deemed excessive and disproportionate to the creditor's losses (Tri Wahyudi et al., 2021); and canceled if proven to violate the principle of good faith or consumer protection provisions (Matera, 2019), the principles of good faith and consumer protection are the basis for canceling contracts that harm consumers or violate ethical standards.

From a civil law perspective, this is in line with the concept that freedom of contract should not be abused to create injustice. Therefore, judges have the interpretive latitude to balance the interests of the parties based on the principles of justice and fairness ("Contract, Freedom Of," 2015). The research results indicate a gap between normative provisions and the practical implementation of early repayment penalty clauses in the field. Normatively, regulations have established the principles of transparency and consumer protection in the financial services sector. However, in practice, the implementation of these principles remains suboptimal. Freedom of contract allows the parties to freely define the terms of their agreement. However, these freedoms are subject to the limits imposed by law, morality, and public order to prevent abuse and ensure justice (Castillo Martínez, 2025).

In practice, this freedom is often unbalanced, especially in standard contracts, where one party (usually the stronger party) designs terms that disproportionately benefit them. This requires judicial intervention to restore justice (Priyono et al., 2025). Judges play an important role in interpreting contracts to ensure a reasonable balance of interests. This involves assessing whether the terms of the contract cause excessive profits for one party or cause excessive losses for the other party. Courts can apply the principles of transactional justice to address imbalances, particularly when the weaker party cannot reasonably foresee the consequences of the agreement (Svirin et al., 2019).

The principle of justice as fairness, influenced by Rawls's theory, suggests that contract law must be aligned with the principles of justice of broader society. This includes protecting the weaker side and ensuring a fair outcome (Klijnsma, 2015). In some jurisdictions, courts have the authority to cancel or modify contracts deemed unfair or exploitative, emphasizing the importance of fairness rather than strict adherence to the terms of the contract (Porto et al., 2022). Standard contracts often highlight the tension between freedom of contract and fairness. These contracts tend to favor the stronger party, leading to exploitative practices. Judicial oversight is essential to uphold justice and protect the rights of the aggrieved party (Priyono et al., 2025).

Several factors contributing to this gap include: the dominant position of banks in drafting agreements; the absence of standard regulations regarding the amount and mechanism of fines; low oversight of the implementation of standard clauses; and a lack of customer understanding of their rights as consumers (Harjono et al., 2024; Yuanitasari & Kusmayanti, 2019). This situation indicates that the existence of regulations has not fully guaranteed the creation of contractual justice in banking credit agreements. Therefore, efforts to strengthen more specific regulations are needed, particularly regarding the limitations and mechanisms for implementing early repayment penalties.

From a contractual fairness perspective, early repayment penalty clauses create a dilemma between the bank's economic interests and the debtor's rights. On the one hand, the bank has an interest in maintaining income stability and managing credit risk. However, on the other hand, the debtor also has the right to manage their obligations flexibly, including making early repayments (Jokubauskas, 2023). In practice, the application of early repayment penalties often does not take the debtor's circumstances into account, potentially hindering healthy financial behavior. Debtors who act in good faith and have the ability to repay early are subject to additional burdens that are not always proportional (Meher & Sirait, 2018).

Therefore, a more balanced approach is needed in formulating early repayment penalty clauses, taking into account the following principles: transparency, namely clarity of information to customers; proportionality, namely the appropriateness of the penalty to actual losses; and balance, namely the protection of the interests of both parties (Gutmann, 2021; Klijnsma, 2015). With this approach, it is hoped that a credit agreement system will be created that not only provides legal certainty but also ensures fairness for all parties involved.

Conclusion

Based on the discussion, it can be concluded that the penalty clause for early repayment of loans in bank credit agreements in Indonesia is essentially a valid clause under civil law. This validity is based on the principle of freedom of contract as stipulated in the Civil Code, as long as the clause meets the requirements for a valid agreement, including agreement, capacity of the parties, a specific object, and a lawful cause. In this context, the penalty clause is viewed as a form of compensation for potential bank losses resulting from the loss of interest income from loans repaid before maturity. However, in practice, this clause is generally set out in a standard agreement drafted unilaterally by the bank, creating an imbalance in the bargaining position between creditors and debtors. This situation often results in the agreement elements in the agreement being formalistic, leaving debtors with insufficient room to negotiate the terms of the agreement. Consequently, the application of the penalty clause for early repayment has the potential to lead to injustice, especially if it is not accompanied by adequate transparency and a proportional penalty amount. The legal consequences of a penalty clause for early loan repayment are, in principle, binding on the parties in accordance with the principle of pacta sunt servanda. However, this binding force is not absolute, as its enforceability must still be subject to the principles of good faith, fairness, and consumer protection provisions. If the penalty clause is proven to be burdensome, non-transparent, or disproportionate to the losses suffered by the creditor, the clause can be adjusted or even revoked through available legal mechanisms. Thus, it can be emphasized that although penalty clauses for early loan repayment have normative legitimacy, their implementation in banking practice still faces various issues, particularly related to the principles of fairness and consumer protection. Therefore, it is necessary to strengthen the application of the principles of transparency, balance, and proportionality in credit agreements to create fairer legal relationships and provide legal certainty for both parties.

Declaration of AI and AI-Assisted Technologies in the Writing Process

During the preparation of this work, the author(s) used Gemini for grammar checking, data visualization, and reference formatting. After using this tool/service, the author(s) reviewed and edited the content as needed and take full responsibility for the integrity, accuracy, and originality of the publication’s final version.

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Authorship contributions are reported following the CRediT (Contributor Roles Taxonomy) system. Each author’s specific role in the research and writing process should be identified clearly.

a. Jaya Kasturi: Conceptualization, Formal Analysis, Investigation, Writing Original Draft, and Writing Review & Editing.
b. Rosmidah: Supervision, Project Administration, and Writing Review & Editing.
c. M. Zulfa Aulia: Funding Acquisition and Resources.
d. Muskibah: Validation and Writing Review & Editing
e. Umar Hasan: Data Curation
f. Indriya Fathni: Translation and Grammar Checking

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper. If conflicts exist, clearly describe them here.

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Data Availability Statement

Data used in this research will be made available upon request to the corresponding author at [Jayakasturi19@gmail.com].

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Ethical Approval Statement

The authors confirm that this study adheres to ethical research standards. No patient-identifying information was used. If ethical approval was required, Jambi University and approval number +62 811-7483-014 Jaya Kasturi.

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