

# Some Legal Aspects of Sale Agreement Goods by Using Credit Card and Developments Use In Palembang-Indonesia

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**Abstract-** Credit card may be used to get goods and services, through Sales of Goods Contract. Credit cards as a Financial Institution's products are developed by Kepres (Decision of President) No.61/1988 and Keputusan Menteri Keuangan RI (Decision of Minister of Financial Affairs) No. 1251/KMK. 013/1998.

Up to now there is no regulation which govern the mechanism of using the card. Due to this fact, the problem arises on the development of the use of the card and the principles in applying the agreement. For these purposes, research has been conducted. By using descriptive and analytical approach, and using an interview and a questionnaire as research instrument. In addition to those approach a direct observation has been conducted in one of the card center's office. As to result of the research, some major and minor finding have been found, among others :

1. Using of the credit card has been developed rapidly, but due to lack of banking minded in the society the distribution of credit card still limited;
2. The Credit card is not currency or medium of exchange, but as a medium to get goods and services and the payment guaranteed by card issuer through official documents
3. Cases found in the court in the use of credit card have more criminal aspect than civil ones.
4. The credit card agreement and merchant agreement are as a standard and primary agreement. While the sale of goods using the credit card agreement is a "Derivative Agreement" or "Secondary Agreement" credit card agreement, several tendencies has been found that :

1. There is an unequal position between parties;
2. Card issuer is not involved in the relationship between cardholder and merchant;
3. Risks carried by card issuer are cause more by credit card crime rather than tort cases cause by undue influence are arrange out of court.

The characteristics of sale of goods using the credit cards agreement are as :

1. a mixed contract (sui generis), due to the mixture element on agreement

of sale, of goods, credit, warranty and power of attorney;

2. an un-known contract or an implied in law agreement, because is not found in and has not been arrange out side KUHPerdata (Indonesian Civil Code);
3. the three parties agreement, the third party possesses the rights of subrogation

**Index Terms**— Credit card, Derivative agreement, Cardholder liability.

## I. INTRODUCTION

In the current era of globalization, the use of credit cards in the buying or selling is very much needed, because the card is considered more efficient, safe and practical than if carrying cash everywhere.

One does not need to carry a wad of cash for everyday purposes. Simply save the plastic card measuring 8.5 cm long and 5.4 cm wide on the wallet, and swiping it on the shopping site with Visa, MasterCard, BCA, American Express, Maestro, and others.

The development is supported by a credit card in addition to the economic conditions are getting better, also because these cards have become part of the urban lifestyle. But on the other hand, competition in the credit card business looks increasingly stringent.

The development of the credit card business in Indonesia is now more lively. This is evident from the continued increase in the types of credit cards issued, increasing the number of customers, and the growing number of credit cards in circulation and the value of transactions in the last six years (2005-2010). In 2005 the number of credit cards in circulation in Indonesia recorded 8.34 million cards with transaction value of Rp 51.67 trillion, in 2009 the number of cards in circulation has been 13.41 million cards with transaction value of Rp 137.25 trillion. By the end of 2010, the number of credit cards circulating in Indonesia is predicted to reach approximately 14.15 million cards with transaction value of Rp 157.48 trillion.

For Palembang region, according Asmorohadi, CEO of BNI Regional Office of Public Palembang Palembang own nearly 85 percent of credit card holder even use the PIN (Personal Identification Number). Meanwhile, BNI card transactions in Palembang Rp 115 billion transactions per

month and EDC (electronic data capture) BNI Rp 95 billion per month. While data Palembang BNI credit card holders as much as 105 thousand.

Credit card usage is growing rapidly, as a result of the demands of practicality and ability to travel. By having a credit card, the holder no longer needs to carry cash in large numbers. So avoid robbery, theft or loss of cash.

By showing its credit card, one can shop, or enlist the services of a company. There are times when the amount of spending is limited and some are not restricted. It depends on the type of card has. At the present time the use of credit cards as a payment instrument has been spread all over the world.

Sale and purchase of goods by using a credit card means that the first party (buyer) and the second party (the seller) will involve a third party that the credit card issuer (whether bank or non-bank institutions). Given this, the three parties through Commitments Legal provisions need to be the rights and obligations of each party in a mechanism in payment and possibility in the event of a dispute or breach of one of the parties. To guard against the manipulation contrary to the law, it is to be seen whether there is legislation concerning the use of credit cards.

## II. DISCUSSION

### A. Purchase Agreement

#### 1. Understanding

Article 1457 of the Civil Code gives the sense of buying and selling as a reciprocal agreement, ie on the one hand obligated to deliver the goods and the other party is obliged to pay the price of the goods.

Purchase agreement, historically a species of the genus exchange agreement. Because it was originally going to exchange goods among parties. The seller shall deliver the goods and the buyer shall submit any other goods, which is a medium of exchange called money. So the main characteristic of the purchase agreement, namely the achievement of the purchaser is the form submission "legal tender" or money and not the other kind. Money is also experiencing growth from coins, money in the concrete to the abstract sense; made of paper money, to other forms of monetary values such as checks, demand deposits, money orders, and so on.

And development, in the fifties known tool to make buying and selling, namely credit cards. Although credit cards are not valid in general, but for certain segments of society recognized the presence of a credit card, as a tool that can be used for economic transactions.

Technological developments also bring a result of the transaction was not among people, but among people with automatic machines. Ie machines that offer specialty items such as cigarettes, drinks and la-inforth. Buyers who agree to receive offers from the machine tool, can put coins and wait for the machine will eject the goods, all the machines are not broken, then the goods will come out, but if the machine is damaged, then the goods will not come out. And every buyer the right to demand the delivery of goods from the machine.

#### 2. The rights and obligations of the Parties

As is known to every treaty created rights and obligations of the parties. In accordance with the provisions of paragraph 1

of Article 1338 of the Civil Code. Sellers are required to deliver the goods. If the goods are the object of the sale and purchase of goods moving, the delivery is done by a real submission (feitelijk- Levering). Because the principle of moving objects is "beziteldtalsvolkomen title". Not so when the object of the sale and purchase of goods that still require the submission of juridical, such as buying and selling goods and moving, or selling goods listed, there are provisions khusus. Provisions about handing over the goods can be agreed between the parties. And as long as there is no determined by the parties to the agreement they make, then apply the general provisions contained in the Civil Code.

The obligation is the right buyer, so the buyer is entitled to dispatch of the object of selling it. The delivery of goods can take place at the seller's premises or elsewhere agreement. And the Purchaser shall pay the price of the goods and the seller is entitled to receive payment from the buyer. About the price, mode of payment tools used to pay can also be agreed by the parties to make buying and selling it.

### 3. Price

About the price, article 1465 of the Civil Code states that the price should be determined by both parties, or both parties can also request a third party to set the price of the goods. In Roman law known principle for determining the price that must verum, certum and iustum. Which means that the price should earnestly price of goods (zaak) and to be fair as well as can be determined. Pricing should be objective and rational. Therefore, do not include buying and selling when the price of goods is not rational. Car purchase and sale agreement in 1390 for only ten million, this is not a sale and purchase agreement but the grant.

The parties in the purchase agreement may make provision for a price to be determined by others beyond the parties. However they can not establish that the price will be determined by one of the parties. And this is contrary to paragraph 1 of Article 1256 of the Civil Code which states that:

"All of the engagement is canceled, if the implementation is solely dependent on the willingness of people who are bound".

They can not have an agreement that one of them, given the circumstances, can change a predetermined price.

However, a sale and purchase agreement where the parties are not talking about the price is valid. It happened on the purchase agreement at big stores that sell goods at a price and the price certainly was generally accepted that day.

### 4. Payment

Regarding payments, the Civil Code regulate matters:

- Who should and can pay (Art. 1382 & 1383)
- To whom paid (ch. 1385 -1388)
- What should be paid (ps 1389-1392)
- Where and when to pay (ps 1393) Regarding the type and form of payment is not regulated. This is reasonable because the terms of payment in the Civil Code contains a broad sense, ie fulfillment of achievement that are owed by the debtor. '

#### a. Means of payment.

In the purchase agreement, is done with the use of money, either currency or demand deposits. Payment of the purchase agreement are financial activities, so in addition to currency or demand deposits (checks, travelers checks, giro giro) payments can also be done by asking the help of banking services. For

example, by using the L / C. And in the last decade has developed a way to pay using a credit card.

Payment of the purchase agreement contains a narrow sense of "emigration ownership or control of the funds from the payer to the recipient", said "the movement of ownership or control of funds" for both the recipient and the payer may be a third party acting for or on the authority of the parties other. Bank receives, does not belong to the bank. Bank master on customer confidence in him..

The use of payment instruments (currency) generally to the transaction price is not too large and if the price is already enough people will use a check or giro. Medium L / C is generally used when the buyer and the seller does not meet, since apart. enough with the documents can be accomplished. Credit cards can be used both for small as well as large quantities. However, a large number are still without borders. Not so with a check that the number of infinite magnitude (long enough funds in the bank).

### **b. Who pays and who receives payment**

Paragraph 1 of Article 1385 of the Civil Code determines who is entitled to receive payment, namely:

- a. creditors in person,
- b. a person authorized by the creditor,
- c. people who have been appointed by the judge,
- d. people who by law are entitled meneriraa the payment.

When a payment through a bank, then the seller or the buyer has an account at the bank, and the transfer occurs.

Payment using bank services occur in big cities, where economic life has been developed. Payments made by the bank to its customers if the funds belonging to customers in the bank is adequate, or the bank to make a payment in advance (customers obtain credit from banks), then the bank will charge back to the customer. Position of the bank here was obtained through subgrasi.

Subrogation means the replacement position of the creditor by a third party in the agreement, as a result of payments made by third parties for the debts of the debtor to the creditor.

Subrogation is happening here is different from the provisions as contained in paragraph 2 of Article 1401 of the Civil Code, which must be made with an authentic deed. Subrogation can occur because of an agreement or because of legislation. Article 1401, paragraph 1 states among other things that the subrogation must be stated unequivocally at the time the payment is made. But what is meant by the provisions expressly does not exist, so it can be oral or written.

### **c. What should be paid.**

Regarding what should be paid, governed by Article 1395 - 1399 of the Civil Code. Basically what would be paid by the buyer clearly the price of goods. However, with due regard to Article 1395 and Article 1397 of the Civil Code, the buyer may be asked also to pay costs and interest.

### **d. Pembavaran place.**

Is generally carried out in the sale and purchase transactions occur. When the payment is made in cash, it is done at the place the goods are delivered to the buyer the seller (Article 1514 Civil Code). When payment is made by not cash, the payment was done in the office of the bank. Bank buyer or seller can be the same, it could also not the same. Therefore the

financial transaction when using bank services through the book-entry aid or clearing.

### **e. Payment method .**

In accordance with the development of tools that can be used to make buying and selling, then the method of payment also vary from the way real delivery (levering feitelijkke) into an abstract act, just happened signer or transfer of items.

### **f. Proof of payment .**

When a payment has been executed, then each party will receive pembavaran evidence. Throughout the purchase is made in cash, then the proof of payment is less relevant, especially if the purchase amount is not large. Proof is required as long as the value is quite big and it is feared if there is a dispute. In the statutory provisions do not exist is called to give evidence of the seller's obligations, because it could be the seller refuse payment receipt. But in the life of the people who know the prevailing legal norms then for every receipt of money may be requested evidence.

## **B. About the card**

### **1. Understanding Credit Card**

a. The definition according to dictionaries and encyclopedias. Some definitions from the dictionary or an encyclopedia, among others;

1) Black's Law Dictionary page 331 states: "Credit card: any card, plate, or other like device existing credit for purpose of obtaining money, property, labor or services on credit".

2) Derrick G. Hanson, in the Dictionary of Banking and Finance, published Pittman, London 1985, page 169, states that:

"A credit card is a credit token within the meaning of section 14 (1) Consumer Credit Act 1874, the which define a credit token as a card, check, voucher, coupon, Stam, form, booklet or other document or thing given to an individual by the person carrying on a consumer credit business".

3) The Encyclopedia Americana: "Credit card is the which means of identification by the owner may Obtain consumer credit for the purchase of goods or services rather than pay cash."

4) The New Encyclopedia Britannica: "Credit card is a social card containing a means of identification such as a signature or picture, that authorises the person named on it to charge goods or services to his account, the which he is billed periodically"

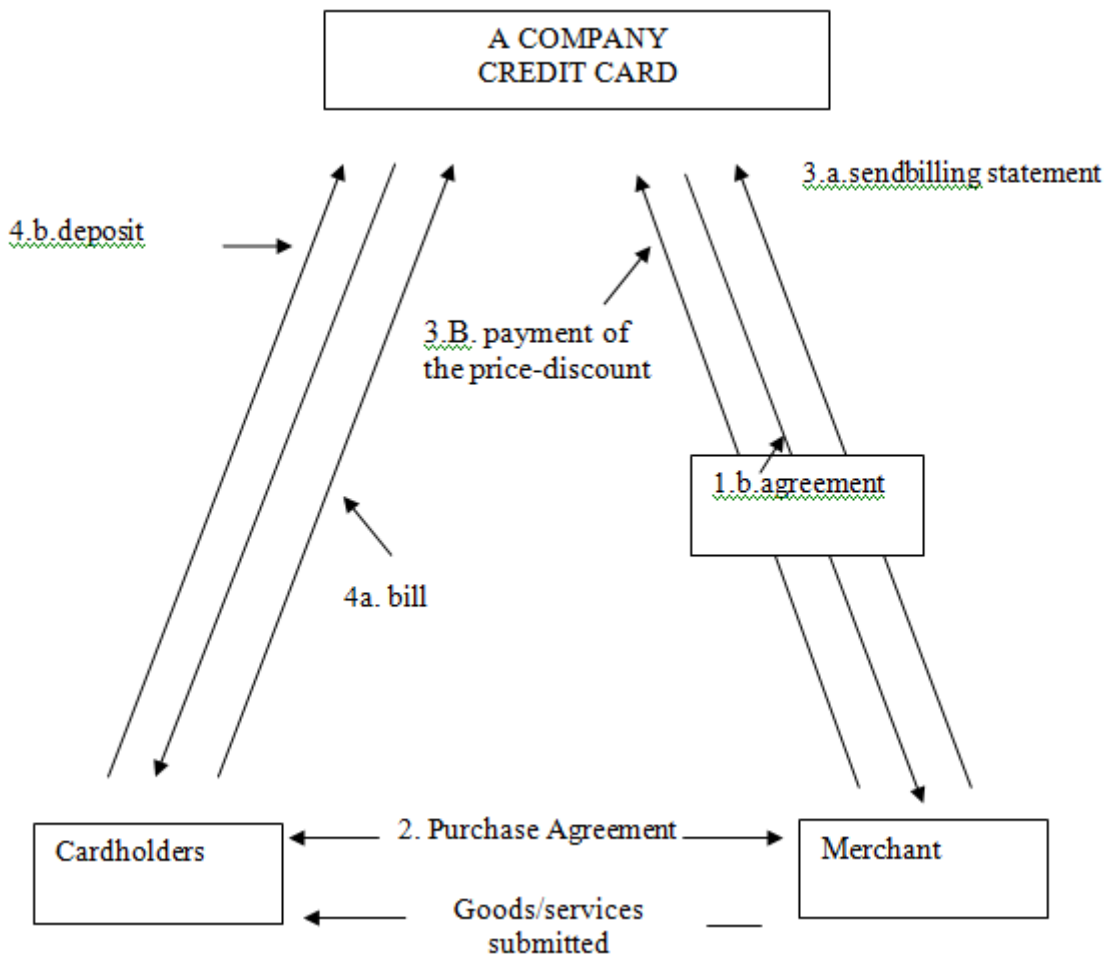
b. Definition According to some of Jurists. The legal experts make different definitions, for example:

1) Prayogo Suryohadibroto & Djoko Imam Prakoso, states that: "Credit card is a kind of means of payment in lieu of cash, in which we may at any time redeem whatever we want that in a place where there branches" that can accept credit card from the Bank, or the company that issued".

2) Thomas Suyantomenuis: "Credit Card or Credit Card adalah means of payment in the

form of a treasure that is made from a type of plastic which is printed with the name of the holder of the credit card, the membership numbers and contents signatures".

**The procedure of credit card usage in the sale and purchase transactions are as follows:**  
Chart no. 1: The procedure of credit card usage



1.a. The card holder made an agreement with a credit card or bank card issuer, based on this agreement banks issue credit cards in the name of the cardholder. With this card cardholders can shop at stores that cater to buyers who would be willing to use credit cards in shopping.

1.b. Merchant or merchant or shop made an agreement with the card issuer or bank, called the merchant agreement.

**2. The credit card holder makes a purchase agreement merchant, the process of the agreement are as follows:**

a. card holders (as buyers) shows a card that dipunyai by a seller (merchant).

b. Merchant check whether the card is valid and is not listed in the Black List. Cards that no-mornya listed on the Black List can not be accepted.

c. Merchant recorded data about the card holder and the number of shopping with the help of a machine (imprinter borrowed from the card issuer) on the sheet (document) provided by the card issuer, the whole amount not to exceed the spending limit, which require authorization.

d. Cardholder sign the sales slip filled in. Buyers have been able to enjoy the goods he bought. But the merchant has not received payment. Until the completion of this transaction are derived from the real agreement, delivery of the goods. But the new obligatoir agreement arising from the birth of some rights and kewaj lban merchants and buyers and publishers.

**3. Merchant will charge your card issuer, at this stage:**

a. belanj make the details of the card holder and attach all the documents that have been has been awarded the cardholder (sales slip, sales draft or credit voucher), and send to the bank, to obtain payment.

b. Banks will recheck the document and when the document was no suspicious bank will make payment by first cutting commissions for services performed bank (issuer) held a first payment to the merchant (jum was the one piece depending on the merchant agreement; ranged between 3 to 5% ).

4. a. In a predetermined time banks will be charging for card holders with me-sent a billing statement.



b. Holders of the card and see the number of invoices received from the bank and matching with existing records to him, and when fit he will pay. Payment is not always made in cash, but can also be simply a way pemidabhukuan, namely bank checking account debit card holders.

5. Relationship with third-parties involved in the use of credit cards  
As shown in the chart of the procedure no one envisaged the relationship between the parties involved in legal relations that occur through the treaty-holders and merchants.

a. The legal relationship between the credit card company to the cardholder. occurs because there is an agreement made between the company credit card (the card issuer or bank) to the cardholder, calling it a cardovereenkomst Rooy. This treaty created rights and obligations between the parties. In this agreement, among others, stated that the card issuer is not fixed, and only the holder has the right to use it as a means of procuring goods simply by showing the card without having to pay cash. Payments will be made to the publisher, under the terms specified in the agreement.

So in the credit card agreement contained a pledge to party III (derden-becling), as stipulated by Article 1317 of the Civil Code. And then the cardholder will pay to the bank on the bill submitted merchant (in credit card usage mechanism-Sale and purchase of the merchant or the merchant's store called) to the bank. So banks here take the place of the merchant, then there substitution, as the provisions of Article 1400 of the Civil Code.

b. The legal relationship between the merchant credit card company. occurs because of the merchant agreement made between them. Rights and Iban kewaj the parties as outlined in the agreement are about the merchant must accept the buyer (cardholder) who shop using the card, the right merchant untu'k receive perobayaran of banks on transactions made using a credit card, and the obligation of the issuer to pay the bills delivered to merchants as long as there is no deviation from the agreed terms. In the agreement, determine the amount of discount will be deducted by the card issuer on the number of bills submitted merchant. In the merchant agreement, also implied the rights and obligations of a merchant related to his relationship with the cardholder.

c. The legal relationship between the merchant and the card is a relationship that occurs due to a purchase of dual appointments between card holder and the merchant. In the purchase agreement consumption goods (and almost entirely chattels), are carried out verbally. However, as an agreement which created rights and obligations, the provisions laid da-lam Book III Chapter Five of the Civil Code Article 1456 start until 15:18 article also applies to the purchase and sale agreement with a credit card. Rights and obligations of the merchant and the cardholder is also implicit in the agreement merchant, that merchant must serve cardholders who want to purchase using the card. The cards are used by the card holder is guaranteed by the bank, which means that the bank will do pembaya'ran for cardholders on pe-ngeluaran made using a credit card. And then the cardholder will pay to the bank on the bill submitted to the merchant bank. If, for no particular reason that caused the banks are not willing to pay or refuse to pay the merchant, the

merchant still entitled to demand that the card holder, and if necessary, ask for the help of the bank.

The company's obligation to pay to the credit card merchant, considered as an abstract obligation, as Rooy said "Deemittent Ziet uitbetalingsverplichting blijktbaar zijn als een abstracte verplichting". And the card issuer did not want to get involved in the dispute between the cardholder and merchant. Therefore merchant, newly willing to accept credit cards when he was convinced that the sales-slip that was sent to the bank will be paid and the card holder does not have the possibility to suspend the payment procedure. This abstract obligation contains an exception, which is if the sales-slip written very large number, so that the card issuer is not willing to pay. Especially when the publisher has faith that raungkin not such a big amount of expenditure, in the case of alleged there was a "mistake" or "fraud".

Then the publisher will receive sales-slip for charging to the card holder. And the new publisher will pay once paid by the card holder. Fraud is meant here is the document (sales-slip) not related to the purchase agreement between the card holder and merchant.

### **C.Characteristics oflaw(rechtscharacters)sale and purchase agreementof goods by usinga credit card**

#### **1. The provisionsof legislation**

Purchase agreement goods by using a credit card is a new legal institution that has developed. In order to ensure legal certainty of the pi-rights involved in this agreement is necessary to find the legal provisions that govern them.

From the research and all the writer's observation, there are no regulations governing the mechanism of credit card usage. Government policy through Presidential Decree No. 61 1988 about his Financing Institutions ha mentions Corporate Credit Card (Credit Card Company), which in article 1 paragraph 7 which states:

"Corporate Credit Cards (Credit Card Company)" is an entity that carries on business financing to buy goods and services using credit cards".

Later in the Minister of Finance of the Republic of Indonesia number 1251 / KM.013 / 1988 on Provisions and Procedures for Financing Institutions, section 1, letter n - j 'is also just mention the sense of Credit Card Company, the same sound with article 1 paragraph 7 of Presidential Decree no , 61 of 1888 mentioned above. Both these regulations governing the procedures for establishing and licensing business credit card. The Minister of Finance of the Republic of Indonesia Article 7 states that:

"The activities carried out in the form of Credit Card issuance of credit cards that can be used by the holder to the payment of goods and services"

Guidelines from Bank Indonesia on credit cards just to mention that the bank will issue credit cards only relatively healthy banks and there should be persetu-juan Bank Indonesia. And the bank that issued the credit card are required to provide a report on Bank Indonesia. But until the month of May 2015, the air-meaning already more than one year of age Kepres that, when the authors conducted interviews at the Head Office of Bank Indonesia in Jakarta, obtained the answer that there are no reports of bank credit card issuers on the number of cards published and which has been outstanding.

Economic transactions in modern society, is generally accomplished through agreement. Legal Agreement shall be governed in Book III of the Civil Code. The principle adopted BOOK III Civil Code is on transparency, which means that the parties may niengatur own rules which will bind them, insofar as the provision coercive nothing in Book III of the Civil Code. With the signing of the agreement, the content of the provisions stipulated in the agreement binding them as legislation. Similarly, according to paragraph 1 of Article 1338 of the Civil Code, which states that:

"All approvals are made legally valid as law for those who make it"  
And because the Civil Code there is no set up and also there is no legislation governing the use of the mechanism of credit karn in buying and selling goods, therefore mesnpergunakan purchase agreement with a credit card can be referred to as a nameless agreement.

**2. Birth of the Sale and Purchase Agreement with the Goods Using Credit Cards**

To find out when the purchase agreement goods by using a credit card is born, it is necessary to see the elements that exist in the purchase agreement. Definition of a purchase agreement by age can be found in Section 1457 KUH; Civil Code which reads:

"Buying and selling is an agreement, whereby one party to bind himself to hand over a material, and the other party to pay the price that has been promised."

Elements of article 1457 of the Civil Code on top of that approval, the parties, the goods and payment. Approval occurs when there is acceptance of the offer, there is acceptance of the offer. The parties are the seller and the buyer. The goods in question are generally good stuff moving objects or fixed objects. Price is the economic value of the agreed parties and payment is a way and the type or form of payment. Goods which become the object of sale and purchase agreement in the purchase agreement goods by using the credit card in question here of consumer goods. Prices in buying and selling goods consumption in society, generally the prices that have been defined in advance or price for sure. Payment of the purchase agreement by using the credit card with a credit card. A purchase agreement with a credit card can only be made between buyers and sellers who have a certain quality that the buyer is the cardholder and the seller is a merchant.

Purchase transaction occurs when the meeting deals with the demand. Offers made by the merchant and addressed to the public, and when one of the public that a card holder wants to make buying and selling, it will show the cards that have. Upon the acceptance of cards by merchants then come a document to be signed by the cardholder. Thus was born the card holder and merchant bond.

Someone called the cardholder when he has a card in his name. Cards obtained because there is an agreement with the card issuer. Hereinafter referred to as credit card agreement (Annex 1 and 2). Merchant is a store or company that made an agreement with the so-called penerblt card merchant agreement (Appendix 3 & 4). Goods Sale and Purchase Agreement by using the Credit Card was born after the other agreements that preceded the credit card agreement and merchant agreement.

Thus Agreements and Credit Card Merchant Agreement shall constitute an agreement which does not have a meaning and 'if it is not followed by the purchase agreement. It can also be called that agreement a credit card and merchant agreement is a preliminary agreement, a legal act which precedes other legal acts (ie a purchase agreement by using a credit card). And the sale and purchase agreement of goods by using a credit card can be regarded as a "derivative agreement" or "secondary agreement"

**3. The mechanism of credit card usage**

To be known by the public that the seller is a merchant then he should put a sticker on the type of credit card that can be served, in a shop window. Buyers will enter into a purchase agreement with using a credit card, must be able to show the card in her name and card. the same as the existing sticker In these sellers.

While there are no merchants and cardholders are met, but a purchase agreement with the credit card use did not happen. Various reasons are found throughout the chapters not peranjian buying and selling taking into use credit cards as shown in the list no. 1 follows.

**List No.1**

**Reason Nothing Happens Purchase Transactions With Using Credit Cards**

The reason given	% answer
1. because of a damaged printer	20
2. The merchant need the cash because they want to be liquidated	15
3. The cardholder can not wait for authorization from the bank	15
4. merchant offering discounts (3-5%) to the cardholder, when transactions are made in cash	30

In addition, also found a merchant who requested the buyer (cardholder) to wear certain types of cards, when knowing that the card holder has several types of cards (20%). Therefore, even though there has been a condition which is owned by the parties to make a sale and purchase agreement of goods by using a credit card does not automatically happen to the agreement, if it is not followed by the realization of the sale and purchase transactions. In addition, although in article 2, paragraph 1 treaty Merchant Bank South Sumatra and Article 2 of the Agreement Merchant Bank Ball contains provisions on the need merchants to accept cards in the sale and purchase transactions, naniun merchant can still reject the use of the card for reasons as mentioned above , The use of credit cards in the buying and selling goods consumption needs only sebagai complementary.

Another requirement that must be met in order for the sale and purchase agreement of goods by using a credit card was born, that the purchaser adalah card holders and parties, the seller is a merchant. Thus, the Sale and Purchase Agreement of Goods by using a Credit Card species of Sale and Purchase Agreement are generally as set forth in Chapter Five Book III.

Under the terms of Article 1458 of the Civil Code, the purchase agreement have occurred when there has been an agreement from both sides, even if the goods have not been

dise-rahkan or the price of goods has not been paid. This means that a purchase agreement adheres to the principle of consensual, because the agreement had been born the agreement, when the merchant accepts the card offered by the card holder and then print transaction data that occurs with the help imprinter, then the cardholder will sign the document (Annex 5, ieilir forum in the form of a sales slip or something of that sort) a consensual agreement. In case of sale and purchase transactions carried out ie cardholder receives goods from a merchant, the purchase agreement by using this credit card, is seen as the real deal. Thus the purchase agreement goods by using a credit card and a consensual agreement as well as the real deal. Likewise, the agreement can be seen as obligatoir (because the sale agreement bore the engagement between the card holder and the merchant, by signing the sales slip) and at the same time as a material agreement (for merchant deliver the goods).

**4. Position parties involved**

Parties involved in the purchase agreement ba-rang by using credit cards must have a certain quality, the buyer has the quality of the card holders and store as a merchant. These parties make a bond with a third party that the bank (card issuer) to make arrangements. This agreement is an agreement and a credit card merchant agreement. In the data obtained in the study site (South Sumatra Bank and Bank BII), the title of which is used is not the same. Title Spoken Bank South Sumatra for kre-dit card agreement is "Membership Agreement Bank South Sumatra Card" and Bank BII wear the title "Bank Card Usage Agreement Ball". This is as a consequence of freedom of contract, the name and content of the agreement submitted to the parties.

Bank will examine whether a person is eligible to become a cardholder and merchant apakah company can msnjadi. Banks generally do the analysis as banks determine whether a person

can be a bank customer and the customer whether it is reasonable to obtain bank credit facilities of this analysis is known as "the five C's analysis". If eligible, the card holders credit card issued in the name of the cardholder and the merchant will be given a loan for the tools and all the necessary documents to conduct purchase transactions are mempergunakan credit card.

So the parties involved in the agreement of sale and purchase of goods by using a credit card here involves three parties, namely the bank as a credit card issuer, the cardholder as the buyer and the merchant as the seller. Therefore this agreement includes perjanjian multifaceted.

Credit card agreement.and merchant agreements already provided by the bank in the form blank. Thus meaning that the provisions governing the rights and obligations of the parties have been printed in the form it. In this so-called Treaty of Legal Sciences Baku. With Baku's agreement means that the bank determines the terms unilaterally, so it can be said that the bank occupies a higher position than the other party. So there is an imbalance between the parties.

Several articles of the Bank BII Card Use Agreement (Appendix 1) and Bank Duta Membership Agreement (Appendix 2), which contains provisions that put pi-hak bank is located at a higher position than the cardholder:

**Listno.2**

**The wordthat indicatethe position ofthe Bank is above thecardholder**

Wordsused	Credit agreementBankBII card	Credit cardagreementBankof South Sumatra
"Stipulated by theBank"	Article 2, paragraph 1	
"Solely on the consideration ofthe Bank"	Article 3, paragraph 2 Article 12 paragraph 1	Article 3, paragraph 1 Article 5, paragraph 1
"Prescribed by theBank"	Article 7 paragraph 1	Article 7 paragraph 1
"Entitled .....	Article 7, paragraph 8	Article 11 paragraph 1
withorwithoutany reason "	Article 8, paragraph 1	Article 3, paragraph 2
"Without having to sayprior to thecardholder"	Article 8, paragraph 4	

From the wordsused inthe articles, it appears that the bank has apositionora higher positionthanthe cardholder.Likewise,inagreement with themerchant(attachment 3&4), similarwordswere foundon alist of3 below;

**Listno.3**

**The wordthat indicatethe position ofthe Bank is above themerchant**

Words	Bank BII	Bankof South Sumatra
Determined entirely by theBankwithout prior notice the discretion of theBank's own	article 7 Article 7, Article 15 article 20	Article 10

Legal language used in the agreement, it is generally difficult to be understood by the common people. Even respondents acknowledge the provisions contained in the agreement, rather elusive. 20% of respondents stated that only understand some of the contents of the agreement, and the remaining states of knowledge of the contents of the agreement. However, 90% of the 80% who know that a new well understood after reading repeatedly and received an explanation from the bank. Because language is considered difficult by the respondent., Then three out of 40 respondents stated that she did not read the contents of the agreement. Because he had believed in the bank, then no read he dared to sign the agreement.

**5. Tools used to make payments**

Article 7 of Decree of the Minister of Finance of the Republic of Indonesia stated that: "The activities carried out in the form of Credit Card issuance of credit cards that can be used by the holder to the payment of goods and services" Within the meaning of Article 7 above, the credit card can be used for buying and selling goods. So in the Sale and Purchase Agreement with *mpergunakan Goods Credit Card*, meaning that the "tool *un-tuk pay*" is a credit card. In terms of buying and selling in general, used for *tool pembayarannya* money.

Credit cards are becoming the object of this study is the card, credit issued by the Bank of South Sumatra and Bank BII is cooperating and has got the authority of the International Card Organization. Provisions on credit cards can be seen in the articles of the agreement between the bank and the cardholder and the agreement between the bank and the merchant, as can be seen in the list no. 4 follow on page 85.

**List no. 4**

**Some terms on credit cards in the credit card agreement and the merchant agreement**

that the card is held by the Bank	<ol style="list-style-type: none"> <li>1. The credit card agreement Bank of South Sumatra, article 1, paragraph 1</li> <li>2. Bank credit card Agreement of South Sumatra, article 1, paragraph 1</li> <li>3. Agreements Merchant Bank South Sumatra, chapter</li> <li>4. Agreement merchant bank South Sumatra, article 1 letter a</li> </ol>
that the card can not be transferred	<ol style="list-style-type: none"> <li>1. The credit card agreement Bank of South Sumatra, article 4, paragraph 1</li> <li>2. Bank credit card Agreement of South Sumatra, article 1, paragraph 1</li> <li>3. Agreements Merchant Bank South Sumatra, chapter</li> <li>4. Agreement merchant bank South Sumatra, article 1 letter a</li> </ol>
cards issued for and on behalf of the cardholder	<ol style="list-style-type: none"> <li>1. The credit card agreement Bank of South Sumatra, article 4, paragraph 1</li> <li>2. Bank credit card agreement</li> </ol>
credit cards as payment instruments, during the card is still valid	<ol style="list-style-type: none"> <li>1. The credit card agreement Bank of South Sumatra, article 4, paragraph 1</li> <li>2. Bank credit card agreement</li> </ol>

the validity period of the card	<p>South Sumatra, article 2, paragraph 1</p> <ol style="list-style-type: none"> <li>3. Agreements Merchant Bank South Sumatra, chapter</li> <li>4. Agreement merchant bank South Sumatra, article 1 letter a</li> </ol> <ol style="list-style-type: none"> <li>1. The credit card agreement Bank of South Sumatra, chapter</li> <li>2. Bank credit card agreement South Sumatra, article 2, paragraph 2</li> <li>3. Agreements Merchant Bank South Sumatra, chapter</li> <li>4. Agreement merchant bank South Sumatra, article 2</li> </ol> <ol style="list-style-type: none"> <li>1. The credit card agreement Bank of South Sumatra, article 2, paragraph 1</li> <li>2. Bank credit card Agreement of South Sumatra, article 3, paragraph 1</li> <li>3. Agreements Merchant Bank South Sumatra, chapters 3 and 2</li> <li>4. Agreement merchant bank South Sumatra, Article 4</li> </ol>
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**B. The principles in the agreement of sale and purchase of goods by using Credit Cards**

Credit cards in this study is a credit card-type three parties, namely the first party is the cardholder, the merchant and the second is the third party is a credit card issuer. To know the principles contained in the Sale and Purchase Agreement of Goods by Using a Credit Card, it will be analyzed in addition to the purchase agreement between the card holder and merchant also needs to be analyzed with the agreement between the card holder agreement between the bank and the merchant bank. In other words, will be analyzed the legal relationship between the cardholder and merchant, a legal relationship with the bank card holders, and legal relationship with the merchant bank.

**1. Hubungan hukum pemegang kartu dengan merchant..**

The parties that have met quality as the cardholder and a merchant, and other general requirements that apply to legal actions fulfilled, can make buying and selling, or in other words, made the purchase agreement between them. Thus there is a legal relationship between which they lived and so was born the rights and obligations of the parties, namely in *mas* cardholders and merchants.

As we know that the reciprocal agreements exist mutually achievement must be met by each of the parties. Article 1457 of the Civil Code clearly stated that one party (in this case merchant) are required to submit material, and the other party (in this case the card holder) is obliged to pay the price of the goods.

a. General liability merchant in the purchase agreement goods by using a credit card, known for some of the general



obligation to do merchant. Obligations can be seen in List No. 5 below, the discussion of the list of numbers 5:

1). With the installation of the cardholder sticker can know that the store adalah merchant and type of card that can be served. So buyers who want to use karta can know. Bank of South Sumatra Mer-chant agreement does not include this provision, but under the terms of Article 1339 of the Civil

Code, it is considered that the common law merchant (on his behalf) would put a credit card sticker that can be served. Article 13b9 of the Civil Code reads:

"They shall not be binding only for things that are expressly stated therein, but also for everything that, by the nature of the approval, required by decency, custom or law"

**List No.5  
 Liabilitiesmerchantandchaptersset**

Kewajiban tentang		Bank of South Sumatra	Bank BII
1	stickerstypes of credit cardsare serviced accept cardswithoutdiscrimination	BpsSouth Sumatra ps2(1) ps3	ps 3 BII
2	stickerstypes of credit cardsare serviced accept cardswithoutdiscrimination	BpsSouth Sumatra ps2(1) ps3	ps 2
3	stickerstypes of credit cardsare serviced	BpsSouth Sumatra ps2(1)	ps 4 & 5
4	stickerstypes of credit cardsare serviced	BpsSouth Sumatra ps2(1)	ps 6
5	stickerstypes of credit cardsare serviced accept cardswithoutdiscrimination	BpsSouth Sumatra ps2(1) ps3	ps 9a&9b ps 22
6	stickerstypes of credit cardsare serviced accept cardswithoutdiscrimination examine/investigatecard	BpsSouth Sumatra ps2(1) ps3 PS4	ps 9c
7	stickerstypes of credit cardsare serviced accept cardswithoutdiscrimination	BpsSouth Sumatra ps2(1) ps3	ps 9c
8	stickerstypes of credit cardsare serviced accept cardswithoutdiscrimination examine/investigatecard requesting authorization salesslipprintdata intheimprinter menyocokansignaturescontainedin thesalesslipwithexistingcredit cards submit a copy ofthe salesslipto the card holder	BpsSouth Sumatra ps2(1) ps3 PS4 ps2(4) ps2(5) ps2(6) ps4(4)	ps 11

2). In South Sumatra Bank mentioned the word "must" delighted at Bank BII is called "permits". And another study they found no merchant is willing to accept cards kre-dit a variety of reasons that have been mentioned on page 88 of this paper. In pretek merchant services for card holders even more special, for example, will be offered a discount when paying cash. But the opposite is often the case is different treatment to buyers who pay in cash and the buyer with a credit card metnakai. Sometimes without the cardholder's knowledge, the

price of which has been imprinted in pales slip there was a price increase is usually about 2.5 - 5% of the general prices (Appendix 6).

3) To check the card will be accepted. The main one is checked is whether the card shown un-tuk of the transaction on its behalf, are still valid and are not listed on the Black List (Warning Bulletin or Recovery Bulletin). When the merchant doubt on the authenticity of the card, the merchant may ask for information to the card center or branch office bank (issuer)

that are nearby. Negligence because of the less scrupulous examination into merchant risk, meaning that the merchant will bear the loss themselves. Checks have been carried out then the merchant fill cardholder data and the total expenditure on the sales slip (sales draft) with the help of "imprinter" he should ask at the office card authorization center. As well as provisions to examine the card if the authorization has not been or is not obtained from the merchant's card center mengandug entirely risk of such transactions. This means that if the bank was not willing to pay the bill, the merchant who bear the losses. Such cases often occur in the hotel, for guests (cardholder) for particular reasons requested fast service, while the hotel must request authorization and this takes time, so the hotel ventured without waiting for authorization., Already have a deal. The new bank will be paid after a period of time longer than the usual provisions.

4) Provisions on the obligation merchants to print a sales slip with imprinter, the Bank of South Sumatra gives leeway in terms imprinternya damaged or do not function properly, then the merchant must attach other evidence eg receipts or vouchers, as sales slip is a document by which a merchant can do billing, then there must be a receipt cardholder's signature. Meanwhile, Bank BII establishes unequivocally that it is not justified to fill sales slips by hand.

5) Provisions that credit cards can only be used by the holder whose name appears on the card, because the merchant must verify the signature of the owner and the similarities that exist with existing carded in the sales slip. Cases which are found in court adalah falsehood card, not a fake signature. Original signature created by the holder of the nama-nya written on the card. Adalah fake card, meaning that the actual cardholder is not registered in the card center as the cardholder. Proper name holder using the name of the cardholder that is right there in the office Card Center and made a fake card, whose signature is the owner of a false name.

6) Liability merchant to submit a copy of the sales slip, is intended to double-check the validity of transactions that have taken place. In the event of fraudulent card transactions by holders of the new merchant can determine after a certain period of time, usually after one month. Because after the bank send out a sales slip to the bank and the bank sent a billing statement to the cardholder, the cardholder stating that he had never shopped at a time and a place called the sales slip (the case in Central Jakarta District Court No. 028 / Pid / B / 1987 / PN, Central Jakarta, and the case in West Jakarta District Court No. 020 / Pid / B / 2015 / PN.Jkt.Bar.)

7) Merchant is not allowed to make two sales slips in a transaction, which will result in the bank was not willing to make a payment to the merchant. In the study found that doing a split salesman merchant banks are not willing to pay the merchant. In such case under article 3 paragraph 3 of the Agreement Merchant Bank South Sumatra, or Article 16 Merchant Bank BII Agreement contains provisions that the bank is entitled urtuk not pay. However in practice, banks are maintaining good relationships with customers will help to collect, on behalf of the merchant to the card holder. This is in accordance with Article 14 of the Agreement Merchant Bank BII. Although the terms are not found in merchant perjan.iaan Bank of South Sumatra, South Sumatra Bank remains willing to assist to charge to the card holder.

b. Merchant obligation to submit material. Merchants who have been carrying out checks on the card and has recorded all the data and the number of transactions, the merchant shall submit the items and selling the finished object. And documents (sales slip) that has been signed will be the tool to the merchant bank bill Ten pliers material delivery as stipulated in the Civil Code 1478:

"The seller is not obliged to hand over the goods, if the buyer has not paid the price, while the seller does not have to allow the delay of payment to him".

In the Sale and Purchase Agreement with using a credit card even if the card holder (buyer) has not paid the price, but he has received the goods and enjoy ba-rang bought. While the delayed payment. This delays the approval implicit in merchant agreements are also in the credit card agreement.

With the completion of the process of charging a sales slip or sales draft by the merchant and the goods have been received by the holder of the card purchase transaction has been completed, or the purchase agreement expires, and the relationship between cardholders and merchants ended. However, when it was later discovered that items purchased defective, and there is an agreement between a buyer and seller to exchange with similar goods, then this can be done by not to make changes on the sales slip or sales draft. "In the study did not find cases of exchange of goods for damaged or defective. But if there is consent to be restored and the procedure is done without any uangnya.maka as financial transactions or in other words there is no cash handed over by the seller to the buyer. Prohibition as financial transactions can be seen in Article 8 Merchant Agreement Bank BII From the research through interviews found no irregularities of this provision, namely cardholders earn money in a way as if the purchase occurred transak-si (Bank Visa cardholders do South Sumatra Padang at a store).

This is possible because dalain Agreement Merchant Bank South Sumatra tercan not turn restrictions such as Article 8 of the Agreement Merchant Bank BII. And of further interviews dinyatakan that this was done to get the cash. Generally all transactions refund the price as a result of the cancellation of a purchase agreement with a credit card is still being done by the documents that are provided specifically for this purpose is by credit slip (article 12 of the Covenant Merchant Bank BII) or with a credit voucher (article 7 of the Agreement Merchant Bank South Sumatra ). In the study only 5% of respondents never done that caused the cancellation of the sale and purchase of goods purchased turned out to be defective and no similar goods which can be used to exchange the defective goods. Cancellation of this agreement have been agreed in advance by the cardholder and the merchant.

So the principle or as as adopted in the purchase agreement by using a credit card is that there are not justified as financial transaction mix, when it metnpergunakanarti-ny a credit card, then for the next if there is a cancellation or replacement, should also with procedures such as card metnpergunakan credit. Not justified refunded in cash. This means that when you've done anban-tu transactions with financial institutions or using documents, then there is no penyerahar cash transaction between the buyer and the seller. All financially through the bank.

c. Obligations of the cardholder to pay Merchant has delivered the goods to the card holder, but the merchant has not received the money price of goods sold, and cardholders are also yet to spend money to pay the price now. The new payment is done when .kartu holders have been charged by the bank, as stipulated in the agreement between the card holder with the card issuer or bank. And merchants are still charging for card holders through credit card issuer or bank.

So the payment from the cardholder to the merchant in real terms as soon as the sale and purchase transactions, no. Here, by the general public commonly called the buyer gets the credit, because it is not spending any money, therefore it is also society's calling card as a credit card. Buyers get credit instead of a direct seller but from a third party that the card issuer. So buyers will make payments on pe-nerbit card and the merchant will receive payment from the card issuer.

In determining the amount of the price of goods sold, the merchant must not engage in additional costs (Article 2 of the Agreement Merchant Bank South Sumatra, article 17 of the Treaty Mer-merchant Bank BII). Paid by the cardholder to the bank is the "price" of goods, but that will be accepted by merchants for the price of goods is the "price" in advance minus a certain percentage for the services of the bank.

According to the theory, when the goods have been delivered by the merchant to the card holder and the card holder has signed the document in question then finished the legal relationship between the merchant and the cardholder. And the birth of new legal relationship other, the legal relationship between the merchant bank. Bank charge to the cardholder, and pay to the merchant. And sometimes when there are omissions merchant still involve the cardholder to participate cope with or resolve the problems facing the merchant. Like the case of electronic trading, which without the cardholder's knowledge no split sales, so the banks are not willing to pay the merchant, and cement-tara was cardholder only willing to pay the bill in accordance with the billing statements received from the bank. So banks do "urgency" to the card holder, me-nagih with the sales slip from merchants who do not DIMA-enter in the billing statement, and ask the cardholder to make payments.

**2. Merchant and Bank Relationships**

Section 1.a. Law no. 14, 1967, stated that the bank adalah financial institution which engages adalah give credit and payment services of the circulation of money.

With the help of banks, merchants can ask for billed receivables (which occurs because buying and selling transactions for credit card use) to the cardholder. Legal relationship with the merchant bank, occurred with the signing of the merchant agreement. Merchant agreement has been provided by the Bank and is a raw deal. Legal relationship with the merchant bank can be seen in the articles contained in the merchant agreement. Merchant Bank BII Treaty, Article I d states that:

"Sales slip is a form provided by the Bank organization, other entity which is authorized by Master Card International to be given to Merchant as a means to carry out the sale transaction with the Card which became the basis for the Bank's account to be debited to the cardholder atan charging".

Seen from the words underlined, which means the merchant asks banks for charging to the card holder, this is a working relationship.

The article 1 paragraph 3 of the Agreement Merchant Bank South Sumatra: "Sales Draft is available form used by the Merchant Bank as a means to record the sale of goods / services to the cardholder and as supporting evidence for the Merchant Bank, collections or other paying agent appointed by the Bank".

Agent is a form of power, in this case the bank authorized by the merchant to charge to the buyer. So the merchant and bank legal relationship here is as a power of attorney. To collect the necessary supporting evidence. Various documents provided by the bank, for example, sales slips or sales drafts, credit slips or credit vouchers, deposit Bank of South Sumatra, Article 22 of the Agreement Merchant Bank BII)

The documents relating to the sale and purchase transaction was submitted to the bank. The document must be signed by the respective card holders. With the signature of this means that there is recognition of the holder of the expenditure that does cards. And thus it is that document for the merchant is evidence of the recognition of debt from the buyer, and therefore can be used to collect or means of obtaining money. But the bill is not directly aimed at the menandata-ngan such a document, but to the credit card issuer, ie bank. So there is a transfer of receivables, this resulted in the subrogation. For the merchant, documents (sales slip) is a valuable letter or papieren van waarde, which applies only to charge the bank or card issuer and the merchant is not transferable. So the documents related to the purchase and sale transactions with credit card meinpergunakan the signed hand it is a document that has valuable properties as a special letter. With sample agreements from the Bank of South Sumatra and Bali Bank, found some of the following items:

**List no. 6  
Clauses concerning payments**

provision	Merchant agreement	
	Bank of South Sumatra	Bank BII
1. Form of payment	Article6, paragraph3	article 7 article 30
2. The amount of payments	Article5Article9 article6	article 7 Article 13 Article 15
3. Time of payment	article6 article6	Article 7 Article 30
4. The payment		Article 7 Article 30
5, How you pay		Article 30

Information :

1. Bank of South Sumatra and Bank BII both did not call a form of payment to the merchant bank with cash. Means here that the bank function to serve customers by conducting financial transactions with the transfer items.

2. The amount to be received by the merchant from the bank is not as large as the amount tercanturn the sales slip. Because of the discount will be reduced by an agreed (Article 5

of the Agreement Merchant Bank South Sumatra, article 7 Merchant Agreement BII). The amount of the discount ranges between 3% - 7% .. The amount of the discount may change at any time at the discretion of the bank. Bank BII these changes without notice to the merchant (Article 7 paragraph 2 of the Agreement Merchant Bank BII). At Bank of South Sumatra this change by merchant agreement (article 5, paragraph 2 Treaty Mercant Bank South Sumatra). So the Bank of South Sumatra seen that there is a parallel position of the parties when compared to what happened in BII. In the amount to be paid by the bank under the Agreement Merchant Bank South Sumatra (chapter 9), the merchant still demanding cost 'communication for authorization.

So the amount received by the Merchant is not the same as the price of goods purchased by the cardholder as it appears in the sales slip or sales draft. But economically the difference in value (price) is by merchant has been calculated as the cost of sales. As for the Bank of discount received a fee for the billing is done for the merchant.

3. The amount to be paid by the merchant's bank to the extent possible on the next working day after the submission of the document, if the merchant has a checking account at the bank concerned or no later than 5 days after the documents submitted, if the merchant does not have a checking account at the bank (Article 15 Merchant agreement Bank BII). Bank Duta At the time the payment is made the next working day or not later than three days after the documents submitted (Article 6 of the Agreement Merchant Bank South Sumatra).

The deadline for submitting the documents to the bank are not the same. At Bank of South Sumatra submission shall be made no later than her within 15 (fifteen) days from the transaction made (Article 6 paragraph 2 of the Agreement Merchant Bank South Sumatra), being the Bank Ball no later than 7 days from the time a transaction carried out (Article 13 Agreement Merchant Bank BII). And when that time period passed, the Bank is not obligated to pay (Article 13 Agreements Mercant Bank BII). However, in practice this provision is not applicable in others. With an oral agreement, some merchants (5 stores) new states send the document when it has reached Rp. 200,000, -or Every end of the month when the number was not reached.

4. The payment set by the Bank of South Sumatra (Article 6) clearly do in South Sumatra Bank checking account that is at merchant, was in BII can be selected whether in BII on merchant accounts (Article 7) or in another bank designated by merchant (article 30).

5. Method of payment. A document signed by the cardholder, the merchant gave the right to obtain payment in advance of the bank. And then the bank will charge to the card holder. Here as if arising legal relationship between the creditor and the debtor within hours of borrowing money. Civil Code give freedom to the parties to set how the shape of the payment to be executed on achievement prosecuted in their agreement. So if the money is paid or credited to the merchant's checking account. Article 6 (3) of the Covenant Merchant Bank South Sumatra mention by way of crediting the merchant's account. In this case means that the merchant is a customer of Bank of South Sumatra. Average Bank Bali to adopt more flexible, which in addition to a current account crediting the merchant (section 7 Pejanjian Merchant) also do the payment can be made by transfer to a bank account designated by the merchant (Article 30). So the merchant may not customers of Bank BII.

In certain cases the bank is not obliged to pay or delaying / withholding payments to merchants, that is, if the following happens:

1) Because of the split transaction. Split transaksi when the merchant at the same bari transaction seoragide-angan cardholder by using more than one sales slip or sales draft. This provision tercanturm in Article 4 paragraph 3 Treaty-Merchant Bank South Sumatra; Article 11 Agreements Merchant Bank BII). In the practice of sales split occurred because less scrupulous merchant, so that the cardholder receives the same bike the same day. When this happens should be implemented by changing the sales draft or sales slip, by using documents credit slip or credit vouchers, ie by canceling the amount that has occurred through the transaction the first, which has dicacat the sales slip or sales draft and then enter a second transaction and first to a sales slip or sales of new draft. So there is only one sales slip or sales draft to the cardholder on the same day. Thus the merchant's negligence caused banks are not willing to pay, and the bank can not charge to the card holder. In this case (the case of transactions in an electronics store with a Visa card holders of Bank of South Sumatra). Bank of South Sumatra trying to give bantuanu to merchants to charge to the holderskartu. Walau nothing in the agreement there is no provision to help. Naroun different from what was stated in the Bank Bali Merchant Agreement, Article 14, the bank if deemed necessary on behalf of the merchant with the bill to the holder of the card, and billing fees charged to merchants.

2) Failure to examine merchant card that turns out later that the card has expired or listed hitarn, forget signed the cardholder, the card is not in accordance with the provisions eg no magnetic tape or no hologram

3) There is no authorization for the transaction that exceeds floor limit. On the merchant (Tiara) once the transaction without any authorization. And as a result, the new bill up to 3 months to be realized. This risk is taken by merchant because of the insistence of the hotel guests will soon leave the hotel, and hotel services to guests realize that the more mainstream.

Thus it can be concluded that there is a relationship between the merchant bank adalah sebagai authorization and once the employment relationship. As seen in the case that because of the negligence of the merchant, which is based on the applicable provisions led to delays in payment from the bank, then the bank presents himself directly on the charge card holders. It is already deviated from the principle of card usage mechanism, that all actions should be done through the bank. But this happens only in consideration of bank wants to provide the best service and satisfy customers. With the receipt of the card in the transaction, the merchant is guaranteed that no payment for the transaction. So the bank as a guarantor.

### **1. The legal relationship with a bank card holders.**

The legal relationship between the card holder with the bank takes place through agreement. Sample taken from Bank of South Sumatra and Bank BII. To see the relationship between card holder and the bank will dikiltkan with the provisions contained in the Civil Code. Based on the credit card function that can be used by the holder to the payment of goods and services, in accordance with what is referred to in Article 7 of Decree of the Minister of Finance of the Republic of Indonesia No. 1251 / KM.013 / 1988, the rights and obligations of the parties that are discussed here are related to



the payment. And then according to article 2, paragraph 3 BII Bank Card Usage Agreement which states:

"That cardholder promised to bind themselves to always carry out the payment of bills from the Bank based on the use of Card in accordance with the provisions of Article 6, Article 7 and Article 9 of this Agreement"

And Article 5 paragraph 2 of the Membership Agreement Bank of South Sumatra, which states that:

"Cardholder is fully responsible for transactions that have been done with Merchant, and shall pay to the Bank prior to the payment due date specified by the Bank, including the costs incurred as specified in this agreement".

Thus the relationship between the Bank and the cardholder is a third party to replace the position of creditors (merchant), the so-called Law Ilmu that there subrogation. The provisions relating to the card holder's obligation to pay to the bank as a result penggunaan credit card to obtain goods / services, can be seen in the credit card agreement. From both the credit card agreement obtained from the Bank of South Sumatra and Bank BII specified provisions of rights and obligations of the card holder as follows:

**List no. 7  
Rights and obligations of the card holder**

No.	Uraian	Bank BII	Bank Sumatera Selatan
1	Recipient of the Bank Billing Statement'	article 6 (1)	article 5 (1)
2	Pay at the time of his slow at maturity	article 6 (2)	Article 5 (2)
3	pay within 20 days after being charged	article 6 (3)	article 6 (1)
4	May appeal if I do not fit, grace 14 days	article 6 (5)	article 5 (3)
5	Payment method	article 7 (3) article 7 (4)	article 8 (1) article 8 (2)
6	Administrative fees if the timing and amount of payments in accordance	article 7 (5) I	article 8 (3)
7	Cardholders pay interest if the bill is not paid in full	article 7 (C)	article 9
8	Forms of payment	article 7 (7)	article 10 (1)
9	payfees	article 7 (8)	article 10 (2)

10.	Payfeesforexceeding thecreditlimit	artic le 6 (3)	article 11 (3)
11.	Currency used?(Rupiah)	artic le 10	article 14

Under the provisions of article 6, paragraph 1 BII Bank Card Agreement or the use of article 5, paragraph 1 Membership Agreement Bank of South Sumatra, as the card-issuing bank will pass on the details of carrying a card, the cardholder is concerned. From the details (billing statement) The cardholder can determine the amount of expenditure made within a certain period. Usually one month, but sometimes the bank sent a billing statement has been the period of one month. In the study almost all respondents have got a shipment billing statement in which expenditures to the card holder has three (3) months ago starting from the receipt of the billing statement.

For some respondents, it is perceived as get credit from the bank, because it does not have to immediately fulfill its obligations, namely to pay the expenditures that have been done.

Once cardholders receive a billing statement from the bank card holders can make payments in two ways:

1. pay to the bank or card issuer, or
2. asked the bank to debit a checking account that is in the bank

When cardholders choose the way, the payment first, then within no later than 20 days after the billing statement is received or before maturity (article 6, paragraph 2 and 3 of Use Agreement card Bank BII, article 5, paragraph 2 and article 6, paragraph 1 Membership Agreement Bank of South Sumatra). And cardholder kebebani interest (article 7 paragraph 4 of the Agreement of Use Card Bank BII or article 8 paragraph 1 bank Ambassador Membership Agreement).

But if the cardholder chose the second way, the bank will debit the account of the cardholder billing statement after delivery. And if the cardholder has paid for that amount and effective has been accepted by the bank, the bank will credit the accounts of card holders (article 10, paragraph 1 Membership Agreement Bank of South Sumatra or article 7 paragraph 7 BII Bank Card Usage Agreement).

In the interview with the respondent (cardholder), when selected the latter is sometimes cardholders feel disadvantaged, because without telling cardholder's bank will debit the entire amount of the bill. Whereas in the calculation of the cardholder she would just pay some mimimum allowed by the card issuer that is in accordance with the provisions of article 6, paragraph 4 Card Usage Agreement Bank BII or article 8 paragraph 2 of the Membership Agreement Bank of South Sumatra. Although cardholder mengetahui that if payment is made entirely within

Prior to maturity, or 20 days after the billing day received a card holder, he no interest, but for the card holders (especially if he is a-pe-entrepreneurs), the period of 20 days for him to have meaning. As these funds can be used for business activities. This is consistent with the view cardholder stating that the name is a credit card then he will get credit facilitation. If he had to pay for the whole amount then this means is not credit but "charge card", such as Diners. If the cardholder pays

the minimum amount in accordance with the Treaty so he bears interest (article 7, paragraph 5 and 6 Card Use Agreement Bank BII or article 8, paragraph 3 and Article 9 Membership Agreement Bank South Sumatra). When the cardholder feel there is a mismatch on the billing statement is on file with him so he can be appealed, so the rights granted to the holder of the card in accordance with the provisions of article 6 paragraph 5 of Terms of Use Card Bank BII or article 6, paragraph 3 Membership Agreement Bank of South Sumatra. Objections must be filed within 14 days, after the details of cardholders use cards accepted, provided also that the cardholder must pay a minimum number of obligations first. From these provisions can be interpreted in a contrario that when the grace period has elapsed then it fell off its right to raise objections. All payments to the bank performed by cardholders in rupiah unit, and if there are transactions made abroad by the cardholder, the cardholder remains itimbayar in IDR and the exchange rate determined by the Bank (article 10 Per Testament Use of Card Bank BII, article 14 Membership Agreement Bank of South Sumatra). And if there is any doubt from the cardholder then Bank can attest, the exchange rate used is the rate last. The card holder will use the card to obtain goods and services, it should be noted the provisions in force concerning limit the amount of spending every time or every day. This spending limit is called Line limit (BII) or Credit limit (Bank of South Sumatra). When spending exceeds the credit limit, the cardholder will be charged the amount determined by the goods (article 8, paragraph 3 of Use Agreement BII Bank card, pasal 11 paragraph 3 of the Membership Agreement Bank of South Sumatra).

Progress in implementation of the agreement of sale and purchase of goods by using a credit card, is the signing of the document (sales slip or sales draft) by the card holder. In the sales slip form, contained the sentence:

"The issuer of the card identified on this item is authorized to pay the amount shown as total. Upon proper presentation A promise to pay such total (together with any other charges due thereon) subject to and in accordance with the agreement governing the use of such card. I here acknowledge receipt of good and services". (lampiran 5, figure 1). Being in sales draft can read the words: "I hereby honor the above charges incurred by me subject to terms, and conditions of my cardholder agreement"

(Annex 5, figure 2). Of the sentence, it appears that the card issuer is authorized to pay the amount in it. And further stated that in accordance with the agreement made between the card holder and the card issuer, then he (the cardholder who signed the sales slip) would pay the amount of expenditure as a result of using the card to obtain goods. Of the sentence is clear that there is a transfer of creditors with the consent of the debtor (cardholder). Bank will pay the merchant, in accordance with the sales slip that has signed the respective card holders and submitted by merchant to the bank.

So to see that the bank will make the payment in advance for expenses incurred by the cardholder, meaning that the bank acted as Lenders, as well as authorization for the bank gets the power to cut the number of accounts of card holders (with debiting) to the bill submitted by merchant. Similarly, in case of cancellation of the transaction in which the procedure also must use the document, the visible task is to debit bank

merchant account and send the voucher to the card-issuing bank. This is evident from the following words:

"Merchant named above hereby authorises the Bank to whom this Voucher is initially presented : (i) to charge Merchants account for the total shown hereon in accordance with its Merchant Agreement with such Bank and (ii) to deliver this Voucher to the issuer of the Bank Card, as identified by the account number imprinted hereon; for credit to such account"

### III. CONCLUSION

From the data collected and analyzed then after a number of conclusions as follows:

1. The use of credit cards has been growing rapidly in the upper middle class society. However, due to the consumptive nature of Indonesian society and the uneven minded banking, customs administrations are also not evenly distributed in the community, then the distribution of cards is still limited and selective once. Card holders are still limited and seletif, only from the communities that have a high income, because of the requirements set by the bank to become customers still can not extend to the lower middle class society. Needs credit card usage is still not widespread, since the use of the card only as a complement of the sale and purchase transactions in cash.

2. The existence of more widespread credit card with the birth of Presidential Decree 61 in 1988 and Minister of Finance Decree number 1251 / KMK.013 / 1988. However, regulations on credit card peiaakaan mechanism yet. The contents of the agreements made by the bank vary widely.

3. The credit card is not a means of payment as the opinion of the general public, but only a means to obtain goods and services. The use of credit cards gave birth to a document in recognition of debt from the cardholder. This document is a letter that is valuable to merchants that can be used un-tuk charge card holders.

4. The principles found in the purchase agreement goods by using a credit card are:

a. Pure agreement does not exist,  
b. notch higher than the bank's cardholders and merchants, so there is no equality of the parties, which allows would be no abuse of state.

c. The use of credit cards in the sale and purchase transactions can not be mixed with payment by cash

5. The agreement of sale and purchase of goods by using a credit card has various characteristics, namely:

a. The parties in the purchase agreement must have a certain quality,ie the buyer and the seller is the cardholder is a merchant.

b. a mixture agreement of sale and purchase agreements, credit agreements, treaties and agreements guarantee the power of the individual

c. An agreement "derivative", was born because there is a credit card agreement and merchant agreement.

d. Form of credit card agreements and treaties merchant adalah raw deal

6. Complaints from the public in general about the card holder unilateral actions of the bank and immediately debit the funds at the time when the checking account debit card holders, then the shortfall on the amount subject to interest. This

happens because the card holder is deemed by the bank less carefully read the agreement between them

7. The case is found in many court which revolves around the criminal aspect of counterfeiting or use a fake credit card. Being the case in many civil law aspek resolved through the street outside the court.

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