

Who is the Real Consumer in a Credit Purchase Transaction?

Suwinto Johan

Faculty of Business, President University, Indonesia

Author's email suwintojohan@gmail.com

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Submission

ABSTRACT

Track:

Purpose of the study:

This study aims to determine who the actual consumers are in financing purchase transactions according to the law and regulations.

Methodology:

The study employed a normative judicial method. Juridical methods are the research with the library data sources.

Results:

Consumers are end-users, not consumers who make payments or own the goods. This definition is derived from the Consumer Protection Act. This definition of the consumer must be refined in light of its practical application in society. The differences between the buyer, owner, and user of goods necessitate a comprehensive understanding.

Application of this study :

Consumers have the option of paying with cash or credit. They can purchase the goods with money by paying in full and taking full ownership and usage. Consumers can also purchase goods on credit or with financing. They can apply for credit to the financing institution. The goods purchased serve as collateral for funding. If the consumer fails to make a payment, the goods purchased will be withdrawn as collateral. The financing institution will determine the type of goods that can be used as collateral. The financing company will also decide on the type of financing.

Novelty / Originality of this study:

The definition of consumer in a credit purchase transaction.

Keywords: consumer; consumer protection; financing instituti

Available online:

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Corresponding

Author:

Suwinto Johan

suwintojohan@gmail.com

INTRODUCTION

A person can buy goods on credit. When a person buys something on credit, two transactions happen at the same time. The sale and purchase of goods and credit transactions coincide. In a purchase transaction, a buyer becomes a consumer. They become a customer of a financing institution when they apply for a financing loan. Goods go through two processes of consumer relationship with the company that provides goods and services. These two transactions have the same characteristics, with the exception of differences in terms of payment or purchase settlement.

A buyer of goods is different from a user of goods. A person who owns goods is not the same as a person who uses them. For example, a father purchases an item and applies for financing from a financing institution. However, the user of the goods is his son. So, who are the real consumers in these transactions under the bill and regulation? The goods purchased, financed, and used are all the same type of goods. This is illustrated in Figure 1.

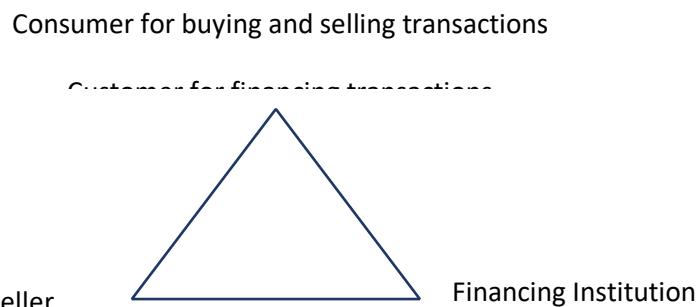


Figure 1. Triangular Relationship between Consumer, Seller, and Financing Institution

Source: Research results

The relationship between the seller, the consumer, and the financing institution is unique. Financing institutions will only pay for certain sellers or suppliers or dealers. They are also only willing to finance certain types of products that have been determined previously. Financing institutions only provide financing to qualified consumers. There are times when parents will buy goods and ask for funding for their children's needs. The child does not meet the requirements in applying for financing due to their age, income, or another reason.

Transactions with installments are common in the sale of expensive goods, such as vehicles, electronic devices, and residential houses. These items can be used as collateral to financing institutions. According to Article 1 of the Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority (OJK Bill), a financing institution is a business entity that carries out financing activities in the form of providing funds or capital goods as referred to in the legislation regarding financing institutions.

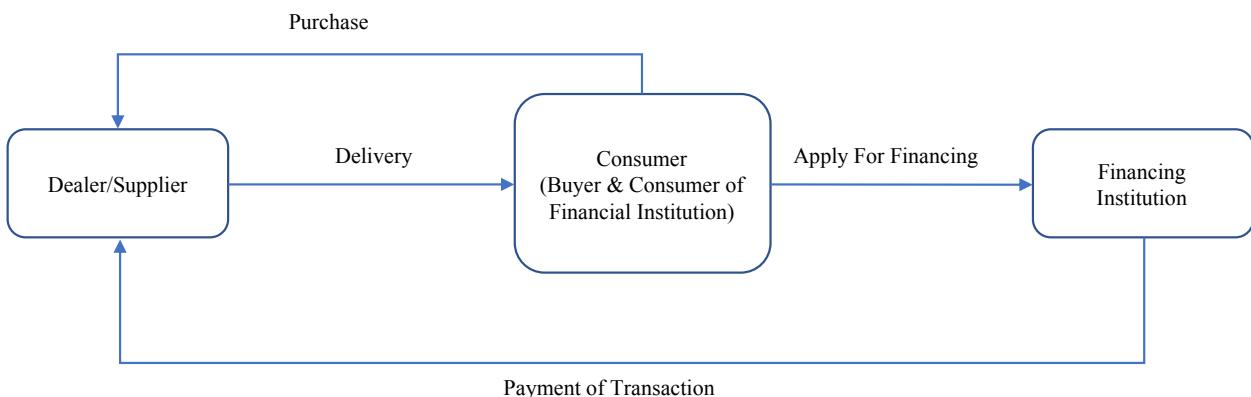


Figure 2. Consumer Transaction

Source: Research results

The majority of research focuses on the relationship between a customer and a financing institution. This relationship is a medium-term to long-term relationship (Johan & Ariawan, 2021a). There are very few studies that focus on the definition of consumers related to credit-based purchasing transactions.

Research on the relationship between customers and financing institutions includes, among others, the case of customer default and double financing. Because the customer could not pay the installments, his vehicle was taken over by a financing or leasing company. A financing company is one of the types of companies in financing institutions. Leasing sold the vehicle that had been withdrawn through an auction, based on the agreed financing agreement. Proceeds from the sale of collateral were used to cover the outstanding loan value (Sandi, 2020). This action happens when the customer experiences a default. If the debtor is unable to pay the loan, the collateral object will be withdrawn and used to pay off the debtor's debt (Setiono et al., 2021). Debtors are people who have debts to other people or other institutions (Johan & Ariawan, 2021a). Thus, the financing company provides relaxation to customers during the COVID-19 pandemic. This relaxation can be in the form of relief in paying debt installments (Johan, 2020).

Another case involves a financing company that continues to require consumers to pay installments, even though consumers have not received the goods they bought on credit. This is a violation of the Indonesian Financial Services Authority Regulation Number 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector and the Bill of the Republic of Indonesia Number 11 of 2008, amended by the Bill of the Republic of Indonesia Number 19 of 2016 on Electronic Information and Transactions (Wiyono & Hasanah, 2019). There are also cases when the seller has not delivered the goods purchased by the consumer, but the contract agreement between the consumer or customer and the financing company has

been carried out. Consequently, the customer must pay the installments, even though the goods have not yet been received from the supplier.

There have been several cases of fraud in society. For example, sales of vehicles that are still on credit with financing companies at low prices. Cars are still on credit but are traded without the permission of the financing company. Consumers are unaware that financing companies are still financing them (Arifin, 2020). The consumer purchases and possesses a vehicle without Proof of Vehicle Ownership (BPKB). In this case, the proof of ownership is still controlled by leasing or financing companies. Financing companies will have difficulty in collecting debt repayments because ownership of goods is different from the customer in the contract agreement. The withdrawal of the collateral will also experience problems because the sale and purchase transaction between the customer in the contract and the buyer is a valid transaction, even without proof of ownership of a vehicle or with a fake proof of ownership.

Another case involved an unscrupulous dealer salesman who scammed vehicle buyers. To entice potential customers, salespeople offer discounts (Priasmoro, 2020). Prospective consumers use fake documents to apply for car financing. The cars are sold by the person concerned. The perpetrator of this action is subject to Article 35 or Article 36 of the Law of the Republic of Indonesia Number 42 of 1999 on Fiduciary (Kurnianto, 2018).

Article 1238 of the Indonesian Civil Code provides legal protection for financial institutions. Creditors have the option of filing a default bill suit against the debtor (Agustina, 2020). In addition to confiscation of collateral, financing institutions can also file a default lawsuit. The financing agreement is classified as an anonymous agreement (*innominaat*). The financing agreement is a combination of a sale and purchase agreement and a lease agreement. The financing agreement cannot be canceled, but a judge has the authority to do so in the event of a default (Khair, 2017). Therefore, protection for financing institutions has already existed.

Consumer protection in dealings with financial institutions remains precarious. Consumer relations with financing institutions have not been fully accommodated in the Consumer Protection Bill (Johan & Ariawan, 2021a). The Consumer Protection Bill only regulates general sales transactions, but it has yet to handle the transactions related to supporting financing transactions. In the Consumer Protection Bill, consumers are defined as users of goods or services. In contrast, someone who is not a user of the goods can make purchases and apply for financing.

The government has issued the Fiduciary Guarantee Bill (UU JF). It provides legal certainty for both parties. A fiduciary guarantee is one of the material guarantees in meeting public needs (Susilo, et al., 2021). The Fiduciary Guarantee Bill requires the existence of collateral items mentioned in the agreement. This bill aims to resolve disputes in the event of customer default. Financing institutions have legal certainty in taking over the collateral on a fiduciary basis.

With the passage of the Mortgage Bill (UUHT), the state protects creditors and debtors in the financing of land and buildings. However, the creditor's preference rights are not used.

This can result in legal uncertainty regarding the status of the debtor. In addition, this results in protracted dispute resolution (Sutanti & Mashdurahatun, 2017).

According to the Law of the Republic of Indonesia No. 8 of 1999 on Consumer Protection, every consumer's rights must be protected and guaranteed. Debt collectors make a withdrawal of vehicles by financing companies, both operating internally and externally from financing institutions. This withdrawal can be classified as an unlawful act (PMH) (Prayutiz et al., 2020). The takeover of the collateral is carried out by force, which is against the terms of the agreement. It has the potential to result in legal action.

Consumer protection is a forum for consumers and the general public to exchange information while also receiving services and resolving consumer complaints against financing institutions, especially those in the banking sector (Ariyo & Sari, 2019). The Indonesian Financial Services Authority establishes a forum for consumer protection and education. Consumer protection is essential to support a healthy industry.

Consumer protection in the financing institution sector, especially banking, needs to be socialized or educated. The purpose of socialization is to reduce bank mistakes (Permata, 2020). Customers' interactions with banks and financing institutions frequently result in relationship issues.

The Indonesian Financial Services Authority (OJK) has asked the public to use the Alternative Dispute Resolution Institution (LAPS) to resolve disputes between financing institutions and consumers. Dispute resolution is one of the mandates of the Financial Services Authority Bill (Wikanto, 2016). The Indonesian Capital Market Arbitration Board (BAPMI), the Indonesian Insurance Mediation and Arbitration Agency (BMAI), the Pension Fund Media Agency (BMDP), the Indonesian Banking Dispute Settlement Alternative Institute (LAPSPI), the Indonesian Guarantee Company Mediation Agency (BAMPI), and Indonesian Financing, Pawnshop, and Venture Mediation Agency (BAMPPVI) are all overseen by the Alternative Dispute Resolution Institution (Intan, 2020; Guntara & Garwan, 2017).

The Indonesian Financial Services Authority established the Alternative Dispute Resolution Institution because the Consumer Dispute Resolution Agency (BPSK) does not have the authority to handle disputes in the financial services sector through arbitration based on the conflict or case. Disputes arising from default are not covered by the Consumer Protection Bill (UU PK), and do not fall under the jurisdiction of the Consumer Dispute Resolution Agency. Financing transactions have not been regulated in the Consumer Protection Bill.

There has been little research on the position of consumers when conducting credit purchasing with financing agreements. Who the actual consumer, the buyer, the user, or the financing company is and which consumers are for the purchase transaction on credit or financing are still to be answered. Research that discusses the position of consumers between sellers, buyers, users, and financing companies is still rarely found. The role of the consumer is essential in line with the definition of the Consumer Protection Bill and other related regulations.

The research questions proposed in this research are: who are the actual consumers in purchases made on credit or financing? Where are the positions of consumers based on existing bills and regulations? Where are the positions of consumers based on financing agreements?

RESEARCH METHOD

This research used a normative juridical research method. The normative analysis began with studying the existing bills and regulations. The primary and secondary research materials were collected in this research. Primary research materials are those derived directly from the collection of materials in the field. This material is directly related to the topic of this research.

Primary research materials are materials or information regarding buying and selling transactions with financing. Consumers in this research are those who are involved in financing transactions. Secondary research materials include applicable bills and regulations associated with buying and selling transactions with consumer financing transactions. Finally, tertiary research materials are legal research materials that serve as guidelines for secondary research materials, such as information from the internet as additional information and materials related to the research topic (Johan & Ariawan, 2021b). The framework of this research is depicted in Figure 3.

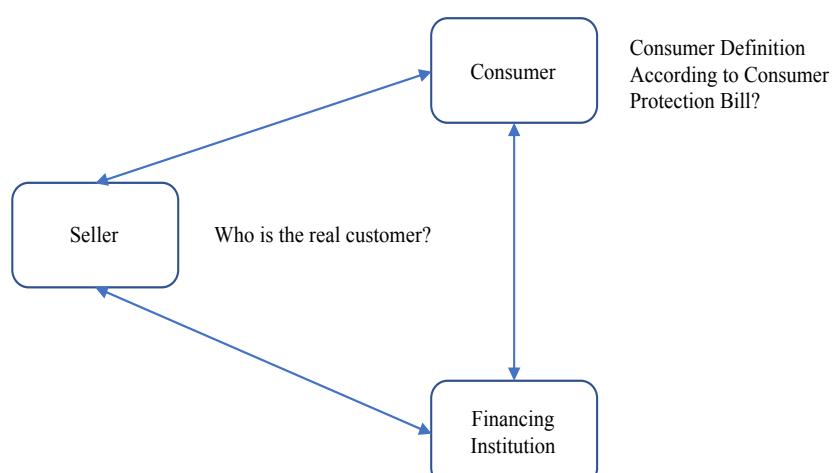


Figure 3. Consumer Position

Source: Research results

RESULTS & DISCUSSION

Financing Process

Financial institutions will cooperate with product selling companies (called suppliers or dealers). These are high-priced products that necessitate financing. Examples of the products are motorcycles, cars, electronics, homes, and others. The brand and minimum down payment for the product will be determined by the financial institution. The collaboration between financial institutions and selling companies is carried out through the signing of a cooperation agreement (PKS). This PKS includes procedures for submitting applications for prospective buyers, guarantees for the quality of goods, and ways of buying back (BBG) in the event of a default on the consumer.

Following the PKS, the selling company, commonly referred to as the supplier or dealer, will introduce the buyer to the financial institution. Financial institutions will verify data and conduct surveys on potential customers. After the verification results, the financial institution will decide whether to approve or reject the application. If the financial institution approves the financing application, the financial institution will notify the dealer or supplier in writing. Dealers or suppliers will send goods to consumers. Financial institutions will also request that consumers sign the financing agreements. After that, the financial institution will send financing funds to the dealer/supplier. The financing amount will be the price of the good deducts the down payment and fees.

These goods must be delivered in accordance with the criteria specified by the consumer. If the delivery is not appropriate, then the consumer can take default action due to product incompatibility. The criteria for goods include the specifications of the goods, the color of the goods, and the type of goods. If the consumer defaults, the consumer will return the goods to the financing institution. Financial institutions can also take over collateral goods if the customer is in default.

If the supplier or dealer provides a BBG within the PKS, the financing institution can claim this BBG. If there is no BBG, the financing institution will sell the collateral through auction. The sale of this collateral item will affect the overall quality and price of the product. The higher the number of goods sold from the repossession, the lower the quality and reputation of the product. On the other hand, suppliers or dealers have an interest in maintaining the quality of this product. The lower the price of this product, the less likely that the financial institutions are to finance it

Interests of Financing Institutions on Goods

The financing institution selects the types of goods to be financed. Financial institutions choose goods with a high resale value. Consumers will prefer goods with a high

resale value because items with good quality facilitate resale. The resale of reposited goods is the risk of the financing institution. A significant decrease in the price of goods will result in losses for the financing institution.

The financing institution has determined the type of goods to be financed in advance. Financial institutions have also recognized goods that can be used as collateral.

When a consumer defaults, ownership of the goods passes to the financing institution. The financial institution will keep the collateral as an asset in its financial statements. This collateral becomes a guarantee of debt repayment.

Collateral is of interest to financing institutions. The financing institution has determined the criteria and types of goods guaranteed. If the customer defaults, the financing institution becomes the owner of the goods. Collateral is also a guarantee for the repayment of customer debt.

Types of Financing

Financing or loan between banks and finance companies differ in terms of ownership of goods and application of the funds. Banks provide loans with collateral that customer already own or will own in the future. If the customer owns the goods, the bank will provide funds for the needs of other business activities. Customers' use of funds obtained from banks differs from the use of funds in financing.

Finance companies provide financing for goods that will be owned and used as collateral. The customer does not receive funds from the financing company in exchange for the financing received. The customer only gets the goods that have been financed. The finance company's funds are used to pay off the purchase value of goods. These funds are transferred to the dealer or supplier. The details are stated in Table 2.

The agreement used by the two types of financing is also different. A bank loan is a credit agreement, and a finance company loan is a financing agreement. Both types of financing can use a fiduciary guarantee as a derivative agreement.

Banking does not require cooperation (PKS) with dealers or suppliers for loan disbursement. The bank will determine the value of the collateral provided by the consumer and ask for the value of the collateral that is higher than the value of the funds provided. Meanwhile, finance companies offer to finance below the price or value of the goods purchased. The financing value is the value of the goods after deducting the down payment.

Financing institutions for credit purchases are classified into two groups, namely banks and finance companies. Banks provide credit to consumers who want to buy certain goods and record them as loans.

There are two types of finance companies that offer financing schemes. The financing consists of consumptive financing and working capital financing. Consumer financing is financing for goods used by consumers in accordance with POJK No. 35 Year 2018. Individuals are financed through consumer financing. This financing is generally used to purchase consumptive goods such as electronic equipment and transportation vehicles.

Table 2. Comparison of Bank Loan and Financing

No.	Item	Bank Loan	Financing
1.	Item Ownership	Customer	Consumer / Financing Company
2.	Type of Agreement	Loan Agreement	Financing Agreement
3.	Purpose of Loan / Financing	Anything	Purchase of Goods
4.	Function of Goods	Loan Collateral	Usage for business activity
5.	Derivative Agreement for Collateral	Fiduciary Agreement	Fiduciary Agreement
6.	Collateral Amount	Bigger than disbursement of the loan amount	Smaller than financing value of the goods

Source: Research results

The second financing is working capital financing. Working capital financing is known as leasing or lease. Working capital financing is the financing of capital goods required for business activities. Customers in working capital financing are companies, not individuals. Examples of this financing are truck financing for the logistics business, excavator and bulldozer financing for mining and plantation industries, and crane financing for building construction. Working capital financing is financing for productive activities. It is different from financing consumer goods.

There are three types of lease financing: operating lease, financial lease, and sale and leaseback. An operating lease is a working capital financing that is owned by a finance company. A financial lease is a working capital financing that is owned by consumers. Meanwhile, sale and leaseback is the resale of goods that have been owned by consumers to financing companies and reused by financing companies. These types of financing are contained in the POJK.

Table 1. Comparison of Operating Lease, Financial Lease, and Consumer Financing

No.	Item	Operating Lease	Financial Lease / Consumer Financing
1.	Financed Goods	Capital	Capital/Consumptive
2.	Item Ownership	Financing Company	Consumer/Financing Company
3.	Type of Agreement	Leasing/Working Capital Financing	Leasing/Consumer Financing
4.	After the Financing Period	The financing company owns the collateral	Can be owned by consumers/customers

Source: Research results

The Actual Customers in Credit or Financing Transaction

The sale and purchase transaction begins with the purchase of goods by the consumer from the seller. This purchase is followed by a credit or financing application to a financing institution. The financing transaction is a triangular relationship transaction, which includes the seller, the buyer, and the financing institution. The buyer's ownership rights in the goods have been transferred to the financing institution as a result of the financing transaction. The goods become collateral to the financing institution as long as the buyer has not paid off the goods purchased on a financing basis. This scheme is part of the consumer financing scheme. In the event of a default, the financing company has the right to seize the goods. As proof of guarantee, for motorized vehicles, the financing institution keeps the proof of vehicle ownership.

Consumer financing is different from capital goods financing or working capital financing. The financing of capital goods is accomplished through a leasing scheme. In Lease financing, such as operating leases, the ownership of the goods is transferred to the financing company. The financing company records the right of the goods on its balance sheet. After the rental period, the consumer cannot own the item. Therefore, the financing company is the actual owner in the transaction based on a financing agreement. The customer who determines the type of financing is the user of the capital goods. The financing company pays for the purchase of goods and owns the goods. Consumers choose and use these goods for productive activities. Consumers or companies are not required to provide a down payment at an early stage.

Consumer financing is different from operating lease financing. In this type of financing, consumers can have collateral at the end of the installment period. Consumers are entitled to collateral goods. Consumers purchase items by paying a down payment first. Then, the consumers submit the applications for financing to the financing institution. If the application is approved, the financing institution will pay off the remaining purchase obligations to the seller. Consumer financing has the same characteristics as financial lease financing for capital goods.

According to Indonesian Financial Services Authority Regulation Number 35 of 2018 on the Operation of Financing Companies, financing institutions can provide sale and leaseback financing in addition to consumer financing purchases and working capital financing. In this financing scheme, companies that already have capital goods can sell them to financing companies. The company accepts the results of this sale as a consumer. The selling company will receive monthly installments from consumers. Following the completion of the installments, the financing company will return this collateral to the company or customer. The return of goods is marked by the release of collateral held by the financing institution. The summary is stated in Table 1.

The Definition of Consumers based on the Existing Law and Regulation

Based on Article 1 of the Consumer Protection Law, a consumer is every person who uses goods and services available in society, both for the benefit of oneself, family, other people, and other living creatures, and not for trading. Customers are entities who use bank services based on the definition of Article 1 of the Law of the Republic of Indonesia Number 10 of 1998 on Banking (Banking Law).

The Consumer Protection Law defines a consumer as a user rather than a trader. While in financing transactions, the user is not necessarily a customer or can be traded. In the sale and leaseback scheme, the collateral that has been owned is exchanged. After completing the financing, the financing institution can sell the goods in the operating lease scheme. Therefore, the Consumer Protection Law's definition of consumer does not match the actual consumers in the financing agreement, particularly working capital financing.

Consumer financing also has its differences. For example, a consumer can buy a vehicle for his children. On the other hand, his son is the user of the car. Meanwhile, the customers who apply for financing are not the users. Instead, the customer at the financing institution is the parent of the children. The status of this transaction is shown in figure 4.

Based on Article 1 of the Consumer Protection Law, a business is defined as an individual or business entity, whether in the form of a legal entity or not, that is established

and domiciled or conducts activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various fields of economy. Therefore, based on this definition, financing companies and companies that sell goods are considered businesses.

To provide legal certainty, the definition of consumers in financing transactions must be clarified. Financing transactions have multiplied in recent years. This definition is essential for the future development of purchase transactions with financing.

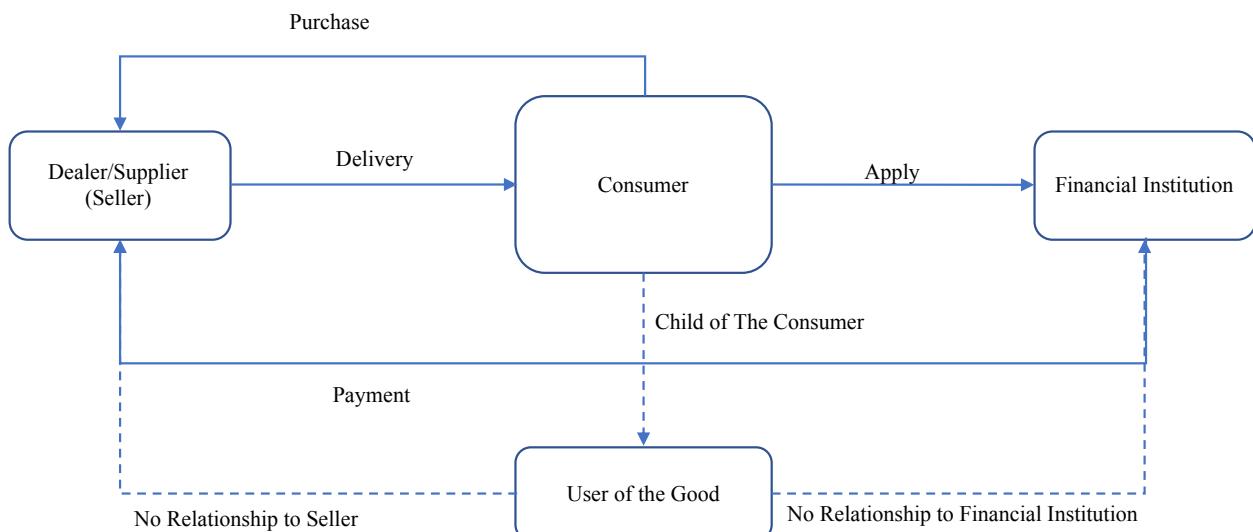


Figure 4. Scheme of Consumer/User Relations in Purchase and Financing Transactions

Source: Research results

CONCLUSION

Purchase transactions through financing have unique characteristics. An item is involved in two transactions at the same time. There are more than two parties engaged in this transaction. In most cases, transactions take place between buyers and sellers. The financing transaction is also a part of a financing institution. The position of the buyer or consumer is also a customer at a financing institution. Therefore, the term "consumer" has a broad definition. According to the Consumer Protection Law, consumers are both buyers and users of goods. Financing transactions are classified into two types: capital goods and consumer goods financing. In capital financing, there are also several financing schemes. Based on the Consumer Protection Law, consumers are users of goods or services. Users, owners, and buyers of these goods or services in financing transactions are different parties. To provide legal certainty, the definition of the consumer must be clarified. This research can be further developed by discussing the purchase of goods with financing, specifically for industrial working capital goods.

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