CREDIT CARD CONTRACTS AND THE RIGHT TO INFORMATION: CASE OF FINANCIAL INSTITUTIONS IN PERU

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ABSTRACT

Purpose: It was decided to determine the influence of credit card contracts on the right to information of customers of financial institutions, Peru.

Theoretical framework: The violation of the right to information has become a habit on the part of financial entities, since the regulatory and supervisory entities do not comply with overseeing and sanctioning this type of companies, therefore, the theoretical background found allowed to go deeper into the subject.

Design/methodology/approach: A quantitative methodology was considered, under a non-experimental descriptive correlational design, surveying 60 people, made up of 30 lawyers and 30 clients of financial entities, Peru.

Findings: The findings showed that when credit card contracts are prepared in an inadequate manner, which only benefits the financial institutions, clients' information rights will be inadequate. Likewise, a significance of less than 0.05 was reached.

Research, Practical & Social implications: Clauses that exclude legal rights have a direct and significant influence on the right to information of customers of financial institutions. Considering the Spanish legislation in article 32.3 of the new Credit Card Payment Services Law and in Colombian legislation in Article 333 of the Political Constitution of Colombia, by allowing private initiative to carry out economic activities and warning that it does not allow companies to abuse their position of dominance, Paradoxically, it grants the financial sector all the faculties and tools to define its excessive and exaggerated charges that harm a population that loses purchasing power every day. It is recommended that the legislative and executive powers reform the 1993 Political Constitution of Peru, where it should establish that small bills that cause economic damage to consumers of financial entities are prohibited.

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Originality/value: It is essential that the state supervisory entities verify compliance with the clauses of the contracts, since this ensures that the right to information of each client in the financial sector is not violated.

Keywords: information, financial consumer, card, clause, contract.

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1 INTRODUCTION

In the international context, according to Rugaber (2021) as of March of this year, there are 14.5 million credit cards in the market worldwide, with U.S. citizens having
more cards than in other countries, but despite this, they do not have the necessary security to carry out their transactions over the Internet. It is even observed that in Chile some credit cards cannot acquire purchase and theft insurance, but this act is not informed by the financial entity to the clients verbally or in writing in the contracts, causing the rights (D) of consumers to be violated. (Central Bank of Chile, 2021).

In Panama, it is observed that customers of financial institutions are unaware of the high interest rates generated by placing consumption in too many installments, which is generated by the bad information they receive from the employees of the institution that has acquired the credit card (Delgado, 2020). (Delgado, 2020). In Peru, according to Ramos (2021) reveals that there are 10 to 16 abusive clauses that cannot be evidenced by the clients because they come armored in a complex language that escapes the view of the acquirer but that greatly harms the economy of these people. In addition, it is evident that, from the signature alone, cardholders sign away their advance consent, which means that the bank has full discretion to make numerous changes without notifying the cardholder, as well as adjust the credit line above the predetermined amount, both in terms of interest rate and fees, as needed (Sources, 2020).

However, the bank can take retaliatory action against customers who violate payment terms but is exempt when the error is its fault; occasions when it is exempt from liability are frequent (Callalla, 2020). Thus, from January to March 2021, 1809 complaints were filed for abuse by financial entities regarding abusive clauses in credit card contracts such as excessive charges, interest rates, prepayments and variation without agreement between the parties, being generated by illegal purchases that customers have not made, excessive charges in monthly installments and insurance that they have not contracted. (Indecopi, 2021)

In the local environment it is evident that the lack of cash to cover certain needs, customers are forced to acquire one or more credit cards because they allow them to have money at any time, being in this that lies the highest rate of department store greatly harming their family economy, because they get to pay more than double what has been obtained, being generated because these financial institutions in Peru does not comply with simple and clear information to the cardholder for example interest, fees, deadlines and the causes that would generate the failure to pay the assigned installments.

This work was justified in the legal basis that the Peruvian state has as it does in the Magna Carta of 1993 specifically in Article 65, as well as in the Code of Protection.
and Defense of the Consumer Law 29571 specifically in Articles 85 and 96, in Law 31143, and in Law 31050. With respect to the social justification, this work is based on the fact that by identifying exactly the clauses of the credit card contracts, clients will be able to learn about the interest, commissions and penalties that these cards have, leading them to make better decisions and not fall into over-indebtedness, also, it will allow them to adequately use their economic resources in the near future for the benefit of their entire family.

In the theoretical aspect this research was justified in all the conceptual bases that have been published by recognized authors worldwide allowing the researchers to know in depth each of the variables that are being studied, also, with the conclusions and recommendations reached by the researchers will provide important knowledge for those people or professionals who decide to learn about credit card contracts (CTC) and consumer rights of financial institutions. With respect to the methodological justification, this work will serve as a guide for those who decide to study the study variables and can be used as a preliminary work to discuss our findings with their results. As a general objective: To determine the influence of credit card contracts on the right to information of clients of financial institutions, Peru. The general hypothesis was: There is a direct and significant influence of credit card contracts on the right to information of customers of financial institutions, Peru.

2 LITERATURE REVIEW

At the global level, Zoilboev and Cyman (2022) noted that the right to withdraw should be available when goods or services are defective, as well as when the consumer's freedom of choice has been impaired in any way. In conjunction, Morales, and Prieto (2021) revealed that it is a notable problem in legal and economic traffic, since it affects the patrimony of the parties, while allowing the initiation of legal proceedings to establish the liability of the parties. Likewise, Muñoz (2021) externalized that, in Ecuador, the socio-legal intervention of the client's lawyer is limited to the mediation figure, which prevents their studies of specific cases from being consistent with a binding decision, which implies a limitation of the rights of financial users and a lack of competitiveness on the part of the Bank's Supervision. Likewise, Giron (2020) mentioned that the contracts that consumers enter with private financial entities violate the rights of clients
by arbitrarily imposing clauses that require unilateral acceptance of non-financial services.

In contrast, Haita (2018), identified that, if the client does not pay, Article 228 of Law 26702 authorizes banks to issue demand drafts without the client's consent, and the only way is to issue a notarized notice of the balance due in advance, and expedited execution in court. In this sense, we consider that the mere provision of the guarantee is not enough to initiate the execution and give the person a patrimonial damage. But Martin (2018) determined that the principle of protection derives directly from the fundamental rights of consumers to adequate and true information, to choose and, finally, to decent and fair treatment. In Peru, in addition, González (2018) stated that some provisions of the contract violated the fundamental rights of the consumer, because of the lack of reciprocity of the relationship between the bank and the client. Likewise, Sotomayor (2017) as he concluded that through the Chi-square test it was shown that these variables maintain a significant and moderately strong association.

The theoretical bases of credit card contract clauses according to Wattanawongwan et al. (2022) the contract deals with the steps that are carried out in a logical sequence in order to ascertain the meaning and effectiveness of the will and the content of interest of the parties. In the field of contracts, the fiscal criterion is fundamental for the interpretation of the statements made by the parties involved during the development of the act, since it is the frequent deliberate agreement of the parties that gives rise to the act or legal business (Moumeni et al. 2020). In contrast, credit card contract clauses are the agreement between a specialized company and a customer to open a credit account in its favor for the customer to contract goods or services with specific establishments with which the company has agreed to pay a commission (Esenogho et al., 2022).

There is also the contribution of Alla et al. (2021) where they state that it is a contract in which the financial institution guarantees the user a determined amount of money for a determined period. The individual can use part or all the credit line during that period. (Alhusainan, 2021). Likewise, Atamer and Pichonnaz (2021) is a written document involving the financial entity and the client, which establishes the supplier's exclusion of liability clauses, and also contains the clauses authorizing the supplier to unilaterally terminate the contract and all the clauses excluding legal rights. According to Caldarelli (2021) discloses that a credit card treaty is granted by a legal entity, this
revolving credit, with a defined amount and duration, extendable indefinitely, is granted to a specific natural person for the purpose of using it in a place, store or affiliate.

The supplier's exclusion of liability clauses according to Cem (2020) are those agreements or legal transactions in which the parties intend to limit the consequences of liability before a breach or the occurrence of an illegitimate act. Likewise, they are the legal covenants that are stipulated in a contract where the financial entity is not responsible for fraud and fault for wrongful acts that occurred after the signing of the contract, transferring the liability directly to the consumer (Ling, 2019). In contrast, Whittaker (2019) states that clauses that empower the supplier to unilaterally terminate a contract in accordance with the law, reveals that it is a mechanism by which the administration can terminate a contract if certain circumstances arise after the improvement of the contract, such as the requirements of public service, public order or incapacity of the contracting party.

In addition, it is the decision taken by the bank in the event that the client no longer has the capacity to meet the payments and must apply prudential rules and avoid legal provisions other than what is stipulated in the legal order (Bisping & Dodsworth, 2019). Also, there is the dimension of clauses that exclude legal rights (CEDL) where Bangayongo (2019) states that the client cannot make advance payments even though the legal system allows it, leading the client to pay its normal installment with the interest and commissions generated. Likewise, this causes there to be default of payment causing the client in a certain period of time to have to pay a very high amount to the one he had at the beginning as debt taking advantage of the bank that has the right of retention of assets held by the client under the injunction (Bean, 2018).

The theoretical bases of consumer rights according to Cash and Tsai. (2018) mention that they are those natural persons who act in a sphere other than that of a company or professional activity when they obtain, wield, or rejoice of the good or contract for a service, and, in exceptional cases, micro-entrepreneurs who demonstrate an asymmetry of information with the supplier in relation to those products or services not related to the company's own line of business. Likewise, it is the end of all economic activity, i.e., it is the man in closed circles (Tektona, 2018).

Financially satisfying their needs and increasing their well-being using a range of products and services. (Tapiero, 2022). A natural person or a legal entity, strictly speaking, buys, uses or enjoys certain products or services that were previously available
in the market (Ponce, 2021). We can state that the credit card is a piece of plastic with your information printed on it, which shows that you are legally entitled to receive goods or services from another person in exchange for presenting this document and signing a receipt in accordance with the order of the person who issued it.

In addition, the right of the financial consumer refers to any client of the supervised entities. (Lopez, 2020). On the other hand, Rincón (2019) mentions that they are those rights held by people who become customers of a financial institution, which have the right to receive transparency and clarity at the time of entering into a contract with the bank, also, they must have the same opportunity as other people, the clauses must be truthful and comparable with other entities and easily understood by consumers.

The goal of financial consumer protection is to ensure that consumers receive adequate services, so that their free and informed decisions steer the financial market in the direction of improved services, rewarding providers who meet their expectations and punishing those who act in violation of their fundamental rights (Goldenberg, 2020). The conditions of the consumer are the same in which every human being has his essence and is not subject to any condition, because in an ontological sense man is a needy entity since his birth, if not before, therefore, he is entitled to all the commandments, guarantees and rights of a consumer (Leturia & Gochicoa, 2020).

The laws (L) are those norms that are in force, where the main norms are the Political Constitution of Peru of 1993, the civil code and the consumer protection code that must be considered by the regulatory entities responsible for ensuring the protection of the rights of financial consumers throughout the national territory. (Chaves, 2021).

On the other hand, rights according to Anaya (2020) refers to the fact that all financial consumers are legally mandated to receive fair treatment, receive protection from all abusive clauses that seek to violate their rights, leading to compensation from the financial institution if it is proven that it has taken advantage of the little knowledge of customers, thus violating their rights. Likewise, the principles (P) where it is mentioned that in every act entered with banks, this must consider the principle of legality, the principle of good faith and the principle of transparency, since this allows to demonstrate that they are not acting below the legal framework and that they always seek to respect the rights of their clients. (Suarez, 2020).
3 DATA AND METHODOLOGY

An applied type of research was used because this allowed the generation of knowledge that has a direct study to the problems of society or the productive sector. (CONCYTEC, 2018). The non-experimental cross-sectional design was taken into account since data were collected at a single point in time, it was used to relate the variables and their interrelated incidence at a given point in time (Puican et al., 2023).

In addition, the descriptive correlational method was used, since the objective was to describe the phenomena and associate the variables of the study (Puican et al., 2023). The population and sample consisted of a total of 60 people, of which 30 were lawyers and 30 clients of financial institutions in Peru. Non-probabilistic convenience sampling was used due to the circumstances that the country is going through. It was the survey that was adapted from the work of Boza (2018).

The instrument for this study was the questionnaire, which was applied to the lawyers and consisted of 18 items and to the clients, which consisted of 18 items. At this point, the data from the survey was transferred to Excel, and after a critical review of each response, the database was assigned to version 26 of the SPSS statistical system. The data for the research were collected from a survey of lawyers, and using statistical data, frequency tables were created using the SPSS program. Reliability, frequency distribution (tables and graphs) was used to collect, process, and analyze the data.

According to Sacred Heart Women's University (2019), the primary ethical characteristics of the research are confidentiality, objectivity, and discretion. Regarding confidentiality, the researchers protected all personal information obtained from the attorneys during the development of the surveys, which will be removed and deleted once UCV approves this work. In terms of objectivity, this refers to the fact that the researchers did not manipulate the data collected during the application of the surveys to the lawyers, meaning that they were not modified or altered. In addition, discretion was considered because all the information provided by the Peruvian lawyers and clients will be used only for academic purposes.

4 RESULTS AND DISCUSSION

In the case of credit card contracts, 63% of the lawyers and 50% of the clients were in the moderate level, indicating that the financial entities commit fraud at the time of drawing up the contract, since they draw it up with full knowledge of the fact that they
have legal counsel at the national level. On the other hand, the clauses that exclude legal rights, since 80% of the lawyers mentioned that it is inadequate and 47% of the clients were located in the inadequate level, demonstrating that the financial entity does not comply with informing the clients about the benefits that they have if they pay in advance installments, besides not informing the consumers that they can annul the contract in case the financial entity does not comply with any clause established in the credit card contract.

Next, we have the dimension excluding liability clauses, where 57% of the lawyers mentioned that it is moderate and 50% of the clients placed themselves in the inadequate level, thus showing that the legal provisions do not protect their right to information because they do not correctly receive the regulatory procedures that the financial entity uses when a fraud against consumers has occurred.

In the dimension of clauses empowering the supplier to unilaterally terminate a contract, more than 50% of the lawyers were in the inadequate and moderate levels, because the financial entities apparently do not comply with the legal provisions set forth in the regulations. On the other hand, more than 80% of the clients placed themselves in the inadequate and moderate levels, thus revealing that the financial entity elaborates abusive clauses that cause them economic damage in the short and long term.

These results are defended by the research of Zoilboev and Cyman (2022), they came to conclude that the right to withdraw should be available when goods or services are defective, as well as when the consumer's freedom of choice has been damaged in any way. Likewise, so does Giron (2020), since he came to conclude that the contracts that consumers enter with private financial institutions violate the rights of customers by arbitrarily imposing clauses that require unilateral acceptance of non-financial services.
The right to information obtained 53% of the lawyers in the inadequate level, demonstrating that they consider that our constitution does not implicitly establish the right to information for consumers, on the other hand, the clients were located with 60% in the moderate level revealing that the country's constitution does not comply with protecting each of their rights as consumers of financial entities. For lawyers, the point with the worst results was the principles, with 73% in the inadequate level, followed by rights, with 67% in the inadequate level, and finally laws, with 47% in the moderate level, thus demonstrating that the legal norms currently in place do not fully comply with their role of protecting the consumers' right to information, since they do not have quality access to the products and services they have contracted.

For clients, the dimension with discouraging results was rights, since they obtained 43% in the inadequate level, followed by laws and principles, since both reached 33% in the inadequate level, thus indicating that they do not receive equitable treatment when they go to the financial entity to present their claim. They also revealed that they cannot access information on credit card contracts at any time, demonstrating that the principle of legality does not subject financial entities to comply with the legal framework, which shows that their rights are being violated by financial entities.

These findings are defended by Morales and Prieto (2021), concluding that it is a notable problem in legal and economic traffic, since it affects the patrimony of the parties,
while allowing the initiation of legal proceedings to establish the liability of the parties. Likewise, so does Muñoz (2021), since he concluded that, in Ecuador, the socio-legal intervention of the client's lawyer is limited to the mediation figure, which prevents his studies of specific cases from being consistent with a mandatory compliance decision, implying a limitation of the rights of financial users and a lack of competitiveness on the part of the Bank Supervision.

When credit card contracts are prepared in an inadequate manner that only benefits the financial entities, 53% of the clients' right to information will be inadequate; likewise, when the contract is moderate, 53% of the clients' right to information will be moderate, but when the credit card contract is prepared in an adequate manner considering the legal norms, 80% of the consumers' right to information will be moderate and 20% adequate. Having achieved an asymptotic significance of less than 0.05, allowing the researchers to accept the positive hypothesis and reject the null hypothesis, concluding that credit card contracts have a direct and significant influence on the right to information of customers of financial institutions in Peru.

These results are defended by the work of Haita (2018), because he concluded that if the client does not pay, Article 228 of Law 26702 authorizes banks to issue demand drafts without the client's consent, and the only way is to issue a notarized notice of the balance due in advance, and expedited execution in court. It is observed that when the financial entities illegally draw up exclusion of liability clauses (ERC) of the supplier.
influences the right to information by 54.5% at the inadequate level, likewise, when it is moderate it influences the right to information of the clients by 62% at the moderate level, but when it is at the adequate level the drawing up of exclusion of liability clauses influences the right to information of the clients of the financial entities by 22.2% at the adequate level. For having achieved an asymptotic significance of less than 0.05, allowing the researchers to accept the specific positive hypothesis 1 and reject the null hypothesis, concluding that the exclusionary clauses of supplier liability have a direct and significant influence on the right to information of the clients of financial institutions, Peru.

These results are supported by Bustios (2021), as he concluded that it is quite deficient in terms of control exercised by the responsible institution, INDECOPI, because according to statistics, the figures caused by complaints from credit card users represent more than half of the attention compared to those caused by other products, which shows that this inadequacy occurs as a result of the lack of specification of the suitability character that should be contemplated in the legislation.

<table>
<thead>
<tr>
<th>Credit card agreements</th>
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<th>Moderate</th>
<th>Suitable</th>
<th>Total</th>
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<td>53.3%</td>
<td>3.3%</td>
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</tr>
</tbody>
</table>

Source: SPSS V26 database.

It can be seen that when the financial entities elaborate clauses that empower the supplier to unilaterally terminate a contract (CFPRUC) without considering the legal norms and without respecting the rights of their clients, it influences the right to information by 76.5% in the inadequate level, likewise, when it is moderate it influences by 66.7% in moderate and 4.2% in adequate in the right to information of the clients of the financial entities. Having achieved an asymptotic significance of less than 0.05, allowing the researchers to accept the specific positive hypothesis 2 and reject the null hypothesis, concluding that the clauses that allow the supplier to unilaterally terminate a
Contract have a direct and significant influence on the right to information of the customers of financial institutions, Peru.

According to the established data, when financial institutions consider clauses that exclude legal rights by correctly informing customers that interest is eliminated when making advance payments, it positively influences the right to information, since when this dimension is inadequate, the right to information will also be inadequate in 63.2%, likewise, when it is moderate it influences 85.7% in moderate and 7.1% in adequate in the right to information of the customers of the financial institutions. For having obtained an asymptotic significance of less than 0.05, allowing the researchers to accept the specific positive hypothesis 3 and reject the null hypothesis, concluding that clauses that exclude legal rights have a direct and significant influence on the right to information of customers of financial institutions, Peru.

These results are supported by the study of Romero (2019), since he concluded that both variables obtained Rho=−0.444, demonstrating that there is a moderate negative association. Likewise, Manuel (2018), as he concluded that abusive clauses in credit card contracts have a direct impact on the protection of consumer rights.

Table 2 Level of influence of Supplier Exclusionary Liability Clauses on the right to information of customers of financial institutions, Peru

<table>
<thead>
<tr>
<th>Clauses excluding Inadequate</th>
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<th>Moderate</th>
<th>Suitable</th>
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<tr>
<td>Total</td>
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<tr>
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<td>%</td>
<td>43.3%</td>
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<td>43.3%</td>
<td>53.3%</td>
<td>3.3%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source: SPSS V26 database.
5 CONCLUSIONS

Credit card contracts have a direct and significant influence on the right to information of the clients of financial institutions. It is recommended that the Superintendence of Banking and Insurance create a decentralized office in Peru because in this way financial entities will be pressured and obliged to correctly inform clients about the clauses in credit card contracts, thus reducing the violation of the right to information (RTI) of each of their clients. Likewise, the Superintendence of Banking and Insurance, it is recommended that the Peruvian Superintendence of Banking and Insurance should carry out an accurate inspection of the financial entities in Peru, where they should verify the credit card contracts that they are signing with customers in order to verify if any company in this sector is committing any abuse of the right to information of its customers, this allows other companies to be interested in ensuring not only their rights, but also those of their customers.

Clauses excluding the supplier's responsibility have a direct and significant influence on the right to information of the clients of financial entities. It is recommended that financial entities respect the existing legal framework of the financial system, as this will allow them to gain more clients in this competitive sector, since by offering sincerity, respect and tolerance, clients will continue acquiring their products and contracting their services.

The clauses that allow the supplier to unilaterally terminate a contract have a direct and significant influence on the right to information of the customers of financial institutions. It is suggested to the clients of the financial entities, it is recommended that before signing the contract, to review slowly each word contained in the credit card contract because this will allow you to avoid legal problems and unnecessary expenses in a short time, that is why it is extremely important to take your time to understand and comprehend each legal or economic term embodied in the agreements signed by both parties.

Clauses that exclude legal rights maintain a direct and significant influence on the right to information of customers of financial institutions. Considering the Spanish legislation in article 32.3 of the new Credit Card Payment Services Law and in the Colombian legislation in Article 333 of the Political Constitution of Colombia, by allowing private initiative to carry out economic activities and warning that it does not allow companies to abuse their position of dominance, Paradoxically, it grants the
financial sector all the faculties and tools to define its excessive and exaggerated charges that harm a population that loses purchasing power every day. It is recommended that the legislative and executive powers reform the 1993 Political Constitution of Peru, where it should establish that small bills that cause economic damage to consumers of financial entities are prohibited.
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