

Fair Interest Rates And Judicial Discretion: A Comparative Study Of Japan And France For Credit Regulation Reform In Indonesia

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Abstract

The determination of a fair interest rate in credit agreements is a crucial issue in securing legal certainty and in protecting debtors against the exploitative imposition of excessive interest (*woeker*). Although Indonesia possesses a historical foundation in the *Woekerordonnantie* 1938, its current positive law no longer prescribes an explicit maximum interest rate — a statutory vacuum that has given rise to disparity among judicial decisions and to legal uncertainty in adjudicative practice. Employing normative legal research with statutory, historical, conceptual, and comparative approaches, this article examines in depth the interest rate regulatory regimes of Japan and France to formulate an ideal regulatory framework for Indonesia. The findings demonstrate that Japan applies static, tiered statutory interest rate ceilings determined by the amount of the loan principal under the Interest Rate Restriction Act (IRRA), whereas France employs the dynamic *taux d'usure* system under the *Code monétaire et financier*, which is revised periodically. The experience of both jurisdictions shows that explicit and transparent limits afford optimal legal certainty and prevent the abuse of circumstances (*misbruik van omstandigheden*). This study therefore recommends regulatory reform in Indonesia through the enactment of statutory interest rate caps and the issuance of judicial guidelines (SEMA/PERMA) to realize distributive justice and contractual balance.

Keywords: Fair Interest Rate; Comparative Law; *Woekerordonnantie*; Credit Agreement; Abuse of Circumstances.

INTRODUCTION

The stipulation of interest is a logical consequence of the advancement of funds and serves, in theory, as consideration for the transfer of the right to use those funds, as compensation for default risk, and as an adjustment for inflation. Viewed from the principle of distributive justice, however, its determination cannot be surrendered entirely to market mechanisms. Freedom of contract under Article 1338 of the Indonesian Civil Code is not an unbounded freedom; it is circumscribed by statute, morality, public order, and the principles of propriety and good faith (Badrulzaman, 2019). Where those constraints are absent, interest exceeding the bounds of reasonableness may be transformed into economic exploitation (*woeker*) of a debtor occupying a socio-economically weaker bargaining position.

The Indonesian legal system anticipated this danger through two colonial instruments promulgated in the same year: the *Woekerordonnantie* 1938 (*Staatsblad* 1938 No. 524) and its companion, the *Geldschieters Ordonnantie* 1938 (*Staatsblad* 1938 No. 523), both of which remain in force by virtue of Article I Undang-Undang Dasar Negara Republik Indonesia 1945. The first replaced a *Woekerbesluit* of 1916 that had required the disadvantaged party both to apply for relief and to prove that its thoughtlessness, inexperience or distress had been exploited — requirements so difficult to satisfy that the decree failed to curb usury in practice (Satrio, 2018a, 2018b). Article 2 of the 1938 ordinance accordingly empowers the civil judge, on application or of its own motion, to lighten the obligations of the parties or to declare the agreement void where, from the outset, the difference in value between their obligations is such that, in the circumstances, the imbalance is excessive. Relief is barred only where it is shown that the disadvantaged party fully understood the consequences of the agreement and did not act thoughtlessly, inexperienceably or in distress. The subjective factor thus operates as a bar to be established by the creditor rather than a condition to be proved by the debtor (Satrio, 2018b;

Minabari, 2023), and exploitation is no longer an element at all (Satrio, 2018b) — a structure that doctrine has nonetheless commonly restated in the language of abuse of circumstances (*misbruik van omstandigheden*) (Subekti, 1985).

Recent scholarship treats abuse of circumstances as a doctrine received through case law without express statutory footing (Clarins, 2021; Suhendar & Athoillah, 2023; Piscesa & Pratiwi, 2026), most recently characterizing it as a defect of consent that renders the agreement voidable (Piscesa & Pratiwi, 2026). None of these studies refers to the ordinance, although it supplies a statutory basis for precisely the class of cases — excessive imbalance born of thoughtlessness, inexperience or distress — in which the doctrine is frequently invoked; this article seeks to close that gap.

Positive law, however, gives the ordinance's standard no quantitative content; the ordinance leaves the measure of an excessive imbalance entirely to the judge (Satrio, 2018b). Article 1767 of the Civil Code (KUHP_{perdata}), read with *Staatsblad* 1848 No. 22, fixes the statutory rate at six per cent per annum and is directed at moratory interest, while Law No. 7 of 1992 as amended by Law No. 10 of 1998, and Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, adopt a market-based approach without any ceiling price (Usman, 2021). The Langsa District Court captured the position precisely when it observed that the law nowhere states how large a stipulated rate may be, saying only that it must not be prohibited, so that the restraint upon excessive interest is known only in the form of the ordinance. A first-instance panel thus recorded, in terms, a jurisdiction conferred without a standard by which to exercise it.

The problem has escalated with the digitalization of financial services, in which interest is frequently set automatically through closed algorithms, without transparency or genuine negotiation, generating an accumulation of daily charges that rapidly compounds beyond the principal. The Financial Services Authority (Otoritas Jasa Keuangan/OJK) has responded within a single segment. Its regulation, OJK Regulation Number 40 of 2024, obliges providers of information-technology-based joint funding services to observe a maximum economic benefit and leaves the figure to the Authority, which has fixed it — together with a ceiling on late-payment penalties and an aggregate limit under which the two combined may not exceed the funding value — in Circular Letter No. 19/SEOJK.06/2025. The regime is addressed to providers as a supervisory norm: a breach attracts administrative sanctions, including a capped fine, but no private-law consequence, and the regime does not reach banking, consumer finance or commercial credit. Even within its segment it falls back to an evaluative standard, prohibiting unsound any funding that carries interest or charges that are not fair. The ordinance, the regulation and the circular thus share a single evaluative standard, and none gives it a measure that binds the civil judge. Outside that one segment, the assessment reverts to the case-by-case discretion of the court.

That discretion has produced a disparity whose character has been imperfectly understood. The literature records it chiefly as a division of outcome: some panels accept abuse of circumstances as a ground for relief while others reject it or decline to consider it, a divergence attributed to judges' non-uniform understanding of the doctrine (Clarins, 2021); in credit disputes, first-instance and appellate courts have found abuse in rising interest rates only to be reversed on cassation (Suhendar & Athoillah, 2023). The decisions examined in this study disclose a further and more troubling pattern: panels agree that a stipulated charge may be reduced, for the most part recite the same doctrinal paraphrase of the ordinance and then diverge sharply over the standard by which the reduction is measured and the rate that replaces it. That disparity lies in method rather than disposition, and it is the more corrosive for being invisible in the outcomes.

This situation stands in contrast with civil law jurisdictions that have codified interest-rate restrictions. Japan applies static, tiered ceilings graduated by the amount of the principal;

France applies a dynamic threshold derived from the average effective rate prevailing in each market segment. Comparison is warranted not merely to emulate their achievements but to apprehend their side effects, since the literature indicates that caps may suppress credit supply to riskier borrowers and displace cost into non-interest charges (Henriquez Gallegos & Maimbo, 2014; Ferrari et al., 2018), as the post-reform contraction of the Japanese consumer finance market illustrates (Pardieck, 2008; Ramseyer, 2015).

RESEARCH METHODS

This study constitutes normative legal research (Soekanto & Mamudji, 2021; Ibrahim, 2018), in which the object of examination is the legal norm rather than social behavior, so that no population of respondents and no statistical instrument is involved. It proceeds from a working proposition tested in the discussion: that an explicit and transparent statutory ceiling affords a higher degree of legal certainty, and curtails the abuse of circumstances more effectively, than reliance upon unstructured judicial discretion.

Five approaches are employed (Marzuki, 2023). The statute approach examines the applicable instruments; the case approach examines the reasoning of the decisions described below; the comparative approach places the Indonesian, Japanese and French regimes side by side using the functional method (Zweigert & Kötz, 1998); the historical approach traces usury control from the *Woekerbesluit* of 1916 and the ordinances of 1938 to the digital era; and the conceptual approach draws upon the doctrines of distributive justice, restricted freedom of contract, abuse of circumstances and judicial law-finding (*rechtsvinding*) (Mertokusumo, 2022).

Primary materials for Indonesia comprise the Civil Code, the *Woekerordonnantie* 1938, the *Geldschieters Ordonnantie* 1938, the banking legislation, Indonesian Law No. 4 of 2023, the consumer protection legislation, Financial Services Authority Regulation (Peraturan OJK) No. 40 of 2024 and Circular Letter (SE OJK) No. 19/SEOJK.06/2025, and decisions of the general courts and the Supreme Court. For Japan they comprise the Interest Rate Restriction Act (Act No. 100 of 1954), the Act Regulating the Receipt of Contributions, Receipt of Deposits and Interest Rates, the Money Lending Business Act, and the decisions of the Supreme Court of Japan of 2006. For France they comprise the *Code de la consommation*, the *Code monétaire et financier*, the quarterly notices of the Banque de France published in the *Journal officiel*, and the case law of the *Cour de cassation*. Authoritative texts were obtained from official sources, namely Japanese Law Translation for Japan and the portals of the French Ministry of the Economy and Finance and of the Banque de France for France. Secondary materials comprise textbooks, accredited national and international journal articles, and institutional working papers.

Comparison proceeds against a fixed *tertium comparationis* of six variables (Zweigert & Kötz, 1998): the form and hierarchy of the restricting norm; the method of determining the ceiling, whether static or dynamic; the basis of differentiation; the scope of application *ratione personae* and *ratione materiae*; the civil consequence of a breach; and the penal or administrative consequence together with the supervisory authority concerned. The same six variables govern the presentation of the comparative findings, so that the three jurisdictions are assessed on identical terms.

Judicial decisions were collected by purposive sampling from the Supreme Court Decision Directory (Direktori Putusan Mahkamah Agung), confined to civil disputes in which a party contested the rate of interest or the default penalty and in which the panel invoked one or both of the usury ordinances, together with any decision on further appeal in the same proceedings, and limited to decisions whose full text is publicly accessible. Each decision was

analyzed against a uniform coding frame recording the transaction type, the charge contested, the instruments invoked, whether the panel worked from the text of the ordinance or from a doctrinal paraphrase, whether it made a finding on the subjective element, whether it applied the ordinance's procedural provisions, the substitute standard adopted, and the disposition. Because the sample is purposive and small, the findings describe the reasoning available in the published corpus rather than the central tendency of Indonesian adjudication and are presented with that limitation stated.

Legal materials were gathered through systematic library and documentary study and analyzed qualitatively and prescriptively by means of grammatical, systematic, teleological and comparative interpretation (Mertokusumo, 2022; Hadjon & Djatmiati, 2019), with deductive and inductive reasoning employed in combination. The study is confined to the normative plane; it does not measure the economic effect of interest-rate ceilings empirically and relies for that dimension upon existing institutional research.

RESULTS AND DISCUSSION

Tiered Statutory Ceilings in Japan

Japanese law does not confine the restriction of interest to a single instrument. Three statutes operate in concert: the Interest Rate Restriction Act governs the civil validity of the stipulation, the Act Regulating the Receipt of Contributions, Receipt of Deposits and Interest Rates (hereinafter the Capital Subscription Act) supplies the penal ceiling, and the Money Lending Business Act regulates the conduct of lenders. Under the first, the lawful ceiling is graduated in three tiers that descend as the principal rises, the rationale being that the smaller the loan, the weaker and more urgently placed the borrower is presumed to be, and the higher the proportionate cost of administration the lender must recover (Table 1).

Table 1. Architecture of statutory interest-rate restriction in Japan

Instrument	Object regulated	Ceiling	Legal effect of a breach
Interest Rate Restriction Act, Art. 1(i)	Contractual interest, principal below ¥100,000	20% per annum	Excess void
Interest Rate Restriction Act, Art. 1(ii)	Contractual interest, principal of ¥100,000 or more but below ¥1,000,000	18% per annum	Excess void
Interest Rate Restriction Act, Art. 1(iii)	Contractual interest, principal of ¥1,000,000 or more	15% per annum	Excess void
Interest Rate Restriction Act, Art. 4(1)	Liquidated damages for default, general loans	1.46 times the Article 1 rate	Excess void
Interest Rate Restriction Act, Art. 7(1)	Liquidated damages for default, commercial loans	20% per annum	Excess void
Capital Subscription Act, before the reform	Penal ceiling	29.2% per annum	Criminal liability; grey zone tolerated below it
Capital Subscription Act and Money Lending Business Act, in full effect from 2010	Penal ceiling; deemed repayment abolished	20% per annum	Criminal liability; grey zone eliminated

Source: Interest Rate Restriction Act (Act No. 100 of 1954); Pardieck (2008); processed by the author.

Two features deserve emphasis. Invalidity is partial rather than total: the agreement survives and only the excess falls away, while under the case law of the Supreme Court of Japan excess interest already paid is appropriated to the principal, so that the debtor is relieved without the creditor being deprived of its capital. And the ceiling upon default damages, expressed as a

multiplier of the interest ceiling, closes the most obvious avenue of circumvention, namely the recharacterization of excess interest as a penalty or an administrative charge.

The Japanese experience is not, however, the untroubled success it is sometimes portrayed to be, and the qualification bears directly on the working proposition of this study. Until the reform, the divergence between the civil and penal ceilings produced a tolerated grey zone within which the consumer finance industry habitually operated. When the Supreme Court in 2006 denied the validity of consent to grey-zone interest, and the legislature thereafter abolished the deemed repayment device and aligned the two ceilings (Pardieck, 2008), the result was not the quiet elimination of judicial discretion but a substantial wave of restitution litigation, and the market contracted sharply as the supply of consumer credit diminished (Pardieck, 2008; Ramseyer, 2015). The lesson is not that a fixed ceiling is undesirable, but that the transition to it must be designed with as much care as the ceiling itself.

Dynamic Usury Thresholds in France

France pursues the same objective by the opposite technique. The *taux d'usure* is defined in Article L. 314-6 of the *Code de la consommation*, with Article L. 313-5-1 of the *Code monétaire et financier* governing operations, and it is calculated rather than enacted. The Banque de France surveys the average effective rate charged by credit institutions during the preceding quarter for each category of credit, and the threshold for the following quarter is fixed at one third above that average.

Three elements give the mechanism its force. The reference rate is the *taux annuel effectif global*, which absorbs not merely nominal interest but commissions, mandatory insurance premiums and other compulsory charges, so that the ceiling cannot be evaded by unbundling the price. The threshold is differentiated by category, amount and tenor rather than expressed as a single figure. And it is revised periodically, allowing the ceiling to track monetary conditions without legislative intervention — a responsiveness demonstrated during 2023, when revision was exceptionally placed on a monthly footing to accommodate the rapid rise in policy rates before reverting to the quarterly cycle at the beginning of 2024 (Banque de France, 2023).

Two features of the French model are commonly misstated and must be rendered accurately if it is to be transplanted. Civil sanctions do not consist in the nullity of the stipulation of interest. Under Article L. 341-48, excess receipts are imputed by operation of law upon the normal interest then due and, in the alternative, upon the principal; where the debt is extinguished in both capital and interest, the sums improperly received must be restored. The contract subsists and the rate is brought back to the threshold. Alongside this, Article L. 341-50 constitutes usury a criminal offence punishable by imprisonment and a substantial fine, lending the threshold a deterrent weight that no purely private remedy can supply. Equally, the protective scope is narrower than is often assumed: Article L. 314-9 excludes credit granted to natural persons acting for professional purposes and to legal persons engaged in commercial, industrial, artisanal, agricultural or non-commercial professional activity, so that the regime is in substance one of consumer protection rather than a general control of lending.

Comparative Synthesis

Assessed against the six variables adopted in the research method, the three jurisdictions diverge less in their objective than in the instrument through which it is pursued, and it is at the level of instrument that the Indonesian weakness becomes visible (Table 2).

Table 2. Comparative matrix of interest-rate restriction in Japan, France and Indonesia

Variable	Japan	France	Indonesia
Form and hierarchy of the norm	Three statutes	Code provisions implemented by periodic official notice	Supervisory regulation (OJK Regulation No. 40 of 2024) imposing duty, with figures fixed by circular letter; colonial ordinances applied by the judge
Method of determining the ceiling	Static, fixed in statute	Dynamic: market average plus one third	Daily ceiling fixed administratively, subject to periodic review
Basis of differentiation	Amount of the principal	Category, amount and tenor of the credit	Purpose, amount and tenor of the funding
Scope of application	All money loans, with special rules for commercial loans	Consumer and residential credit; professional credit largely excluded	Information-technology-based joint funding only; banking, consumer finance and commercial credit uncovered
Civil consequence of a breach	Excess void	Imputation by law, then restitution; no nullity	No express consequence; recourse to the ordinances and to propriety
Penal and supervisory consequence	Criminal liability above the penal ceiling; financial authority supervision	Imprisonment and fine; central bank and prudential authority	Administrative sanctions only, including a fine capped at Rp50 million; no offence of usury

Source: Primary legal materials of the three jurisdictions, processed by the authors

Indonesia is thus not without a ceiling but without a ceiling of the appropriate rank, reach and consequence. Both comparator jurisdictions place the restriction in an instrument binding upon the civil judge and attach to it a determinate private-law consequence; Indonesia places it in an instrument binding upon the supervised entity and leaves the judge without any statutory measure.

Juridical Implications of the Absence of a Statutory Ceiling in Indonesia

The usury ordinances are not dormant instruments. Of the five decisions examined here, spanning the first instance, appellate and cassation levels, four invoke the *Woekerordonnantie* — the fifth, on cassation, leaving one of them undisturbed — and three invoke it together with the *Geldschieters Ordonnantie*, the companion instrument that doctrine identifies as the one directed at usury in the form of excessive interest, the *Woekerordonnantie* addressing disproportion between performances generally (Satrio, 2018b). Nor is their reach confined to consumer credit: the ordinances have been applied to rural bank lending, to consumer and multi-purpose financing, and to commercial supply contracts between a state-owned enterprise and its corporate suppliers (Table 3).

Table 3. Indonesian decisions applying the usury ordinances to excessive interest and default penalties

N o	Decision	Transaction and charge contested	Instruments invoked	Substitute standard	Outcome
1	Putusan Pengadilan Tinggi Bangka Belitung No. 10/PDT/2018/PT.BBL, 18 July 2018	Rural bank credit; contract interest of 1.9% per month	<i>Woekerordonnantie</i> 1938; Arts. 1313 and 1243 CC	Prime lending rates of the ten largest banks (9.85–12.30%); rate fixed at 10% per annum; penalty at 10% per annum of the interest	Interest reduced; award cut by some 6%
2	Putusan Mahkamah Agung No. 326 K/Pdt/2019, 21 February 2019	Cassation No. 1	Breach-of-contract reasoning only	None articulated	Cassation refused; No. 1 becomes final
3	Putusan Pengadilan Negeri Jakarta Selatan No. 590/Pdt.G/2018/PN Jkt.Sel, 22 January 2019	Consumer vehicle financing; default penalty of 0.5% per day (some 182.5% per annum)	Stb. 1938-523; Stb. 1938-524; Arts. 1243 and 1250 CC	Statutory interest of 6% per annum from filing	Penalty refused; arrears awarded
4	Putusan Pengadilan Tinggi Kalimantan Timur No. 23/PDT/2019/PT SMR, 28 March 2019	Multi-purpose financing with fiduciary security; aggregate claim including 0.5% per day	Stb. 1938-523; Stb. 1938-524; Arts. 1320, 1338 and 1754 CC	12% per annum, described as the government bank rate, source unstated	Claim reduced by some 87%
5	Putusan Pengadilan Negeri Langsa No. 7/Pdt.G/2019/PN Lgs, 21 January 2020	Business-to-business fertilizer supply; late-payment penalty of 1.20% per month billed cumulatively	Stb. 1938-524 as express ground (recited twice; on the operative legal basis); Stb. 1938-523; Arts. 1365, 1338 and 1339 CC; Hoge Raad 1919 and 1923	None; clauses deprived of legal force	Penalty clauses void; sums paid ordered restored

Source: Supreme Court Decision Directory, processed by the authors

The statutory test is displaced by its paraphrase. Article 2 makes an excessive imbalance from the outset the operative test and treats the disadvantaged party's informed and unconstrained consent as a bar to relief, to be established by the creditor. None of the decisions work from that text. Three of the four substantive decisions recite instead Subekti's restatement (Subekti, 1985), which departs from the ordinance in three respects: it converts the bar into a condition, requiring that one party have acted out of ignorance and compulsion; it requires that the condition have been exploited by the other party; and it confines the initiative to the debtor, omitting the court's power to act of its own motion. Each of these features belonged to the 1916 decree, and each was abandoned in 1938 after it had proved an obstacle to applying that decree (Satrio, 2018a, 2018b). Through the paraphrase, the courts are reasoning from the structure of a repealed instrument. Having recited it, the three panels then leave even the paraphrase unapplied, discharging the subjective element with an unelaborated assertion that the parties stood in an unequal position. The identity of the disadvantaged party does not cure the omission: doctrine and colonial case law accept that a legal person may be the victim of usury (Satrio, 2018c, 2018d), so the Langsa panel was entitled to protect a state-owned enterprise, but it made no finding that the enterprise had acted thoughtlessly, inexperiencedly or in distress, nor any finding bearing on the bar. On the text, what was required was an inquiry, which no panel

undertook, into whether the creditor had shown that the disadvantaged party understood and freely accepted the bargain (Minabari, 2023). The Bangka Belitung panel, which does not set out the test at all, comes nearest to it, holding that the borrower was financially pressed and bound by a standard-form contract — findings that, on the text, negate the bar rather than satisfy a condition. The courts thus apply neither the ordinance nor its paraphrase.

Who may be protected is itself unsettled. The Langsa panel extended the ordinance's protection to a state-owned enterprise against its suppliers. In a credit dispute outside this sample, the Supreme Court took the opposite view of a corporate borrower (Putusan Mahkamah Agung No. 3550 K/Pdt/2021), holding that it stood on an equal footing with its bank, was free to choose its creditor, and had been charged a double-digit rate that was proper — without stating the measure by which propriety was judged — and so reversed a first-instance and appellate finding of abuse (Suhendar & Athoillah, 2023). Both positions are open under the ordinance; what is missing is the measure that would decide between them.

The procedural architecture of the ordinance is likewise unused. In at least two of the decisions the ordinance was applied although the disadvantaged party had not invoked it — in one because the debtor never appeared — which is consistent with the court's power to act of its own motion, a power the 1938 ordinance introduced (Satrio, 2018b), yet neither panel refers to that power. The third paragraph of Article 2 requires the court, before deciding, to give the parties the opportunity to explain the circumstances that might justify a striking imbalance; none of the decisions records such an invitation, the Langsa panel coming nearest by leaving the parties to reconcile their penalty calculations, but only after it had declared the clauses without force. Only the fourth paragraph, which directs the court to regulate the consequences equitably and, on annulment, to restore the parties as far as possible to their prior position, finds an echo, in the restitution ordered at Langsa and the recalculation at Bangka Belitung.

An aggregate test has emerged in practice. Across the financing and supply cases the operative question is not whether the rate is high but whether the accumulated charge has overtaken the principal. One panel refuses a daily penalty on the footing that, granted in full, it could exceed the principal; another applies the same reasoning to a claim several times the facility advanced; a third, confronting a monthly penalty unremarkable in itself, voids the clauses because the creditors billed years of accrued charges in a single undifferentiated demand, producing what it described as a snowball effect. The courts have improvised the very aggregate cap that the supervisory authority has since imposed for one market segment, and that Japanese law achieves by pegging default damages to a multiple of the interest ceiling.

The Langsa panel's framing of its own issue makes the point explicit. Having asked whether the suppliers had acted unlawfully, it asked second whether the mechanism by which the penalty was collected had been proper. The inquiry was thus directed not at the rate, which was unremarkable, but at the way an unremarkable rate had been allowed to accumulate, and the ordinance was invoked to answer it. Where a court asks that question without a statutory measure, the answer necessarily reflects the panel's own sense of propriety rather than any standard a party could have consulted in advance.

The substitute standards diverge without a shared rationale. Having set the stipulated charge aside, each panel must supply a replacement — and, as the Langsa panel itself acknowledged, the law names no figure from which to draw it. Here are the practice fragments: a statutory rate fixed in 1848; a rate attributed, without source, to government banks; the extinction of the charge altogether; and a rate derived from a market survey (Table 3). Four incompatible justifications arising within some eighteen months are the concrete measure of the uncertainty that the absence of a benchmark produces. The practice is not new. In 1987 the Supreme Court held a rate of ten per cent a month contrary to propriety and justice, fixed the proper rate *ex aequo et bono* at one per cent a month, and appropriated interest already paid to the principal (Putusan Mahkamah Agung No. 3431 K/Pdt/1985) (Suhendar & Athoillah, 2023)

— in substance the Japanese solution, reached without a statute, yet not one that the later panels examined here apply. It is a disparity of method rather than of disposition, and the more serious for that, since a litigant can predict neither the standard against which the bargain will be judged nor the rate that will replace it.

One panel has already applied the French technique. The Bangka Belitung panel surveyed the prime lending rates published for the ten largest banks in the year the agreement was concluded and fixed the lawful rate by reference to that range, adding a default penalty pegged to the interest rather than stipulated independently. That is, in substance, the *taux d'usure* method: a segment-specific market average converted into a judicial benchmark, with a penalty structured as the Japanese statute structures it. The borrower challenged that decision on cassation, and the Supreme Court, having examined the grounds against the reasoning of the *judex facti*, held that the appellate court had not misapplied the law and that its decision was not contrary to law or statute, refusing the application without reservation. The Court disposed of the application on the grounds of breach of contract and did not discuss the ordinance expressly, but its holding left the appellate reasoning undisturbed. The approach therefore stands as a final determination of Indonesian law, and the technique it embodies is available to any panel that chooses to follow it.

Its limitations are equally instructive. The panel applied the substitute rate to the original facility on a flat basis over the remaining instalments, although the outstanding principal was some thirty per cent lower, so that the nominal rate it pronounced is not an effective rate at all. It drew its market data from a news portal rather than from the prime lending rates that banks are required to publish under supervisory rules. And it fixed the rate near the lower end of the market range with no margin above it, so that a lender pricing at the upper end of a competitive market would be found to have charged excessively. Each defect points to the same conclusion: the technique is sound but cannot be operated reliably by individual panels improvising from secondary sources.

Formulation of Reform

The working proposition is confirmed, but in qualified form. Explicit and transparent ceilings do deliver greater legal certainty than unstructured discretion, as both comparator jurisdictions bear out. They do not eliminate judicial involvement, as the Japanese restitution litigation demonstrates, and they carry documented side effects where set materially below prevailing market rates, including displacement of cost into non-interest charges, reduced credit supply to riskier borrowers, and the withdrawal of lenders from poorer market segments (Henriquez Gallegos & Maimbo, 2014; Ferrari et al., 2018). The appropriate conclusion is not a ceiling at any level, but a ceiling calibrated to the market and introduced by stages. The supervisory authority's own practice points the same way: in replacing its earlier circular in 2025, it left agreements already concluded to run their course under the terms on which they were made.

History counsels caution from the other direction as well. The decree of 1916 was itself adopted after rate ceilings had proved easy to evade by selling goods on credit at inflated prices while stipulating normal interest, which is why both that decree and the 1938 ordinance were framed around disproportion between performances rather than the rate of interest alone (Satrio, 2018a). A ceiling must therefore be expressed in effective terms inclusive of all compulsory charges, and the ordinance must be retained alongside it as a residual safeguard against disproportion that no rate captures.

On that footing, a benchmark expressed as a multiple of the central bank policy rate must be rejected. The policy rate expresses the cost of monetary policy, not the cost of funds plus the risk premium of a particular segment — a premium whose relevance the colonial High Court recognized as early as 1929, when it declined to treat a rate of around forty per cent on an unsecured loan as extraordinary because the lender's risk had to be weighed (Satrio, 2018e).

A threshold so constructed would fall far below the ceiling presently applicable to licensed digital lending, rendering much of the unsecured consumer credit market presumptively usurious. A reference rate derived from the published effective rate for each segment would not be an innovation imposed on the ordinance but a measure for the standard it already contains it gives content to what is excessive, while the bar of informed and unconstrained consent and the duty to hear justification remain as the ordinance frames them.

Nor does the alternative rest on comparative inference alone: an Indonesian appellate court has already referred to a segment market average and been left undisturbed on cassation, and the defects in its execution identify precisely what a guideline must supply. The guideline should also codify the aggregate test that the courts have independently reached, so that interest and penalties combined may not exceed the principal and should require default penalties to be expressed as a stated multiple of the lawful interest, as Japanese law provides, rather than as a free-standing daily percentage. The design converges with recent calls for explicit, measurable indicators and evidentiary parameters, and for consistent jurisprudential guidance, to curb divergent adjudication of abuse of circumstances (Piscesa & Pratiwi, 2026), but it anchors them in an instrument already in force rather than in new legislation alone (Table 4).

Table 4. Proposed two-tiered design of reform

Layer	Instrument	Substance	Comparator model	Principal caveat
Short term	Supreme Court Circular Letter	Restatement of the ordinance's own structure — excessive imbalance as the test, informed and unconstrained consent as a bar, and the court's power to act of its own motion; a rebuttable reference rate, being the published effective rate for the segment plus a stated margin; a procedure giving effect to the duty to hear justification; an aggregate limit on interest and penalties; default penalties pegged to the lawful interest rate	France (reference base); Japan (penalty multiplier)	No reallocation of the burden of proof is needed: once an excessive imbalance is shown, the ordinance itself places on the creditor the burden of establishing the bar, so a circular letter gives effect to a statutory allocation rather than departing from Art. 163 HIR, Art. 283 R.Bg and Art. 1865 CC
Long term	Amendment of the banking and consumer protection legislation	Statutory ceiling expressed in effective terms inclusive of all compulsory charges; dynamic threshold for banking and mortgage credit; tiered fixed ceiling for micro and digital lending; aggregate limit on interest and penalties; the ordinance retained as a residual safeguard	France and Japan combined	Phased entry into force with transitional provisions for subsisting contracts, to avoid the retrospective litigation experienced in Japan

Source: Formulated by the authors

The division of technique between segments is deliberate. Banking and mortgage credit are priced within a reasonably transparent and competitive market for which a market-referenced dynamic threshold is feasible and self-correcting. Micro and digital lending is characterised by algorithmic and unilateral pricing, short tenors and severe information asymmetry, conditions in which a threshold derived from the market average would merely ratify the prevailing level, and in which a fixed tiered ceiling of the Japanese type supplies the certainty required. One qualification follows from the Langsa decision: because Indonesian courts apply the ordinances to commercial parties as readily as to consumers, the French exclusion of professional credit cannot be transplanted without first deciding, as a matter of policy, whether that practice is to be preserved or curtailed.

CONCLUSION

Japan and France pursue an identical objective by opposite techniques, the former fixing a static ceiling in statute and graduating it by the amount of the principal while rendering the excess void, the latter calculating a dynamic threshold from the average effective rate prevailing in each market segment and reducing the usurious rate to that threshold by operation of law, with criminal liability attaching in addition; what unites them is not the form of the ceiling but the fact that it is laid down in an instrument binding upon the civil judge and accompanied by a determinate private-law consequence. Measured against that standard, Indonesia suffers not from the absence of any restriction but from a restriction of inadequate rank, reach and consequence: the *Woekerordonnantie* 1938 makes the excessiveness of an imbalance the test without giving it a measure, and the only quantitative ceilings in force sit in supervisory regulation, bind a single segment and attract administrative sanctions alone. The decisions examined here record that want in their own reasoning — displacing the ordinance's test with a doctrinal paraphrase that reproduces the repealed decree of 1916 and then leaving even that paraphrase unperformed, leaving the ordinance's procedural safeguards unused, converging upon an unlegislated aggregate test under which charges may not overtake the principal, and yet replacing the charges they set aside with substitute standards resting on four incompatible grounds, from the statutory rate of 1848 to the extinction of the charge altogether — so that a litigant can predict neither the standard of judgment nor the rate that will follow it. Reform should accordingly proceed in two layers: a Supreme Court Circular Letter restating the ordinance's own structure, giving its standard a rebuttable measure referenced to the published effective cost of the relevant segment rather than to a multiple of the policy rate, operationalizing the court's duty to hear justification, and pegging default penalties to the lawful interest; and, in the longer term, a statutory ceiling expressed in effective terms, applying a dynamic threshold to banking and mortgage credit and a tiered fixed ceiling to micro and digital lending, introduced in stages with transitional provisions and with the ordinance retained as a residual safeguard, so that contractual balance is restored without reproducing the retrospective litigation and credit contraction that followed reform elsewhere.

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