

PREFERENTIAL TREATMENT IN THE COLLECTION OF INTEREST FROM FINANCIAL SYSTEM COMPANIES TO THE DETRIMENT OF CONSUMER CREDIT USERS

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Abstract

The present study was focused on analyzing the preferential treatment that the Companies of the National Financial System have in charging interest to the users of Trujillo for consumer credit contracts, generating prejudice against them. The procedure used to determine the effects consisted of processing data obtained from Indecopi - La Libertad and two Justice of the Peace Courts of Trujillo. Additionally, the analytical-synthetic method was used to verify the exorbitant interest rates complained by service users in the mentioned companies, which allowed reflection on the preferential legal treatment, as opposed to those allowed to private individuals or legal entities. From this, it can be inferred that, under the pretext of the free market economy, the legal protection of the users of consumer credit is violated. Therefore, the preferential treatment to companies in the financial system, together with the lack of transparency in the financial system, harm the users of consumer credit due to the violation of their legal protection and in contravention of the principles that sustain it, such as the correction of asymmetry and good faith.

Keywords: Preferential treatment, interest, financial system, consumer credit.

1. Introduction

Financial institutions assume an important role in the development process of a country and form the core of the money market in a modern country. The banking system is transcendental in a

nation's economy and has a crucial role in all economic and commercial activities; it serves as an engine of growth and development (Gladis and Rani, 2016). However, the Covid-related crisis has highlighted the relevance of the financial system, which has strongly impacted the banking system, causing regression in credit activity (Carchano Alcaraz et al., 2021b). It has also forced banks to adapt quickly to the new regulatory and economic environment. In this context, credit unions have differentiated behavior from other banking institutions and institutions in the same cooperative sector (Pizarro-Barceló et al., 2015).

Carchano Alcaraz et al. (2021a) mention that credit unions have managed to remain relatively isolated from financial disturbances, thanks to sensible investment policies and a clear territorial vocation and proximity to the environment, which, together with their cooperative nature, have become the main strengths of this type of credit institutions. Moreover, the banking system's progressive neglect of regions in demographic decline has led to the financial exclusion of their inhabitants. For Carchano Alcaraz et al. (2021b), credit unions favor the fight against financing, the availability of credit and the provision of financial services, mainly in territories with low demographics, which favors strengthening the territories as the welfare of the societies where they develop. Silva (in López-Santamaría et al., 2021) mentions that the cooperative movement aims to give a more social sense to the economy of solidarity, cooperation and inclusion.

The European cooperative scenario indicates that these institutions favor satisfying needs in collectives of greater vulnerability. Colombia has been no stranger to the cooperative movement, where this sector has shown a great apogee as a driver of the economy (Escobar Castillo et al., 2018). In Ecuador, savings and credit cooperatives have grown in business volume more than banks, but instead of recognizing strategies as leaders, they implement financial intermediation strategies such as having lower debt ratios (Luque González and Peñaherrera Melo, 2021). The cooperative model supports and sustains wealth generation and promotes self-sustainability for social development with less inequality and involves the communities (Lagoa and Prata, 2015)

The payment of interest derived from consumer contracts entered into by individuals or legal entities with companies of the national financial system, such as banks, finance companies, enzymes, rural banks and municipal banks, has given rise to some unfair practices on the part of these entities, which affect the economy of the users of such loans.

In many judicial proceedings in Trujillo, which have been conducted by companies of the national financial system against users of consumer loans, regarding the obligation to grant a sum of money, it is observed that high-interest rates are charged. These judicial processes, being extremely expeditious, do not allow, in most cases, the defendants to properly exercise their right of defense, either due to carelessness, lack of knowledge or because they do not have the advice of an attorney.

In the absence of any contradiction whatsoever, the interest recorded in the securities becomes final, and immediately the enforcement is carried out on the users' assets to collect the principal, interest and expenses. In addition, liquidations of the interest recorded are ordered, thus materializing the payment of excessive interest rates to the detriment of the users.

Likewise, high-interest rates are appreciable in the judicial sphere to which reference has been made and outside of it. Thus, it can be seen that in consumer credit contracts entered into between individuals and companies of the National Financial System offer affordable interest rates, ranging from 10% to 50% effective annual rate; however, users end up paying higher amounts than those advertised, because interest rates, commissions and expenses are disclosed inadequately, in confusing panels, without due clarity (so they are not understandable to an average user). In this way, users of consumer loans are not fully aware of the interest rates and other obligations set by the financial system entities, resulting in the payment of the debt becoming a heavy burden for users.

The situations described above generate a large number of people who resort to administrative entities in search of protection of their rights as users, entities such as INDECOPI, where they file their respective complaints and denunciations against companies of the financial system. These practices that harm users are protected by the legal regulations in force, which clearly distinguish between persons outside the National Financial System and companies that are part of the Financial System, concerning the power to set interest rates. In the first case - of persons outside the financial system - the agreed conventional interest cannot exceed the maximum established by the Central Reserve Bank (Article 1243° of the Civil Code) and any excess over the maximum rate gives rise to the return or imputation to the capital, at the will of the debtor; even the charging of usurious interest has been typified as a crime against the credit system. On the other hand, in the second case - of companies of the national financial system - according to article 9 of Law 26702, General Law of the Financial System and the Insurance System and Organic Law of the Superintendence of Banking and Insurance, they can freely set interest rates, commissions and expenses for their active and passive operations and services, without ceilings.

It is, therefore, a preferential and unequal treatment granted to the companies of the national financial system for other natural or legal persons, which means that the former has a license to charge highly beneficial interest rates for themselves, ensuring large profits to the detriment of the economy of its users, who are harmed by the high-interest rates they end up paying, the problem described occurs at present.

From the exposed reality, it was of interest to problematize the following: How does the preferential treatment in interest charges to financial system companies harm consumer credit users, Trujillo-Peru, 2008-2009?

Consumer credit

Edwards in (Vorravongpitak, 2022) defined credit as the trust between two parties, the borrower and the lender, in granting the loan, where the terms and conditions for repayment are specified through a contract. For Chisiripaiboon in (Vorravongpitak, 2022), the proper and clear credit approval process increases the efficiency of the analysis and reduces risk. Efficient credit management starts with the reason for the loan, approval of the credit limit, debt collection and issuance of a good credit policy. For Kumar and Yadav (2011), credit is crucial in agriculture and an efficient form of rural development in India, where the KCC scheme is employed. It has proved to be a popular and effective financial product, providing appropriate loans to farmers and uncomplicated to meet their capital requirements (Pratap and Prakash, 2022)

Financing is an important factor in the economic development of regions and countries, as highlighted by varied literature (Marcondes and De Oliveira, 2020). Credit markets work to propagate and amplify economic activity. In the 19th century, credit expansion took various forms, from informal and personal loans to institutionalized financing by merchants, intermediaries and banks (Marcondes and De Oliveira, 2020). At the end of the Middle Ages, in the Iberian Peninsula, credit of greater economic volume and temporal duration, both short term (loans at interest, deposits, orders, acknowledgments of debt) and long term (censales and violarios), with an extensive amount of legal formulas and security clauses for the creditor, in case of non-payment, this act was registered by a notary, in the presence of witnesses; while small credit, that is, promises or commitments to pay for term purchases or deferred payments, could be registered free of charge in the judicial courts (Furió, 2021).

In relation to the notion of “interest,” in the law of obligations, the author mentions that “interest, in economic terms, is the price or remuneration that a person has to pay for the use or enjoyment of capital goods owned by others. Since capital goods are factors of production, their use or enjoyment provides a benefit for which a price must be paid. In legal terms, however, the concept of ‘interest’ is narrower. Legally, interest is the amount of money that must be paid for the use and enjoyment of capital, also consisting of money.”

II.- MATERIAL AND METHODS

The preferential treatment for the collection of interest that the law allows to the Companies of the National Financial System harms the rights of the users of Trujillo -period 2008-2009- when contracting consumer credits with excessive interest rates without ceilings, breaking the principle of legal protection. For this reason, the study considered the contracting parties of consumer credits in the Companies of the National Financial System harmed by the excessive interest rates.

The population of this study is: a) All users sued by companies of the National Financial System

before seven Justice of the Peace Courts, for obligations to give sums of money supported by promissory notes that show interest rates during the period 2008-2009; b) All users harmed by the charging of excessive interest rates that claimed and denounced before the INDECOPI Office to companies of the National Financial System, in the city of Trujillo since 20 08.

The study worked with the following sample: a) Users sued by banks, municipal savings banks, rural savings banks, finance companies and Edpymes before the Third and Fifth Court of Justice for obligations to give sums of money derived from consumer loans whose promissory notes showed the interest rates charged during the period 2008-2009. And b) Users harmed by charging excessive interest rates who complained and denounced before the INDECOPI Office to Companies of the National Financial System in the city of Trujillo during 2008-2009.

The procedure for collecting the information focused on the information sources. For data processing, authors resorted to analyzing lawsuits before the Courts included in the sample and the Indecopi Office that received complaints from consumer credit users. In addition, the circulars issued by the Central Reserve Bank of Peru were analyzed: No. 006-2003-EF/90, Circular No. 007-2003-EF/90 and No. 021-2007-BCRP, which show the ceilings set for conventional, compensatory and default interest to be stipulated in contracts entered into between persons outside the financial system. The following procedure was followed:

A.- The agreed rate is greater than or equal to the maximum rate.

The mathematical formula used is as follows: $I = C * ((FA2/FA1) - 1)$

Where:

I = Interest

C = Capital

FA1 = Cumulative factor of maturity date

FA2 = Cumulative pay date factor

B.- When the agreed rate is lower than the maximum rate.

$I = C(1+i)^{n/M} - 1$

Where

I = Interest C = Capital

n = Number of calendar days i = Effective interest rate

M = 360 or 30, according to how the interest rates are given, annual or monthly, respectively.

In turn, the calculation of interest will depend on whether the credit operation has been agreed in local or foreign currency and in a certain period; thus:

I.- Transactions in local currency: The maximum rate of compensatory and default interest:

The period between April 1, 1991, and September 30, 2007: for operations up to 360 days, the maximum compensatory conventional interest rate is equivalent to the Effective Weighted Average Market Lending Rate in local currency (TAMN). For term loans over 360 and up to 719 days, it is TAMN + 1; for operations over 720 days, it is TAMN + 2.

The maximum conventional moratorium interest rate for the same period is 15% of the TAMN. Period beginning October 1, 2007, and after that, the maximum compensatory conventional interest rate is equivalent to the average rate of the financial system for microenterprise loans. The maximum conventional default interest rate for the same period is 15% of the average rate of the financial system for microenterprise loans.

II.- Transactions in foreign currency: The maximum rate of compensatory and moratory interest:

1.- Period between April 1, 1991, and September 30, 2007: it is equivalent to the Effective Weighted Average Market Active Rate in Foreign Currency (TAMEX) regardless of the term of the operation.

The maximum conventional default interest rate is equivalent to 20% of the TAMEX.

Period beginning October 1, 2007, and after that, the maximum compensatory conventional interest rate is equivalent to the average rate of the financial system for microenterprise loans.

The maximum conventional default interest rate for the same period is 20% of the average rate of the financial system for microenterprise loans.

In addition, the following methods were used:

- a) **Regulatory Comparison:** The special law that regulates the Companies of the National Financial System compared to the Civil Code that applies to persons outside the system.
- b) **Observation:** For this purpose, the National Financial System company headquarters in Trujillo were contacted to obtain information on the interest rates applied to consumer loans. Also, from the Judicial Power to obtain data from judicial files and from Indecopi to obtain the requested report on the complaints made by those affected by consumer loans.
- c) **Descriptive Statistics:** To present the results obtained from the information sources.
- d) **File:** From bibliographic information as well as field data.

The following instruments were used:

- a) Laws, national and comparative doctrine, circulars of the Central Reserve Bank of Peru, and Resolutions of the SBS.
- b) Bibliographic and empirical data collection sheets.
- c) INDECOPI Technical Report.

For the comparison, the data published by the Superintendency of Banking and Insurance on its

web portal, referring to the interest rates applied by the financial system entities included in the sample to consumer loans, were compiled.

Data was collected on the claims filed before the courts included in the sample, which showed that the attached promissory notes contain excessive interest rates. Furthermore, Indecopi-La Libertad was requested, through a request for access to public information, the data referring to the number of complaints and claims in the sample filed by users of consumer loans against the companies in the financial system. This information was then systematized to prepare tables that could demonstrate the hypothesis put forward.

The data obtained were presented in tables and figures, having prepared comparative graphs in a timeline corresponding to the years 2008 and 2009, in quarterly intervals, selecting the highest rate, the average interest rate for each type of company and the maximum rate established by the Central Reserve Bank of Peru (for people outside the financial system). With this information, comparative tables have been prepared for each type of company, both in the financial banking system and the non-bank financial system (among them, finance companies, municipal savings banks, rural savings banks and EDPYMES). The data was processed using the Excel program.

The results were based on the legal doctrine, circulars, etc., referring to the payment of interest in civil and financial contracts and the principles that regulate consumer contracts. In addition, the reports of compensatory interest rates applied by the Companies of the National Financial System to consumer loans from 2008 to 2009, published in the National Superintendence of Banking and Insurance web portal, were analyzed.

Data on compensatory and default interest rates contained in lawsuits filed by Banks, Municipal Savings Banks, Rural Savings Banks, financial companies and Edpymes before the third and fifth Justice of the Peace Courts of Trujillo during 2008 and 2009, in which compensatory and default interest charges have been agreed upon, were analyzed and discussed, having reviewed a total of two hundred promissory notes that constitute fifty percent of the total of the lawsuits filed in the referred courts during the said period.

- From this information, six interest rates ranging from zero percent to rates greater than 200% have been separated into percentages, and the percentages of promissory notes bearing specific interest rates are shown.

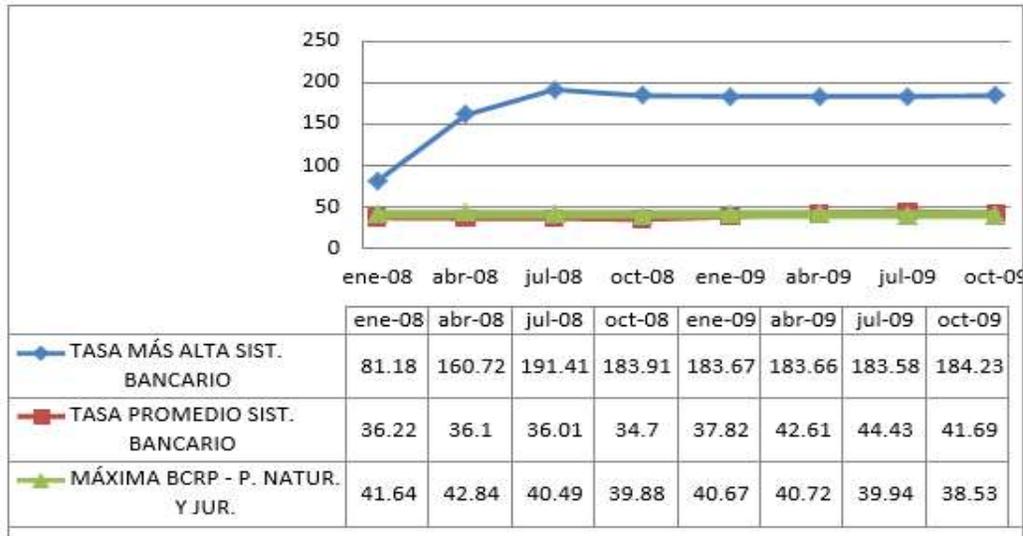
- Also discussed was the information previously requested from Indecopi - La Libertad regarding interest rates, the object of claims and complaints during the period 2008-2009, against companies of the National Financial System, in the city of Trujillo. However, for this last information requested, it has not been possible to obtain detailed data on interest rate complaints since the reporting entity did not have such information. Nevertheless, this was not an obstacle to obtaining general information on complaints and denunciations before INDEPOPI - La Libertad

against companies in the national financial system, which was helpful in the development of the investigation.

III.- RESULTS

Figure 1

Comparison between average interest rates of companies in the banking system and maximum rates of the BCRP - period 2008 - 2009 (annual rate in local currency for consumer loans).



Source: Own elaboration with data reported by the SBS.

Figure 2

Comparison between average interest rates of financial institutions and maximum rates of the BCRP - period 2008 - 2009 (annual rate in local currency for consumer loans).

Source: Own elaboration with data reported by the SBS.

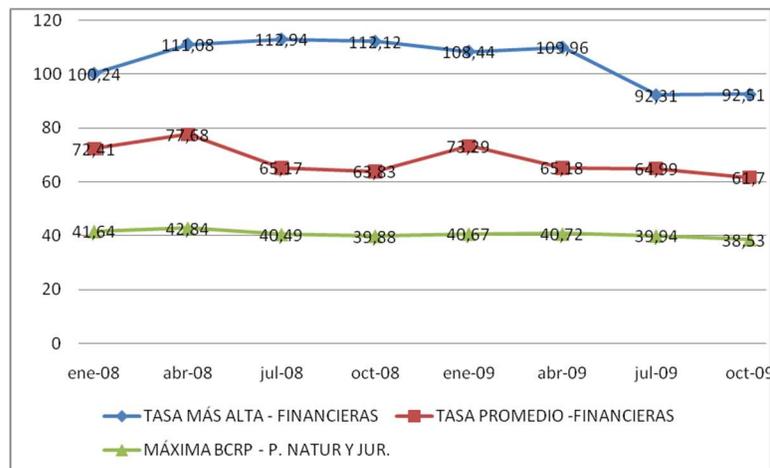
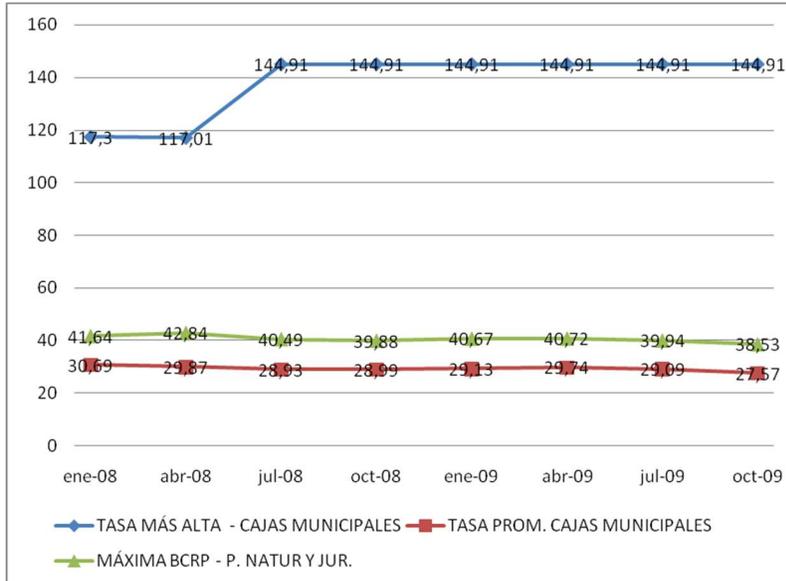


Figure 3

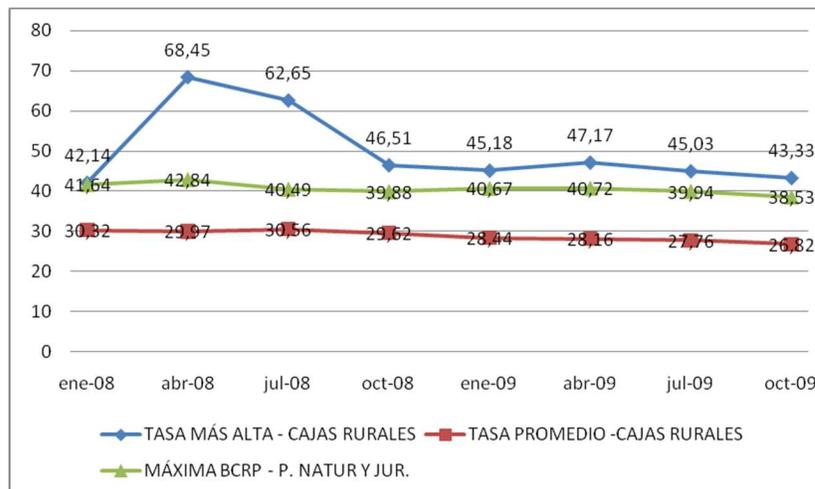
Comparison between average interest rates of municipal savings and loan associations and maximum rates of the BCRP - period 2008 - 2009 (annual rate in local currency for consumer loans).



Source: Own elaboration with data reported by the SBS.

Figure 4

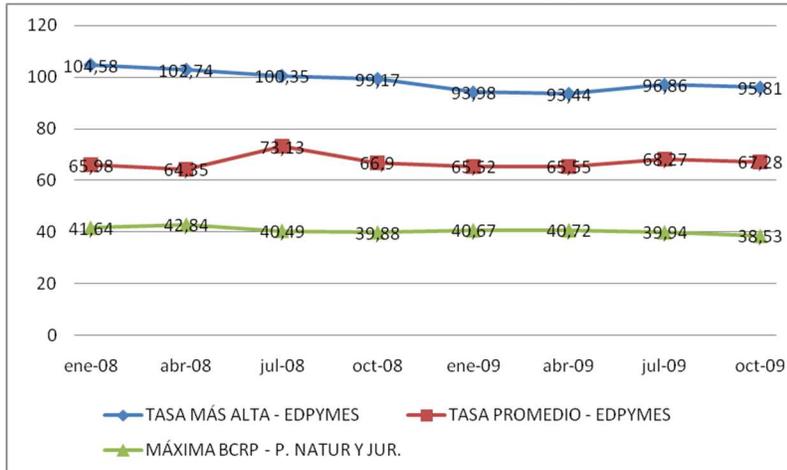
Comparison between average interest rates of rural banks and maximum rates of the BCRP - period 2008 - 2009 (annual rate in local currency for consumer loans).



Source: Own elaboration with data reported by the SBS.

Figure 5

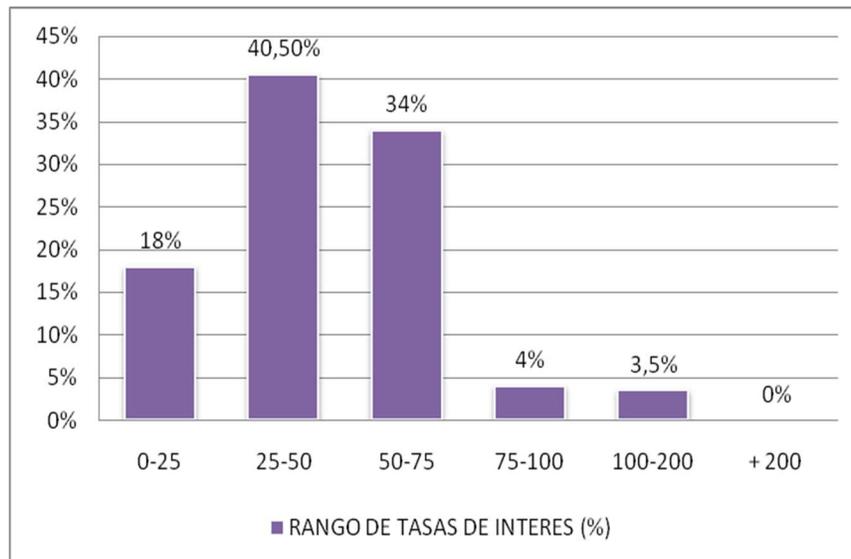
Comparison between average interest rates of edpymes and maximum rates of the BCRP - period 2008 to 2009 (annual rate in local currency for consumer loans).



Source: Own elaboration with data reported by the SBS.

Figure 6

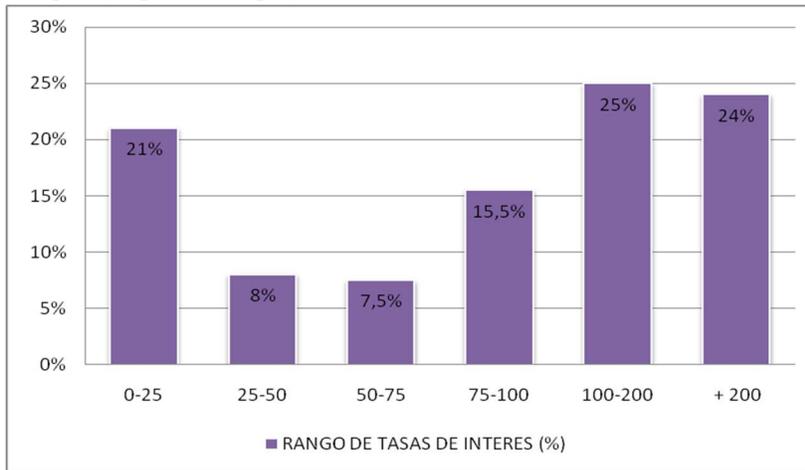
Annual compensatory interest rates charged by financial system companies on consumer loans - by ranges (in percentages)



Source: Own elaboration with data from proceedings before the Justice of the Peace Courts of Trujillo.

Figure 7

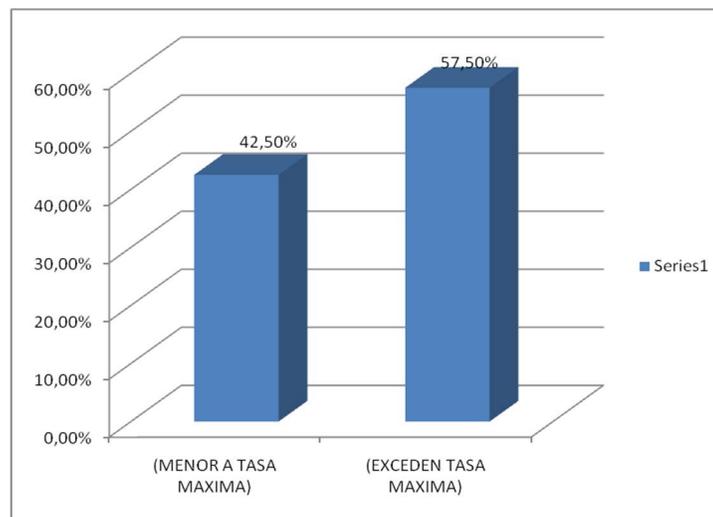
Annual moratorium interest rates charged by financial system companies on consumer loans - by ranges (in percentages)



Source: Own elaboration with data from proceedings before the Justice of the Peace Courts of Trujillo.

Figure 8

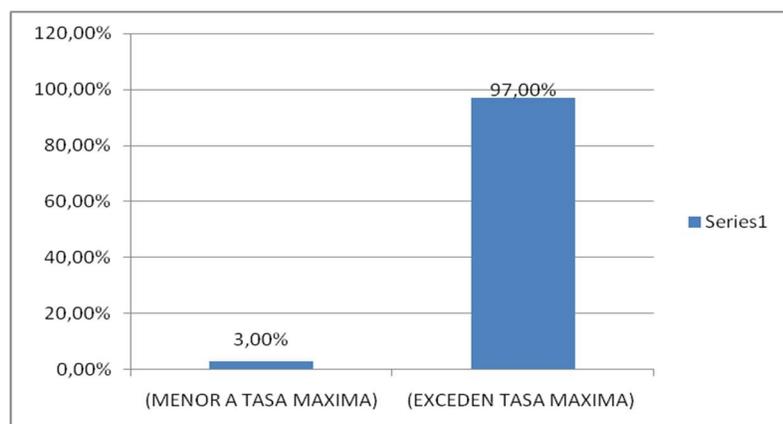
Percentage of compensatory interest rates (consigned in promissory notes issued by companies of the financial system) that exceed the maximum rate established by the BCRP.



Source: Own elaboration with data from proceedings before the Justice of the Peace Courts of Trujillo.

Figure 9

Percentage of default interest rates (consigned in promissory notes issued by companies of the financial system) that exceed the maximum rate established by the BCRP.



Source: Own elaboration with data from proceedings before the Justice of the Peace Courts of Trujillo.

Table 1

Differentiation of interests governing private individuals and legal entities and ESNF.

TREATMENT OF INTEREST PAYMENTS IN THE C.C.	TREATMENT OF INTEREST PAYMENTS IN THE DOMESTIC FINANCIAL SYSTEM
<i>Applicable norms: Art. 1242 to 1250 C.C. Circular N° 21-2007-BCRP</i>	<i>Applicable norms: Art. 9 of Law 26702 Circular N° 21-2007-BCRP Law No. 28587 and its regulation SBS Resolution No. 1765 - 2005</i>
<p>Determination of maximum interest rate</p> <p>Art. 1243° C.C.: “The Central Bank of Peru fixes the maximum rate of conventional compensatory or moratory interest. Any excess over the maximum rate gives rise to repayment or imputation to the principal, at the debtor’s discretion.”</p> <p>Circular No. 021-2007-BCRP: The maximum conventional compensatory interest rate is equivalent to the average rate of the financial system for microenterprise loans and is expressed</p>	<p>Determination of the maximum interest rate</p> <p>Art. 9 Law No. 26702: “Companies in the financial system may freely set interest rates, commissions and expenses for their asset and liability operations and services...”. Circular No. 021-2007-BCRP: “In any of its modalities, the conventional compensatory interest rate is determined by free competition in the financial market and is expressed in effective annual terms.” “The</p>

<p>in effective annual terms. The maximum conventional default interest rate is equivalent to 15% of the average rate of the financial system for microenterprise loans.</p>	<p>moratorium interest rate is determined by free competition in the financial market and is expressed in effective annual terms.”</p>
<p>Interest rate ceilings (maximum rate) Maximum interest rate ceilings are established for</p>	<p>Interest rate caps (maximum rate) Uncapped</p>

Source: Own elaboration with data from Peruvian regulations.

IV.- DISCUSSION

In recent years, there has been an increase in commercial activity in our city, and as such, in credit granted by companies in the financial system. Consumer credit has also been increasing significantly. More and more people are obtaining consumer credit through personal loans or credit cards. These credits are contracted with compensatory and moratorium interests; however, the interest rates charged by the financial system companies, unlike those established for any other natural or legal person, are set without ceilings or limits. Article 9 of the General Law of the Financial System has established preferential treatment for the financial system companies, leaving the market rules in charge of establishing the interest rates according to the competition in the financial market.

In this study, the interest rates set by the companies of the national financial system for their consumer loans were studied, according to the reports published by the National Superintendence of Banking and Insurance - SBS - on its web portal. As a result, it was corroborated that the companies above set rates in different ways and that there is no similarity between the average rates of the financial system and the highest rates set by some companies, which should be the norm in a scenario of free competition as promoted by the General Law of the Financial System. Therefore, of all the interest rates analyzed, applied to consumer loans, the highest interest rates have been selected in order to compare them with the average interest rates existing in the financial market (for each type of company) and also with the maximum rates set by the Central Reserve Bank of Peru.

The importance of carrying out a comparative study of interest rates, as mentioned above, lies in the fact that the comparison between them shows how the so-called “free competition” in the financial market has been taking shape in reality with the determination of interest rates since the basis for adopting a system of free interest rates in the financial system - interest rates without ceilings - is that free competition must maintain a balance in the percentages set.

The market benchmark, in terms of interest rates, is precisely the average interest rates; therefore, the first comparison between interest rates should be made between the highest interest rates existing in the financial system (established within the framework of “free competition,” under article 9 of Law 26702) and the average interest rate. The average interest rate is a market reference since it is a rate that shows the balance among all the interest rates established in the financial market. Therefore, the evidence that the market is functioning correctly is that the different interest rates existing in the financial market (including the highest rates) should maintain a certain correlation with the average interest rate; or, in any case, they should not be too far apart.

This lack of transparency causes financial system users to enter into consumer contracts expressing a will formed without full discernment, knowledge and freedom. In other words, the will expressed by the users, without having full knowledge of the essential conditions of the contract (such as the interest rates), is vitiated, and this could even constitute grounds for annulment of the contracts thus entered into.

Consequently, according to the tables studied, the consumer credit contracts that have been the subject of complaints and denunciations before the offices of INDECOPI - La Libertad show defects in their formation, which evidently includes ignorance of the excessive interest rates applied by these companies. These consumer contracts thus formed become instruments that cause prejudice to consumer credit users, highlighting the inadequacy and ineffectiveness of the legislation to promote transparency in the financial system.

For Guansi (2022), in his study, respondents have deduced the relevant reasons noted as push factors involving small retailers in extending credit as the following: extending credit for increased sales; extending credit for quick disposal of products; extending credit in order to build customer loyalty; extending credit to customers due to lack of available cash; extending credit for penetration of new and more customers; and extending credit to make consumers aware of products and the store.

Gómez-Ramírez and Garza (2021) present their research on the contemporary Colombian economy. This country is characterized by relatively tight but improving credit constraints, also exhibits the typical formal/informal dualism of developing economies and presents an increasingly important “extractive” sector (coal and, to a lesser extent, oil mining). The proposed model highlights dynamic features that existing theoretical approaches have not yet recognized, although they have already been incorporated in applied empirical analyses. The first conclusion drawn from the theoretical model is that relaxing credit constraints increases productivity, capital accumulation and growth in the modern sector, but complementary policies are also required to increase formal labor.

V. CONCLUSIONS

The high-interest rates in the financial system for consumer loans are disproportionately high. They do not correlate with the average rates of the financial system and the maximum rates established by the Peruvian Central Reserve Bank and therefore are not following a system of free competition in the financial market.

The preferential treatment that Law No. 26702 allows the companies of the national financial system to fix interest rates freely and without being subject to maximum limits, has led these companies to take advantage of this power to set excessive interest rates, harming the users of consumer loans, due to the economic damage caused to them and the unequal treatment about people outside the financial system.

The harm to Trujillo's consumer credit users due to excessive interest charges is also evident in the complaints filed with the Consumer Defense Office of Indecopi- La Libertad.

The preferential treatment of companies in the financial system, together with the lack of transparency in the financial system, is detrimental to the users of consumer credit due to the violation of their legal protection and contravention of the principles that sustain it, such as the correction of asymmetry and good faith.

Further research can study the legal solution to allow the State to intervene in setting interest rate ceilings on consumer loans entered into by companies in the national financial system.

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