

Consumer Financing Dispute Settlement Patterns During the Covid-19 Pandemic in Wetland Environments

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Abstract: *The pandemic Covid it had an impact on all economic sectors which had an impact on the smooth running of consumers in paying consumer financing installments, which led to consumer financing disputes. The people of South Kalimantan who live in a wetland environment have local wisdom in resolving disputes with Adat Badamai tradition. This study aims to find patterns of dispute resolution between consumers and finance companies during the covid 19 pandemic and to analyze whether local wisdom in the wetland environment, namely the Bahamian custom is reflected in the settlement of consumer financing disputes. The research method used is empirical legal research supported by library research. (library research), is prescriptive analytics, it is hoped that a comprehensive, in-depth and systematic picture will be obtained. This research was conducted in South Kalimantan Province. The results showed (1). consumer financing dispute settlement patterns prioritize settlements outside the court (non-litigation), namely by internal company settlements; use third party services; through the Consumer Dispute Resolution Body, if an amicable agreement is not reached, as a last resort, a court settlement (litigation) is taken. (2). Dispute Resolution Financing companies in South Kalimantan have implemented the customary value of Adat Badamai in the settlement of consumer financing disputes. In the Banjar community, if there is a dispute, they tend to choose to settle it peacefully, meaning that there is no need for the settlement to go to court. Adat Badamai tradition is quite effective and plays a role in creating security and peace among the disputing community members.*

Keywords: *Dispute Resolution; Consumer Financing; Adat Badamai.*

1. INTRODUCTION

Advances in science and technology make companies race to produce a variety of increasingly sophisticated and diverse products. The existence of a new product

encourages consumers to be interested in owning it, for people who have fairly well-established economic capabilities it is not a problem, but it will cause problems for the consumer community who financially does not have enough funds to buy the new product. This condition causes consumer finance institutions to grow rapidly.

Data from the Financial Services Authority's Directory showed that the number of finance companies in South Kalimantan in December 2021 amounted to 181 finance companies (OJK, n.d.). Consumer finance institutions are one alternative to meet consumer needs for consumer goods they need. Through consumer finance institutions, people who have difficulty buying goods in cash can solve this problem easily and quickly (Sunaryo, 2013). Financial institutions are one form of business in the field of non-bank financial institutions that have a very important role in financing. Activities of financial institutions are carried out in the form of providing funds or capital goods.

Products whose purchases are financed by consumer financing institutions are consumer goods, such as motor vehicles, both cars and motorcycles, electronic goods, furniture, computers, mobile phones and other consumer goods. In the consumer financing agreement, the consumer finance company pays the purchase price of the goods needed by the consumer to the supplier of goods in cash, and the consumer pays in installments to the consumer finance company which of course is accompanied by interest, and the supplier delivers the goods to the consumer.

In addition to getting payments in installments from consumers, finance companies also require guarantees from financing consumers, principal guarantees in the form of fiduciary guarantees in the form of goods financed by the purchase by consumer finance companies, where all documents of ownership of goods are controlled by consumer finance companies (*fiduciary transfer of ownership*) until installments paid off by consumers. The additional guarantee is in the form of a debt acknowledgment deed (*promissory notes*).

Since March 2020, our country has experienced a corona virus disease (Covid) 19 pandemic which has had an impact on all sectors of life in society, including the economic sector. With the COVID-19 pandemic, many employees have lost their jobs

due to many companies reducing their employees. This impacts the smooth running of consumers in paying consumer financing installments to finance companies.

As result of consumers not paying these installments, it can lead to disputes between consumers and consumer financing institutions. This is in line with what was conveyed by a member of the Banjarmasin City Consumer Dispute Settlement Agency who stated that motor vehicle bad loans dominated consumer disputes in South Kalimantan. This problem often leads to disputes between motor vehicle owners and consumer finance parties. Usually, a unilateral withdrawal by the financing company usually causes problems because the motor vehicle owner does not accept the withdrawal action (Post, 2021). In the people of South Kalimantan who live in a wetland environment, there is a lot of local wisdom related to dispute resolution, such as the tradition of deliberation (Wahyu, 2020). In addition, in our society, it is known that there is "Adat Badamai" which is one of the dispute resolutions commonly carried out by the Banjar people (Hasan, 2010). In this regard, researchers are interested in researching how the pattern of dispute resolution between consumers and finance companies during the covid 19 pandemic and whether local wisdom in the wetland environment, namely the existence of traditional Adat Badamai is reflected in the settlement of consumer financing disputes.

2. METHODS

The type of research used in this research is empirical legal research that focuses on field *research* to obtain primary data, while library research is also needed to complement and support the data obtained in the field. This library research will use secondary data, namely primary legal materials, secondary legal materials, and tertiary legal materials.

This research is prescriptive analytics because the results of the analysis of this research are expected to obtain a comprehensive picture (*holistic*), in-depth and systematic. This research was conducted in the jurisdiction of South Kalimantan Province. The population is spread throughout South Kalimantan, namely in 13

regencies/cities. As the research sample in this study is consumer finance companies in Banjarmasin City, Banjarbaru City, and Tanah Laut Regency.

The analysis used in this study is a qualitative method. The data that has been collected both from observations, interviews, and results from document studies are grouped according to the problems to be discussed. The data is then interpreted and analyzed in order to get clarity (solution of the problem to be discussed).

3. RESULTS AND DISCUSSION

3.1. Pattern of Dispute Resolution and Withdrawal of Fiduciary Guarantee Objects Between Consumers and Finance Companies During the Covid-19 Pandemic.

Consumer Finance Companies according to Presidential Regulation Number 9 of 2009 Article 1 number (7) are companies engaged in financing activities for the procurement of goods based on consumer needs with payments in installments. The scope of consumer financing activities according to Article 6 of the Regulation of the Minister of Finance Number 84/PMK.012/2006 concerning financing companies includes motor vehicle financing, household equipment financing, electronic goods financing, and housing financing. As for the research conducted in South Kalimantan on several consumer financing companies, most of which are motorized vehicles and some are in the form of electronic goods.

The legal relationship between the consumer and the consumer financing company was born from an agreement between the two parties. The agreement is made based on the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code which reads as follows: Every agreement made legally applies as law for those who make it. Thus, according to Article 1338 paragraph (1) of the Civil Code, basically, anyone is free to make an agreement, the form or content of which does not conflict with the law, morality, and public order, then the agreement made is binding on the parties as per the law.

In South Kalimantan, consumer financing business activities (*Consumer Finance*) are growing rapidly in almost every area that is ready to serve the needs of people who need goods with limited funds or no cash funds to realize owning an item and the

community. In general, the objects of financing companies in South Kalimantan that are mostly financed are motorized vehicles, although there are also electronic goods and other goods needed.

In the practice of implementing consumer financing after the consumer financing agreement is signed, and the funds have been issued by the financing company to pay for the object being financed, then the object of financing is physically in the control of the consumer, furthermore, the object of financing will be tied with a fiduciary guarantee as a security measure for the financing company. if the consumer breach of contract or is negligent in paying the agreed installments. The next step for consumer finance companies is to register a fiduciary agreement that has been made by consumers as required by the Fiduciary Law so that the fiduciary agreement has legal force. Fiduciary, according to its origin, comes from the word "*fides*" which means trust. In accordance with the meaning of this word, the relationship (legal) between the debtor (fiduciary giver) and the creditor (fiduciary recipient) is a legal relationship based on trust. The fiduciary giver believes that the fiduciary recipient is willing to return the property rights to the goods that have been handed over after the debt has been paid off. On the other hand, the fiduciary recipient will not misuse the collateral which is under his control (Gunawan Widjaja & Ahmad Yani, 2000).

From the research results, almost all finance companies have registered fiduciaries in accordance with the provisions of the legislation, namely Law Number 42 of 1999 concerning Fiduciaries and Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Financing Companies that Conducting Consumer Financing for Motor Vehicles with the imposition of Fiduciary Guarantees according to article 2 is determined 30 calendar days from the consumer Financing agreement, although in the field there are still financing companies that have just registered their fiduciary guarantees if there are indications that consumers will breach of contract or do not carry out their obligations in paying installments.

During the Covid-19 pandemic in Indonesia, especially in the first year, the risk of not paying installments from consumers was unavoidable in its implementation,

considering that the current conditions affected the business world and the world of work, namely many businesses were stopped and many people also lost their jobs. The affected community as one of the consumers of consumer finance companies will have difficulty carrying out their obligations. In the implementation of consumer financing during the Covid-19 pandemic hit South Kalimantan, in general, finance companies provide company policies in the form of restructuring/relaxation, namely by revitalizing debtor obligations in the form of delaying payments between 2 months to 6 months, namely by only paying interest without paying principal installments and fines, then there are also those who implement a policy of providing an extension of the loan term.

If the consumer is still unable to pay the installments even though they have been given a restriction and an extension of the payment period, then:

1) Internal settlement of the company

If there is a breach of contract and dispute between the company and the consumer, the finance company first chooses to settle internally between the parties, for example, the object of the financing agreement is bought back (*buy back*) by the Financing Company or there is also a voluntary redemption program or voluntary submission.

2) Using third-party services

If consumers are not cooperative and have no good intentions, for example, the object of the dispute is transferred and its whereabouts are unknown, this will be very detrimental to the company and third parties, then the finance company will usually use the services of a third party to track and find the object of financing.

3) Using a dispute resolution institution outside the court (non-litigation).

If the internal settlement and using the services of a third party does not resolve the dispute, such as a consumer who transfers the object of financing (*over credit*) to a third party without the knowledge of the financing company, usually the problem that often occurs is when the installment has been paid off and the third party has received the payment. the transfer of consumer financing credit intends to take BPKB to a finance company, but the finance company does not want to hand it

over to a third party because the name stated in the financing agreement contract is the name of the initial consumer. Meanwhile, the whereabouts of the consumers listed in the financing agreement are unknown. For disputes that cannot be resolved internally and through the services of third parties, business actors and consumers can resolve them through the City Consumer Dispute Settlement Agency.

Table.1. Consumer Dispute Resolution Data for 2020-2022

| Year | Financing Company | Settlement Method | Description |
|------|---|--|-------------|
| 2020 | PT. Adira Finance Banjarmasin | Mediation | Completed |
| | PT. First Indo American Finance Banjarmasin | Mediation | Completed |
| | PT. Mandiri Tunas Finance Banjarbaru | Mediation | Completed |
| | PT. Mandiri Finance Banjarmasin | Conciliation | Completed |
| | PT. Federal Internasional Finance (FIF) Banjarmasin | Conciliation | Completed |
| 2021 | PT. BFI Finance Banjarmasin | Mediation | Completed |
| | PT. NIC Banjarmasin | Conciliation | Completed |
| | PT. OTO Finance | Arbitration | Completed |
| | PT. Toyota Astra finance Banjarmasin | Mediation | Completed |
| | PT. Home Kredit Banjarmasin | Conciliation | Completed |
| | PT. SMS. Finance Banjarmasin | Conciliation | Completed |
| 2022 | PT. OTO MultiArtha Banjarmasin | Arbitration | Completed |
| | PT. OTO MultiArtha Banjarmasin | Arbitration | Completed |
| | PT. OTO MultiArtha Banjarmasin | Arbitration | Completed |
| | PT. OTO MultiArtha Banjarmasin | Disagree in selection Method of settlement | Disagree |
| | PT. Mandala Multi finance Banjarmasin | Mediation | Completed |
| | PT. SMS. Finance Banjarmasin | Conciliation | Completed |
| | PT. Summit Oto Finance Banjarmasin | Mediation | Completed |

Source: Banjarmasin Consumer Dispute Settlement Agency September 2022

Of the 18 consumer financing disputes handled by the Banjarmasin City BPSK in the last 3 (one) years that could be resolved by conciliation, mediation, and arbitration, only one was not successfully resolved amicably because the parties did not reach an

agreement in determining the settlement method. As for the Alternative Dispute Resolution Institutions (LAPS) in the Financial Services Sector which is mandated by the Financial Services Authority Law to handle consumer disputes in the financial services sector, including financial institutions, it has not run as expected because there have been no consumer financing disputes in South Kalimantan that have filed dispute resolution through LAPS in the Financial Services Sector, this is because there is no LAPS in the Financial Services Sector representative office in South Kalimantan, so the settlement must be done online, which is difficult for consumers in South Kalimantan.

4) Through the Court (Litigation)

According to the results of research at the District Court (of justice) in South Kalimantan for the last 3 (three) years, there is only two consumer financing dispute, namely the Banjarmasin District Court (of justice). As for the dispute case between the Financing Company and the consumer which has been decided by the Banjarmasin District Court in decision No. 103/Pdt.G/2021/PN BJM, is moving from a dispute from the financing company BCA Finance and decision No.7/Pdt.GS/2022/PN BJM dated April 21, 2022, is moving from a dispute from the financing company Suzuki Finance, namely the consumer as a debtor from a financing company breach of contract.

3.2. Implementation of the Deliberative Tradition and Adat Badamai in the Settlement of Consumer Financing Disputes

Every country that stands above the law must provide guarantees of justice to its citizens. Therefore, justice should not only be used as a motto of life but, efforts should be made as much as possible so that justice is an ideal that must be realized in the association of life in society, nation, and state. The justice in question does not belong to the government, officials, or certain groups, but justice that is intended for all Indonesian people (Margono, 2019). Disputes or conflicts can come from a variety of triggering sources.

The term conflict comes from the English language *conflict* and *dispute* which means dispute, squabble, or conflict (Aulia Muthiah, 2018). Disputes can also come

from situations where there are parties who feel aggrieved by the other party (Shofie, 2003). According to Soerjono Soekamto, a dispute is intended as a discrepancy between individuals or groups who have legal relations because the rights of one party are disturbed or violated (Barkatullah, 2016).

So creating a balance between different interests is the main task of the law itself. Sociologically, the law is a social institution, namely a set of rules from all levels that revolve around a basic need in society (Samosir, 2013). Then the law in meeting the needs of the community in the settlement of consumer disputes in the financial services sector, including financing companies. Based on Law Number 8 of 1999 concerning Consumer Protection and OJK Regulation Number 61/POJK.7/2020 concerning Alternative Financial Services Sector Dispute Resolution Institutions, then dispute resolution between consumers and business actors can be resolved through three institutions, namely

1. Courts (Litigation)
2. Consumer Dispute Settlement Agency (BPSK) (non-litigation)
3. Alternative Dispute Resolution Institutions (LAPS) in the Financial Services Sector

According to Satjipto Rahardjo, the tendency to settle disputes outside the court is not only found in simple societies, but also in modern societies such as the United States, which adheres to stronger court dispute resolution but nowadays tends to resolve the dispute using an out-of-court mechanism. From Stewart Macaulay's research, it turns out that entrepreneurs in the United States prefer to settle their contract disputes outside of formal justice. They prioritize economic logic over legal logic because if they use legal instruments to resolve disputes or disputes, it will have implications for the breakdown of business relationships that they have worked so hard to build, which incur huge costs and be time-consuming if they have to go through a path full of problems formality (Herwastoeti, 2019).

Given the values in legal culture, it has a very strong influence on the level of use of the rule of law. Therefore, a legal culture largely determines whether a rule exists. the law is effective or not in its implementation. According to Aminuddin Salle,

public legal awareness is nothing but awareness of the ideals, ideas, and concepts of the community members, or most of them regarding the applicable law. If the laws and regulations to be applied are contrary to the values that live in society, then the laws and regulations cannot be effective. In line with this opinion, in addition to the legal structure and legal substance in a legal system, elements of legal culture or culture are very important, especially in resolving disputes if there are conflicts or disputes between the interests of community members (Herwastoeti, 2019).

In the culture of the Banjar people, if a dispute occurs, there is a tendency to resolve it amicably, meaning that it does not need to be resolved in court. Adat Badamai is recognized as quite effective and plays a role in creating security and peace among the disputing community members. This Adat Badamai is also commonly referred to as baparbaik, baakuran, bapatut or suluh (Ishlah) (Hasan, 2020).

Etymologically speaking Adat Badamai comes from the words "adat" and "badamai". Adat means the habits or traditions of the community that have been carried out over and over from generation to generation. The word Badamai comes from the Banjar language which is a word formed from the Banjar language. The term Badamai comes from the word "damai" plus the suffix "ba" ("ber" in Indonesian), so it becomes the word Badamai. According to Abdul Djebar Hapip in the Banjar Language Dictionary, Badamai is an effort carried out peacefully. In the Banjarese language, the word "Badamai" is matched with the words walking with bajalan, bermain with bamain. Adat Badamai is a compound word that means a peace effort that is carried out or carried out repeatedly and becomes an institutionalized habit in Banjar society. Adat Badamai law can increase to become customary law when the community already considers the act of Badamai as something that must apply to the Banjar indigenous people so that it is something that must be done (Hasan, 2012).

In the Banjar community, if a dispute occurs and is not resolved in a peaceful manner, it is considered that it will damage the harmonious order which is a violation of traditional wisdom. Adat Badamai is a form of dispute resolution commonly carried out by the Banjar community. Adat Badamai is a result of the opening process or deliberation in joint discussions with the aim of reaching a decision as a solution to a

problem (Hasan, 2012). The settlement of disputes through this Adat Badamai has existed since ancient times, and has become customary law in the Banjar community has been stipulated in the Act. Invite Sultan Adam (UUSA) in 1825-1857, which is maintained and preserved from generation to generation. Although the USA is no longer formally applied due to the abolition of the Banjar kingdom in 1860, the substance of the rules is recognized as still relevant today and the public recognizes it as something that must be guided in everyday life (Hasan, 2012).

In Banjar society, the culture to solve various legal problems is known as the traditional Adat Badamai culture. In the Banjar community, if a dispute occurs, there is a tendency to resolve it amicably, meaning that it does not need to be resolved in court. This Adat Badamai custom is recognized as quite effective and plays a role in creating security and peace among the disputing community members. Adat Badamai custom is also commonly referred to as baparbaik, baakuran, bapatut or suluh (Ishlah) (Hasan, 2012).

From the pattern of settlement of consumer financing disputes in South Kalimantan as described above, in resolving disputes, financing companies appear to have implemented the customary values of Adat Badamai out of court. This is reflected in the results of the study showing that the financing company prioritizes resolving all problems and disputes in consumer financing internally between the parties.

But if the consumer is uncooperative and has bad intentions, for example, the object of the dispute is transferred and its whereabouts are unknown, this will be very detrimental to the financing company, usually using a third party to find it or resolve it. In addition, if the parties are unable to settle internally, the parties, be it finance companies or consumers, in some cases propose a settlement with the assistance of the Consumer Dispute Settlement Agency, which can almost entirely be resolved amicably by means of conciliation, mediation, and arbitration. there is only two dispute found between the Financing Company and the consumer which has been decided by the Banjarmasin District Court in decision No. 103/Pdt.G/2021/PN BJM, and in decision no. 7/Pdt.GS/2022/PN BJM dated 21 April 2022.

Thus the dispute resolution between finance companies and consumers in South Kalimantan prioritizes dispute resolution outside the court, this can be seen from the settlement process taken by the parties, both finance companies, and consumers. consumers, this shows that the parties in resolving disputes are more trying or choosing a peaceful settlement. this is in accordance with the culture of the Banjar people in South Kalimantan, namely the culture of Badamai which prioritizes deliberation and kinship in solving all problems that exist in the community.

In resolving a dispute and protecting the interests of the community, law as a social institution also involves the role of the people involved in it, especially as ordinary people who are the target of legal administration. The participation of these people can be seen, for example, in the relationship between the operation of the cultural sub-system in society and its legal institutions. Here it is said that in order for the law to work according to its function, namely as a means of integration, the people must also be moved to submit their disputes to the courts. With such an attitude, the law will truly become a means of integration. However, on the contrary, when the people are not or are less moved to use the services of the court. This situation indicates that people are more likely to entrust their dispute resolution to institutions or bodies outside the official court. Such a process is not impossible, especially if we try to solve it anthropologically. From such an explanation, among other things, it is said that the official trial is actually only one of the many possibilities in the course of the nation's experimentation regarding the real solution. Apart from the official ones, there may still be other bodies that can carry out similar functions, of course with different levels of officiality (Rahardjo, 1991).

4. CONCLUSIONS

1. Patterns for resolving consumer financing disputes during the Covid-19 pandemic are: (1). Non-litigation settlement; by way (a). In the internal settlement, in general, financing companies provide company policies in the form of restructuring/relaxation, namely in the form of delaying payments or providing an extension of the loan period. If the consumer is still unable to pay the installments, the object of the

financing agreement is repurchased (*buy back*) by the Financing Company or some also call it a "voluntary redemption or voluntary delivery" program. (b). Settlement through a third party If there are consumers and the whereabouts of the consumer financing object is unknown, then the consumer finance company usually uses the services of a third party to track the whereabouts of the consumer and the object of the financing agreement, and if it is found, the third party asks the consumer to voluntarily hand over the object to the financing company. (c). Through Consumer Dispute Resolution Body (BPSK), several cases were submitted to BPSK including because consumers had transferred the object of financing (*over credit*) to a third party without the knowledge of the financing *company*. BPKB to a finance company, the financing company is not willing to hand it over to a third party who receives *over credit* This is because the name of the debtor listed in the financing agreement is the name of the initial consumer who has over-credited. This is often the cause of disputes between finance companies and consumers, as well as third parties who have accepted the transfer of financing objects, so consumers ask for a settlement through BPSK. Through Courts (Litigation) Consumer financing dispute resolution in court is taken as a last resort if the out-of-court settlement does not result in an agreement between the parties. South for the last 3 (three) years, there has only two consumer financing disputes, namely in the Banjarmasin District Court (of justice).

2. Dispute Resolution Multifinance companies in South Kalimantan have implemented the traditional values of Adat Badamai in the settlement of disputes between the financing company and the consumer. In the " Adat Badamai " culture, the Banjar people, if there is a dispute, tend to choose to settle it amicably, meaning no need to be resolved it in court. Adat Badamai tradition is quite effective and plays a role in creating security and peace among community members who are in dispute. Thus, in resolving disputes and defaults between finance companies and consumers in South Kalimantan, they prioritize dispute resolution outside the court, this can be seen from the settlement process taken by the parties. whether it's a finance company or a consumer, where the company first chooses a settlement with a family approach

without involving a third party. by means of conciliation, mediation, and arbitration, as for the settlement of consumer disputes with finance companies for the last 3 years, there was only two dispute that was submitted to the Banjarmasin Court. This shows that the parties in resolving the dispute are more trying or choosing a peaceful settlement. by the culture of the Banjar people in South Kalimantan, namely a culture of Adat Badamai that prioritizes deliberation, consensus, and kinship in solving all problems that exist in the community.

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