



Implementation of an Alternative Dispute Resolution for the Banjar Indigenous Community on Credit Agreements in South Kalimantan

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ABSTRACT

Implementation of ADR dispute resolution for Banjar Indigenous Peoples regarding Credit Agreements in South Kalimantan, the resolution of a dispute is basically always resolved through public courts, whether civil lawsuits or simple lawsuits, in every credit agreement entered into by Banjar Indigenous Peoples in Kalimantan. South, for this reason a new legal problem arises if the legal settlement is taken through the Alternative Dispute Resolution (ADR) route. First: how to execute the credit agreement if using the Alternative Dispute Resolution (ADR) route. Second: how to process the agreement dispute resolution. This credit can be resolved through mediation or arbitration outside of court, especially in South Kalimantan. The method used is a type of normative legal research that is prescriptive in nature. Then regarding the research approach, the author uses a conceptual approach and a statutory approach. The legal material collection technique used is the document study or literature study technique. This research uses the syllogism deduction analysis technique which stems from the submission of a major premise and a minor premise. The major premise is the conclusion of a legal rule, while the minor premise is a legal fact that can be found. Then from these two premises a conclusion or conclusion can be drawn. The results of the research and discussion are that the implementation of Alternative Dispute Resolution in South Kalimantan cannot be separated from article 130 HIR/154 Rbg which provides the legal basis for the existence of mediation institutions in court, but apart from that ADR can also be carried out outside the court with the agreement of the parties to the dispute through preventive and repressive channels by means of prevention through the stages of prudence, supervision and through the stages of mediation, conciliation and arbitration at institutions that have been accredited by the Supreme Court in the form of replacing the dispute resolution clause in the agreement through the courts into the form of dispute resolution through the Alternative Dispute Resolution route with mediation and arbitration methods. A legal bond or relationship between the debtor (debt) and the creditor (debt giver) which regulates the rights and obligations of both parties in South Kalimantan Province. This agreement is usually accompanied by a "guarantee guarantee" (individual) agreement. As in a credit agreement, there is always collateral before making credit.

INTRODUCTION

The advancement of technological developments that have occurred has changed the existing culture, including the Alternative Dispute Resolution system for the Banjar indigenous community, which has influenced the method of resolving disputes in general, because currently dispute resolution is usually resolved through court, so it is considered irrational because it takes too much time. long, not according to the needs of the international community. The current existence of financial lending institutions is aimed at resolving disputes through mediation in general so that it is aimed at providing a way for disputes to be resolved peacefully and accurately without taking up a lot of time. According to Huala Adolf, international dispute resolution is divided into two parts, namely peaceful dispute resolution and military dispute resolution. In his writing, Huala Adolf explains that dispute resolution using a win-win solution is divided into two, namely legal settlement which includes arbitration in court and settlement through mediation or conciliation. From this statement, we can conclude that dispute resolution can be achieved through litigation (court) or non-litigation (mediation) or dispute resolution outside the court (Alternative Dispute Resolution (ADR)).

According to Abdul Halim Barkatullah in his journal, he stated that the form of Alternative Dispute Resolution (ADR) can be divided into several alternative types, namely litigation adjudication which consists of negotiation, mediation and arbitration. In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 point 10 states that alternative dispute resolution is an institution for resolving disputes or differences of opinion which are resolved through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation and conciliation. (Abdul Hakim Barkatullah. (2010).

According to Rivai in his journal "Credit is the delivery of goods, services or money from one party (creditor or lender) on the basis of trust to another party (debtor or debtor) with 3 a promise to pay from the credit recipient to the credit provider on a date agreed upon by both parties".

If we look at the method of resolving disputes over Banjar indigenous people's credit agreements, then the resolution of a dispute is basically always resolved through public courts, whether in civil suits or simple lawsuits, in every credit agreement entered into by the Banjar indigenous people in South Kalimantan. , so that a new legal problem arises if

the legal settlement is taken through the Alternative Dispute Resolution (ADR) route, namely how to execute the credit agreement if using the Alternative Dispute Resolution (ADR) route, and if the parties agree to take mediation or arbitration. through Alternative Dispute Resolution (ADR). So the question will arise regarding how to ensure that the credit agreement dispute resolution process can be resolved through mediation or arbitration outside of court, especially in South Kalimantan. The Problem Statement of this research is regarding the Implementation of Alternative Dispute Resolution (ADR) for the Banjar indigenous community regarding credit agreements and dispute resolution mechanisms in South Kalimantan.

METHOD

This author uses a prescriptive type of normative legal research. Then regarding the research approach, the author uses a conceptual approach and a statutory approach. The sources of research legal materials are primary and secondary legal materials. The legal material collection technique used is the document study or literature study technique. This research uses the syllogism deduction analysis technique which stems from the submission of a major premise and a minor premise. The major premise is the conclusion of a legal rule, while the minor premise is a legal fact that can be found. Then from these two premises a conclusion or conclusion can be drawn (Peter Mahmud Marzuki, 2014: 89-90).

RESULTS AND DISCUSSION

Alternative Dispute Resolution for Banjar Indigenous Peoples Regarding Credit Agreements. Alternative Dispute Resolution (ADR) is a foreign term which in Indonesian has been introduced in various forums by various parties, such as: Dispute Resolution Options (PPS), Alternative Dispute Resolution Mechanisms (MAPS), Dispute Resolution Options Outside the Court and Cooperative Settlement Mechanisms. Apart from that, ADR is also defined as "cooperative" conflict management (cooperative conflict management). Thus, judging from the terms above, ADR is actually a peaceful settlement of disputes outside of court. In the Legal Dictionary, the terms alternative dispute resolution and ADR are distinguished, as explained below: Alternative Dispute Resolution "A dispute resolution option chosen through a procedure agreed upon by the disputing parties, namely settlement outside of court by means of consultation, negotiation, mediation or by using expert assessment." ADR "A

concept that includes various forms of dispute resolution options other than the judicial process, namely through legally valid methods, whether based on a consensus approach or not." (Rachmadi Usman, 2013).

The provisions in article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulate options for resolving disputes through deliberation between the parties to the dispute, under the title "Alternative Dispute Resolution", which is a translation of Alternative Dispute Resolution. Juridically in Law no. 30 of 1999, defines alternative dispute resolution as follows: Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment."

So it can be concluded that ADR is an institution for resolving disputes outside of court, the mechanism of which is based on an agreement between the parties to the exclusion of resolving disputes through litigation in court, either through consultation, negotiation, conciliation or expert assessment.

Alternative dispute resolution in Indonesia is not something new, because traditional societies have used alternative dispute resolution for a long time. This can be seen from customary law which places the traditional head as a mediator and provides customary decisions for disputes between its citizens. Dispute resolution carried out by traditional heads is considered effective and is a tradition that is still alive in society today. (Hilman Hadikusuma. (1992).

In subsequent developments, customary law communities have long resolved customary disputes through traditional institutions, such as village peace judges. Usually the person who acts as the village peace judge is the village head or people's head, who is also a traditional and religious figure. A village head is not only tasked with dealing with government matters, but is also tasked with resolving disputes that arise in his customary law community. In other words, the village head carries out affairs as a village justice of the peace (*dorpsjutitie*). In terms of credit agreements, Banjar indigenous people usually use the courts as an alternative dispute resolution, but there is a legal breakthrough that Banjar indigenous people can resolve legal problems outside of court if there are changes in the clauses of the dispute resolution agreement, which were initially resolved in

court according to domicile, which will be changed. to resolve disputes through Alternative Dispute Resolution through mediation and arbitration.

There is an undeniable fact that nowadays aspirations for the development of alternative dispute resolution are increasingly emerging to the surface, especially from within the business community. Currently, alternative dispute resolution methods have a number of advantages and benefits compared to resolving disputes in court. Alternative dispute resolution allows cases to be handled informally with direct cooperation between both parties, confidentiality is maintained and is based on the needs of both parties leading to a mutually beneficial resolution (win-win solution). (Takdir Rahmadi. (1994)

At the Indonesian judicial level, ADR cannot be separated from article 130 HIR/154 Rbg which provides the legal basis for the existence of Court Annexed Mediation (a mediation institution in court). Because article 130 HIR/154 Rbg was unclear regarding the procedures, stages and events, the Supreme Court of the Republic of Indonesia on 11 September 2003 issued Supreme Court Regulation (Perma) No. 02 of 2003 concerning Mediation Procedures in Court. The regulation, which consists of 18 articles, is based, among other things, on the consideration that the institutionalization of the mediation process into the justice system can strengthen and maximize the function of court institutions in resolving disputes in addition to adjudicative court processes.

Juridically, ADR outside the court is regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Currently, there are several institutions promoting the ADR method, including BANI (Indonesian National Arbitration Board) and DSI (Indonesian Dispute Council) which focus on the world of Dispute Resolution Alternatives in resolving disputes with jurisdiction in the civil sector. Therefore, nowadays dispute resolution outside the court has developed, known as Alternative Dispute Resolution (ADR). The term out-of-court dispute resolution is here only to describe methods of resolution other than litigation (court). Considering public dissatisfaction with judicial institutions, it is increasingly important to make greater use of alternative dispute resolution, ADR (Alternative Dispute Resolution) as a dispute resolution system. ADR (Alternative Dispute Resolution) is a mechanism for resolving disputes outside of court which is considered more effective,

efficient, fast and low cost and benefits both parties (win-win solution) in the case.

Conventionally, dispute resolution in the business world, such as in trade, banking, mining projects, oil and gas, energy, infrastructure, and so on is usually carried out through a litigation process. In the litigation process, the parties are at odds with each other, apart from that, dispute resolution through litigation is the ultimate means (*ultimum remedium*) after other alternative dispute resolution (ADR) have failed to produce results.

Preventive Efforts can be interpreted as all efforts made to prevent the occurrence of an undesirable event or situation (loss). Various efforts that can be made to prevent losses include:

- a. Consumer caution in transactions in the field of credit agreements. Several things that consumers should pay attention to when making transactions include the condition and level of security of business actors, standard contracts and e-commerce transaction provisions. In law, business actors in developed countries always have a tendency to apply the law using Alternative Dispute Resolution (ADR) with business actors, as well as consumers who use credit cards in e-commerce transactions specifically in connection with banking services via the internet (internet banking).) also requires a standard contract so it is also necessary to pay attention to the bank's readiness (Ahmad M. Ramli, 2002: 14).
- b. Self-Regulation by Business Actors. Self-regulation can be carried out by improving transaction methods, security systems, payments, delivery of goods and resolving disputes if disputes occur. This aims to increase consumer confidence, and business actors will benefit from the large number of consumers who make transactions on their websites and this also requires improvements to standard agreements when making transactions; (Abdul Halim Barkatullah, 2017: 104)
- c. Supervision and Protection by the Government and Related Bodies. The government's obligation to provide protection is stated in Article 40 paragraph (2) of the Electronic Information and Transactions Law. Meanwhile, carrying out supervision is stated in Article 30 paragraph (1) of the Consumer Protection Law.

Repressive Efforts: Non-Litigation Resolution (Alternative Dispute Resolution/ADR) in Article

Paragraph (10) of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides a definition of alternative dispute resolution, which reads: "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment."

- a. Consultation, is a personal action between one particular party called a client and another party called a consultant, who gives their opinion to the client to meet their needs (Abdul Halim Barkatullah, 2017: 13).
- b. Negotiation is similar to peace as regulated in Article 1851 to Article 1864 of the Civil Code, where peace is an agreement whereby both parties, by handing over, promising or retaining an item, end a pending case or prevent a case from arising.
- c. Mediation (mediation), Mediation is a problem-solving process in which an impartial and neutral outside party works with the disputing parties to help them obtain a satisfactory agreement.
- d. Conciliation (conciliation), Conciliation is the resolution of disputes with the intervention of a third party (conciliator), where the conciliator is more active, by taking the initiative to prepare and formulate settlement steps, which are then proposed and offered to the parties to the dispute (Abdul Halim Barkatullah, 2017 : 14).
- e. Arbitration, according to Article 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that arbitration is a method of resolving a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute.

Juridically, the meaning of credit is regulated in article 1 point 11 of Law Number: 10 of 1998 concerning Banking. According to Article 1 Number 11 of Law Number 10 of 1998 states "Credit is a provider of money or bills that can be equated with it, based on an agreement or loan agreement between banks and other parties which requires the borrowing party to pay off the debt after a certain period of time with interest."

Getting a loan is not easy because creditors are not careless in lending money. Creditors do not want problems to arise at a later date after the debt and receivable transaction has been completed with the debtor. Creditors have various assessments of debtors, including debt repayment issues. Even though debts and receivables are discussed verbally,

the agreement has already been reached by reaching an agreement because the principle of consensualism applies. In this principle, the will of the parties is implied to bind themselves to each other and create trust (*vertrouwen*) between the parties to ensure the fulfillment of the agreement. (Agus Yudha Hernoko, 2010) Based on the provisions of article 1320 of the Civil Code, there are four types of conditions for the validity of an agreement, namely: having an agreement, having the ability to act, certain things and a lawful cause. The credit agreement is a preliminary agreement (*pactum de contrahendo*). Thus, this agreement precedes the debt and receivables agreement. Meanwhile, the debt and receivable agreement is the implementation of a preliminary agreement or credit agreement.

According to Gatot Wardoyo in his writing regarding bank credit agreement clauses, according to him they have several functions that support each other and are related to each other. So the function of the credit agreement is as follows:

- a) The credit agreement functions as the main agreement, meaning that the credit agreement is something that determines the cancellation or non-cancellation of another agreement that follows it, for example a collateral agreement.
- b) The credit agreement functions as evidence regarding the limitations of rights and obligations between creditors and debtors.
- c) The credit agreement functions as a tool for monitoring credit.

Juridically, there are 2 types of credit agreements or bindings that banks use in providing credit, namely private credit agreements or bindings using private deeds and credit agreements or bindings made by and before a notary or an authentic deed. In banking practice, all banks have implemented the standard contracts they have created. The Standard Contract is an agreement whose form is written and the contents have been determined unilaterally by the creditor, and its nature is to force the debtor to agree. This cannot be done orally. Because most creditors or traditional Banjar communities have difficulty remembering all the contents of the agreement, which is usually quite a lot. And the debtor is only asked for an opinion whether he agrees to the offer and can fulfill all the requirements contained in the agreement or not. This is based on an agreement between the parties and the applicant, if the credit application has been made and approved by the bank, then an authentic deed can be made to the credit agreement by a notary.

CONCLUSION

Based on the results of the discussion above, it can be concluded that the implementation of Alternative Dispute Resolution in South Kalimantan cannot be separated from article 130 HIR/154 Rbg which provides the legal basis for the existence of mediation institutions in court, but apart from that ADR can also be carried out outside the court with the agreement of the parties to the dispute through preventive and repressive channels by means of prevention through the stages of prudence, supervision and through the stages of mediation, conciliation and arbitration at institutions that have been accredited by the Supreme Court in the form of replacing the dispute resolution clause in the agreement through the courts into the form of dispute resolution through Alternative Dispute Resolution pathway by means of mediation and arbitration. A credit agreement is the provision of money or bills that can be equated with it, based on the agreement of both parties who borrow and borrow within a time agreed by both parties. Credit agreements usually make payments in stages according to the agreement between both parties.

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