



# Good Faith in the Implementation of Car Financing Agreements During the Covid-19 Pandemic

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## ABSTRACT

One way that one can buy a car by instalment is through a financing company, one can pay payment instalments according to their ability, when the parties have agreed and signed a financing agreement then the parties have been bound by an agreement that is Binding on both parties, this is in accordance with the principle of *pacta sunt servanda* and the legal terms of the agreement article 1320 of the Civil Code, but in fact some implementation of the agreement cannot run in accordance with what has been agreed in the agreement because of the Covid-19 pandemic causing disputes. The question arises how the implementation of good faith in the implementation of car financing agreements in the Covid-19 pandemic period, whether it is true that the inhibition of instalment payments caused by the Covid-19 pandemic or other factor, of course, needs to be proven. This research method uses the normative legal research method with the case approach, the analysis in this case uses the principle of good faith in the implementation of the agreement in order to prove in the resolution of disputes between the parties in court and the theory of justice in the framework of dispute resolution of the parties in the court.

**Keywords:** *Good Faith; Car Financing Agreements; Covid-19 Pandemic*

## 1. INTRODUCTION

In today's modern era where people's mobility is increasing, the need for transportation, especially cars, is also increasing. Data from Gaikindo shows that car sales throughout 2019 have passed one million units [1]. Car purchases during the pandemic and before the Covid-19 pandemic are mostly done through credit schemes through financing companies [2]. The financing of car purchases in Indonesia is based on agreements made by the parties that refer to the provisions of the Civil Code which applies the principle of *pacta sunt servanda*. The Covid-19 pandemic poses challenges in the economy where restriction policies carried out by the government have an impact on the decline in people's incomes, the situation has an impact on the number of debtors in the car finance sector experiencing a default on their monthly instalment obligations. The government issued an economic stimulus policy through POJK 11/2020 which in the rules contained relaxation rules and waivers to the community in carrying out their obligations, especially for communities affected by the Covid-19 pandemic. Stimulus is provided given the decline in debtor's ability to broadly disrupt the stability of the national financial

system. Banks and financing companies make guidelines in providing stimulus for debtors who meet the criteria and determine the form of stimulus provided either in the form of extension of time, decrease in interest, reduction of principal / interest arrears, addition of credit facilities or financing. However, the provision of stimulus still considers the principle of health so that there is no moral hazard or action to take advantage of pandemic situations not to carry out obligations. The Covid-19 pandemic can be exploited by rogue debtors to escape the responsibility to pay instalments. The Covid-19 pandemic has a wide impact not only for debtors but also for creditors, therefore the question arises how good faith in the implementation of the contents of car financing agreements during the Covid-19 pandemic, in this case the author took the case based on verdict number 13/Pdt.G.S/2020/PNBgl.

## 2. METHOD

The study used normative legal research methods. Normative legal research is oriented to the practical aspect, namely to solve concrete legal problems and carried out by legal practitioners in the form of disputes

or simply want to know how and where a legal problem is regulated by law conducted through legal channels, facts, relevant legal regulations, and also look at cases that are relevant to the question to be solved [3]. This research is qualitative using the case approach, which is to conduct an analysis of the case verdict number 13/Pdt.G.S/2020/PNBgl.

### 3. RESULT AND DISCUSSION

The agreement made by the parties is binding on the parties who make it, in this case the principle of *pacta sunt servanda* as stipulated in the Civil Code article 1338. The agreement made must also be carried out in good faith. The principle of good faith is one of the principles of agreement law, the principle of good faith in legal language is *de goedetrow* which is related to the implementation of an agreement [4]. In Black's Law Dictionary good faith is defined as: In or with good faith, honestly, openly and sincerely, without deceit or fraud. Truly; actually; without simulation or pretence. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned [5].

The principle of good faith becomes important during the Covid-19 pandemic, especially in car financing agreements between creditors and debtors. The emergence of the Covid-19 pandemic which has an impact on the reduced ability of many debtors can trigger widespread default events that can disrupt the stability of the national economy; therefore, the government has issued a stimulus and relaxation policy for debtors affected by Covid-19 through POJK 11/2020. In this regulation, banks and finance companies can provide credit or financing restructuring for affected customers by, among others, lowering interest rates, extending time, reducing principal arrears, reducing interest arrears, adding credit/financing facilities, or converting credit/financing into investment. temporary capital. The mechanism for granting restructuring depends on the policies of each bank/finance company and depends on the results of the assessment of the debtor whether it is really affected by the Covid-19 pandemic. In relation to debtors from financing/leasing companies affected by the pandemic, OJK directs debtors to proactively contact the nearest leasing company office to find an agreement, including rescheduling instalments. The debtor is given the opportunity to apply for restructuring to the leasing company to clarify the fulfilment of its obligations.

Supreme Court decision case number 13/Pdt.G.S/2020/PNBgl between PT Toyota Astra Financial Services Bengkulu Branch as the plaintiff against Dicky Mahendra as the Defendant. The Plaintiff argues that the Defendant has defaulted on the written agreement on the Toyota Calya car financing agreement which was made on February 17, 2020. The Defendant did not fulfil his obligation to pay his debt of Rp. loss. The judge is of the

opinion that there has been an agreement between the Plaintiff and the Defendant which was born out of an agreement/agreement between the two parties. Therefore, the judge examines whether or not there is an agreement between the two parties. The plaintiff provided evidence, namely receipt of vehicle payment, Financing Agreement dated February 17, 2020, warning letter 1, warning letter 2, warning letter 3, fiduciary guarantee certificate, fiduciary deed, receipt of delivery of goods, instalment schedule. On the other hand, the Defendant submitted evidence, namely a photocopy of the LPKSM's power of attorney, a photocopy of the letter of application for postponement of instalments to LPKSM, a photocopy of the financing agreement of the joint statement letter. The judge is of the opinion that the defendant's actions did not carry out his obligation to pay instalments since April 2020 as part of the default act, the agreement agreed upon by the parties as evidence of the Financing Agreement is valid and binding. In the trial, the fact was found that there were a series of actions of the Defendant who did not comply and did not comply with the contents of the agreement. The defendant also could not show his real condition that he was affected by the Covid-19 pandemic to relate it to the POJK 11/2020 rules. In his decision, the Judge decided that the Defendant was in default and sentenced the Defendant to pay a loss of Rp. 189.252.690, -.

Based on the above case, it can be seen that the basis of the engagement between the Plaintiff and the Defendant is the existence of a valid agreement according to Article 1320 of the Civil Code. A valid agreement must meet four conditions, namely agreement, competence, a certain issue, and a cause that is not prohibited. The agreement will also have power if it is carried out without coercion, so that the agreement in this case is valid in the eyes of the law. The legal agreement is binding and applies as law for the parties who agree according to the principle of *pacta sunt servanda*. The debtor in this case does not fulfil his obligation to pay instalments starting from the 2nd instalment and becomes a bad credit. This makes the debtor violate the contents of the agreement and become a party to default or break a promise. The debtor does not appear to be trying to ask for leniency and relaxation from his leasing company to be given credit restructuring if he is affected by the Covid-19 pandemic, but instead asks for a postponement of instalments to LPKSM which is not in accordance with the restructuring mechanism provided by POJK 11/2020.

Good faith is a legal principle in civil law and international law related to honesty, goodwill and sincerity. According to Subekti, good faith is divided into two types, namely subjective good faith and objective good faith. Subjective good faith means honesty, objective good faith means obedience [6]. Good faith in contract law should be distinguished into good faith as a rule of contract law and good faith as a principle of contract law. As a concrete legal rule, it is included in the

dogmatic level of law, while as a legal principle it is included in the level of legal philosophy. Thus, good faith as a concrete legal rule if interpreted grammatically means that it only exists at the stage of contract implementation. In contrast to good faith, it is interpreted as the principle of contract law whose area of application is not limited to the implementation of the contract but at all stages of the contract, namely the pre-contract stage, contract implementation and dispute resolution [7]. The author agrees that good faith must exist in the preparation/pre-agreement stage, the implementation of the agreement, and the dispute resolution stage.

Based on the above case, there has not been seen any good faith from the debtor to carry out the contents of the agreement so that there is a default, when a debtor dispute occurs, there is also no good faith to resolve the problem of arrears in instalments that occurs by not proactively requesting restructuring from the leasing company according to the direction of the OJK if it is affected by the Covid-19 pandemic. In the case of a car financing agreement, at the pre-agreement stage, generally, the debtor only accepts the draft standard agreement given by the creditor without any room for negotiation, on the one hand the existence of a standard agreement facilitates and speeds up the agreement, but on the other hand the debtor seems to be forced to follow the rules laid down. made by the creditor if the application for financing is to be approved. So here it can be seen that the bargaining power of the debtor is under the creditor. Good faith in the car financing agreement at the pre-agreement stage there should be a negotiation stage. The contents of the agreement are basically the result of the agreement of the parties who made it. The agreement, can be born between through the negotiation process. So the purpose of carrying out negotiations is basically to reach an agreement between the parties on a matter that will be stated in the agreement [8].

#### 4. CONCLUSION

Based on the description above, it can be concluded that good faith plays an important role in an agreement starting from the pre-agreement, the implementation of the agreement, and at the time of the dispute. Good faith in car financing agreements must be implemented by Creditors and Debtors as parties to the engagement in accordance with the mandate of the Civil Code, especially during the Covid-19 pandemic where the majority of people are affected, especially for debtors and

creditors. The government has made relaxation rules for affected debtors but also prohibits moral hazard practices that take advantage of the pandemic situation to escape obligations for naughty debtors, the government also prohibits creditors from changing the debtor's credit status to Current for debtors who had problems prior to the Covid-19 pandemic. The existence of relaxation rules from the government can be used by debtors affected by the pandemic to apply for waivers to leasing companies so that solutions can be found by making new negotiations and agreements to achieve win-win solutions.

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