

*Research Article*

# Postponement of Fulfillment of Achievements in Business Contracts during the Covid-19 Pandemic as a Basis for Force Majeure

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**Abstract.** The purpose of this journal is to find out the policies of the parties regarding delaying the fulfillment of business contract agreements during the Covid-19 pandemic and to find out the impact of delaying the fulfillment of business contracts for the parties during the Covid-19 pandemic. The research method uses the juridical-normative method. The results of the research method concluded that: 1). If the Covid-19 pandemic is included in a force majeure situation, the parties can take a policy to terminate the agreement if the pandemic is permanent or can delay the fulfillment of achievements if the situation is only temporary. 2). The impact of the current pandemic is that the parties have to temporarily postpone the contract that was agreed before the Covid-19 pandemic occurred due to restrictions on community activities whose rules have been conveyed by the Indonesian government. The delay to fulfill the achievement itself must get approval from both parties so that there is no broken promise (default).

**Keywords:** *Forced Circumstances, Business Contracts, Covid-19 Pandemic.*

## A. INTRODUCTION

In November 2019 countries around the world were shocked by the emergence of a virus that attacks the respiratory system, acute pneumonia problems and even death (Supriyanti & Nurjamil, 2021). The Covid-19 virus, which was first discovered in China, to be precise in the city of Wuhan, at the end of December 2019 spread and very quickly reached other Asian countries, including Indonesia. Cases of exposure to the Corona virus or severe acute respiratory syndrome corona virus 2 (SARS-CoV-2) spread initially in Indonesia spearheaded by 2 (two) Indonesian Citizens (WNI) from Depok, West Java who had a record of close contact with tourists from Japan who have contracted the Covid-19 virus. This virus is not only infected with humans but can also be infected with animals (Mahbengi, 2022).

Covid-19 is spreading rapidly causing new problems in all sectors of the world, including in Indonesia. The Covid-19 virus caused a pandemic that occurred throughout the country. The pandemic itself is an infection that infects on a large scale and spreads across many regions or countries (Wirawan et al., 2022; Hulzannah, 2021; Cendhani et al., 2020). The problems caused by this virus are not only in the health sector, but have disrupted business transactions in Indonesia. This was due to delays in fulfilling promises in contracts that had been agreed upon by both parties prior to the Covid-19 pandemic. This is also because the government has implemented rules regarding restrictions on community activities which of course hinder all types of business activities in Indonesia (Arrizal, 2020; Azmi & Hilmy, 2020).

The spread of this pandemic, which was originally a purely health problem, eventually had an impact on other aspects, such as the socio-economic aspect. Social ministry of the republic Indonesia. published that the impact of the spread of COVID-19 affected the socio-economic sector in Indonesia and a statement from WHO declaring COVID-19 as a Global Pandemic was a matter of consideration for issuing (Nugraheni, 2022).

Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning Stipulation of Non-Natural Disaster of the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster (hereinafter referred to as Presidential Decree 12/2020) on 13 April 2020.

The Presidential Decree 12/2020 stipulates that: 1. Non-natural disasters caused by the spread of COVID-19 are declared as national disasters; 2. National disaster management due to COVID-19 is carried out by the Task Force for the Acceleration of Handling Corona Virus Disease (COVID-19) in accordance with Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) as amended by Decree President Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) through synergy between ministries/agencies and local governments; 3. Governors, regents and mayors are given the mandate as Cluster Chairs in the regions and in setting policies in their regions must pay attention to policies from the Central Government; 4. Presidential Decree 12/2020 takes effect on April 13, 2020 (Kertha Semaya, 2020).

## **B. METHOD**

The Juridical-Normative method was chosen in completing this research. This method conducts a study of the conformity of the norms obtained in the statutory principles which include laws regarding provisions related to research problems. The approach to the problem used is Legislation (Statute Approach), that research that uses normative law is ensured by a statutory approach with the focus of research on various types of legal rules and themes that are the center of attention of a study. In approaching legislation, this research needs to interpret the strata and principles in the rules of law. The legal sources that are the object of this research are tracing sources of primary, secondary and tertiary legal materials in the form of library research, and collecting documents both literature, print media, electronic media, internet media, books, law magazines, regulations. laws, opinions of scholars, lecture materials and others. Analysis of the qualitative data used will be carried out by means of an inventory of regulations related to the problem of the object of study and then it will be presented in a descriptive form in the form of writing about a problem observed.

## **C. RESULT AND DISCUSSION**

### **1. Agreement of the Parties in Postponing the Fulfillment of Achievements During the Covid-19 Pandemic**

Regarding the explanation of Article 1320 of the Civil Code, there is one condition that makes a valid agreement, namely an agreement between the parties. The case that occurred between party A and party B related to delays in sending stock of goods to party A's warehouse is a small example of what happened during this pandemic. Party A has agreed with party B to ship the stock on their usual agreed date. However, due to restrictions on traveling by air, land and sea, this has forced party B to postpone shipments to party A's city because of these restrictions. Party B asked for a time dispensation to delay delivery and has taken various ways so that it can be sent as quickly as possible but the pandemic and government regulations that are still changing have made party A refuse to grant a dispensation.

From the cases above, it can be seen that agreements made before the pandemic occurred can be categorized as force majeure or coercive circumstances. If party A can provide a time dispensation for party B to delay fulfilling its achievements, the activity can run as it should. If party A does not want to provide a time dispensation for party B, party A and party B can make changes to the contents of the clause regarding the delivery date, but it must be seen again regarding the disaster clause.

The contents of the business contract agreement that has been determined by the parties, usually found in a disaster or force majeure clause. Force majeure is usually associated with causing the debtor to be hindered by circumstances and unable to carry out his achievements due to unexpected events when the agreement was made and then entered into force and the debtor cannot be held accountable due to circumstances/events that occur outside the will of each party. While the debtor does not intend to have bad intentions (Caputo & Mininno, 1996).

The Indonesian state itself has laws that regulate urgent conditions, which the term in the Civil Code is called *overmacht* or urgent conditions. The explanation regarding the definition of force majeure is indeed not detailed, but urgent conditions have been regulated in Articles 1244 and 1245 of the Civil Code. The articles contained both deal with the rules for coercive circumstances which are unpredictable, hinder the debtor from carrying out the fulfillment of something that is obligatory for him or the fulfillment of achievements, and which cannot be accounted for to him (Ibrahim, 2016).

*Overmacht*, according to the doctrine of legal experts, is defined as an unexpected situation that prevents the debtor from carrying out his achievements or obligations in accordance with the agreement that was agreed upon, and this situation is truly unavoidable for the debtor. Such circumstances or events cannot be accounted for to the debtor, while the debtor does not have bad intentions (Nasution et al., 2022; Anugrah et al., 2021). This refers to circumstances caused by natural disasters or accidents that occur beyond human capabilities and cannot be avoided, so that it is impossible for the debtor to fulfill the contents of the agreement, for example the performance is not in accordance with the agreed time, or the object promised has been destroyed. There are two types of coercive conditions, namely absolute *onmogelijkheid* (absolute coercive conditions) and *relatieve onmogelijkheid* (relative coercive conditions) (Tjoanda et al., 2021).

Absolute *onmogelijkheid* or absolute coercion is a condition or event in which the debtor cannot fulfill his performance at all, this is usually caused by flash floods, earthquakes, and lava due to volcanic eruptions. Meanwhile, *relatieve onmogelijkheid* or relative coercion is a condition or event that causes the debtor to be able to carry out his achievements, even though the fulfillment of the achievement is carried out by providing large, unequal sacrifices or using mental strength that is beyond human ability or the possibility of experiencing a very high risk of loss. large (Soekanto, 2001).

The current problem is if debtors and creditors do not include the corona virus pandemic or endemic as a force majeure. It is difficult to determine immediately that the Covid-19 pandemic is included in a force majeure because not all industries have stopped operating their companies. Moreover, there are no binding regulations regarding the Covid-19 pandemic for companies. The government has just issued regulations regarding physical distancing for the community as well as limiting access to and from certain areas and/or goods.

When one party experiences a coercive situation and the other party knows about the situation but it is not included in the agreement they have made, the mechanism of the two parties can carry out deliberations and consensus to resolve delays and delays in fulfilling these achievements. Deliberations conducted by the two parties will lead to a new agreement to make a new addendum regarding changes to the disaster clause and changes to the date of fulfillment of these achievements which are inseparable from the existing agreement (Ilmih et al., 2021).

Delays in fulfillment of achievements can be implemented because the force majeure that occurs on the debtor's side is temporary or relative or the object promised is not lost or destroyed, then the agreement will continue but the process of fulfilling the achievement will be temporarily delayed until conditions return to normal (Harahap, 1982).

## **2. Legal Consequences of Postponing the Fulfillment of Business Contract Achievements for Parties During the Covid-19 Pandemic**

The delay in fulfilling the achievement between the creditor and the debtor is certain to have legal consequences for the debtor because he fails to fulfill his achievement at the time agreed with the creditor. With this pandemic, creditors cannot demand accountability from debtors because the Covid-19 pandemic is classified as a non-natural disaster and is qualified as a force majeure. The debtor must provide reasons to the creditor why he failed to fulfill his achievements in accordance with the time specified. Where this achievement failed to be fulfilled on time was not because the debtor wanted it, but because the Covid-19 pandemic was unavoidable and then there were rules regarding social restrictions that had been established by the government (Sembiring, 2011).

Legal actions that can arise from delays in fulfilling the achievement itself are broken promises or defaults. Default in accordance with Article 1243 of the Civil Code states that related to the substitution of costs, compensation and the emergence of interest because an agreement is not fulfilled, if the debtor, even though he has been said to be negligent, remains negligent, to carry out the engagement, or something that must be allocated or carried out within the time limit which is too far away at the appointed time (Margono, 2011; Saputra, 2020).

Before the creditor asks for compensation from the debtor, the debtor must explain to the creditor that delays in fulfilling achievements due to a pandemic or compelling circumstances have elements such as unforeseen events, may not be borne by the debtor, the debtor has no intention of bad faith, incidents that are not intentional by the debtor and the default debtor in that condition hinders the outstanding debtor which if the achievement continues to be carried out it will be subject to a ban. Fulfillment of all of the above elements by the debtor, the force majeure does not oblige the debtor to pay compensation to the creditor, and also in the terms of this agreement, the creditor cannot demand termination because the agreement has been terminated or automatically deleted. However, according to the provisions of Article 1444 paragraph (1) and paragraph (4) of the Civil Code, it is also explained regarding satisfaction for substitution of losses, namely as follows (Agustina, 2003; Cassioli et al., 2022):

- a. If the principal goods for which the approval has been approved are lost, cannot be traded or are lost and cannot be found again, then the agreement is automatically deleted, as long as the goods have indeed been lost or lost other than the fault of the debtor and before the debtor gives them.
- b. At any cost should a property be lost or lost, the individual who took the property is bound and has the obligation to replace the property at its price.

Settlement of disputes through court or litigation routes refers to procedural law regarding the requirements that can be carried out in a dispute or legal action that can be submitted and the efforts that can be made by the parties. As for the preference for conflict resolution (ADR) or non-litigation or preference for conflict resolution with mediation, arbitration and negotiation methods. Handling disputes outside the green table is the resolution of dispute issues which are carried out based on the approval of each part and the process of solving the problem is fully handed over to the two parties concerned (Suyanto, 2018).

Negotiation, arbitration and mediation are several methods of handling conflicts outside the court. The resolution of the conflict has pros and cons that can be taken into consideration by both parties in choosing a method of dispute resolution. ADR itself is a form of dispute resolution carried out by creditors and debtors with or without the help of third parties to assist in the settlement process between the conflicting parties. In contrast to litigation, conflict resolution through ADR is in the hands of the opposing groups. ADR can be resolved by a

mechanism if the parties agree to handle it through a conflict resolution option convention outside the scope of the court (Rossanti, 2021).

By conducting mediation, it is hoped that the disputing parties will be able to find common ground for the dispute they are facing without harming both parties. Mediation is a way of resolving disputes with the advantage that each party is free to renegotiate regarding the fulfillment of achievements. In carrying out mediation, the parties can also renegotiate the agreement they have made so that the contents of the agreement can comply with the new government regulations regarding the Covid-19 pandemic.

### **3. The Covid 19 Pandemic relationship is associated with the obligation to carry out the Contract**

It is unlikely that the parties who have made contracts before will be able to imagine that in the future there will be a Covid 19 pandemic which will result in achievements not being fulfilled to the fullest. Even though COVID-19 could qualify as a force majeure, this is not enough to prove that one of the parties to the agreement can be released from the responsibility to make compensation because they cannot carry out their obligations due to force majeure.

The designation of COVID-19 as a national disaster cannot be immediately used as an excuse for force majeure. The existence of a causality or causal relationship to the determination of COVID-19 as a national disaster for the implementation of the agreement is important to study to determine a force majeure situation, in relation to proving the element of "an unexpected thing causes a party to be unable to carry out its obligations". In determining the existence of a causal relationship it is important to ascertain the extent to which the agreement cannot be implemented. Was it not possible to fulfill the achievements in the agreement as a whole or only part of it. This is also important in order to ascertain what consequences can be implemented by the parties (Safitri, 2019).

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Relative force majeure is defined as a force majeure that does not have an absolute impact that an agreement cannot be implemented. In this context, it can be stated, for example, that the first situation of coercion exists, the debtor is still carrying it out but there is a big sacrifice. In different situations, the coercive circumstances exist, from the coercive circumstances it causes the debtor to be temporarily unable to carry out the agreement, and after the coercive circumstances are gone, the debtor can return to implementing the agreement. Exemption from costs, losses and interest can also be obtained for parties who are faced with a relative force majeure situation, but not until the cancellation of the agreement. In relative force majeure, it can be understood that the release is only temporary and as long as the force majeure prevents the debtor from carrying out the performance.

If the force majeure situation disappears, the creditor can demand the fulfillment of the achievement. The consequence of relative force majeure is that temporary achievements cannot be carried out. Determination of the COVID19 Pandemic as a national disaster, presumably from the perspective of force majeure can be classified as relative, because even though the parties to the commercial agreement are faced with a situation of inability to fulfill their

achievements, when the corona pandemic ends, I hope they can still continue their business activities, so they can return perform the fulfillment of the agreement. commercial companies are faced with a situation of inability to fulfill their achievements, but when the corona pandemic ends, hopefully they can still continue their business activities, so they can return to fulfilling their agreement achievements (Suyanto, 2018).

#### D. CONCLUSION

The Covid-19 pandemic is included in a force majeure situation, so the parties can take a policy to terminate the agreement if the Covid-19 pandemic is permanent or can delay the fulfillment of achievements if the situation is only temporary, however the Covid-19 pandemic is not necessarily immediately it can be used as an excuse for all delays in fulfilling achievements because this pandemic cannot be used as an excuse for everyone but must be assessed from the situation and conditions of each party. The parties can provide relief to be able to temporarily postpone the fulfillment of the achievements of the agreement that has been made to avoid broken promises (achievement). In this case, the two parties must agree to provide relief or renegotiate for the delays that occur.

The impact of the current pandemic is that the parties have to temporarily postpone the contract that was agreed upon prior to the Covid-19 outbreak because the implementation of large-scale social restrictions (PSBB) had been implemented by the Indonesian state apparatus. The delay to fulfill the achievement itself must be approved by an agreement from both parties so that there is no broken promise (default) in the future. Based on the principle of good faith, when the parties to a commercial agreement experience a relative force majeure situation, it is relevant to consider efforts to restructure the agreement as is often applied to problem banking loans. One form of restructuring, for example, is by rescheduling related to the fulfillment of achievements both in terms of interest, installments and the time period is extended, so that the debtor can return to fulfilling his achievements after the unexpected forceful conditions end.

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