THE COVID-19 PANDEMIC AND ITS IMPLICATIONS IN THE AGREEMENT

Ni Luh Yamuna Santhi Sudarna, Bimantara Putra Law Office,
E-mail: yamunasudarna8@gmail.com
Putu Edgar Tanaya, Faculty of Law Udayana University
E-mail: edgar_tanaya@unud.ac.id

doi: https://doi.org/10.24843/KS.2022.v11.i01.p13

ABSTRACT

The aim of writing this journal is to provide new knowledge regarding the provisions of force majeure in the agreement if in the future there are circumtances beyond human control that have never happened which resulted in the parties involved in the agreement being unable to carry out theit obligations. The research method in this journal uses normative law, which uses two sources of legal material, namely, primary legal material, such as laws and regulations, and secondary legal materials, such as other related journals. The result of this journal is that the Covid-19 pandemic cannot simply be entered into a force majeure, because a force majeure is a situation beyond human control which causes one or both parties to be unable to carry out their obligations, if both parties can still carry out their obligations, the Covid-19 pandemic cannot be entered into a force majeure. However, if the government declares the spread of Covid-19 pandemi which is a non-natural disaster is a national disaster, then it has the potensial to be used as an excuse for force majeure. However, the government cannot determine a situation as a force majeure, the authorities lies with the judges through their considerations after assessing the contents of the agreement and the circumstances that occurred at that time based on the exisiting law and/or norms.

Key Words: Agreement, Force Majeure, Covid-19 Pandemic.

1. Introduction

1.1. Background

The human being has been created as social beings by God, who cannot live alone but need another human to live. Therefore, there is a social bond or social interaction that human ought to have with each other. Legal ties are among social partnerships which are carried out.

A legal relationship (*rechtsbetrekkingen)* defined as a relationship between two or more legal subjects. In this legal relationship, the rights and obligations of the other party dealing with the rights and obligations of the other party.[1] Legal relation certainly gives rise to rights and obligations, apart from that each member of society certainly has a relationship of interest which different or opposing each other.[2] One example of a legal relationship is an agreement.

The agreement is an agreement made by two or more parties is outlined in writing and creates rights and obligations which must be fulfilled by the parties and will result in consequences or sanctions for the parties who do not fulfill their obligations. The agreement contains the provisions have been agreed upon and are binding on the parties. In the agreement, it also contains provisions on how the

[1] R., Soeroso. *Pengantar Ilmu Hukum* (Jakarta, PT. Rajagrafindo Persada, 2011), 269.
[2] Sunarjo. "Perlindungan Hukum Pemegang Kartu Kredit Sebagai Nasabah Bank Berdasarkan Perjanjian Merchant." *Cakrawala Hukum* 5, No. 2 (2014): 180-196.

agreement can end or be null and void. However, in real life, it is not a few of the parties involved in the agreement cannot fulfill their obligations, it is not because of intentionally or negligently, there are things which beyond their power that influence them not to carry out their obligations, or legal terms as known as force majeure or state of force (*overmacht).* Indiscipline of covenant law, one very important principle is recognized. The principle in this question is principle of strenght of binding agreement (*pacta sund servanda)*. This principle means that the parties agreeing must carry out the agreement. In this principle, the agreement of the parties is binding as befits a law for the parties making it.[3] From the explanation of principles of *pacta sund servanda,* the parties to the agreement only carry our provisions contained in the agreement, the parties may not do anything is outside provision of agreement.

In general, provision of force majeure is outlined in the agreement by describing what events are included in force majeure. Force majeure is an unexpected event that can prevent the parties involved in the agreement from fulfilling their obligations. Force majeure is regulated in Article 1244 and Article 1245 in the Civil Code (*Kitab Undang-Undang Hukum Perdata*), but when examined further, these provisions emphasize more on how to reimburse costs, losses and interest but can be used as a reference as a force majeure arrangement. The force majeure clause protects against losses caused by outside of human power.[4] Force majeure looked at the situation that occurred during the agreement.

As we know, from the end of 2019 to the end of 2020, there ware spread of a virus originating from China, is coronavirus or commonly known as Covid-19, which has spread widely to 220 countries, including Indonesia. Based on an official website page related to Covid-19 virus, total number of positive cases of coronavirus ware 88,506,564 cases, with the death toll reaching 1,906,770 people, and the number of patiens who were declared cured was 63,614,848 patients.[5] The Covid-19 affects various sectors, both in economy, tourism, and many other sectors, which also have an impact on an agreement or contract. This raises problems for people's own lives. Many people who have been involved in the agreement, both debt agreements, lease agreements, and other agreements, cannot fulfill their obligations due to Covid-19 pandemic. However, whether the Covid-19 pandemic can be excused as a force majeure to postpone or cancel the agreement. Due to Covid-19 pandemic, it was not previously regulated in the agreement or statutory regulation.

Based on the explanation in the background of the problem, it will be discussed and further reviewed in this journal by taking the title "The Covid-19 Pandemic and Its Implications in Legal Agreement".

As for several journal with a similar theme regarding Covid-19 Pandemic in the agreement are "*Pandemi Corona Sebagai Alasan Force Majeure Dalam Suatu Kontrak Bisnis"* by Annisa Dian Arini which was written in *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* Vol. 8 No. 2 in 2019. Also "*Kajian Force Majeure Terkait Pemenuhan Prestasi Perjanjian Komersial Pasca Penetapan Covid-19 Sebagai Bencana Nasional"* by Putu Bagus Tutuan Aris Kaya and Ni Ketut Supasti Dharmawan which were written in *Jurnal*

---

[3] MS., Salim. *Hukum Kontrak, Teori & Teknik Penyusunan Kontrak* (Jakarta, Sinar Grafika, 2008), 27.

[4] Isradjuningtias, Agri Chairunisa. "Force Majeure (Overmacht) Dalam Hukum Kontrak (Perjanjian) Indonesia." *Veritas Et Justitia* 1, No.2 (2015) : 136-158.

[5] Worldmeter Corona Virus. https://www.worldometers.info/coronavirus/. (Accessed on 05 January 2021).

Kertha Semaya Vol. 8 No. 6 in 2020. What distinguishes this journal is that this journal tries to explain in more detail the implications of the Covid-19 pandemic in the legal agreement and who can conclude whether the Covid-19 pandemic can be used as a reason for force majeure in an agreement law.

1.2. Formulation of Problems

Based on the background description above, the formulation of problems can be formulated, as follows:

1. Can the Covid-19 pandemic be used as a reason for force majeure in a legal agreement?
2. How do the parties fulfill their obligation in the agreement if they are affected the Covid-19 pandemic?

1.3. Purpose of Writing

The purpose of this writing shall be examine and explain whether the pandemic can be used or classified as "focrce majeure" in an agreement as well as examine any procedure can be taken by any parties in order to fulfill their obligation as written on the agreement due to Covid-19.

2. Methods of Research

This research uses a normative legal research methods, where the focus of the research begins with the existence of vague norms. This method examines the research of documents, which uses a variety of secondary data such as statutory regulations, court decisions, and it can form the opinions of scholarz. This type of normative has a tendency to represent law as a prescriptive discipline where it only sees law from the point of view of its norms.[6] This type of research uses a statutory and conceptual approach. The nature of this research is descriptive research is researching whose main purpose is to objectively provide an overview or description of a situation. This research design is used to solve or answer problems that are being faced in the current situation.[7]

In this research, two sources of legal materials were used are primary and secondary legal materials.[8] The primary legal material is the laws and regulations in the Republic of Indonesia, such as the 1945 Constitution of the Republic Indonesia, the Civil Code, and the Presidential Decree No. 12 of 2020 concerning Determination of Nonnatural Disaster for the Spread of Corona Virus Disease 2019 as a National Disaster. A secondary legal material used in this research includes explanations from primary legal material and opinions from legal experts regarding the Covid-19 pandemic as a reason for force majeure, court decisions, research results, and journals that are related to answering the problem, which is appointed in this journal.

Primary and secondary legal materials in this research were collected through the document search method are though library research and the internet. All primary and secondary legal materials will be interpreted by extracting the meaning contained in

---

[6] Sonata, Depri Liber. "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum." *Fiat Justisia Jurnal Ilmu Hukum* 8, No. 1 (2014) : 15-35.

[7] Ali, Zainuddin. *Metode Penelitian Hukum* (Jakarta, Sinar Grafika, 2010), 22.

[8] P.M., Marzuki. *Penelitian Hukum* (Edisi Revisi) (Jakarta, Kencana Prenada Media Grup, 2005), 181.

each word in the legislation and relating it to the legal conceptual approach of court decisions and opinions from experts to answer problems in this journal.

3. Results and Discussion

3.1. The Concept of "Agreement" according to Indonesian Law

The agreement in the Big Indonesian Dictionary has the meaning "written or oral agreement made by two or more parties, each of which agreed to obey what is stated of the agreement."[9] The definition of an agreement has also been regulated in the Civil Code Article 1313, "An agreement is an act pursuant to which one or more individuals commit themselves to one another". The word agreement in a translation of the word *overeekomst* in Dutch. The word *overeekomst* is commonly translated as agreement. In Black's Law Dictionary states definitions of an agreement is "an agreement between two or more persons who creates an obligation, to do or not to do a particular thing."[10] Several experts also put forward definition of an agreement, one of which is according to R. Subekti, who stated that an agreement is an event which a person promises to another person or where two people promise each other to do something.[11] Also, Salim HS expressed his opinion in the meaning of the agreement, is a legal relationship between one subject and another in field of assets, where one legal subject has right to achieve and also other legal subjects are obliged to carry out their achievements by what has been their agreed.[12]

Based on the terms of agreement that have been mentioned above, it can be concluded that agreement consists of the parties involved in the agreement, the agreement between the parties, the achievements that will be carried out, because it is lawful, there are certain forms of oral or written, certain conditions as contents of the agreement and there are goals to be achieved. In making an agreement, several important things must be considered, among others, the system of agreement law arrangements, the principles of the agreement law, the validity of an agreement, and form or types of agreement.[13] The purpose of the agreement is as a means to regulate exchange of rights and obligations of the parties involved so it can take place proper in accordance with the agreement of the parties. The agreement generally has 5 (five) principles. The five principles as follow:

1) The principle freedom of contract (*Asas Kebebasan berkontrak*)
   In Article 1338 paragraph (1) of the Civil Code, it states that "All legally executed agreements shall bind the individuals who have concluded them by law." This article can be analysed as the principle of freedom in contract or agreement. This principle gives parties' freedom to make or not enter into an agreement, anyone can enter into an agreement, determine the terms and conditions of the agreement, and determine form of agreement either in writing or orally. However, all of them must not be contrary to law, decency, and public order. The enactment of principle in freedom of contract is not absolute, because the Civil

[9] Departemen Pendidikan Nasional. *Kamus Besar Ikthasar Indonesia Edisi Ketiga* (Jakarta, Balai Pustaka, 2005), 458.

[10] Garner, Bryan A. *Black's Law Dictionary 6th Edition* (United States of America, West Publishing Co, 1990), 322.

[11] Subekti, R. *Hukum Perjanjian.* (Jakarta, PT. Intermasa, 2001), 1.

[12] Khairandy, Ridwan. *Itikad Baik Dalam Kebebasan Berkontrak* (Jakarta, UI Press, 2004), 28.

[13] Rasuh, Daryl John. "Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 dan Pasal 1245 Kitab Undang-Undang Hukum Perdata." *Lex Privatum* 4, No. 2 (2016) : 173-180.

Code provides limitations which can be seen in the Civil Code Article 1320 paragraph (1), (2), and (4), Article 1322, Article 1335, and Article 1337.

2) The principle of consensualism (*Asas Konsesualisme)*
In Article 1320 paragraph (1) of the Civil Code states that there are 4 (four) conditions for a valid agreement, that are their agreement that bind themselves, the ability to make an agreement, a certain subject, and a cause that is not prohibited. This article can be a conclusion in principle of consesualism, is that one of conditions for validity of the agreement is an agreement between the parties.

3) The principle of legal certainty (*pacta sunt servanda)*
In Article 1338 paragraph (1) and paragraph (2) of the Civil Code states that all agreement made by law is valid as laws for those who make them. The agreement cannot be withdrawn other than by agreement of two parties, or for reasons determined by law. This article concludes with the principle of legal certainty where this principle is recognized as a rule that all agreements made by humans are mutually intended to be fulfilled and if necessary, it can be enforced, so it is legally binding.[14] It means that the agreement has been made is binding on the parties and the parties must comply with what they have agreed upon together.

4) The principle of good faith *(Asas Itikad Baik)*
In Article 1338 paragraph (3) of the Civil Code, it states that the agreement must be implemented in good faith. In Dutch, good faith is called *te goeder trouw,* which is often translated as honesty, which can be divided into 2 (two) types, that are good faith at the time of entering into an agreement and good faith when carrying out rights and obligations that arising from the agreement.[15]

5) The principle of personality *(Asas Kepribadian)*
In Article 1340 of the Civil Code states that an agreement is only valid between the parties who made it. The agreement cannot bring harm to the third party and the third party does not have the benefit from it other than of the matters stipulated in Article 1317 of the Civil Code. Article 1315 of the Civil Code also emphasizes that in general a person cannot enter into an engagement or agreement other than for oneself. Whereas, in Article 1318 of the Civil Code, it does not only regulate agreement for onself, but also for the interests of their heirs and for people who obtain rights from them.

In addition, besides the five principles above, in an engagement law workshop organized by the National Legal Development Agrency (BPHN), the Ministry of Justice

[14] Ibrahim, Johannes, Lindawaty Sewu. *Hukum Bisnis Dalam Persepsi Manusia Modern,* Cetakan 2 (Bandung, Refika Aditama, 2007), 98.

[15] Prodjodikoro, Wirjono. *Azas-Azas Hukum Perdata,* Cetakan 7 (Bandung, Sumur Bandung, 1979), 56.

of Republic of Indonesia on 17 until 19 December 1985 successfully formulated eight national engagement law principles, as follow:[16]

1) The principle of trust, is that everyone making an agreement will fulfill every achievement made between the parties.
2) The principle of legal equality, is the legal subject to the agreement has the same position, rights and obligations before the law.
3) The principle of balance, is the principle that requires by the parties to fulfill and implement the agreement.
4) The principle of legal certainty, is the agreement acts as law for the parties and bind the parties involved in the agreement.
5) The principle of morality, is the principle relating to voluntary actions of a person cannot claim rights for him to contest achievements of other parties.
6) The principle of compliance, is the principle stipulated in Article 1339 of the Civil Code, where the contents of the agreement must be based on the nature of the agreement.
7) The principle of customary, is the agreement to follow things that are generally followed according to custom.
8) The principle of protection, is the parties must be protected by the law.
9) The principle that mentioned above form basis of the parties in making an agreement, and are important and absolute things that must be considered for the parties, so the final goal of the agreement is achieved and carried out as desired by the parties.

Legal relations are born through an agreement do not always fulfill aim and the aim of this situation can occur as a result of default by one party or both parties, the existence of coercion, error, fraudulent acts, or compelling circumstances known as "force majeure" or in Indonesian law, known as "*overmacht*". The consequences that arise from this situation cause an agreement to be canceled and which is null and void.[17]

3.2. Force Majeure in Indonesian Law

Force majeure is usually included in the agreement which has the aim so that if one day a situation occurs where one of the parties cannot fulfill his obligations, all parties can understand that the situation is due to negligence or due to coercive circumstances.[18] Force majeure is not regulated in a specific law, but in the civil law, it has been explained and regulated in Article 1244 and Article 1245 of the Civil Code. Article 1245 of the Civil Code states that "the debtor needs to compensate for cost, damages or interests, if an act of God or an accident prevented him from giving or doing an obligation, or because of such reasons he committed a prohibited act." In Presidential Regulation No. 4 of 2015 concerning the Government Procurement of Goods/Services, which previously was Presidential Regulation No. 54 of 2010 concerning the Procurement of Gods/Service Article 91 paragraph (1) states "force majeure is a condition that occurs outside will of the parties and cannot be predicted

[16] Sinaga, Niru Anita. "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian." *Binamulia Hukum* 7, No. 2 (2018) : 107-120.

[17] Isradjuningtias, Agri Chairunisa. *loc. cit.*

[18] Muljono, Bambang Eko, Dhevi Nayasari. "Keabsahan Force Majeure dalam Perjanjian Di Masa Era Pandemi Covid-19." *Jurnal Humaniora* 4, No. 2 (2020) : 256-263.

beforehand so that obligations specified in contract cannot be fulfilled." So it can be concluded that what is meant by force majeure is a forceful situation or an unexpected event that causes great consequences so that fulfillment cannot be done.[19] Force majeure is where there is an event that is categorized as a situation that brings consequences to the parties in the agreement, where the party who cannot meet performance is not declared in default.[20]

Based on the explanation above, force majeure in requirements in the Civil Code is an event that cause force majeure to be unexpected by the parties, these events cannot be accounted for to the party who must carry out these achievements, the parties are not in a state of bad faith, causing the force majeure to occur is beyond parties' fault, If a force majeure occurs, the parties may not demand compensation, but if the agreement is canceled due to force majeure. So for the fulfillment of the elements of justice, it can be granted restitution or quantum merit is still possible, or as far as possible the parties are returned as if an agreement had never been made (Article 1545 of the Civil Code, "If an object, which has been promised for an exchange, is lost beyond the fault of the owner, then the agreement is deemed null and void and the party who has performed his obligation may claim for the object he has delivered in the exchange").

Based on the Civil Code, force majeure is divided into 3 (three) classifications, as follow:

1) Force Majeure because the unforeseen reasons
   In Article 1244 of the Civil Code states if unexpected things occur that cause failure to carry out the agreement, it is not included in the category of contract/agreement default, but it is included in the category of force majeure, where the legal arrangement is completely different, except for one of the parties with bad faith, still can be held responsible.

2) Force Majeure because the forceful circumstances
   In Article 1245 of the Civil Code states that another reason a debtor does not need to be responsible for not executing the contract is if the contract is not fulfilled it is caused by coercive circumstances.

3) Force Majeure because each of these acts is prohibited
   In Article 1245 of the Civil Code states that if it turns out that actions (achievements) must be carried out by the parties or one of the parties are prohibited (by the applicable laws and regulations) then that party is not subject to the obligation to pay compensation.

Based on the impact target, force majeure can be divided into 2 (two), that are is objective and subjective force majeure. The objective force majeure is occured on objects that are the object of the agreement. This means that the condition of the object is such that it is no longer possible to fulfill achievements, without an element of error from the parties. For example, if the object is on fire, therefore, the fulfillment if the achievement is absolutely impossible because it is the object which is the object of the agreement being hit. The subjective force majeure occurs when force majeure occurs

[19] Rasuh, Daryl John. *loc.cit.*
[20] *Ibid.*

not in relation to the object, but, caused by the abilities of the parties, for example, if one party or both parties are seriously ill, so that it is impossible to fulfill the agreement.

Based on its nature, force majeure is divided into 2 (two) that are absolute theory and the relative theory. According to the absolute theory, the parties are in a state of coercion, if the fulfillment the agreement is not possible (there is an element of impossibility) to be carried out by anyone. In the minds of scholars are on natural disaster or major accidents.[21] This is contained in the Article 1444 of the Civil Code, which states that "where a certain specific asset" that constitute the subject matter of the agreement are destroyed, becomes unmerchantable, or are lost, to the extent that one is not aware whether or not the assets still exist, the obligations are discharged." In cloncusion, force majeure in absolute theory is an event that absolutely negates a party's ability to meet achievements. An example is the destruction of buildings used as collateral for contracts due to natural disasters. In the event of absolute force majeure, the engagement will be canceled. The reason is because the obstacles that occur are permanent, so that it is really not possible to carry out achievements.[22] According to the relative theory, a coercive situation exists, if the parties are still possible to carry out the achievement, but with great difficulty or sacrifice or changes in circumstances, but there are still other alternatives that can be substituted, negotiated, postponed, or so on. For relative force majeure, the obstacles only occur temporarily and do not cause the agreement to be canceled, but can be postponed. For example, a freight company must transport goods to the creditor's place. Even though the transporter (debtor) has used a strong rope to transfer the goods to the ship, it turns out that the rope used is broken and the goods to be sent are damaged. Here the debtor must be responsible for the damage to the item.[23]

3.3. The Covid-19 Pandemic as a Reason for Force Majeure in the Agreement

On 11 March 2020, the world health organization or WHO declared the disease outbreak due to the coronavirus or COvid-19 a global pandemic. It is stated that this status is due to positive cases outside China, which have spread to 220 countries, including Indonesia. Based on the official website page related to the Covid-19 virus, the total number of positive cases of the coronavirus was 88,506,564 cases, with the death toll reaching 1,906,779 people, and the number of patients who were declared cured was 63,614,858 patients. Covid-19 first appeared in the Wuhan area in China. It spreads very quickly, through physical contact through nose, mouth, and eyes, then develops in the lungs. Law as social control is a form of implementation of legal certainty, so that laws and regulations that are carried out are properly implemented by the authorities and law enforcers. To prevent the Covid-19 outbreak, it is necessary to form a law as a social controller.[24] There have been many policies issued by the

---

[21] Artadi, I Ketut. "Akibat Hukum Terhadap Debitur Atas Terjadinya Force Majeure (Keadaan Memaksa)." *Kertha Semaya* 2, No. 6 (2014) : 1-5.

[22] Dewangker, Arie Exchell Prayogo. "Penggunaan Klausula Force Majeure Dalam Kondisi Pandemik." *Jurnal Online IPTS* 8, No. 3 (2020) : 309-313.

[23] Sutrawaty, Laras. "Force Majeure Sebagai Alasan Tidak Dilaksanakan Suatu Kontrak Ditinjau Dari Perspektif Hukum Perdata." *Legal Opinion* 4, No. 3 (2016) : 1-14.

[24] Syafrida, Ralang Hartati. "Bersama Melawan Virus Covid 19 di Indonesia." *Jurnal Sosial & Budaya Syar-I* 7, No. 6 (2020) : 495-508.

Indonesian government to deal with the spread of Covid-19, but we cannot deny that this virus spreads very quickly and very easily.

The impact of the Covid-19 pandemic affects various sectors, both the economic sectors, the legal sectors, and many other sectors. In the legal or business sectors, the impact of the Covid-19 pandemic is pronounced, one example is for the parties who have previously been involved in business agreements, or other agreements, where the parties or one of the parties cannot fulfil their obligations due to Covid-19 pandemic. This makes it very difficult for the parties involved so that can cause the parties who cannot fulfil their obligations to be subject to a penalty.

Based on the considerations of the WHO statement which declared Covid-19 a global pandemic and the effects of the Covid-19 virus, the President of Indonesia issued Presidential Decree No. 12 of 2020 concerning Determination of Nonnatural Disaster for the Spread of Corona Virus Disease 2019 as a National Disaster. Presidential Decree No. 12 of 2020 regulates that non-natural disaster caused by the spread of Covid-19 virus are declared as national disasters, national disaster management due to Covid-19 is carried out by Task Force for Acceleration of Handling Corona Virus Disease (Covid-19) is in accordance with the Presidential Decree No. 7 of 2020 concerning Task Force for Acceleration of Handling of Corona Virus Disease 2019 (Covid-19) as amended by Presidential Decree No. 9 of 2020 concerning Amendment to Presidential Decree No. 7 of 2020 about Task Forces Acceleration of Handling Corona Virus Disease 2019 through anti synergy of ministries/agencies and regional governments, as well as Governors, regents and mayors are given the mandate as Chair of Clusters in regions and in determining policies in their regions, it is obligatory to pay attention to policies of Central Government.[25]

Related to the parties that do not fulfill their obligations in the agreement due to several reasons, one of which is due to force majeure as described above. In determining a force majeure situation, there must be a good faith of the parties and there must be no element of intent. Due to the case of the Covid-19 pandemic, the Indonesian government has issued regulations that make the Covid-19 pandemic as a force majeure in a special category. If viewed from the point of the case position, it is known that relative force majeure which has an element of difficulty and absolute force majeure which has an element of impossibility. From this corona case, the parties can still do work but it is difficult, for fear of contracting the virus. So the size is not impossible, but difficulties.[26] To determine a cause that was not previously regulated in force majeure provisions in the agreement, it is the judge's consideration. Apart from statutory regulations, judges' considerations are very influential regarding whether a situation that is not regulated by the force majeure provisions in the agreement can be used as a reason to force majeure or not. For example, Court Decision which has permanent legal force No. 587PK/Pdt/2010, which is the plaintiff and the defendant have a legal relationship in the form of purchasing coal. The Panel of Cassation Judges canceled the decision of Jakarta District Court and Jakarta High Court and stated that the defendant had defaulted. The Panel of Cassation Judges stated that the continuous rain was not a force ajeure, even though the defendant did not fulfill the obligation to

[25] Presidential Decree of the Republic of Indonesia No. 12 of 2020 concerning the Determination of Non-Natrual Disaster for the Srpead of Corona Virus Disease 2019 as a National Disaster.

[26] Kunarso, A Djoko. "Eksistensi Perjanjian Ditengah Pandemi Covid-19." *Batulis Civil Law Review* 1, Vol.1 (2020) : 33-46.

ship coal because the rain caused flooding and the about bridge to the shipping area was damaged. The reason was also made the defendant filed a legal remedy for judicial review. Regarding the force majeure argument due to flooding, the Panel of Cassation Judges argued: "the reason there is a flood which is categorized as force majeure cannot be justified because the judex juris has considered a flood, not as a force majeure; The differences in perceptions about the flood, including force majeure or not, is not a reason for a request for consideration." The Panel of Cassation Judges stated that the reasons presented by the judicial review applicant (defendant) were groundless because the defendant admitted to delaying in sending coal, only sending one time in the Philippines, and not sending it to Thailand at all. According to the acknowledgement of the witnesses also stated that rain always fell in March, April, and May every year, so the Panel of Cassation Judges stated that predictable rainfall could not be considered as a force majeure.

Another example is Decision No. 2914K/Pdt/2001, a paper procurement company filed a lawsuit against a state-owned bank and an insurance company. The paper company claims that the insurance company should have paid for insurance for goods burned as a result of the social unrest on 14 May 1998. The company, which operates in paper management also has a credit agreement with a bank. On 14 May 1998, items were pledged as collateral for credit burned down due to riots. The insurer refused to pay the insurance claim because the fire was not covered by the cover. Finally, the paper management company took the insurance company and bank to the court. The palintiffs' lawsut was rejected at the first level and upheld at the appeal level. The bank also filed an appeal for fear that the reason for the riot force majeure was used as an excuse for not paying credit. The bank warned that fire in the stock of merchandise as a result of the riots was only a relative or non-absolute force. Moreover, this incident does not include reasons as mentioned in Article 1381 of the Civil Code. The bank's cassation memory was finally received. The Panel of Cassation Judges stated that the paper management company had defaulted. In connection with coercive circumstances, the Panel of Cassation Judges considers: "the cassation respondent/the plaintiff did not pay off his debt (credit) because of the forced situation *(overmacht)* cannot be justified. The burning of Plaintiff's merchandise stock was not related to the credit agreement and therefore did not eliminate or reduce the Plaintiff's obligations as stipulated in the credit agreement. The recipient of credit is still lined to credit agreement, even though the collateral is burned because according to the law, the Plaintiff's entire assets are collateral for debt."

Based on the explanation above, the Covid-19 pandemic cannot automatically be used as an excuse for force majeure in the agreement, it is because Covid-19 is not explained or included in the agreement, which is the law that applies to the parties making it. Force majeure can bring the parties into two states of impossibility that are absolute impossibility and relative impossibility, as described above. Mahfud MD stated that force majeure could not automatically be used as a reason for contract cancellation, but it could indeed be used as an entry point for negotiations to cancel or change the contents of the contract.[27] Furthermore, Mahfud MD also emphasized that the Covid-19 pandemic had actually become a non-natural disaster in Indonesian and

[27] Mochamad Januar Rizki. (2020). Penjelasan Prof Mahfud Soal Forcem Majeure Akibat Pandemi Corona. https://www.hukumonline.com/berita/baca/lt5ea11ca6a5956/penjelasan-prof-mahfud-soal-i- forcemajeure-i-akibat-pandemi-corona/ .(Accessed on 07 January 2021).

issuance of Presidential Decree No. 12 of 2020, which intends not to make Covid-19 the reason to immediately cancel the contract. However, renegotiation on the grounds of force majeure can based on the Article 1244, Article 1245, and especially Article 1338 of the Civil Code.[28] However the judge's consideration is also a determined by the state of force majeure, which aims so that there is no loss on one party with an advantage on the other, but on the principle of justice and good faith.

4. Conclusion

Based on the explanation above. The spread of the Covid-19 pandemic, which is a non-natural disaster as a national disaster is not automatic and can automatically be said to be force majeure, but the contents of the agreement must be seen first. But if the government declared that the spread or pandemic of Covid-19 which was a non-natural disaster was a national disaster as stated in the Presidential Decree No. 12 of 2020 concerning the Determination of Nonnatural Disease for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster, it could potentially be used as a reason for force majeure. This is because there are regulations that were issued after the issuance of the Presidential Decree which restricts, even prohibits certain activities, which have the potential to prevent one of the parties or the parties to the agreement from fulfilling their obligations. However, the government cannot determine a situation as force majeure, the authority rests with the judge through his consideration after assessing the contents of the agreement and the conditions that occurred at that time which are based on existing laws and/or norms. One of the parties that do not fulfill his obligations and can prove that there is a force majeure situation, can ask for a postponement of performance implementation until such force majeure is over, or can also ask not to be required to pay compensation and interest based on the agreement by sticking to the Article 1244, Article 1245, and Article 1338 of the Civil Code, which aims to ensure that there is no loss on one party with an advantage on the other but on the principles of justice and good faith.

Reference

Book

Ali, Zainuddin. 2010. *Metode Penelitian Hukum* . Jakarta: Sinar Grafika.

Ibrahim , Johannes, and Lindawati Sewu. 2007. *Hukum Bisnis Dalam Persepsi Manusia Modern,* Cetakan 2. Bandung: Refika Aditama.

Khairandy, Ridwan. 2004. *Itikad Baik Dalam Kebebasan Berkontrak.* Jakarta: UI Press.

MS., Salim. 2008. *Hukum Kontrak, Teori & Teknik Penyusunan Kontrak.* Jakarta: Sinar Grafika.

P.M., Marzuki. 2005. *Penelitian Hukum (Edisi Revisi).* Jakarta: Kencana Prenada Media Grup.

Prodjodikoro, Wirjono. 1979. *Azas-Azas Hukum Perdata, Cetakan 7.* Bandung: Sumur Bandung.

R., Soeroso. 2011. *Pengantar Ilmu Hukum.* Jakarta: PT. Rajagrafindo Persadaa

Subekti, R. 2001. *Hukum Perjanjian.* Jakarta: PT. Intermasa.

[28] Cahaya, Suhandi. "Pandangan Hakim Terhadap Keadaan Memaksa." *Jurnal Hukum & Pembangunan* 42, Vol. 4 (2012) : 519-549.

Journal

Artadi, I Ketut. 2014. "Akibat Hukum Terhadap Debitur Atas Terjadinya Force Majeure (Keadaan Memaksa)." *Kertha Semaya* 2(6): 1-5.

Cahaya, Suhandi. 2012. "Pandangan Hakim Terhadap Keadaan Memaksa." *Jurnal Hukum & Pembangunan* 42(4): 519-549.

Dewangker, Arie Exchell Prayogo. "Penggunaan Klausula Force Majeure Dalam Kondisi Pandemik." *Jurnal Online IPTS* 8, No. 3 (2020) : 309-313.

Isradjuningtias, Agri Chairunisa. 2015. "Force Majeure (Overmacht) Dalam Hukum Kontrak (Perjanjian) Indonesia." *Veritas Et Justitia* 1(2): 136-158.

Kunarso, A Djoko. 2020. "Eksistensi Perjanjian Ditengah Pandemi Covid-19." *Batulis Civil Law Review* 1(1): 33-46.

Muljono, Bambang Eko, Dhevi Nayasari. 2020. "Keabsahan Force Majeure dalam Perjanjian Di Masa Era Pandemi Covid-19." *Jurnal Humaniora* 4(2): 256-263.

Rasuh, Daryl John. 2016. "Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 dan Pasal 1245 Kitab Undang-Undang Hukum Perdata." *Lex Privatum* 4(2): 173-180.

Sinaga, Niru Anita. 2018. "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian." *Binamulia Hukum* 7(2): 107-120.

Sonata, Depri Liber. 2014. "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum." *Fiat Justisia Jurnal Ilmu Hukum* 8(1): 15-35.

Sunarjo. 2014. "Perlindungan Hukum Pemegang kartu Kredit Sebagai Nasabah Bank Berdasarkan perjanjian Merchant." *Cakrawala Hukum* 5(2): 180-196.

Sutrawaty, Laras. "Force Majeure Sebagai Alasan Tidak Dilaksanakan Suatu Kontrak Ditinjau Dari Perspektif Hukum Perdata." *Legal Opinion* 4, No. 3 (2016) : 1-14.

Syafrida, Ralang Hartati. 2020. "Bersama Melawan Virus Covid 19 di Indonesia." *Jurnal Sosial & Budaya Syar-I* 7(6): 495-508.

Website

Mochamad Januar Rizki. 2020. "Penjelasan Prof Mahfud Soal Forcem Majeure Akibat Pandemi Corona", https://www.hukumonline.com/berita/baca/lt5ea11ca6a5956/penjelasan-prof-mahfud-soal-i-forcemajeure-i-akibat-pandemi-corona/.

Worldmeter Corona Virus, https://www.worldometers.info/coronavirus/.

Laws and Regulations

Kitab Undang-Undang Hukum Perdata.

Peraturan Presiden No.4 tahun 2015 tentang Pengadaan Barang/Jasa Pemerintah.

Keputusan Presiden Nomor 12 Tahun 2020 tentang Penetapan Bencana Non-Alam Penyebaran Corona Virus Dease 2019 sebagai Bencana Nasonal.

Keputusan Presiden Nomor 9 Tahun 2020 tentang Perubahan atas Keputusan Presiden Nomor 7 Tahun 2020 tentang Gugus Tugas Percepatan Penanganan *Corona Virus Dsease* 2019.