

99+

Mail

Chat

Spaces

Meet

Tulis

Kotak Masuk

1.527

Berbintang

Ditunda

Terkirim

Draf

2

Selengkapnya

Label

+

International Conference on L

X

Aktif

UNG

7 dari 9

3rd INCLAR submission 5654

Eksternal

Kotak Masuk x

3rd INCLAR <3rdinclar@easychair.org>

Rab, 30 Mar 17.24

kepada saya

Inggris

Indonesia

Terjemahkan pesan

Nonaktifkan untuk: Ir

Dear authors,

We received your submission to 3rd INCLAR (3rd INTERNATIONAL CONFERENCE ON LAW REFORM):

Authors : Dolot Alhasni Bakung and Mohamad Hidayat Muhtar

Title : THE URGENCY OF PROCURING A LEGAL ENTITY TO ISSUE FORCE MAJEURE CERTIFICATES / PROTECTION FOR CREDITORS DURING THE COVID-19 PANDEMIC

Number : 5654

The submission was uploaded by Dolot Alhasni Bakung <dolot.bakung@ung.ac.id>. You can access it via the 3rd INCLAR EasyChair Web page

<https://easychair.org/conferences/?conf=3rdinclar>

Thank you for submitting to 3rd INCLAR.

Best regards,

EasyChair for 3rd INCLAR.

99+

Mail

Chat

Spaces

Meet

Tulis

Kotak Masuk

1.527

Berbintang

Ditunda

Terkirim

Draf

2

Selengkapnya

Label

+

Gmail

International Conference on L

X

Aktif

6 dari 9

WAG Peserta INCLAR 3, 2022

Eksternal

Kotak Masuk x

International Conference on Law Reform . <inclar@umm.ac.id>

Rab, 11 Mei 12.45

kepada Absori, Indra, Ahmad, Nadia, Fenty, Mohamad, Amanda, Agus, Rocky, Ariyoza, Bianca, Ning, Nuvazria, Renti, Ar

Assalamu'alaikum Wr Wb

Untuk mempermudah akses informasi untuk peserta International Confrence on Law Reform 3 (INCLAR 3), k&e

mempersilakan Bapak/Ibu peserta INCLAR 3 untuk bergabung pada WA Grup berikut

[LINK WAG INCLAR 3](#)

Atas kesediaannya, kami ucapkan terimakasih.

Tertanda

Panitia

Balas

Balas ke semua

Teruskan

 OPEN ACCESS

Research Article

The Urgency of Establishing a Legal Entity Issuing Force Majeure Certificates Against Creditor Protection During the Covid-19 Pandemic

¹Dolot Alhasni Bakung, Mohamad Hidayat Muhtar, Zamroni Abdussamad, ²Rahmat Teguh Santoso Gobel

¹Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: dolot.bakung@ung.ac.id

²Faculty of Law, Institut Agama Islam Negeri (IAIN) Sultan Amai Gorontalo, Indonesia.

ORCID ID

0000-0002-7137-8030

Abstract. The Covid-19 that has occurred in recent years has had a massive impact not only on public health but also on the economic sector. Covid-19 has caused the Indonesian economy to experience a slump in the second quarter of 2020, until the real GDP contracted and its value became IDR 2,590 trillion, which previously was IDR 2,735 trillion in the second quarter of 2019. In response to this situation, the government issued Presidential Decree Number 12 of 2020 dated April 13, 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster which became a reference for Covid-19 as an emergency. The problem above is that this economic impact affects creditors in paying their obligations to debtors. The problem is that the emergency status of Covid-19 does not necessarily cause force majeure which has an impact on losses for creditors, therefore it is necessary to form a state agency that specifically issues force majeure certificates like in China so that it can be used as a reference that the debtor is proven to have experienced force majeure. This certificate serves the purpose of proof which will ultimately be considered among all relevant factors by the court because in Indonesia the only way to interpret force majeure in court is based solely on the opinion of the judge and the creditor's position does not have strong evidence to prove in a state of force majeure. The formulation of the problem in this study is: how is the concept of force majeure in Indonesia towards creditor protection and how is the formulation of the formation of a legal entity issuing force majeure certificates in Indonesia.

Keywords: Force Majeure Certificates, Creditor protection, Covid-19

1. INTRODUCTION

Corporate activities both nationally and globally have had a huge impact as a result of the spread of Corona Virus Disease 2019 (Covid-19), the very fast transmission rate and high risk of death made the government take appropriate policies to prevent additional transmission of Corona Virus Disease. 2019(Covid-19). The impact caused by the spread of Corona Virus Disease 2019 (Covid-19) cannot be denied has been in a very alarming condition. The fact that shows that the extent of the coverage area affected by the disaster, as well as having implications for broad socio-economic aspects in Indonesia, along with the increasing number of victims and property losses, is evidence that the impact caused by the spread of Corona Virus Disease 2019 (Covid-19) it can no longer be underestimated. With the Covid-19 pandemic, the government took the policy of having PSBB so that it had an impact on debtors who experienced economic difficulties resulting in the cancellation of the agreement. In the business environment, failure to fulfill an agreement or default is often justified by law if the person who does not fulfill the performance can prove that there are unavoidable obstacles [1].

This term is known as force majeure or synonymous with overmacht, and is defined as a state of force or force majeure. Force majeure is a condition that releases debtors who do not or cannot fulfill their obligations, from the responsibility to provide compensation, fees and interest, and/or the responsibility to fulfill these obligations. This teaching is based on the possibility that in the implementation of the agreement unexpected events arise and are beyond the debtor's fault, and then these events prevent the debtor from fulfilling the agreed performance [2]. Force majeure is also known in the Civil Code, which is contained in Articles 1244 and 1245 of the Civil Code. The provisions of the two articles state that, in the event of force majeure, the debtor's non-performance does not cause legal consequences in the form of reimbursement of costs, losses and interest to creditors.

Along with the demands for increasingly urgent developments in situations and conditions, and the handling of the spread of Corona Virus Disease 2019 (Covid-19) which cannot be handled under 'normal' conditions, President Joko Widodo on April 13, 2020 issued Presidential Decree No. 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters. Therefore, the issuance of Presidential Decree Number 12 of 2020

dated April 13, 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster.

The issuance of this regulation has actually caused a polemic in the community, whether the Covid-19 pandemic can be said to be a force majeure or the Covid-19 pandemic can be qualified as an important force majeure for a study. This is because the qualification of a pandemic as force majeure will have implications for contractual obligations in civil law. If we observe Article 1338 of the Civil Code, every agreement must be subject to the principle of good faith (*bona fide* / good faith) in its implementation, because it is binding like a law. Exceptions to this provision are found in the provisions governing force majeure, namely in Article 1244 and Article 1245 of the Civil Code.

The problem of force majeure itself in the covid-19 pandemic is an important note that must be resolved. This is because the negative impact of the COVID-19 pandemic is felt by almost all sectors, especially the business sector due to the PSBB policy. Therefore, many financial plans cannot be implemented, one of which is the problem of credit payments. In Indonesia, regarding force majeure, Article 1244 of the Criminal Code states that:

“If there is a reason for that, the debtor must be punished for compensating costs, losses and interest if he cannot prove that it was not or not at the right time to carry out the engagement, due to an unforeseen event, nor can he be held accountable for all of that. Even if bad faith is not on his side”.

Furthermore, Article 1245 of the Criminal Code states that:

“There is no cost of loss and interest to be reimbursed, if due to compelling circumstances or due to an accidental event the debtor is unable to provide or do something that is required, or because of the same things he has committed a prohibited act”.

Unlike the case from Article 1244, Article 1245 talks about losses that arise because there is an obstacle for the debtor to give or do something that is required due to forced circumstances or due to an unintentional event. According to J. Satrio, the formulations of these two articles talk about the obstacles that arise after the engagement is born. In other words, obstacles to the performance of the engagement obligations. There are four things mentioned in Article 1244-1245 of the Civil Code, which causes the debtor to be unable to carry out his obligations, namely unexpected things, cannot be blamed on him, unintentional, and there is no bad faith in him [\[3\]](#)

In comparison, Article 590 of the Chinese Civil Code states in the same way that "in the event that a party is unable to perform a contract due to force majeure, that

party is exempted from liability partially or wholly based on the impact of force majeure, unless otherwise provided for by law". In such a case, the party must immediately notify the other party in order to reduce the harm that may be inflicted on the other party and provide evidence within a reasonable time limit. If force majeure occurs after one of the parties delays performance, that party will not be relieved of responsibility for the violation" [4].

To provide legal certainty, the Chinese government offers force majeure protection certificates issued by the China Council for the Promotion of International ("CCPIT") to companies based in the People's Republic of China who are currently seeking to maintain the unavoidable suspension of performance under contractual obligations imposed on them. exists, as a result of the pandemic outbreak. While the issuance of such certificates may be a cause of alarm for counterparties who are about to/sign a contract with a China based company, they are not strictly an official and definitive decision which may not discharge all contractual obligations of the Company. This certificate serves the purpose of proof which will ultimately be considered among all relevant factors by the court, differing from case to case [5].

When compared to Indonesia, force majeure does not have the administrative basis needed by business actors as proof that they are experiencing force majeure. In Indonesia, the only way to prove force majeure is through the courts. The problem is that the court does not have enough time to prove the situation of force majeure because the evidence provided requires a more comprehensive audit. Meanwhile, in China, the force majeure protection certificate is given after a thorough audit has been carried out and this force majeure certificate can be used as additional evidence in claiming force majeure in court.

Based on this, it is important to form an independent organization/body that is responsible for issuing force majeure certificates to be used as comprehensive evidence in court later. Therefore, the problem to be discussed is how the concept of force majeure in Indonesia is for creditor protection and how is the formulation of the formation of a legal entity issuing force majeure certificates in Indonesia.

2. METHODOLOGY/ MATERIALS

This research is categorized into normative legal research type, it is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational, critical analytical and philosophical views, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined [6]. And will be analyzed using descriptive analytical method, namely by describing the applicable laws and regulations related to legal theory and legal protection practices related to the problem [7].

3. RESULTS AND DISCUSSIONS

A. CONCEPT OF FORCE MAJEURE IN INDONESIA

Force majeure is one of the clauses that are usually in an agreement, it is said to be one of the clauses because the position of force majeure in an agreement is in the main agreement, not separated as an additional agreement and associated with the main agreement as an *accessoir* agreement. Force majeure or what is often translated as "force majeure" is a condition where a debtor is prevented from carrying out his achievements due to unexpected circumstances or events at the time the contract was made, the circumstances or events cannot be accounted for to the debtor, while the debtor is not in a state of bad intention. There are various kinds of coercive circumstances, namely: absolute coercion (absolute *onmogelijkheid*) and relative coercion (relative *onmogelijkheid*) [8].

Absolute coercion is a situation where the debtor is completely unable to fulfill his debt to the creditor, due to earthquakes, flash floods, and vulcanic lava. While the relative coercion is a condition that causes the debtor to be able to carry out his achievements. In the implementation of this achievement, it must be done by giving large, disproportionate sacrifices or using mental strength that is beyond human capacity or the danger of enormous loss is possible [9].

If it is observed that the regulations regarding force majeure in Indonesia are contained in the Civil Code there is no article that regulates force majeure in general for a bilateral contract, so there is no general juridical standard that can be used in interpreting what is meant by force majeure. Therefore, to interpret what is meant by force majeure in the Civil Code, what can be done is to draw general conclusions from special arrangements, namely special arrangements regarding force majeure contained in the section on compensation arrangements, or risk arrangements due to force majeure. for unilateral contracts or in part of special contracts (contracts named) [10].

Provisions in the Civil Code regarding the general provisions of force majeure are contained in Articles 1244 and 1245 of the Civil Code. Basically, this provision only regulates force majeure issues in relation to the replacement of costs and losses and interest only [11]. The formulation of the cause of force majeure in the Civil Code can be detailed as follows: [12].

1. The event that causes the force majeure must be "unexpected" by the parties, or not included in the basic assumptions at the time the parties make the contract (Article 1244 of the Civil Code);
2. The incident cannot be accounted for to the party who must carry out the presentation (the debtor) (Article 1244 of the Civil Code);
3. The event that causes the force majeure is beyond the fault of the debtor (Article 1244 of the Civil Code);
4. The event that caused the force majeure was not an intentional event by the Debtor. This is an inaccurate formulation, because the action should be "beyond the fault of the parties (Article 1545 of the Civil Code), not accidentally". This is because the mistakes of the parties, either intentionally or unintentionally, are in the form of "negligence".
5. The parties are not in bad faith (Article 1244 of the Civil Code);
6. If a force majeure occurs, the contract will be void, and as far as possible the parties are returned as if the agreement had never been made (Article 1545 of the Civil Code);
7. In the event of force majeure, the parties may not claim compensation. Vide Article 1244 in conjunction with Article 1245, in conjunction with Article 1553 paragraph (2) of the Civil Code. However, because the contract in question is void due to force majeure, in order to maintain the fulfillment of the elements of justice, the granting of restitution or quantum merit is certainly still possible;
8. The risk as a result of force majeure, shifts from the creditor to the debtor from the moment the goods should be delivered (vide Article 1545 of the Civil Code). Article 1460 of the Civil Code regulates this incorrectly (outside the system).

After analyzing the provisions and position of force majeure in Indonesia, in fact there is no clear and comprehensive regulation regarding force majeure, therefore in the follow-up arrangements an update is needed that accommodates an independent agency or institution that issues a force majeure certificate.

B. ESTABLISHMENT OF LEGAL ENTITY ISSUING FORCE MAJURE CERTIFICATES IN INDONESIA

One of the well-known legal adages is *lex proscipit non respicit* which is the main premise that current law is understood and confirmed as the latest law in accordance with the times, either from judicial decisions, statements in general law or from procedures recognized in the law. the level of state institutions that regulate the laws that

must regulate current activities. The adage can be interpreted as "the law must look forward not backward" [13].

Departing from this adage, it is important for Indonesia to update national legal policies related to force majeure arrangements, especially in an emergency situation, emergency measures are needed to maintain the national economy, in addition to health defense. One of the issues that was built on the background was the establishment of an independent agency or institution tasked with providing force majeure protection certificates to legal subjects as a manifestation of the protection provided by the state during the Covid-19 pandemic.

China itself has passed the Council for the Promotion of International Trade issued 4,811 force majeure certificates with the contracts worth 373.7 billion Chinese yuan (\$53.79 billion) [14]. Seeing the value of the contract that was successfully issued with a force majeure certificate, it was quite large which had an impact on a stable economic cycle because entrepreneurs were not burdened with obligations as creditors and had more ability to survive the Covid-19 pandemic. Therefore, the independent agency or institution that will be formed in Indonesia is described as follows:

1. Independent

The establishment of an institution that issues force majeure certificates must have an independent nature to reduce the level of collusion in the issuance of force majeure certificates. In addition, an independent agency or institution will gain more trust from the community which aims to build public trust. This is also useful so that the task of this agency or institution is progressive and effective because it gets privileges, especially during the COVID-19 pandemic.

2. Having a Legal Basis in the Form of Legislation

Having a legal basis at the level of a law makes this institution more legitimacy and legal certainty because to dissolve it must go through the discussion of the House of Representatives. This is certainly different if this institution or agency is only formed through a Presidential Regulation and Government Regulation which can be revoked at any time.

3. Issuance of a Force Majeure Certificate is not Absolute

The point is that the issuance of a certificate of force majeure protection does not necessarily eliminate the contractual obligations that are owned because the issuance of this force majeure certificate is only used as one of the strong evidences in court for proof..

4. Issuance of Force Majeure Certificate Has Criteria

It is necessary to stipulate that the issuance of this force majeure is only for companies and or corporations as well as other types of business. This is intended so that there is no accumulation of requests that will interfere with the performance of the agency or institution that will issue the force majeure certificate.

5. Establishing branch in every region

This is important to do in order to be more effective in reaching the certificate issuance that requires. Therefore, it can be divided that the central agency or institution only issues force majeure certificates for large companies or corporations and for businesses in the small category they can administer them in their respective regions.

4. CONCLUSION AND RECOMMENDATION

The concept of force majeure in Indonesia has a legal basis in the Civil Code, especially articles 1244 and 1245 which regulate creditor and debtor agreements in an emergency. However, this regulation does not yet have legal certainty because in an emergency, the agreement on the abolition and suspension of obligations must go through the agreement of both parties or a court decision. Therefore, the establishment of an agency or institution that has the legitimacy to issue a force majeure certificate is intended to provide legal certainty that the legal subject is really in a state of force majeure which will later be used as evidence at the court level.

References (please use IEEE Styles)

1. Dolot Al Hasni Bakung, Mohamad Hidayat Muhtar, dan Nabih Amer, "Comparative Analysis of Legal Policies Regarding Force Major During Covid-19 Pandemic in Indonesia and China", *Batulis Civil Law Review*, Vol 3, No 1, 2022, p. 8
2. Sulistya Widiastiani Nindry, "Pandemi Covid-19: Force Majeure Dan Hardship Pada Perjanjian Kerja", *Jurnal Hukum & Pembangunan Tahun ke-51 No.3 Juli-September 2021*, hlm. 700
3. Rizki Bagus Prasetio, *Pandemi Covid-19 Sebagai Justifikasi Force Majeure dalam Kontrak Bisnis. Notarius*, Volume 14 Nomor 2, 2021, p. 328
4. Herbots, J.H, "Covid-19 and contracts in China and Europe" *China-EU Law J* (2021). <https://doi.org/10.1007/s12689-021-00091-5>
5. Verónica Orantes, "If the Government Says So, It Must Be Right: An Analysis on the Impact of Government Issued Force Majeure Certificates", *University of Miami Inter-American Law Review*, Vol. 53 > No. 2, 2022, p. 230
6. Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Bandung: ALFABETA, 2017, p. 45
7. Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, p. 22
8. Harry Kendy, *Force Majeure in Troubled Times: The Example of Libya*, Jones Day Publication, Houston, 2011, p. 1
9. Riduan Syahrani, *Seluk Beluk dan Asas-asas Hukum Perdata*, Bandung: Alumni, 2006, p. 243
10. M. Yahya Harahap, *Segi-Segi Hukum Perjanjian*, Alumni, Bandung, 1982, p. 84
11. M. Muhtarom, *Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak*, *Jurnal Suhuf*, Vol. 26, No. 1, Mei 2014, p. 50.
12. Nafila Rahmawati, *Tinjauan Yuridis Pengelolaan Risiko dan Penyelesaian Sengketa Wanprestasi dalam Pembiayaan Murabahah antara Bank Syariah X dan PT. Z pada Badan Arbitrase Syariah Nasional dan Pengadilan Agama (Analisis Putusan Pengadilan Agama Nomor 729/Pdt.G/2009/PA.JP)*, *Skripsi pada Fakultas Hukum Universitas Indonesia*, 2012, p. 53-54
13. Mohamad Hidayat Muhtar, Zainal Abdul Aziz Hadju, Zamroni Abdussamad, Rahmat Teguh Santoso Gobel, "Perluasan Kewenangan Komisi Penyiaran Indonesia terhadap Pengawasan Media Digital", *Jurnal Konstitusi*, Volume 19, Nomor 1, Maret 2022, p. 141
14. Huileng Tan, "China invokes 'force majeure' to protect businesses — but the companies may be in for a 'rude awakening'", Maret 6 2020, Dikutip dalam <https://www.cnn.com/2020/03/06/coronavirus-impact-china-invokes-force-majeure-to-protect-businesses.html#:~:text=World%20Economy-,China%20invokes%20'force%20majeure'%20to%20protect%20businesses%20%E2%80%94but%20the,in%20for%20a%20'rude%20awakening'&text=According%20to%20the%20China%20Council,epidemic%2C%20state%20media%20Xinhua%20reported>

99+

Mail

Chat

Spaces

Meet

Tulis

Kotak Masuk1.529

Berbintang

Ditunda

Terkirim

Draf2

Selengkapnya

Label+

The Urgency of Establishing a

X

Aktif

UNG

←


2 dari 2

←

3rd INCLAR - Plagiarism Review and Results

Eksternal

Kotak Masuk x



International Conference on Law Reform . <inclar@umm.ac.id>

13 Jul 2022 10.33

☆

kepada saya, Mohamad, Zamroni, rtsg

Inggris

>

Indonesia

Terjemahkan pesan

Nonaktifkan untuk: Ir

Dear Author(s)
Please find the review result of your paper and please also note all comments on the review form as attached below.

Revised paper version should be submitted no more than 17 July 2022. **After the due date, the paper will not be processed next step of publication.**

Please send the revised paper to: <https://bit.ly/revisionpaperINCLAR>

Best regards,
International Conference on Law Reform

Committee:
Faculty of Law, Universitas Muhammadiyah Malang, Gedung Kuliah Bersama IV, 7th floor,
Malang, East Java, Indonesia
Website: <https://inclar.umm.ac.id/>.
Email: inclar@umm.ac.id

2 Lampiran • Dipindai dengan Gmail

INCLAR 2022

Ind Social Sciences

The 7th International Conference on Law Reform (INCLAR)

Volume 2022

Knowledge E

U.S. & Canada Headquarters

REVIEWED_3rd_I...

HASIL PAPER 5654 ORI

PDF 40%_PAPER 5654...

12086-Article Text-59375-1-10- 20221004

by 1 1

Submission date: 04-Oct-2022 08:50AM (UTC-0400)

Submission ID: 1886833517

File name: 12086-Article_Text-59375-1-10-20221004.pdf (282.61K)

Word count: 3348

Character count: 17995



Conference Paper

The Urgency of Establishing a Legal Entity Issuing Force Majeure Certificates Against Creditor Protection During the Covid-19 Pandemic

Dolot Ahsani Bakung^{1*}, Muhammad Hidayat Muhtar¹, Zamroni Abdussamad¹, Rahmat Teguh Santoso Gobel²

¹Faculty of Law, Universitas Negeri Gorontalo, Indonesia

²Faculty of Law, Institut Agama Islam Negeri (IAIN) Sultan Amai Gorontalo, Indonesia

ORCID

Dolot Ahsani Bakung: <https://orcid.org/0000-0002-7137-8030>

Muhammad Hidayat Muhtar: <https://orcid.org/0000-0002-1728-683X>

Zamroni Abdussamad: <https://orcid.org/0000-0002-1774-8707>

Rahmat Teguh Santoso Gobel: <https://orcid.org/0000-0002-5779-1726>

Abstract.

The Covid-19 that occurred in recent years has had an impact on public health as well as the economic sector. It has caused the Indonesian economy to experience a slump in the second quarter of 2020 until the real GDP contracted and its value became IDR 2,590 trillion, which previously was IDR 2,735 trillion in the second quarter of 2019. Accordingly, the government announced Presidential Decree No. 12 of April 13, 2020, on the determination of non-natural disasters due to the spread of COVID-19 in 2019, a national disaster, making use of it. The issue is that the economic impact affects creditors in paying their obligations to debtors. The problem is that the emergency status of Covid-19 does not necessarily cause force majeure that has an impact on losses for creditors. Therefore, it is necessary to form a state agency that specifically issues force majeure certificates like in China so that it can be used as a reference that the debtor is proven to have experienced force majeure. This certificate serves the purpose of proof which will ultimately be considered among all relevant factors by the court. Because in Indonesia, the only way to interpret force majeure in court is based solely on the opinion of the judge, and the creditor's position does not have strong evidence to prove in a state of force majeure. The formulation of the problem in this study is: what about the concept of force majeure for loan protection in Indonesia? How to Establish a Legal Entity Providing Force Majeure in Indonesia Design Certificate?

Keywords: force majeure certificates, creditor protection, Covid-19

1. INTRODUCTION

The spread of the coronavirus A Disease 2019 (Covid-19) has had a significant impact on the national and international market. Due to the rapid spread of the disease and the high number of deaths, the government has taken reasonable precautions. In addition to the coronavirus infection, 2019 (COVID-19). The prevalence of the 2019 coronavirus

OPEN ACCESS

How to cite this article: Dolot Ahsani Bakung*, Muhammad Hidayat Muhtar, Zamroni Abdussamad, Rahmat Teguh Santoso Gobel, (2022).

"The Urgency of Establishing a Legal Entity Issuing Force Majeure Certificates Against Creditor Protection During the Covid-19 Pandemic" In 3rd International Conference on Law Reform (3rd INCLAR), KnE Social Sciences, pages 148–156. DOI 10.18502/kss.v7i15.12086

(Covid-19) outbreak is severely underdiagnosed and concerning. In the aftermath of the disaster, it affected businesses across the community in Indonesia, with multiple casualties and property damage testifying to the impact of the pandemic coronavirus the virus 2019 (Covid-19) should not be expected. The deal was terminated due to financial difficulties due to PSBB's policy during the transmission of COVID-19. In the business world, crimes or violations are often justified by law, so the offender can reveal consequences that cannot be avoided [1].

This term is known as a synonym for force majeure or force majeure and is defined as a condition of force majeure. Impossible is a condition that relieves a debtor who is unable or unable to fulfill his indemnity, compensation, interest and / or obligation obligations to fulfill those obligations. This theory is based on the possibility that unforeseen events will occur during the execution of the contract, the debtor is not responsible for them and the debtor will not be able to provide the agreed service [2]. The irresistible force also known in the Civil Code is found in Articles 1244 and 1245 of the Civil Code. The provisions of the two articles state that, when unavoidable, the debtor's default will not be legitimate in the form of the loan amount, loss and return of flowers.

In addition to the increasingly urgent developments of the situation and the demand for ways to deal with the 2019 coronavirus disease (Covid-19) epidemic that cannot be addressed in "normal" situations, President Joko Widodo said in April. On February 13, 2020, Presidential Policy No 12/2020 has been declared and non-destructive damage to the global virus Coronavirus-19 (COVID-19) has been selected as a national disaster. Consequently, Presidential Policy No 12/2020, issued on April 13, 2020, selects unnatural disasters due to the transmission of the coronavirus (COVID-19) as national disasters.

The enactment of this ordinance has actually sparked controversy in the community as to whether the Covid-19 pandemic can be explained as an unavoidable force, or whether the Covid-19 pandemic is recognized as an important unavoidable force in research. Classification of a pandemic as force majeure has a civil law impact on contractual obligations. When complying with Article 1338 of the Civil Code, any agreement is as binding as the law and must follow the principle of integrity in its implementation. Exceptions to this provision are found in the provisions on unavoidable forces, especially in Articles 1244 and 245 of the Civil Code.

The issue of force majeure in the covid-19 epidemic is critical and must be addressed. Because of the PSBB strategy, the detrimental impact of the COVID-19 epidemic is felt by practically all sectors, particularly the business sector. As a result, many financial

arrangements, including the issue of credit payments, cannot be accomplished. In Indonesia, Article 1244 of the Criminal Code specifies that "force majeure":

"In such a case, the creditor may be liable for costs, losses and interest if, due to unforeseen circumstances, it cannot be proved that it is not the time to prepare the credit. take responsibility however. Evil is also not on your side".

Furthermore, Article 1245 of the Criminal Code states that:

"Losses and interest will not be reimbursed if, due to unforeseen circumstances or events, the creditor is unable to provide or observe due process, or if the person's debt has become a restriction on the same reason".

Unlike the situation in section 1244, section 1245 filed for loss since the debtor was unable to provide or complete what he owed due to unforeseen or unforeseen circumstances. According to J. Satrio, the models of these two papers evoke the problems that arise at the beginning of a society. In other words, it forbids us to keep our promises. Articles 1244-1245 of the Constitution indicate four causes for which a debtor cannot fulfill his obligations: unforeseeable circumstances, inability to fulfill his obligations, work, accidents and mistrust [3].

On the other hand, Article 590 of the Chinese Civil Code states that "If the parties fail to reach an agreement due to force majeure, the parties are exempt from liability in whole or in part for the benefit of force majeure, except contrary provision. Prohibited by law. "In such cases, the parties must promptly notify the other party and disclose evidence in a timely manner to minimize harm to others. If a force majeure event occurs after one of the parties has performed the delay, the party will not be released from liability for non-performance" [4].

To provide legal certainty, the Chinese government offers force majeure protection certificates issued by the China Council for the Promotion of International ("CCPIT") to companies based in the People's Republic of China who are currently seeking to maintain the unavoidable suspension of performance under contractual obligations imposed on them. exists, as a result of the pandemic outbreak. While the issuance of such certificates may be a cause of alarm for counterparties who are about to sign a contract with a China based company, they are not strictly an official and definitive decision which may not discharge all contractual obligations of the Company. This certificate serves the purpose of proof which will ultimately be considered among all relevant factors by the court, differing from case to case [5].

When compared to Indonesia, force majeure does not have the administrative basis needed by business actors as proof that they are experiencing force majeure. In Indonesia, the only way to prove force majeure is through the courts. The problem is

that the court does not have enough time to prove the situation of **force majeure** because the evidence provided requires a more comprehensive audit. Meanwhile, in China, the force majeure protection certificate is given after a thorough audit has been carried out and this force majeure certificate can be used as additional evidence in claiming force majeure in court. Missing

Based on this, it is important to form an independent organization/body that is responsible for issuing force majeure certificates to be used as **comprehensive** evidence in court later. Therefore, the problem to be discussed is how the concept of force majeure in Indonesia is for creditor protection and how is the formulation of the formation of a legal entity issuing force majeure certificates in Indonesia. Sp. (ETS)

2. METHODOLOGY/ MATERIALS

This study is classified as law-based research due to its research-based interest and / or importance. Applied science is philosophical, but instead focuses on analysis, theory, analysis and **theory** of thought, concluding with the conclusion that new discoveries have been developed in response to important problems that have been identified [6]. And will be evaluated utilizing a descriptive analytical technique, namely by detailing the relevant laws and regulations connected to legal reasoning and **protections practices** [7]. Article Error (ETS) Proofrea

3. RESULTS AND DISCUSSIONS

3.1. **CONCEPT** OF FORCE MAJURE IN INDONESIA

Article Error (ETS)

The source of force majeure in the contract is in the main contract and applies to the main contract as a sub-contract and not as a separate contract. Force majeure, also called "force majeure", is an event or event unforeseen at the time of the contract which protects the debtor from the performance of his obligations [8]. The debtor and the creditor are unable to identify the circumstances or the circumstances. , even if the debt is not bad [9].

Absolute coercion is a situation where the debtor is completely unable to fulfill his debt to the creditor, due to earthquakes, flash floods, and **vulcanic** lava. While the relative coercion is a condition that causes the debtor to be able to carry out his achievements. In the implementation of this achievement, it must be done by giving large, disproportionate sacrifices or using mental strength that is beyond human Sp. (ETS)

capacity or the danger of enormous loss is possible [10]. Since the rules governing force majeure in Indonesia are enshrined in the Civil Code, there is generally no force majeure governing the mutual agreement and therefore no general law is applied to define the meaning of force majeure. To define the meaning of force majeure in civil law, general insights can be drawn from special plans, in particular special plans relating to force majeure or the risk of force majeure included in the payment conditions. Party to a unilateral agreement or special contract (name agreement) [11].

Articles 1244 and 1245 of the Civil Code include provisions relating the general provisions of force majeure. Essentially, this article primarily governs force majeure matters pertaining to the replacement of expenses, damages, and interest [12]. The following is a full formulation of the reason of force majeure in the Civil Code [13]:

1. The outcome of a Force Majeure Event must not be "unbelievable" to either party or exclude material considerations during the term of the Contract. (Article 1244 of the Civil Code).
2. Its occurrence cannot be attributed to the person in charge of the presentation (creditor). (Article 1244 of the Civil Code);
3. The occurrence of a case of force majeure does not engage the liability of the debtor. (Civil Code, Article 1244);
4. The occurrence that created the force majeure was not the Debtor's fault. This is an incorrect wording since the action should be "beyond the parties' fault" (article 1545 of the Civil Code), and not "by accident". This is due to the negligence of both parties, whether intentional or negligent, using the role of "irresponsibility";
5. The participants are not acting dishonestly (Article 1244 of the Civil Code);
1. In case of force majeure, the contract is void and the parties will be treated as if they had not signed the contract (Article 1545 of the Civil Code);
2. The parties may not claim restitution in the case of force majeure. See, for example, Civil Code Articles 1244 and 1245, as well as Civil Code Article 1553 paragraph (2). However, because the contract in question is void owing to force majeure, the granting of compensation or quantum merit is undoubtedly still conceivable in order to ensure the fulfillment of the components of justice.;

After analyzing the provisions and position of force majeure in Indonesia, in fact there is no clear and comprehensive regulation regarding force majeure, therefore in

the follow-up arrangements an update is needed that accommodates an independent agency or institution that issues a force majeure certificate.

3.2. ESTABLISHMENT OF LEGAL ENTITY ISSUING FORCE MAJURE CERTIFICATES IN INDONESIA

One of the well-known legal adages is *lex proscipit non respicit* which is the main premise that current law is understood and confirmed as the latest law in accordance with the times, either from judicial decisions, statements in general law or from procedures recognized in the law. the level of state institutions that regulate the laws that must regulate current activities. The adage can be interpreted as "the law must look forward not backward" [14].

Departing from this adage, it is important for Indonesia to update national legal policies related to force majeure arrangements, especially in an emergency situation, emergency measures are needed to maintain the national economy, in addition to health defense. One of the problems created in the background is created by an independent organization or an organization that works by issuing a certificate of prevention of force majeure to the police as a sign of protection by the state while Covid-19 was ubiquitous.

China has passed the Council for the Promotion of International Trade's resolution. 4,811 certifications of force majeure with contracts totaling 373.7 billion Chinese yuan (\$53.79 billion) [15] Seeing the value of the contract that was successfully issued with a force majeure certificate, it was quite large which had an impact on a stable economic cycle because entrepreneurs were not burdened with obligations as creditors and had more ability to survive the Covid-19 pandemic. Therefore, the independent agency or institution that will be formed in Indonesia is described as follows:

1. Independent

The establishment of an institution that issues force majeure certificates must have an independent nature to reduce the level of collusion in the issuance of force majeure certificates. In addition, an independent agency or institution will gain more trust from the community which aims to build public trust. This is also useful so that the task of this agency or institution is progressive and effective because it gets privileges, especially during the COVID-19 pandemic.

2. Having a Legal Basis in the Form of Legislation

Having a legal basis at the level of a law makes this institution more legitimacy and legal certainty because to dissolve it must go through the discussion of the House of

Representatives. This is certainly different if this institution or agency is only formed through a Presidential Regulation and Government Regulation which can be revoked at any time.

3. Issuance of a Force Majeure Certificate is not Absolute

The point is that the issuance of a certificate of force majeure protection does not necessarily eliminate the contractual obligations that are owned because the issuance of this force majeure certificate is only used as one of the strong evidences in court for proof..

4. Issuance of Force Majeure Certificate Has Criteria

It is necessary to stipulate that the issuance of this force majeure is only for companies and or corporations as well as other types of business. This is intended so that there is no accumulation of requests that will interfere with the performance of the agency or institution that will issue the force majeure certificate.

5. Establishing branch in every region

This is important to do in order to be more effective in reaching the certificate issuance that requires. Therefore, it can be divided that the central agency or institution only issues force majeure certificates for large companies or corporations and for businesses in the small category they can administer them in their respective regions.

4. CONCLUSION AND RECOMMENDATION

The concept of force majeure in Indonesia has a legal basis in the Civil Code, especially articles 1244 and 1245 which regulate creditor and debtor agreements in an emergency. However, this regulation does not yet have legal certainty because in an emergency, the agreement on the abolition and suspension of obligations must go through the agreement of both parties or a court decision. Therefore, the establishment of an agency or institution that has the legitimacy to issue a force majeure certificate is intended to provide legal certainty that the legal subject is really in a state of force majeure which will later be used as evidence at the court

References

- [1] Bakung DA, Muhtar MH, Amer N. Comparative Analysis of Legal Policies Regarding Force Major During Covid-19 Pandemic in Indonesia and China. *Batulis Civ. Law Rev.* 2022 May;3(1):8.
- [2] Widiastiani NS. "PANDEMI COVID-19: FORCE MAJEURE DAN HARDSHIP PADA PERJANJIAN KERJA", <https://doi.org/10.21143/jhp.vol51.no3.3130..>
- [3] Putri Andrianti MH, Santoso B. Pandemi Covid-19 Sebagai Justifikasi Force Majeure dalam Kontrak Bisnis. *Notarius.* 2021;14(2):739–56.
- [4] Herbots JH. Covid-19 and contracts in China and Europe. *China-EU Law J.* 2021;(Nov): <https://doi.org/10.1007/s12689-021-00091-5>.
- [5] Orantes V. "If the Government Says So, It Must Be Right : An Analysis on the Impact of Government Issued Force Majeure Certificates If the Government Says So, It Must Be Right: An Analysis on the Impact of Government Issued Force Majeure Certificates." vol. 53, no. 2, 2022.
- [6] Ishaq, Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, Serta Disertasi. Alfabeta Bandungt, 2017.
- [7] Marzuki PM. Penelitian Hukum. Jakarta: Kencana Prenada Media Group; 2011.
- [8] Hartini R. Hukum Kepailitan. 3rd ed. Malang: UMM Press; 2012.
- [9] Kendy H. "Force Majeure in Troubled Times: The Example of Libya," Jones Day, 2011. https://www.jonesday.com/en/insights/2011/03/iforce-majeurei-in-troubled-times-the-example-of-libya#_ftn1
- [10] Syahrani R. Seluk Beluk dan Asas-asas Hukum Perdata. Bandung: Alumni; 2006.
- [11] Harahap MY. Segi-Segi Hukum Perjanjian. Bandung: Alumni; 1982.
- [12] Rahmawati N. "Tinjauan Yuridis Pengelolaan Risiko dan Penyelesaian Sengketa Wanprestasi dalam Pembiayaan Murabahah antara Bank Syariah X dan PT. Z pada Badan Arbitrase Syariah Nasional dan Pengadilan Agama (Analisis Putusan Pengadilan Agama Nomor 729/Pdt.G/2009/PA.JP)," Universitas Indonesia, 2012.
- [13] Muhtar MH, Hadju ZA, Abdussamad Z, Gobel GR. Perluasan Kewenangan Komisaris Penyiaran Indonesia terhadap Pengawasan Digital. *J. Konstitusi.* 2022;19(1):126–48.
- [14] Tan H. "China invokes 'force majeure' to protect businesses — but the companies may be in for a 'rude awakening,'" cnbc, 2020. <https://www.cnbc.com/2020/03/06/coronavirus-impact-china-invokes-force-majeure-to-protect-businesses.html#:~:text=World Economy-%0A,China invokes%0A the,in for a 'rude>

awakening'&text=According to the China Council%0A, epidemic%2C state media
Xinhua reported%0A

ORIGINALITY REPORT

15%

SIMILARITY INDEX

11%

INTERNET SOURCES

9%

PUBLICATIONS

6%

STUDENT PAPERS

PRIMARY SOURCES

1	lifescienceglobal.com Internet Source	2%
2	Dolot Al Hasni Bakung, Mohamad Hidayat Muhtar, Nabih Amer. "Comparative Analysis of Legal Policies Regarding Force Major During Covid-19 Pandemic in Indonesia and China", Batulis Civil Law Review, 2022 Publication	2%
3	media.neliti.com Internet Source	2%
4	Submitted to SIM Global Education Student Paper	1%
5	Submitted to Universitas Bung Hatta Student Paper	1%
6	ejurnal.unisri.ac.id Internet Source	1%
7	link.springer.com Internet Source	1%

8	Submitted to Nanyang Technological University Student Paper	1 %
9	www.cnbc.com Internet Source	1 %
10	austlii.community Internet Source	1 %
11	www.atlantis-press.com Internet Source	1 %
12	opac.elte.hu Internet Source	<1 %
13	Submitted to National University of Singapore Student Paper	<1 %
14	www.jonesday.com Internet Source	<1 %
15	Dhiniaty Gularso, Putri Pratiwi, Juang Kurniawan Syahrurah. "The Development of Ular Tangga Nusantara (Larganusa) as Social Studies Learning Media for Elementary Schools During the COVID-19 Pandemic", KnE Social Sciences, 2022 Publication	<1 %
16	knepublishing.com Internet Source	<1 %
17	www.neliti.com Internet Source	

<1 %

18

repository.law.miami.edu
Internet Source

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On



Article Error You may need to use an article before this word. Consider using the article **the**.



Article Error You may need to remove this article.



Missing "," You may need to place a comma after this word.



Missing "," You may need to place a comma after this word.



Frag. This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence to be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.



Frag. This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence to be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.



Frag. This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence to be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.



Article Error You may need to remove this article.



Article Error You may need to use an article before this word. Consider using the article **the**.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Article Error You may need to use an article before this word.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Prep. You may be using the wrong preposition.



P/V You have used the passive voice in this sentence. Depending upon what you wish to emphasize in the sentence, you may want to revise it using the active voice.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.

PAGE 3



Sentence Cap. Remember to capitalize the first word of each sentence.



Article Error You may need to use an article before this word.



Article Error You may need to remove this article.



Wrong Article You may have used the wrong article or pronoun. Proofread the sentence to make sure that the article or pronoun agrees with the word it describes.



Wrong Article You may have used the wrong article or pronoun. Proofread the sentence to make sure that the article or pronoun agrees with the word it describes.



Confused You have used **except** in this sentence. You may need to use **accept** instead.



S/V This subject and verb may not agree. Proofread the sentence to make sure the subject agrees with the verb.



Sentence Cap. Remember to capitalize the first word of each sentence.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Prep. You may be using the wrong preposition.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.

PAGE 4



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Missing ", " You may need to place a comma after this word.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Article Error You may need to use an article before this word.



Proofread This part of the sentence contains a grammatical error or misspelled word that makes your meaning unclear.



Article Error You may need to use an article before this word. Consider using the article **the**.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.

PAGE 5



Article Error You may need to use an article before this word. Consider using the article **the**.



Article Error You may need to remove this article.



Article Error You may need to use an article before this word.



Missing ", " You may need to place a comma after this word.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.

PAGE 6



Article Error You may need to use an article before this word. Consider using the article **the**.



P/V You have used the passive voice in this sentence. Depending upon what you wish to emphasize in the sentence, you may want to revise it using the active voice.



Missing ", " You may need to place a comma after this word.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.



Missing "," You may need to place a comma after this word.



Sp. This word is misspelled. Use a dictionary or spellchecker when you proofread your work.