

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

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

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## 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

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(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.

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 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].

## 17 3. RESULTS AND DISCUSSIONS

### 3.1. CONCEPT OF FORCE MAJURE IN INDONESIA

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 volcanic 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 [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



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