



## Force Majeure During the Covid-19 Pandemic (A Study of Causality in the Perspective of Engagement Law)

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### Abstract

Corona Virus Disease 2019 (COVID-19) has been declared by President Joko Widodo to be a National Disaster with Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, where this is the reason for delays or cancellations. In a contract related to force majeure. This study aims to analyze whether the Covid-19 pandemic cannot be said to be a force majeure that can cancel an engagement. This research contains a diagnostic form with a sociolegal or socio-legal research approach. The result of the discussion is that the Covid-19 pandemic, which has been designated as a national disaster by the Government, does not necessarily become the basis for changing or even canceling an engagement because the event is casuistic, which requires a comprehensive study and approach as well as evidence regarding the impact of the Covid-19 pandemic. This results in the parties being hindered in carrying out or fulfilling their achievements. Then, the Covid-19 pandemic, which is said to be force majeure, can only be used as the basis for a relative force majeure reason because the situation or event is only temporary, meaning that the Covid-19 pandemic as force majeure can only delay the implementation of achievements without canceling the engagement.

**Keywords:** Force Majeure; Covid-19 Pandemic; Causality; Law of Obligations.

### A. Introduction

A health disaster is currently hitting Indonesia in the form of the *Covid-19 pandemic*, which has almost hit all countries worldwide. In Indonesia alone, the first case of *Covid-19* was detected in early March 2020. Based on data from the Covid-19 task force, on October 23, 2021, 4,239,396 people were confirmed positive for Covid-19, 4,081,417 people recovered, and 4,081,417 people recovered. Died as many as 143,176 people. The <sup>1</sup>*Covid-19* pandemic does not only have an impact on the health sector, but the *Covid-19 pandemic* also has impacts such as a decrease in the flow of tourism, disruption of air travel, and weakening of consumer and business confidence because almost all countries enforce lockdown policies (regional isolation), restrictions social distancing, community quarantine, temporary business closures,

<sup>1</sup> COVID-19 Handling Task Force, "Covid-19 Vaccination Data (Update as of October 23, 2021)," <https://Covid19.Go.Id/p/Berita/Data-Vaksinasi-Covid-19-Update-23-Oktober-2021> (Jakarta, October 23, 2021). Retrieved October 24, 2021.

and travel restrictions or restrictions that have the potential to bring on or spread the virus.

The disruption in various activities due to the Covid-19 pandemic has also impacted economic activities.<sup>2</sup> Likewise, during a pandemic like this in the business world, it disrupts the continuity of contracts or engagement relationships in an agreement. Even though *Burgerlijk Wetboek* (BW) of the Civil Code does not provide understanding *force majeure* specifically, the author defines *force majeure* as a condition that occurs after the agreement is made, which prevents the debtor from fulfilling its performance, where the debtor cannot be blamed and does not have to bear the risk and cannot predict when the agreement is made.

I am implementing a contract or agreement that results in the birth of a legal relationship (commitment). A contract is not always carried out following the original intent and purpose for which the agreement was formed. There may be default in an engagement, either by the creditor or the debtor.<sup>3</sup> In addition, it can also be due to coercion, error, fraudulent act, or due to coercive circumstances or *force majeure*, which can cancel an agreement. Failure to achieve the aims and objectives due to *force majeure* generally results in an event in which a person cannot perform his obligations due to events beyond his reach that prevent him from fulfilling his performance.<sup>4</sup>

*Force majeure* is one of the causes of default or breach of contract in an agreement within the jurisdiction of the engagement.<sup>5</sup> *Force majeure* or Force majeure can occur when a party breaks a contract where the party, namely the debtor, is unable to perform or fulfill its performance as a result of the occurrence of an event that was previously unexpected and the situation occurs without any element of error or bad faith from it. If *force majeure* occurs, no party can be blamed, the debtor or the creditor. This is because the occurrence of force majeure is beyond all parties' will and ability.<sup>6</sup>

Article 1245 of the Civil Code states, "There is no reimbursement of costs, losses, and interest if due to circumstances of coercion or coincidences, the debtor is prevented from giving or doing something required or doing something forbidden for him." Then based on Article 1244 and Article 1245 of the Civil Code, in principle, a situation will be considered *force majeure* if the situation is: (1) Unpredictable; (2) Beyond the will or control of the parties; (3) Has tried to fulfill achievements (in good faith); (4) Cannot be accounted for.<sup>7</sup>

<sup>2</sup> Kartika Septiani Amiri, "The Impact of Force Majeure on the Economy in Indonesia During the Covid-19 Pandemic," *Al-'Aqdu: Journal of Islamic Economics Law* 1, no. 1 (2021): p. 11-20.

<sup>3</sup> Annisa Dian Arini, "Corona Pandemic as the Reason for Force Majeure in a Business Contract," *Journal of the Supremacy of Law* 9, no. 1 (2020): p. 41-56.

<sup>4</sup> Riza Fibriani, "Legal Policy of Contract Cancellation in Force Majeure Circumstances of the Covid-19 Pandemic in Indonesia," *Humani (Law and Civil Society)* 10, no. 2 (2020): p. 202-215.

<sup>5</sup> Carissa Dianputri, "Contract Negotiations Due to Force Majeure Due to the Covid-19 Pandemic Judging from the Civil Code," *Adigama Law Journal* 3, no. 2 (2020): p. 1469-1488.

<sup>6</sup> Rini Apriyani Putu Angga Pratama Sukma Ketut Adi Wirawan Firman Firdausi and Vica Jillyan Edsti Saija, *Force Majeur in Law* (Yogyakarta: Zahir Publication, 2021). p. 13-14.

<sup>7</sup> Winna Wahyu Permatasari Fathiya Nabila, "Restructuring Agreements During Covid-19 as an Effort to Prevent Defaults," *Legislative Journal* 4, no. 2 (2021): p. 215-222.

According to Amran Suadi, *force majeure* could be due to something beyond the debtor's control, which could be used as an excuse to be released from the obligation to provide compensation. Likewise, according to Abdul Kadir Muhammad, *force majeure* is a condition where the debtor's achievements cannot be fulfilled because an unexpected event that the debtor cannot predict will occur at the engagement.<sup>8</sup> It can be concluded that *force majeure* is an unexpected situation that causes one party, namely the debtor, to be unable to carry out his obligations for achievement, and the other party, namely the creditor, does not get his rights to an achievement that was agreed upon in an engagement.<sup>9</sup>

In connection with *force majeure* with the Covid-19 pandemic wave that has hit most countries globally, especially Indonesia, and the issuance of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters was for the Spread of *Corona Virus Disease 2019 (Covid-19)*. As a national disaster, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the context of Accelerating the Handling of *Corona Virus Disease 2019 (Covid-19)*, Minister of Health Regulation No. 9 of 2020 concerning PSBB Guidelines in the context of Accelerating the Handling of Covid-19, Government Regulation instead of Law Number 1 of 2020 concerning State financial policies and financial stability for handling the 2019 *Coronavirus disease (Covid-19)* pandemic and in the context of dealing with threats which endangers the national economy and financial system stability which has been enacted as Law Number 2 of 2020. These government policies and laws have implications for community business activities where many contractual agreements cannot be implemented during this pandemic.<sup>10</sup> These government policies and laws are also the basis for the parties to emphasize that the Covid-19 pandemic is the entry point for a change in clause or cancellation of a clause in an agreement or contractual business engagement. The debtor can use the existence of this condition to deny a contract or agreement that has been agreed with the creditor because of *force majeure*.

A theoretical framework is needed as an analytical tool in this scientific article. The theoretical framework is a picture or plan that explains all the things used as research material based on the research results. The theoretical framework usually also contains the relationship between a variable and another variable, which usually has cause and effect from two or more variables—identifying theories that serve as the basis for thinking to conduct research. The theory used in this scientific article is the theory of causality and the theory of agreement as a framework of ideas to analyze and synthesize the problems of this article (to find answers).

As a *state of the art and novelty*, comparisons are needed from other journal manuscripts, from several searches obtained, namely those written by Andi Risma and Zainuddin entitled " The Interpretation of the Covid-19 Pandemic as Reasons for

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<sup>8</sup> Saija, *Force Majeur in Law* .

<sup>9</sup> Muhammad Fajar Hidayat and Desi Sommaliagustina, "Juridical Implications of Determining Covid-19 as a National Disaster in Contract Execution," *Straits Journal* 8, no. 1 (2020): p. 67-87.

<sup>10</sup> Nugraha R. Ma'ruf Hafidz Sri Lestari Poernomo, "Analysis of the 2019 Corona Virus Disease Pandemic as the Reason for Force Majeure According to Indonesian Civil Law," *Journal of Lex Generalis* 2, no. 3 (2021): p. 917-930.

*Force Majeure* Resulting in Cancellation of Agreements", <sup>11</sup>They are further written by Marsella " Perspective of Land Dispute Handling in the National Land Agency."<sup>12</sup> The difference with this journal manuscript is that this journal article examines more and wants to develop the idea of why the *Covid-19* pandemic cannot be said to be a *force majeure* that can cancel an engagement.

Based on the above background, the author limits this scientific article to the formulation of the problem, including: Can the *Covid-19 pandemic* not be considered a *force majeure* that can cancel the engagement ?. With that, it will be possible to find and develop the purpose of the problem, namely an explanation related to the *Covid-19 pandemic*, which cannot be said to be a *force majeure* capable of canceling the engagement.

## B. Research Methods

This research contains a diagnostic form, with <sup>13</sup>A sociolegal approach or *socio-legal research method* is a study of law using a legal and social science approach. In principle, sociolegal studies are legal studies that use a social science methodological approach in a broad sense.<sup>14</sup> This approach is used to understand the law in the context of society. Characteristics of socio-legal research methods can be identified through two things *first* socio-legal studies conduct textual studies, articles in legislation in positive legal systems and policies can be critically analyzed and explained their meaning and implications for legal subjects, *second* sociolegal studies Legal develops various 'new' methods resulting from the marriage between legal methods and social sciences, such as sociolegal qualitative research and sociolegal ethnography.<sup>15</sup>

## C. Result And Discussion

*The covid-19* pandemic has caused many problems, especially in the scope of agreements or engagements. At this time, the *Covid-19 pandemic* is often used as the basis for reasons by debtors not to fulfill their achievements in an agreement so that the *Covid-19 pandemic event* harms creditors where debtors take advantage of the situation to run away from their responsibilities in fulfilling their achievements to creditors. The primary reason for the *Covid-19 pandemic* as a *force majeure* that can change or even cancel the contents of an agreement or engagement is based on

<sup>11</sup> Andi Risma and Zainuddin, "Interpretation of the Covid-19 Pandemic as the Reason for Force Majeure Resulting in Cancellation of the Agreement," *Journal Insight Yuridika* 5, no. 1 (2021): p. 100-112.

<sup>12</sup> Rizkyana Diah Pitaloka, "Policy of Postponement of Fulfillment of Business Contracts During the Covid-19 Pandemic," *Proceeding National Conference For Law Studies: Legal Development Towards the Era of Digital Society* 2, no. 1 (2020): p. 435-447.

<sup>13</sup> Diagnostic research is a form of research designed by guiding a researcher towards action so that with this research method, the researcher will be directed to the causes of a symptom. By knowing these causes, a result will be obtained from the typical research problems.

<sup>14</sup> Sulistyowati Irianto, "Introducing Sociolegal Studies and the Implications of Its Methodology," in *Andrian W. Bedner, Sulistyowati Irianto, Jan Michiel Otto and Teresa Dyah Wirastri (Editor), Sociolegal Studies: Series of Elements of Building a State of Law* (Denpasar: Pustaka Larasan, 2012 ), p. 3-4.

<sup>15</sup> *Ibid.* P. 5-6.

Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of *Corona Virus Disease 2019 (Covid-19)* as a national disaster. The Presidential Decree is considered as a decision that confirms and opens the door to the occurrence of a *force majeure*. The *Covid-19* pandemic has had an extensive impact, affecting health, the economy, tourism, and even the legal aspect<sup>16</sup>

According to R. Setiawan that *force majeure* is a condition that occurs after the establishment of an agreement, where the situation prevents the debtor from fulfilling his performance so that the debtor cannot be blamed and is not subject to risk because the situation was unexpected at the time the agreement was made. Before the debtor neglects to carry out his achievements when the situation arises.<sup>17</sup> The notion of *force majeure* is in line with Abdulkadir Muhammad's opinion, which explains that *force majeure* is a condition where the debtor's performance cannot be fulfilled due to the occurrence of an event or event that is not due to his fault (the debtor), where the incident or event cannot be known or cannot be expected to occur. Occurred at the time of drafting an agreement.<sup>18</sup> Thus it can be simplified that *force majeure* is a condition in which the debtor cannot be blamed for the non-fulfillment of an achievement or the delay in implementing it. This is caused by events that arise beyond the debtor's ability, willingness, and suspicion so that the debtor cannot be blamed, sanctioned, or punished.

The definition explained by the experts is also contained in Article 1245 of the Civil Code concerning *force majeure*, which states, "there is no reimbursement of costs, losses, and interest. If due to coercive circumstances or coincidences, the debtor is prevented from giving or doing something obligatory or performing an act prohibited for him. Article 1245 of the Civil Code also explains that if there is a compelling condition or unforeseen event so that the debtor is hindered or unable to carry out or fulfill his achievements, in that case, the debtor cannot be held responsible.<sup>19</sup> The elements contained in the coercive state consist of: (1) non-fulfillment of achievements, caused by an event or incident that destroys the object that is the object of the engagement; (2) The non-fulfillment of its achievements is caused by an event or events that prevent the debtor's actions from fulfilling and carrying out his achievements; and (3) the incident was unexpected or known to occur at the time of forming an engagement, either by the debtor or the creditor.<sup>20</sup>

The theory of causality explains that the theory of *condition sine qua non* proposed by Von Buri is the only theory of causality that is very systematic and rational. Cause and effect are called the name *causality*, which comes from the word "causa," which means cause." In civil law, the teaching of causality is used to find a causal relationship between unlawful acts and the losses incurred to impose

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Cindy Sulistya Widiastiani, "Covid-19 Pandemic: Force Majeure And Hardship In Employment Agreements," *Journal of Law & Development* 51, no. 3 (2021): p. 698-719.

<sup>17</sup> R. Setiawan, *Principles of Engagement Law* (Bandung: Bina Cipta, 1987). p. 27.

<sup>18</sup> Abdulkadir Muhammad, *Law of Engagement* (Bandung: Citra Aditya Bhakti, 1990). p. 27-28.

<sup>19</sup> Joel Timothy Milendra, "Analysis of the Force Majeure Clause in the Contracting Agreement. Mega Karya Synergy with PT. Nasari Indonesia in a Covid-19 Pandemic Situation," *DiH: Journal of Legal Studies* 17, no. 1 (2021): p. 117-126.

<sup>20</sup> Muhammad, *The Law of Bonds. Loc.Cit.*



responsibility on the perpetrator.<sup>21</sup> From the formulations put forward by several experts, conclusions can be drawn regarding the teaching of the *condition sine qua non*, namely: :

- a) Every action or problem, which is a condition of an effect occurring, must be considered as the cause of the effect.
- b) The condition of the effect is that if the action or problem cannot be eliminated, there will be no effect.<sup>22</sup>

The big question is whether the *Covid-19 pandemic* can be a *force majeure* by the debtor to be free from responsibility for fulfilling achievements in an agreement or engagement. In this case, the theory of causality views that there is a causal relationship that can lead to legal consequences in the legal area of the engagement. According to Mahfud MD, Presidential Decree No. 12 of 2020 stipulates the National Disaster of Covid-19 Spread as *the* basis for not fulfilling achievements and canceling civil contracts, especially business contracts. In the engagement is a mistake. Mahfud MD explained that *Covid-19* could not directly be used as an excuse for *force majeure*. Reviewing that an engagement is a law for its makers must be implemented as described in Article 1338 of the Civil Code, but this *Covid-19 pandemic situation* can be used as an entry point in negotiating to cancel or change the clauses in a contract. According to its contents, the contract must continue to be carried out because Article 1338 of the Civil Code states that every agreement made legally applies as a law for those who make it.<sup>23</sup>

Based on this, the *Covid-19 pandemic*, designated as a national disaster by the Government, where the parties, especially debtors, consider the determination as to the basis for the occurrence of *force majeure*, which immediately cancels an agreement or engagement, then this is a mistake. In this case, the *Covid-19 pandemic* is only an entry point for the parties' deliberation to negotiate regarding cancellations or changing the clauses contained in an agreement or agreement. As a party that must fulfill and carries out his achievements to creditors, the debtor cannot arbitrarily cancel or postpone his obligations towards his achievements.

Article 1244 of the Civil Code explains that "debtors must be punished to compensate for costs, losses, and interest. If he cannot prove that the non-performance of the engagement or the inaccuracy of the time in carrying out the engagement was caused by something unexpected, which cannot be accounted for by him even though there is no bad faith towards him. In this case, the debtor must prove that the *Covid-19 pandemic* is a *force majeure* situation where the event's occurrence can prevent him from carrying out and fulfilling his achievements in an agreement or engagement. If the debtor cannot prove that the *Covid-19 pandemic* can prevent him from carrying out or fulfilling his achievements, the debtor must be

<sup>21</sup> MA Moegni Djojodirdjo, *Unlawful Acts* (Jakarta: Pradnya Paramita, 1982). p. 83-84.

<sup>22</sup> Ibid.

<sup>23</sup> Mochamad Januar Rizki, "Prof Mahfud's Explanation of Force Majeure Due to the Corona Pandemic," <https://www.hukumonline.com/berita/a/pencepatan-prof-mahfud-soal-i-force-majeure-i-akibat-pandemi-corona-lt5ea11ca6a5956> (Jakarta, April 23, 2020). Retrieved November 20, 2021.

punished to compensate for costs, losses, and interest as described in Article 1244 of the Civil War Code.<sup>24</sup>

Regarding the *Covid-19 pandemic*, whether this situation can affect debtors in carrying out or fulfilling their achievements is a casuistic one.<sup>25</sup> A more comprehensive approach or study is needed because not all debtors hindered by the *Covid-19 pandemic* cannot fulfill their achievements. For example, an example of an engagement in the field of debts and receivables of a sum of money, a debtor who performs the achievement of paying a certain amount of money will, of course, be hindered considering the *Covid-19 pandemic* disrupts the wheels of the economy. Meanwhile, another example is in the field of medical equipment masks, where business activities are increasing considering the *Covid-19 pandemic* is an event that focuses on attacking the health sector where the Government requires all people to wear masks when they are active so that agreements or agreements made in the field of medical equipment business masks. There is an increasing demand in society. Therefore, these cases become essential indicators in assessing whether the debtor has experienced *force majeure* or not.

The theory of agreement or *contract or agreement* states that one or two people promise each other to do or not do something, and each party has rights and obligations related to each other, with the fulfillment of competent, agreed, legal clauses, and certain things. The *force majeure* also consists of 2 properties, namely, absolute *force majeure* and relative *force majeure*. Where *force majeure* is absolute, the engagement becomes void because the obstacles do not allow the performance to be carried out and are permanent. As for the relative nature of *force majeure*, *it is only temporary and not permanent, so that force majeure does not cause the cancellation of an engagement but only postpones it first.*<sup>26</sup> In this regard, it can be concluded that the *Covid-19 pandemic* can be qualified as a relative *force majeure* in which the legal consequences of the *force majeure* situation cannot cancel an engagement but only delay its implementation considering that the *Covid-19 pandemic* is being worked on by the Government so that this situation occurs Did not last long.

The situation of a non-natural national disaster ( *Covid-19* ) does not automatically remove the debtor's responsibility in carrying out his achievements based on *force majeure*, which results in an exemption from fees, losses, and interest arising from the engagement so that the release of the debtor from fulfilling his achievements which has an impact on the cancellation engagement.<sup>27</sup> As explained in the explanation regarding the *Covid-19 pandemic* as *force majeure* above, the *Covid-19 pandemic situation* can be said to be a relative *force majeure* or coercive situation where the

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<sup>24</sup> Waras Putri Andrianti Budi Santoso and Mujiono Hafidh Prasetyo, "Covid-19 Pandemic as Justification for Force Majeure in Business Contracts," *Journal of Notarius* 14, no. 2 (2021): p. 739-756. Also, check Dona Budi Kharisma, "Covid-19 Pandemic Is Force Majeure?," *Journal of Rechts Vinding: Media for National Law Development* (2020): p. 1-4.

<sup>25</sup> Recording and researching causes (cases), see "Casuistics," <https://kbbi.kemdikbud.go.id/entri/kasuistik>. They were retrieved on December 15, 2021.

<sup>26</sup> Agri Chairunisa Isradjuningtias, "Force Majeure (Overmact) in Indonesian Contract Law," *Journal of Veritas et Justitia* 1, no. 1 (2015): p. 136-158.

<sup>27</sup> Putu Bagus Tutuan Aris Kaya and Ni Ketut Supasti Dharmawan, "A Force Majeure Study Regarding the Fulfillment of Commercial Agreement Achievements after the Designation of Covid-19 a National Disaster," *Journal of Kertha Semaya* 8, no. 6 (2020): p. 891-901.

situation is temporary and cannot cancel an engagement but only delays its implementation. The determination must be based on each case. The implication is that the debtor does not have to bear the risk in a forced situation, meaning that the debtor, whether based on the law, agreement, or according to the prevailing view in society, does not have to bear the risk.

#### D. Conclusion

A *covid-19* pandemic can affect debtors in carrying out or fulfilling their achievements; this is, of course, a casuistic nature that requires a more comprehensive approach or study. In other words, the *Covid-19 pandemic* cannot necessarily mean that all engagements affected by the *Covid-19 pandemic* are said to be *force majeure*. This is because the *Covid-19 pandemic* as the basis for the reason for the *force majeure* is casuistic, so different approaches and studies are needed. Causality of the *Covid-19 pandemic*, which has been designated as a national disaster by the Government, does not necessarily become the basis for changing or even canceling an engagement because the event is casuistic, which requires a comprehensive study and approach, as well as evidence regarding the impact of the *Covid-19 pandemic* which resulted in parties, are prevented from carrying out or fulfilling their achievements. Then, the *Covid-19 pandemic*, which is said to be *force majeure*, can only be used as the basis for a relative *force majeure reason* because the situation or event is only temporary, meaning that the *Covid-19 pandemic* as *force majeure* can only delay the implementation of achievements without canceling the engagement.

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