

## Legal Analysis of Default Indemnity Due to "Force Majeure" on Banking Credit Providers in the Covid-19 Pandemic



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**ABSTRACT:** This study examines default due to the covid-19 pandemic, which is a force major that can cancel a banking credit agreement and to analyze the conditions for a force major to cancel a banking credit agreement made by the parties. The study was conducted using the case approach used in this paper, aiming to examine and analyze the application of norms or rules carried out in legal practice, especially cases related to working capital credit agreements that experienced bad credit due to force majeure circumstances. The results show that the cancellation of the agreement on banking credit due to the Pandemic -19 is a relative "force majeure" which means that this relative "force majeure" the debtor is considered capable of returning to its original state or in other words the debtor is considered to still have the ability to fulfill the contents agreement when the Pandemic-19 situation has ended. As for the condition that a force majeure can cancel the banking credit agreement made by the Parties, that is, if the parties in the agreement clause specify using any event that is included as "force majeure" if the Pandemic-19 is stated in the agreement as "force majeure" then one of the parties can postpone or cancel the agreement.

**KEYWORD:** Default Compensation, Force Majeure, Banking Credit Provider, Covid-19.

### A. BACKGROUND

In Indonesia, banking financial institutions have a special mission and function, such as collecting public funds and channeling them back to the community, which also has a function that is directed as an agent of development, namely as an institution that aims to support the implementation of national development in order to improve equitable development. and yields, economic growth, and national stability towards improving people's living standards. Thus, credit agreements cannot be separated from banking activities, but the above Act does not explicitly regulate the formal form of credit agreements. The implementation of lending carried out by banks is generally carried out by entering into an agreement, the agreement is divided into two, namely, the main agreement in the form of accounts payable and additional agreements in the form of providing guarantees or collateral to the bank.

Making a written agreement or contract is needed to provide legal certainty for the parties. An agreement made between the creditor and the debtor. The agreement in question is a credit agreement (loan agreement) which is one of the agreements made between the bank and the customer or debtor. This credit agreement is likened to a debt agreement. According to Article 1 number 11 of Law No. 10 of 1998 on the amendment to Law No. 7 year 1992 concerning Banking which states that:

"Credit is the provision of money or an equivalent claim, based on an agreement or loan agreement between a bank and another party, requiring the borrower to pay off the debt after the stipulated period and the provision of interest"

Credit agreement according to civil law is a form of lending and borrowing agreement which is regulated in book III of the Civil Law Book, namely Article 1754 to Article 1769. Article 1754 of the Criminal Code which reads: "a loan-borrowing agreement is an agreement in which the first party submits something that can be replaced, while the second party is obliged to return the goods in the same quantity and quality".

The exoneration clause (standard agreement) used by the banking sector which is generally in the form of a credit agreement often causes negative impacts/excesses in the sense that parties who have a very strong bargaining position can impose their will on weak parties, the bank's position as creditors and customers as debtors are never balanced. The attitude of banks that use the form of exoneration agreements or standard agreements in the practice of credit agreements is basically not by policy, which means that it does not happen because it is the bank's policy that requires it.

The commercial bank or rural credit bank has never outlined a policy that customers or in this case as debtors are not allowed to negotiate to request changes to the credit agreement clauses that have been prepared by the bank, there is no absolute freedom of contract. However, what will be the focus of discussion in this study is related to the legal protection of debtors against credit agreements that experience bad credit due to force majeure circumstances during the covid-19 pandemic, that is indeed

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related to the form of credit or borrowing agreements regulated in the Civil Law Book. explicitly regulates the credit agreement. However, credit agreements made between creditors and debtors do not provide legal protection to customers or debtors. Then the consequences that will arise if the debtor experiences bad credit due to a forced situation.

Default due to the COVID-19 pandemic can be categorized as a force major so that it can cancel the banking credit agreement. Thus, in the process of granting credit by banks to their customers or debtors, it often happens that the debtor is harmed by the credit agreement that has bad credit due to force majeure. Because the bank in this case is the creditor, does not provide protection for its customers or debtors who experience bad credit due to a situation where there is no intentional element committed by the debtor or in this case is force majeure.

### B. Formulation of The Problem

The problems in this formulation are as follows:

1. Is Default Due to the Covid-19 Pandemic a Force Major that can Cancel a Banking Credit Agreement?
2. How are the Terms of a Force Major can cancel the Banking Credit Agreement made by the Parties?

### C. Tujuan Penelitian

In this legal research, there are several objectives that will be discussed in this research, including::

#### 1. General Purpose

1. To study and analyze whether a default due to the covid-19 pandemic is a force major that can cancel a banking credit agreement
2. To describe the conditions for a force major to cancel the banking credit agreement made by the parties

#### 2. Special Purpose

Adding to the repertoire of knowledge for the development of community dynamics in interpreting a banking agreement during this pandemic can be declared a force major and can cancel a banking credit agreement. Thus, it does not cause losses to the debtor.

### D. Novelty

The author has not found a previous study that is exactly the same as this study with the title of legal analysis of default compensation due to "force major" in banking credit agreements during the covid-19 pandemic. This study focuses on the role of banks in applying the principle of balance in a force majeure situation like this.

### E. Manfaat Penelitian

It is hoped that it can be used as input for the parties who enter into credit agreements as well as academics and related institutions, in this case the Bank regarding the compensation for default due to the covid-19 pandemic, which is a force major which can cancel the banking credit agreement.

## RESEARCH METHODS

### A. Types of Research

The type of research that will be used is normative legal research or what is known as library research. Where in doctrinal law research because this research is only aimed at written regulations so that this research is called library research because it will require secondary data in the library.<sup>1</sup>In a normative study, the written law is studied in a statutory approach which is used to support the writing that is carried out, namely as the initial basis for conducting an analysis. The positive law approach is a very basic preliminary activity. Therefore, before finding legal norms, it is necessary to know in advance what positive law applies.<sup>2</sup>

The statutory approach is used to support the writing that is carried out, namely as the initial basis for conducting analysis. Collecting positive law first is a very basic preliminary activity. Therefore, before finding legal norms, it must be known in advance, the applicable positive law.

### B. Data Source

This research uses literature study or known as legal materials, namely data obtained from the results of a literature review of various literatures or library materials related to the problem or research material. On that basis, the purpose and usefulness of library research is basically used to show the way to solve research problems.<sup>3</sup>

### C. Data Collection Technique

Teknik pengumpulan bahan hukum yang digunakan oleh peneliti ialah sebagai berikut:

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<sup>1</sup>Soerjono Soekanto, 2014, *Pengantar Penelitian Hukum*, Jakarta, Univ Indonesia, Hlm. 6-7

<sup>2</sup>Agus Yudha Hernoko, 2010, *Hukum Perjanjian; Asas Proposionitas Dalam Kontrak Komersial* Jakarta:Kencana, Hlm. 38-39

<sup>3</sup> Bambang Sunggono, 2016, *Metodologi Penelitian Hukum*, Jakarta, PT RajaGrafindo Persada, hlm. 112

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- a. Literature Study, which is a method of collecting legal materials by conducting a search on library materials, namely collecting and reviewing laws and regulations, legal books, opinions of legal scholars. As well as the results of previous research related to the research problem under study, namely in the form of journals, articles, the legal basis of the engagement originating from an agreement where the act is contrary to the law and other materials that support this research.
- b. b. Documentary Study, which is a method of collecting materials by examining government and non-government documents that support the above title relating to the legal protection of debtors against credit agreements due to force majeure.

### D. Teknik Analisis Data

The analysis of legal materials in this study will use deductive logic analysis methods with qualitative normative analysis methods. The method of deductive logic analysis is to draw conclusions from a general problem to the concrete problem under study. While the qualitative normative analysis method, namely the discussion and explanation that is arranged logically on the results of research on norms, rules, and legal theoretical foundations that are relevant to the subject matter.

## RESEARCH RESULTS AND DISCUSSION

### A. Legal Implications Regarding Default Due to the Covid-19 Pandemic as Force Majeure in Cancellation of Banking Credit Agreements

As a type of disease that causes a public health emergency, the Indonesian government has taken steps to establish the Covid-19 pandemic as a national disaster. After the WHO (World Health Organization) declared that Covid-19 was a global pandemic in March 2020. Then in April 2020, the government issued Presidential Decree No. 12 year 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as National Disaster. The impact of the COVID-19 pandemic is even felt by business actors in the supply-demand cycle, including service providers and service providers as well as creditors and debtors in credit agreements. Therefore, the submission of a force majeure claim should be carried out in the spirit of jointly fulfilling the obligations of each party in the best possible way.

Failure to fulfill contractual obligations or default does not apply if the party who is unable to fulfill the performance can prove that there is an unavoidable obstacle, such as a natural disaster. Non-natural disasters caused by Covid-19 have had an impact on increasing the number of victims, property losses, expanding the coverage area affected by the disaster, as well as having implications for broad social and economic aspects in Indonesia. Thus, the presence of Presidential Decree No. 12 year 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster has led to public speculation, especially business people, that the existence of these rules can be used as a legal basis for force majeure. Many business actors in the business world interpret the disaster as a force majeure, which is an extraordinary event that causes people to be unable to carry out their achievements due to an event beyond their capabilities.

Recognizing the increasingly widespread Covid-19 that has spread throughout the world including Indonesia and has an impact on all areas of human life, including the economic field. Therefore, the Financial Services Authority issued Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Corona Virus Disease 2019 (hereinafter referred to as POJK No. 11/2020). However, it should also be underlined that the policy for restructuring/loaning/financing is left entirely to the policies taken by the Bank. In this case, the Bank that will handle it through a policy that contains criteria for debtors and sectors affected by Covid-19 will then be entitled to the restructuring policy or credit relief.

The credit agreement begins with making an agreement between the credit recipient (debtor) and the creditor which is stated in the form of an agreement. The agreement can be in the form of an oral agreement or in the form of a written agreement. Debt agreements in written agreements are made with credit agreements. The debt agreement between the debtor and creditor is stated in the credit agreement. The credit agreement contains the rights and obligations of the debtor and creditor. The credit agreement is expected to make the parties bound in the agreement fulfill all their obligations properly.<sup>4</sup>

Credit is the ability to make purchases or make loans with the promise that payments will be deferred at an agreed period of time<sup>5</sup>, In addition, credit is the provision of money or equivalent claims based on a loan agreement between a bank/financing institution and the borrower and then repays the debt after a certain period of time with interest. Credit, among others, facilitates business capital through bank credit, to develop its business so that it can be competitive, considering that the most dominant obstacle is capital.<sup>6</sup>

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<sup>4</sup>Muhammad Fahmi Rizal, 2020, Jurnal: Penundaan Kewajiban Pembayaran Utang Dalam Perjanjian Kredit Perbankan Karena Adanya Pandemi Covid-19, Fakultas Hukum Program Studi Ilmu Hukum Universitas Muhammadiyah Jember (diakses pada tanggal 1 Juli 2021).

<sup>5</sup>Sutarno, 2004. *Aspek-Aspek Hukum Perbankan Pada Bank*, Bandung: Alfabeta, hlm. 2.

<sup>6</sup>Limpele dan Mariana Mogot. 2017. *Perjanjian Kredit Dengan Jaminan Hak Milik Atas Tanah dan Bangunan Pada Bank Tabungan Negara Cabang Manado Menurut UU Nomor 4 Tahun 1996 tentang Hak Tanggungan*, Lex Crime, 6 (2), 44-49. hlm. 44.

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The essential element of credit is the trust of the bank/financing institution as a creditor to the borrower as a debtor. This trust arises because all terms and conditions are met to obtain credit from a bank/financing institution (creditor) by the debtor. The meaning of this trust is that there is a belief from the bank/financing institution as a creditor that the credit given will actually be received back within a certain period of time according to the agreement.<sup>16</sup> Meanwhile, from an economic perspective, credit means that an activity that provides the same economic value will be returned to the creditor after a certain period of time, according to the agreed agreement, as an advantage for the creditor because it has provided the economic value, the creditor receives payment with interest by the debtor.<sup>7</sup>

An agreement sometimes has problems, where one of the parties does not fulfill its obligations according to what has been agreed since the agreement was made, which is called default. Default can occur either intentionally or unintentionally, because the party is not able to fulfill these achievements or also because they are forced to perform these achievements. Here the default can be in the form of: not doing anything at all, the achievements made are not perfect, being late in making achievements, and doing what is in the agreement is forbidden to do. Meanwhile, credit facilities provided by banking institutions and financing institutions as creditors to borrowers as debtors are carried out in the form of credit agreements. The agreement in a state of the Covid-19 outbreak greatly affects the implementation of the agreement stipulated and agreed upon by the parties. Because the agreement binds the parties, so the parties are subject to the contents of the agreement.

The legal consequences of default are parties who cannot carry out the agreement because default can be demanded to fulfill the agreement, must be responsible for compensation for losses, objects that have been the object of the agreement since the agreement is not fulfilled are their responsibility and can also be sued for cancellation of the agreement. Almost in all agreements the phrase "Overmacht" is found. This phrase includes the "naturalia element" of a contract, so that this phrase whether mentioned or not is already considered to be in a contract or agreement. Articles 1244 and 1245 of the Civil Law Book have stipulated overmacht as a legal reason that frees the debtor from the obligation to fulfill (nakoming) and compensation (schadevergoeding) even though the debtor has committed an unlawful act or onrechtmatig.

Article 1244 of the Civil Law Book reads; "If there is a reason for that, the debtor must be punished to compensate for costs, losses and interest, if he does not prove that the thing was not carried out or not at the right time for the implementation of the agreement, due to something unexpected, nor can he be held accountable. all of that even if bad faith is not on his side. Furthermore, Article 1245 of the Civil Law Book reads:

"It is not necessary to pay fees, losses and interest if, due to overmacht or unintentional circumstances, the debtor is unable to give or do something that is required, or because of the same things he has committed a prohibited act."

When examined further, the regulation regarding force majeure emphasizes the procedures for reimbursement of costs, compensation, and interest. However, this provision can still be used as a reference as a force majeure arrangement. In an agreement, the force majeure clause or also known as overmacht can provide protection to debtors if they experience losses caused by natural disasters (floods, earthquakes, rainstorms, hurricanes), power outages, sabotage, war, military coups, epidemics, terrorism, blockades, embargoes, and so on.

The position of force majeure is in the legal part of the contract. Contract law is a part of civil law which focuses on self-imposed obligations. **M. Muharom** revealed that contract law is part of civil law because violations of the obligations specified in the contract are purely the business of the contracting parties.<sup>8</sup>

In the opinion of **V. Brakel**, the existence of force majeure results in the obligation for the performance of the debtor to be nullified and a further consequence is that the debtor does not need to compensate the creditor's losses due to coercive circumstances. Force majeure can be interpreted as a situation where a debtor is prevented from carrying out his performance due to unexpected events or circumstances when a contract is made, where the event or condition is the fulfillment of the obligations of the debtor to the creditor, while the debtor at that time is not in a state of emergency. bad faith. Therefore, it can be seen that the elements of a state of coercion or force majeure are the presence of something unexpected and which cannot be accounted for to a person (creditor). In addition, he with all his efforts tried properly to fulfill all his obligations.

If after the agreement is made, a situation that cannot be predicted will occur, then the result is that the situation cannot be accounted for to him. Therefore, only the debtor can explain the existence of a state of coercion. The nature of force majeure or overmacht is divided into two, namely permanent overmacht and temporary overmacht. In permanent overmacht, the debtor cannot perform at all due to overmacht, while in temporary overmacht the debtor will be able to perform again after the overmacht

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<sup>7</sup>Baneftar, Frengky. 2020. *Wanprestasi Dalam Perjanjian Kredit Perbankan dengan Jaminan Sertifikat Tanah Ditinjau dari Undang-Undang Nomor 4 Tahun 1996 studi ada Bank Papua Cabang Biak*. Jurnal Ilmu Hukum Kyadiren, 5 (1), 19-44. <https://doi.org/10.46924/jihk.v5i1.25>, hlm. 19

<sup>8</sup>M. Muhtarom, *Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak*, Jurnal Suhuf, Vol. 26, No. 1, (2014), hlm.36

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condition ends. If referring to Law no. 24 year 2007 concerning Disaster Management in Article 1 paragraph (1) of the Disaster Management Law states that:

“Disaster is an event or series of events that threaten and disrupt people's lives and livelihoods caused, both by natural factors and/or non-natural factors as well as human factors, resulting in human casualties, environmental damage, property losses, and psychological impacts.”.

Covid-19 includes non-natural disasters, as stated in Article 1 Paragraph (3), namely: "Non-natural disasters are disasters caused by non-natural events or series of events which include technological failures, failed modernization, epidemics, and epidemic of a disease." Thus, it can be said that Covid-19 is an overmacht condition. Some people include absolute overmacht, namely those who are no longer able to perform achievements. However, the debtor has a choice, whether to restructure credit/financing which can be identified with relative overmacht, or declare himself in absolute overmacht condition. However, it should be understood that overmacht will not be resolved if only from both parties (debtors and creditors). Therefore, the debtor/customer can request a court order. The legal consequences of Overmacht/force majeure/force majeure are:

1. The debtor does not need to pay compensation (Article 1244 of the Civil Law Book);
2. The risk burden does not change, especially in temporary forced circumstances, and
3. Creditors are not entitled to fulfillment of achievements, but at the same time by law are free from their obligations to submit performance contrasts.

The covid-19 pandemic is categorized as relative overmacht, so the legal consequences of overmacht in credit agreements due to the covid-19 pandemic cause the risk burden to remain unchanged in the sense that debtors continue to fulfill their achievements after the covid-19 pandemic ends, or through credit restructuring efforts as has been done. determined by the government to be implemented by the bank or financing institution with the debtor.

There are two methods of resolving non-performing loans/financing. First, rescue non-performing loans, namely through renegotiation between the bank/finance (creditor) and the debtor's customer. Second, the settlement of non-performing loans is the settlement through legal institutions, such as the State Receivables Committee (SRC) and the Directorate General of State Receivables and Auctions, Judiciary and Arbitration Institutions. Credit rescue can be done in three forms, namely:

1. Rescheduling (rescheduling) by making changes to several terms of the credit agreement relating to the repayment schedule or credit term, including changes in the number of installments.
2. Reconditioning (reconditioning), which is to make changes in part or all of the terms of the agreement without providing additional credit and without converting participation.
3. Restructuring (rearrangement) by changing the credit terms in the form of additional credit or by converting. Meanwhile, in Pojk 11/2020, saving credit during the pandemic uses a restructuring mechanism.

Sebelum Prior to the commencement of lending activities, it is necessary to have a good and thorough analysis of all aspects of credit that can support the credit granting process, in order to prevent the emergence of a credit risk. This financing is very helpful for the community in meeting their needs. It's just that in providing these financing facilities, the parties to financial institutions must act extra carefully. The financing will involve a number of fairly large risks, whether the funds and interest from the loans lent can be received back or not.

The force majeure condition does not automatically become the cancellation of a contract, but renegotiation can be carried out to cancel or change the contents of the agreed contract, of course, it is expected to run in good faith. A contract must still be carried out in accordance with its contents in accordance with the provisions of Article 1338 of the Civil Law Book which states that every agreement made is already valid as law for those who make it.

### **B. Conditions A Force Major can Cancel the Banking Credit Agreement made by the Parties**

Banking institutions as one of the financial institutions have a strategic value in the economic life of a country. The institution is intended as an intermediary for parties who have excess funds (surplus of funds) with parties who lack and need funds (lack of funds). Banks will engage in credit activities and various services provided by banks to serve financing needs as well as streamlining payment system mechanisms for all economic factors.

Banking as an international financial intermediary institution plays an important role in the national development process. The main business activities of banks according to the Banking Law Article 1 paragraph 2, in the form of collecting funds from the public in the form of savings and channeling them back to the public in the form of credit and/or financing, make them full of regulation, both through the laws and regulations in the banking sector itself and the legislation. -Other related legislation. The provision of credit is a real service of the bank in the life and development of the economy in Indonesia. Credit is the provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest.

The purpose of granting credit is to meet diverse needs in accordance with their uzharkat, which is always increasing. Meanwhile, human ability has a certain limit, forcing a person to try to obtain capital assistance to fulfill his desires and



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aspirations in order to increase business and increase the usability of goods/services. Therefore, every loan must be stated in a written credit agreement. The form and format is submitted by Bank Indonesia to each bank to determine it. However, at least one must pay attention to the following:

1. Fulfill legality and legal requirements that can protect the interests of the bank;
2. Contains the amount, period, procedures for credit repayment and other credit requirements as stipulated in the said credit approval decision.
3. The bank credit agreement must at least contain clauses related to the provisions regarding the credit facilities provided, including the maximum amount of credit, credit period, credit purpose, form of credit and limit of withdrawal permit.
4. Interest rates and costs incurred in connection with the provision of credit, including stamp duty, fees/commitment fees and over-drawing penalties.
5. Authorization of the bank to charge the checking account and/or credit account of the credit recipient for the interest rate for overdrawn fines and interest in arrears as well as all kinds of costs incurred due to and for the implementation of certain matters which are the burden of the credit recipient.
6. Representations and warranties, namely statements from credit recipients on the burden and all assets of credit recipients as collateral for credit repayment.
7. Condition precedent, namely tough conditions that must first be received by the credit recipient in order to withdraw credit for the first time.
8. Credit collateral and insurance of collateral goods.
9. Affirmative and negative covenants, namely obligations and cancellation of the credit recipient's actions as long as the credit agreement is still valid.
10. Bank actions in the context of supervision and credit rescue.
11. Events of default/default/breach of promise/trigger clause/open baar clause, namely bank actions can terminate the credit agreement at any time and will immediately collect all money along with interest and other costs incurred.
12. Choice of domicile/forum/law in the event of a dispute in credit settlement between the bank and the customer receiving the credit.
13. Provisions for the entry into force of the credit agreement and the signing of the credit agreement.

A credit agreement that has been legally made is binding and applies as law for the parties who make it, therefore both parties must implement or obey it (*pacta sunt servanda* principle), but sometimes a legally made agreement cannot be implemented as intended. It must be because there are various things that affect it.

Agreements made legally can be carried out by the parties, namely the parties can carry out the fulfillment of the rights and obligations that have been agreed upon to achieve the objectives of the agreement. However, there is no doubt that in an engagement it is very important to realize an agreement which means to promise each other to do something and do something. As in the formulation of Article 1234 of the Civil Law Book where it is stated that:

“Every engagement is to give something, to do something, or not to do something.”

Many useful things can be found in the contents of the agreement, this is intended to avoid problems both during the implementation of the agreement. So that an agreement provides legal certainty and clarity of rights and obligations for both parties. In general, contract law is defined as a legal mechanism in society to protect the wishes or expectations of the contracting parties. The contract is known as the *nominee contract* and the *law of the innominate contract*. *Nominee contract law* is a legal provision that examines various contracts or agreements known in the Civil Law Book. Meanwhile, *innominate contract law* is a:<sup>9</sup> “The whole law that examines various contracts that arise, grow, and live in the community and these contracts were not yet known at the time the Civil Law Book was enacted”

This type of development of *innominate contracts* is not previously regulated in book III of the Civil Law Book. However, it applies to regulations that are specific in the laws and regulations that govern them. Indeed, there is no special law that regulates it, but in civil law it has been explained or regulated the issue of *force majeure* in Article 1244 of the Civil Law Book and Article 1245 of the Civil Law Book. The arrangement in Article 1245 of the Criminal Code states that there is no loss and interest must be replaced. If due to coercive circumstances or due to an unintentional incident, the debtor is unable to provide or do something that is required or because of the same reasons he has committed a prohibited act, that there is no compensation for the loss if due to forced circumstances or an unintentional event and is prevented from doing something. . In addition to these two provisions, the concept of a state of coercion is also referred to in Articles 1444 and 1445 of the Civil Law Book, as follows.

### a. Article 1444 of the Civil Law Book

(1) If certain goods which are the subject of the agreement are destroyed, cannot be traded, or are lost, until they are completely unknown if the item is still there, then remove the binding, as long as the item is destroyed or lost beyond the fault of the debtor and before he neglects to deliver it.

<sup>9</sup>Salim, 2003, *Perkembangan Hukum Kontrak Innominaat Di Indonesia*, Jakarta, Sinar Grafika, hlm. 4

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- (2) Even if the debtor neglects to deliver an item, while he has not been responsible for unforeseen events, the engagement is still invalid if the item will also be destroyed in the same way in the hands of the debtor if it has been handed over to him.
- (3) The debtor is required to prove unexpected events,
- (4) In whatever way an item that has been stolen, destroyed or lost, the loss of the item will never relieve the person who stole the item from his obligation to replace the price”

### b. Article 1445 of the Civil Law Book

“If the thing owed, beyond the fault of the debtor is destroyed, no can again be traded, or lost, then the debtor, if he have rights or claims for compensation regarding the goods are obliged to give these rights and demands to the person who owes him the debt.

Based on the articles of the Civil Law Book above, the elements of coercive circumstances include:

- a. Unforeseen events;
- b. cannot be accounted for to the debtor;
- c. There is no bad faith from the debtor;
- d. The existence of unintended circumstances by the debtor;
- e. This situation prevents outstanding debtors;
- f. If the achievement is carried out, it will be banned
- g. Circumstances beyond the debtor's fault
- h. The debtor does not fail to perform (deliver goods);
- i. This incident cannot be avoided by anyone (both debtors and other parties);
- j. The debtor is not proven guilty or negligent.

As a result of force majeure from the aspect of the agreement according to the Civil Law Book, the agreement is terminated if the goods that are the object of the agreement are destroyed (absolute force majeure). From the risk aspect, the debtor cannot be held responsible for paying costs, compensation or interest arising from force majeure. However, if the debtor has a claim for rights or a claim for compensation for the goods, the right or claim for compensation is transferred to the debtor. If force majeure does occur, the agreement is not automatically annulled, but renegotiation is opened between the parties to the agreement. This is also a form of legal protection given to creditors, because creditors are actually entitled to the achievements of the debtor, and vice versa the debtor is obliged to provide achievements.

From several Articles 1244-1545 which regulates the matter of force majeure, it can be concluded that the conditions for a state of coercion are as follows :

1. The event that causes the force majeure to occur must be unexpected by the parties.
2. The incident cannot be accounted for to the party who must carry out the achievement.
3. The event that causes the force majeure is beyond the fault of the debtor.
4. The event that causes the force majeure is not an intentional event by the debtor.
5. The debtor is not in bad faith.
6. In the event of force majeure, the contract is void, and as far as possible the parties are returned as if it had never been done.
7. In case of force majeure the parties do not claim compensation.
8. The risk as a result of force majeure shifts from the creditor to the debtor from the time the goods should be delivered.

Another criterion in the science of contract law states that what is meant by a state of coercion is:

#### 1. Impossibility (impossibility).

Impossible contract performance is a situation where a person is no longer possible to carry out his contract due to circumstances beyond his responsibility. For example, a contract to sell a house, but the house caught fire before being handed over to the buyer.

#### 2. Impracticability.

The point is that the event also occurred without the fault of the parties, the event was in such a way, where with the event the parties were actually theoretically still possible to carry out their achievements, but practically it occurred in such a way that even if the achievements in the contract were carried out, it would require great sacrifices from the parties. in terms of cost, time or other sacrifices. Thus, in contrast to the impossibility of executing a contract, where **the contract is absolutely impossible to continue**, in the uncertainty of the implementation of this contract, the contract is still possible to be implemented, but it has become impractical if it continues to be enforced.

#### 1. Frustration (frustration).

Frustration referred to here is frustration with the purpose of the contract, namely in this case there is an event that is not accountable to one of the parties, which event makes it impossible to achieve the purpose of making the contract, even though in fact the parties are still possible to carry out the contract. Because, the purpose of the contract is no longer possible to achieve so the contract is thus in a state of frustration.

## Legal Analysis of Default Indemnity Due to "Force Majeure" on Banking Credit Providers in The Covid-19 Pandemic

Based on the explanation above, if it is contextualized with the cancellation of the agreement, it must meet the cancellation requirements that have been specified in the law. Cancellation of an agreement that results in an agreement that is considered never existed, of course, creates new legal consequences for the parties to the agreement. **Cancellation of the agreement can be requested by one of the parties to the agreement who feels aggrieved.** An agreement can be called for cancellation if:

1. The agreement made violates the subjective conditions of the validity of the agreement as regulated in Article 1320 Paragraphs 1 and 2 of the Criminal Code, namely the agreement was born due to a defect of will (*wilsgebreke*) among others due to oversight, coercion or fraud, or due to the incompetence of the parties in the agreement (*ombekwaamheid*), resulting in the agreement being canceled (*vernietigbaar*).
2. The agreement that is made violates the objective requirements for the validity of the agreement as regulated in Article 1320 paragraphs 3 and 4, the agreement is made not to fulfill certain object requirements or has a reason that is not allowed such as contrary to law, public order, and decency, resulting in the agreement being null and void (*nietig*).

The existence of an event that is categorized as a state of coercion brings consequences for the parties in an engagement, where the party who cannot fulfill the performance is not declared in default. Thus, in the event of compelling circumstances, the debtor is not obliged to pay compensation and in a reciprocal agreement, the creditor cannot demand cancellation because the engagement is considered void/abolished.

### CLOSING

#### A. Conclusion

1. Legal Implications Regarding Default Due to the Covid-19 Pandemic As a force majeure in the Cancellation of a Banking Credit Agreement, that the occurrence of a default where one party does not fulfill the contents of the agreement that has been made, will have consequences for the other party who entered into an agreement to provide compensation as stipulated in article 1243 of the Civil Law Book which compensation in the form of interest, losses and costs. However, there are several conditions that cause an agreement cannot be fulfilled in accordance with what was agreed at the beginning. One of them is the occurrence of "force majeure" or circumstances that cannot be predicted or predicted to occur. The "force majeure" regulated in Article 1244-1245 of the Civil Law Book itself is divided into 2 (two) namely absolute "force majeure" and relative "force majeure". That the cancellation of the agreement on banking credit due to the Pandemic -19 is a relative "force majeure" which means that this relative "force majeure" the debtor is considered capable of returning to its original state or in other words the debtor is considered to still have the ability to fulfill the contents of the agreement if the conditions are met. The pandemic-19 has ended.
2. The condition that a force majeure can cancel a banking credit agreement made by the Parties, namely if the parties in the agreement clause specify using any event that is included as "force majeure" if the Pandemic-19 is stated in the agreement as "force majeure" then it is wrong. one party can postpone or cancel the agreement.

#### B. Recommendation

1. Every agreement made by the parties should always include a "force majeure" clause in the agreement, the "force majeure" in question must be clearly defined, because there are absolute and relative "force majeure" which will provide the impact is different if an agreement is not implemented as the parties wanted it from the beginning of the agreement.
2. The parties who make an agreement must know correctly about the things that can cancel an agreement that has been made, so that later if there is a problem in this case the parties will be easier to deal with, for example an agreement that can be canceled due to covid-19.

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