



Termination of Contract Due to Force Majeure Is Reviewed from Presidential Decree Number 12 of 2020 Concerning the Determination of Non-Natural Disasters of the Spread of Corona Disease 2019 (COVID-19) as a National Disaster

Dinalara D. Butar-Butar; Mustika Mega Wijaya; Mayzara Sari Fitria

Faculty of Law, Pakuan University, Bogor, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v12i6.6899>

Abstract

The COVID-19 pandemic that began to spread in Indonesia in early 2020 has had a significant impact on various aspects of life, including the economic and business sectors. In response to this situation, the Indonesian government designated the COVID-19 pandemic as a national disaster through Presidential Decree Number 12 of 2020. This determination provides a legal basis for various actions and policies needed to deal with the impact of the pandemic, including in the context of civil law relationships such as contracts. In practice, many contracts cannot be executed as they should due to restrictions imposed by the government, a decline in economic activity, and other factors related to the pandemic. This raises legal questions related to the application of the concept of *force majeure* in contractual relationships. *Force majeure* is a crucial issue because the COVID-19 pandemic situation, which many parties consider to qualify as a *force majeure condition*, forces the parties to the contract to terminate or suspend their obligations. However, the application of *force majeure* in the context of Indonesian law is not always simple. Each contract has a different *force majeure* clause, and its application requires careful legal interpretation. Presidential Decree Number 12 of 2020, although it establishes COVID-19 as a national disaster, does not explicitly provide guidelines on how the concept of *force majeure* should be applied in contracts affected by the pandemic. Therefore, an in-depth juridical review is needed to understand the legal implications of termination of a contract based on *force majeure* in this context. This study aims to analyze whether the determination of the COVID-19 pandemic as a national disaster can be used as a basis for force majeure for contract termination, examine how Indonesian civil law regulates the concept of *force majeure* in the context of national disasters, Provide recommendations related to legal steps that can be taken by parties whose contracts are affected by the COVID-19 pandemic.

Keywords: Corona Virus Disease 2019; Contract; Force Majeure

Introduction

In 2020, the World Health Organization (WHO) declared Covid-19 a global pandemic. Therefore, the Government stipulated a Regulation through Presidential Decree Number 12 of 2020

concerning the Determination of Non-Natural Disasters for the Spread of Covid-19 as a National Disaster. In its development in society, after the birth of Presidential Decree Number 12 of 2020, it actually reaped a new problem, where the Presidential Decree has become a reason to terminate the contract because the Presidential Decree is actually interpreted by many parties as *force majeure*. Although many people also consider that with the issuance of Presidential Decree Number 12 of 2020, it is not automatically considered a *force majeure* to the contract, even though the smooth process of what is agreed in the contract itself is hampered. In the practice of classifying *force majeure* conditions that are commonly included in a contract, among others, are natural disasters, wars, rebellions, mass riots, riots, power struggles, social disturbances, strikes or *lockouts*, material changes in national and regional laws and regulations and so on.¹ According to V. Brakel, the existence of *force majeure* results in the obligation for the debtor's achievements can be erased and the further consequence is that the debtor does not need to compensate creditors for losses caused by compelling circumstances.⁵ In connection with this issue, as Article 1338 of the Civil Code states:

"All agreements made legally shall be binding on those who make them."

Where a valid agreement cannot be withdrawn unilaterally. The agreement is binding on the parties, and cannot be withdrawn or cancelled unilaterally. If you want to withdraw or cancel it, it must obtain the approval of the other party, so it is agreed again. However, if there are sufficient legal reasons, the agreement can be withdrawn or canceled unilaterally. A valid agreement cannot be unilaterally withdrawn.⁶ This is emphasized by Article 1339 of the Civil Code, which states as follows:

"A covenant is binding not only on the things expressly stated in it, but also on everything which, by the nature of the covenant, is required by propriety, custom or law".

The issuance of Presidential Decree Number 12 of 2020 is not automatically considered a *force majeure* to the contract, even though the smooth process of what is agreed in the contract itself is hampered. It needs to be understood by the parties that the contract is guaranteed by Article 1338 of the Civil Code and Article 1339 of the Civil Code. It should be noted that the parties must include parameters specifically for the problem of coercive circumstances in the contract by knowing the type of contract to be made or agreed, which is an important point that needs to be studied and paid attention to by the parties to the contract so as not to harm the parties themselves in the contract in the future. In its development in society, after the birth of Presidential Decree Number 12 of 2020, a new problem has emerged, where the Presidential Decree has become a reason to terminate the contract because the Presidential Decree is interpreted by many parties as *force majeure*.

Problem Formulation

1. What are the juridical implications for the issuance of Presidential Decree Number 12 of 2020?
2. Can Presidential Decree Number 12 of 2020 be used as a reason to terminate a contract due to *force majeure*?
3. What problems arise in Presidential Decree Regulation Number 12 of 2020 as a reason to terminate a contract due to *force majeure*?

Method

This study uses a normative research method, which is a legal research approach that focuses on the analysis and interpretation of applicable legal norms. In the context of juridical review of contract termination due to *force majeure* reviewed from Presidential Decree Number 12 of 2020, research by

¹ Rifqi, "Force Majeure and Presidential Decree Number 12 of 2020", available at: <https://www.acehtrend.com>, retrieved 20 April 2025.

studying and studying primary data and secondary data in the form of books or literature materials related to the title of research indirectly which contains discussions related to the title of this research (literature). With the intention of identifying and analyzing legal issues that are currently being researched. This normative method will provide a solid legal framework for analyzing and understanding the application of force majeure in the context of national disasters, as well as providing guidance for better legal policies and practices.

Data Sources And Types

Based on the type and form, the data needed in this study are primary and secondary data. The secondary data was obtained through *library research*. Literature research aims to study, research, and trace secondary data including primary legal materials, namely binding legal materials, secondary materials that provide explanations of primary legal materials and tertiary legal materials, which are materials that provide instructions and explanations of primary and secondary legal materials.¹⁶ The Gospel of Jesus Christ

The data used consisted of:¹⁷

- a. Primary legal materials sourced from directly obtained legal materials will be used in this study which are legal materials that have juridically binding power.
- b. Secondary legal materials, which are legal materials that provide explanations of primary legal materials, namely legal materials consisting of textbooks written by influential legal experts (*deherseende leer*), legal journals, scholars' opinions, legal cases, jurisprudence, and the results of recent symposiums related to research topics.
- c. Tertiary legal materials are legal materials that provide instructions or explanations for primary legal materials and secondary legal materials such as legal dictionaries, and *encyclopedias*.

Results and Discussion

The terms contract and *agreement* (English) and *overeenkomst* (Dutch) in a broader sense are called agreements/agreements.² The above states that in principle a contract consists of one or a series of promises made by the parties to the contract. The essence of the contract itself is an agreement.³ Covenants are one of the efforts of people to bind themselves to others in order to meet their needs.⁴

According to Article 1313 of the Civil Code, the agreement is

"A covenant is an act by which one more binds himself to one or more others."

According to Subekti, what is meant by an agreement is an event where a person promises to one or two people to promise each other to carry out something.

Force Majeure

The term coercive circumstance derived from the term *overmacht* or *force majeure*, in relation to an agreement or agreement is not specifically formulated in the law. However, it can be concluded from several provisions in the Civil Code, including Article 1244 of the Civil Code which states as follows:

² Lukman Santoso AZ, *Law of the Alliance, Legal and Technical Theories of Contract Making, Cooperation and Business*, (Malang: Setara Press, 2016), p. 14.

³ Lukman Santoso AZ ⁽²⁾, *Legal Aspects of Agreements: A Comprehensive Study of Theory and Its Development*, (Yogyakarta: Penebarter Media Pustaka, 2009), p. 48.

⁴ Subekti, R. *Covenant Law*. Jakarta: Internusa, 2019.p1..

"Debtors must be punished to reimburse costs, losses and interest. If he cannot prove that the non-execution of the agreement or the improper timing of the execution of the agreement is due to some unforeseen event, which cannot be accounted for to him. even if there is no bad faith towards him."

Article 1245 of the Civil Code states as follows:

"There is no reimbursement of fees, losses and interest. if due to compulsion or due to a coincidental circumstance, the debtor is prevented from giving or doing something obligatory, or doing an act that is forbidden to him."

In addition, this coercive situation is also contained in Article 1444 of the Civil Code and Article 1445 of the Civil Code. Article 1444 of the Civil Code, which states as follows:

"If a certain item that is the subject of the agreement is destroyed, cannot be traded, or is lost to the point that it is not known at all whether the item still exists, or not, then the attachment is cancelled, as long as the item is destroyed or lost beyond the debtor's fault and before he neglects to hand it over. Even if the debtor is negligent in handing over an item, which was previously uninsured against unforeseen events, the attachment is still void if the item would also have been destroyed in the same manner in the hands of the creditor, had it been delivered to him. The debtor is required to prove the unexpected events he submitted. In any way a good is lost or destroyed, the person who takes the goods is never free and obliged to change the price."

Article 1445 of the Civil Code, which states as follows:

"If the goods owed are destroyed, can no longer be traded, or are lost through the debtor's fault, then the debtor, if he has a right or claim for compensation in respect of the goods, is obliged to give such rights and demands to the creditor."

From the provisions of the Civil Code, it can be concluded that *overmacht* is a situation that releases a person or a party who has an obligation to fulfill it based on an agreement, who is unable or unable to fulfill his obligations, from the responsibility to provide compensation, costs and interest, and/or from the responsibility to fulfill his obligations.⁵

Thus, it can be concluded that a forced situation is an unexpected, accidental, and unaccountable event to the debtor and coercive in the sense that the debtor is forced to be unable to keep his promise.⁶ Therefore, Article 1244 and Article 1245 of the Civil Code are the doctrine of *force majeure* that is carried out for the sake of the law, not the implementation because of an agreement in the agreement (*contractual obligation*). This means that even if the parties do not specifically regulate the applicability of the *force majeure* doctrine in their agreements, it is still for the sake of law that the *force majeure* doctrine can apply as a legal reason for one of the parties who cannot perform its obligations in accordance with what has been agreed in the agreement.⁷

Some experts who gave explanations about the coercive situation include:

According to R. Subekti, the coercive circumstances are:⁸

⁵ Rahmat S. S. Soemadipradja, *Legal Explanation of Force Majeure (Conditions for Cancellation of Agreements Due to Force Majeure)*, (Jakarta: NLRP, 2010), p. 3.

⁶ Subekti, *Op. Cit.*, p. 56.

⁷ Ricardo Simanjuntak, *Business Contract Design Techniques*, (Jakarta: Mingguan Ekonomi & Bisnis Kontan, 2006), p. 203.

⁸ Subekti, *Op. Cit.*, p. 55.

The debtor shows that the non-fulfillment of what was promised was caused by things that were completely unpredictable, and that he could not do anything about the circumstances or events that arose beyond the expectation. In other words, the non-implementation of the agreement or the delay in the implementation is not due to negligence. It cannot be said to be wrong or wrong, and the innocent person should not be subjected to the sanctions threatened for negligence.

Meanwhile, Sri Soedewi Masjchoen Sofwan, who cited H.F.A. Vollmar, stated that the coercive circumstances were:⁷⁷

A situation in which the debtor is completely unable to meet the debt (*absolute overmacht*) or still possible to meet the debt, but requires a large sacrifice that is not balanced or the strength of the soul beyond the ability or and causes a very great loss (*relative overmacht*).

Elements of Force Majeure

Based on the provisions of Article 1244 of the Civil Code and Article 1245 of the Civil Code as well as Article 1444 of the Civil Code and Article 1445 of the Civil Code, the elements of coercive circumstances include, among others:

- a. Unexpected events;
- b. Cannot be held liable to the debtor;
- c. There is no bad faith on the part of the debtor;
- d. The existence of unintentional circumstances by the debtor;
- e. This situation prevents the debtor from achieving it;
- f. If the achievement is carried out, it will be banned;
- g. A situation outside of the debtor's fault;
- h. The debtor does not fail to perform (hand over goods);
- i. The incident cannot be avoided by anyone (both debtors and other parties);
- j. The debtor is not proven to have committed any wrongdoing or negligence.

Abdulkadir formulated that the elements of coercive circumstances are only in three points, namely:

- a. Not fulfilled with achievements because of an event that destroyed or destroyed the object of the engagement;
- b. It is not fulfilled with achievements because there is an event that prevents the debtor's actions from achievement;
- c. The event cannot be known or expected to occur at the time of making the engagement.

In the event of a coercive state that satisfies the elements in letters a and c above, then the coercive state is called an objective coercive state, which according to Vollmar is called *absolute overmacht* which is basically the impossibility of fulfilling the achievement because the object disappears/is destroyed. While in the event of a coercive circumstance that satisfies the letters of elements b and c above, this coercive circumstance is called a subjective coercive circumstance, Vollmar calls it *relatieve overmacht* which is basically the difficulty of fulfilling achievements because there is an event that prevents the debtor from doing.

Types of Force Majeure

Some experts distinguish the types of a coercive situation based on certain criteria, as follows:⁹

⁹ Rahmat S. S. Soemadipradja, *Op. Cit.*, pp. 9-10.

Criterion	Explanation
a. Based on Cause	1) <i>Overmacht</i> due to natural circumstances, which is a coercive state caused by a natural event that cannot be predicted and avoided by everyone because it is natural without an element of intentionality. For example, floods, landslides, earthquakes, storms, erupting mountains, and so on.
	2) <i>Overmacht</i> due to emergencies, i.e. compelling circumstances caused by unnatural circumstances or conditions, special circumstances that are immediate and short-lived, without being foreseeable. For example, wars, blockades, strikes, epidemics, terrorism, explosions, mass riots, including the damage of an instrument that causes the non-fulfillment of an alliance. 3) <i>Overmacht</i> due to the destruction or loss of the object of the agreement. 4) <i>Overmacht</i> is due to government policies or regulations, which are coercive circumstances caused by a situation where there is a change in government policy or the removal or issuance of a new policy, which has an impact on ongoing activities. For example, the issuance of a Government Regulation (central or regional) that causes an object of agreement/engagement becomes impossible to implement.
b. By nature	1) <i>Fixed overmacht</i> , i.e. a coercive state that results in an agreement being impossible to enforce or impossible to fulfill at all. 2) <i>A temporary overmacht</i> , is a coercive state that results in the execution of an agreement being delayed from the time specified in the agreement. In such circumstances, the alliance does not stop (not void), but only fulfillment of his delayed achievements.
c. Based on the object	1) <i>Force majeure</i> complete Means about All of these achievements cannot be fulfilled by the debtor. 2) <i>Overmacht</i> in part, meaning only a part of the achievements that cannot be fulfilled by the debtor.
d. Based on the subject	1) Objective <i>overmacht</i> is a coercive state that makes the fulfillment of performance impossible for anyone, it is based on Theory of Impossibility (Impossibility). 2) Subjective <i>overmacht</i> is a coercive situation that occurs when the fulfillment of achievements causes difficulties in execution for certain debtors. In this case, the debtor may still meet the achievements, but with a large sacrifice that is not balanced, or poses a great danger of loss to the debtor. This in the Anglo American system is called hardship which gives rise to rights for renegotiation.
e. By scope	1) A common <i>overmacht</i> can be climate, loss, and theft. 2) A special <i>overmacht</i> can be in the form of the enactment of a regulation (law or Government Regulation). In this case, it does not mean that achievements cannot be done, but achievements should not be Done.

A coercive situation that befalls the object of engagement (based on the object) can cause partial losses, it can also cause total losses. Meanwhile, coercive circumstances that prevent the debtor's actions from fulfilling achievements (based on nature) can be temporary or permanent.

The distinction of the types of coercive circumstances based on the subject, as explained above, Subekti also makes the distinction, but with a different name, where Subekti states that there is an absolute state of force, that is, in the case it is absolutely impossible to carry out the agreement.

The coercive situation is absolute, in the sense that it is no longer possible for the debtor to fulfill his obligations, but on the basis of his thinking is directed to natural disasters or accidents so great as to make it impossible for the debtor to keep his promise. For example, because the goods that are the object of the agreement are destroyed. However, along with the development of the times, the coercive situation is no longer absolute, because there is a coercive circumstance where it is actually still possible to execute the agreement, but with such great sacrifices on the part of the debtor, that it is no longer appropriate for the creditor to demand the execution of the agreement. As explained by Abdulkadir Muhammad who made a distinction based on subject, but with a different name, namely the teaching of coercive circumstances that are objective and subjective, among others

A. Objective Coercive Conditions

Objective means that the object that is the object of the engagement cannot be fulfilled by anyone. This refers to the opinion of Marsh and Soulsby who call the basis of this doctrine the term *physical impossibility*, meaning real impossibilities. According to this objective teaching, the coercive state exists if each person is completely unable to fulfill the achievement of the object of the alliance. In such a circumstance the coercive circumstances automatically terminate the engagement because it is impossible to fulfill. In other words, the *agreement would be void from the outset*. The coercive circumstances here are fixed, Marsh and Soulsby stating that a treaty cannot be enforced if, after the treaty is made, there is a change in the law which results in the fact that the treaty which has been made becomes unlawful if it is executed.

B. Subjective Coercive Conditions

It is said to be subjective because it concerns the debtor's own actions, concerns the debtor's own ability, so it is limited to the debtor's actions or abilities. The basis of this teaching is difficulties. According to this teaching, the debtor may still meet the achievement even if he experiences difficulties or faces danger, the compelling circumstances in this case are temporary. In such a situation, the alliance does not stop (not cancel) but only the fulfillment of its achievements.

Conclusion

Based on the description in the chapters that have been stated earlier, several conclusions can be described as follows:

1. With the issuance of Presidential Decree Number 12 of 2020, it has caused a legal implication for the community or economic actors (parties to the contract) in fulfilling their civil contract rights and obligations, so that in this case the party who caused the loss has committed an act in the form of default or unlawful acts. In addition, it has an impact in the form of losses to the party who suffers losses so that the aggrieved party can be sued by the aggrieved party to pay costs, losses, and interest. In addition, it has an impact on the party who suffers losses, where the party who suffers losses can file legal remedies in the form of giving warnings to the party who caused losses and filing a lawsuit due to the actions of the party who caused losses who committed acts of default and/or unlawful acts to the Court or arbitrator. In addition, the party who suffers losses can claim losses in the lawsuit in the form of costs, losses, and interest. This is because the party who suffers a loss feels is harmed as a result of the termination of the contract made by the party who caused the loss.
2. Presidential Decree Number 12 of 2020 does not state that the *Covid-19* virus outbreak pandemic

is a *force majeure* event. However, in the context of whether the aforementioned Presidential Decree Number 12 of 2020 can be used as a reason to terminate the contract, then by looking at the provisions of Article 1244 of the Civil Code and Article 1245 of the Civil Code as well as the elements of *force majeure* and then the classification of *force majeure*, then Presidential Decree Number 12 of 2020 can be used as a reason by the public/parties to the contract to terminate the contract. However, the termination of the civil contract can occur legally, if there is agreement from the parties and good faith from the parties to the contract. In addition, the termination of the civil contract can be done by looking at the ability of the parties whether or not they are still able to fulfill their rights and obligations in their civil contracts. In addition, if it is felt that the parties can still fulfill their rights and obligations, but to fulfill these rights and obligations, they must wait until the situation becomes normal, then the nature will only delay the fulfillment of the obligations of the parties and cannot abolish the rights or obligations of each party.

Suggestion

The suggestions that can be given from the description of the chapters that have been stated previously include the following:

1. Seeing the issuance of Presidential Decree Number 12 of 2020, which states that *the covid-19* virus is a non-natural national disaster, where the issuance of Presidential Decree Number 12 of 2020 has caused a very complex impact on people's lives, especially in the sector national economy so that specifically with the issuance of Presidential Decree Number 12 of 2020 has also had an impact, namely the termination of civil contracts carried out by the community or economic actors, so to avoid the impact of the termination of civil contracts in the wider community, the Government not only issued a policy of Presidential Decree Number 12 of 2020, or other policies that are such as protocol socialization health, but the Government together with lawmakers are expected to be able to form regulations that specifically regulate related to economic handling during the *covid-19* virus pandemic situation so that this can provide justice and benefits as well as legal certainty to the community or economic actors in carrying out their civil contracts.
2. To avoid the possibility of a termination of a civil contract in the future when it is determined that there are events that can be categorized as a *force majeure* event as in the doctrine of *force majeure* itself. In this case, in order for the values of justice and the usefulness and certainty of the law itself to be achieved, the lawmakers together with the Government should develop and form regulations that specifically regulate what things can be categorized as circumstances *force majeure* without deviating from the doctrines of *force majeure* itself, so that the public or economic actors who will make an engagement in a civil contract can construct the *force majeure clauses* in harmony, besides that it can minimize the existence of multiple interpretations.
3. In carrying out civil contracts during the *Covid-19* pandemic, the community or economic actors who bind themselves to a contract must be able to understand each other's situations and conditions with the principle of good faith, namely by prioritizing efforts such as renegotiation to deter to find a *win-win solution* in order to overcome the consequences arising from the issuance of Presidential Decree Number 12 of 2020, on the implementation of civil contracts. As is known, renegotiation efforts that can be carried out can be in the form of *rescheduling*, *restructuring* or *reconditioning* in the hope of restoring the balance of rights and obligations in civil/contractual agreements and can complement the unregulated matters to adjust to the circumstances of the *Covid-19 pandemic* which is a non-natural national disaster.

References

- Indonesia. *Constitution of the Republic of Indonesia in 1945*.
- ____. *Code of Civil Law. Official Gazette* 1847 Number 23 concerning *Civil Code for Indonesia*.
- ____. *Consumer Protection Act*. Law Number 08 of 1999. LN RI Number 3821 of 1999.
- ____. *Law on Construction Services*. Law Number 18 of 1999.
LN RI Number 3833 of 1999.
- ____. *Employment Law*. Law Number 13 of 2003.
LN RI Number 39 of 2003.
- ____. *Disaster Management Act*. Law Number 24 of 2007. LN RI Number 4723 of 2007.
- ____. *Presidential Decree on the Procurement of Goods and Services*. Presidential Decree No. 80 of 2003.
- ____. *Presidential Decree on the Determination of Non-Natural Disasters of the Spread of Corona Disease 2019 (Covid-19) as a National Disaster*. Presidential Decree Number 12 of 2020.
- H.S., Salim. *Contract Law Theory and Contract Preparation Techniques*. Jakarta: Sinar Grafika, 2019.
- Muhammad, Abdulkadir. *Indonesian Civil Law*. Bandung: Citra Aditya Bakti, 2000.
- ____. *Law of Alliance*. Bandung: Citra Aditya Sakti, 1992.
- Pradjodikoro, Wirjono. *Principles of Covenant Law*. Bandung: Bale Bandung, 1986.
- Raharjo, Handri. *Treaty Law in Indonesia*. Yogyakarta: Pustaka Yustisia, 2009.
- Satrio, J. *The law of engagement, engagement in general*. New York: Alumni Press, 1993. Setiawan, R. *The Principles of the Covenant*. Bandung: Putra A Badin, 1977.
- Simanjuntak, P.N.H. *Indonesian Civil Law*. Jakarta: Prenada Media Group, 2018.
- Simanjuntak, Ricardo. *Business Contract Design*. Jakarta: Ekonomi & Business Kontan Weekly, 2006.
- Soemadipradja, Rahmat S. S. *Legal Explanation of Force Majeure (Conditions for Cancellation of Agreements Due to Force Majeure)*. Jakarta: NLRP, 2010.
- Subekti, R. *Covenant Law*. Jakarta: Internusa, 2019.
- ____. *Principles of Civil Law*. Jakarta: Internusa, 2003.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).