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The Nature of Overmacht/Force Majeure and Its Implications in Various Agreements in the Covid-19 Era

Ketut Manika, Syahrudin Nawi, Sufirman Rahman & Nasrullah Arsyad

Doctor of Laws; Universitas Muslim Indonesia
Faculty of Law, Universitas Muslim Indonesia

ABSTRACT

This research aims to analyze the nature of *overmatch/force majeure* according to Indonesian legislation. The type of research used is normative legal research (*Doctrinal*). The results of the study show that the nature of *Overmacht / force majeure* according to Indonesian legislation is to provide legal protection to anyone who neglects his obligations due to events beyond his control, which prevent him from fulfilling his obligations, for which he cannot be blamed and cannot be charged. compensation. (2). That Covid 19 is a National Disaster according to the laws and regulations, including the *Overmacht/force majeure* which is the juridical basis so that a person cannot be categorized as negligent or in default. (3). That the legal consequences caused by Covid 19 as a National Disaster are included in the category of *overmatch/force majeure* or coercive circumstances, namely: a). Giving freedom to debtors/creditors to pay compensation (*schadevergoeding*), and b). Freeing debtors/creditors from the obligation to fulfil achievements (*making*).

KEYWORDS: Overmacht/Force Majeure; Agreement; Covid-19

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I. Introduction

In the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, it is mandated that the Government of the Unitary State of the Republic of Indonesia protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice.^[1]

As the implementation of this mandate, national development is carried out which aims to create a just and prosperous society that always pays attention to the right to life and protection for every citizen within the framework of the Unitary State of the Republic of Indonesia. The Unitary State of the Republic of Indonesia has a wide area and is located at the equator at a cross position between two continents and two oceans with natural conditions that have various advantages, but on the other hand, its position is in an area that has geographical, geological, hydrological, and demographic conditions that are prone to flooding, occurrence of disasters with a fairly high frequency,^[2] thus requiring systematic, integrated, and coordinated handling. Potential causes of disasters in the territory of the unitary state of Indonesia can be grouped into 3 (three) types of disasters, namely natural disasters, non-natural disasters, and social disasters.

Natural disasters include earthquakes due to nature, volcanic eruptions, hurricanes, landslides, droughts, forest/land fires due to natural factors, plant pests, epidemics, epidemics, extraordinary events, and space events/celestial bodies. Non-natural disasters include forest/land fires caused by humans, transportation accidents, construction/technology failures, industrial impacts, nuclear explosions, environmental pollution and space activities.

Social disasters include social unrest and social conflicts in society that often occur. Disaster Management is one part of national development, namely a series of disaster management activities before, during and after a disaster occurs. So far, there are still weaknesses in the implementation of disaster management as well as those related to the legal basis, because there is no law specifically dealing with disasters.

As understood, the Unitary State of the Republic of Indonesia is responsible for protecting the entire Indonesian nation and the entire homeland of Indonesia to provide protection for life and livelihood, including protection against disasters, in the context of realizing public welfare based on Pancasila, as mandated in the Constitution of the Republic of Indonesia. 1945.^[3]

On the other hand, it is also known that the Territory of the Unitary State of the Republic of Indonesia has geographical, geological, hydrological and demographic conditions that allow disasters to occur, whether

caused by natural factors, non-natural factors or human factors that cause human casualties, environmental damage, loss of property, and psychological impact which under certain circumstances can hinder national development.

The Indonesian government has designated COVID-19 as a type of disease that causes a public health emergency. Therefore, to inhibit the spread of COVID-19, the Government has taken steps by establishing the Covid-19 pandemic as a national disaster and urging the public to practice *physical distancing* and work/study from home.

This Government appeal was followed by the issuance of several legal umbrellas including, Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19),^[4] Presidential Decree No. 11 of 2020 concerning Stipulation of Public Health Emergency Corona Virus Disease 2019 (COVID-19), Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19). Likewise, through Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters. In the context of the COVID-19 pandemic, this raises the question, *force majeure* be fulfilled legally? Or, does the *force majeure* still have to refer to the agreement agreed by the parties?

II. Research Methods

The type of research that will be used in this research is normative legal research (*doctrinal*). Thus the focus of the research study is the entire legislation relating to agreements or contracts as well as *overmatch* (*force majeure*). All of them will be related to the problem formulation that has been stated in Chapter I. Introduction. Thus, this research study will normatively examine, analyze and even find answers to each problem formulation. The formulation that will be studied juridically is focused on the nature of *overmatch* (*Force majeure*), and Covid 19 as a National Disaster which is suspected of being *overmatched/Force majeure* or a state of coercion.

III. Discussion

Covid 19 as a National Disaster according to the laws and regulations is included in the *overmatch* (Forcing Circumstances)

As it is known that the President of the Republic of Indonesia, has issued a decision related to Corona Virus Disease 2019 (COVID-19) as a National Disaster.^[5] This was confirmed through Presidential Decree Number 12 of 2020 concerning the Designation of Non-Natural Disasters Spreading Corona Virus Disease 2019 (COVID-19) as National Disasters. During the consideration of the Presidential Regulation, several things were emphasized for consideration, namely:

- a. that non-natural disasters caused by the spread of Corona Virus Disease 2019 (COVID-19) have had an impact on increasing the number of victims and property losses, expanding the coverage area affected by the disaster, as well as having implications for broad socio-economic aspects in Indonesia;
- b. that the World Health Organization (WHO) has declared COVID-19 as a Global Pandemic on March 11, 2020.

Based on the considerations as referred to above, a Presidential Decree is issued regarding the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID 19) as a National Disaster.^[6] Furthermore, the Presidential Decree affirmed several things as decisions, namely:

1. Decision on Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster.
2. Declare a non-natural disaster caused by the spread of Corona Vints Disease 2019 (COVID-19/ as a National Disaster.
3. National Disaster Management caused by the spread of Corona Virus Disease 2019 (COVID-19) is carried out by the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) by Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19). -19) as amended by Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) through synergy between ministries/agencies and local governments.

Based on the Presidential Decree (Number 12 of 2020), it is legally clear that a Non-Natural Disaster in the form of the spread of Corona Virus Disease 2019 (COVID-19) is a National Disaster. The question that arises is whether a National Disaster is the spread of Corona Virus Disease 2019 (COVID-19), is classified as a state of coercion (*overmatch/force majeure*).^[7]

The state of coercion comes from the term *overmatch* or *force majeure*, about an engagement or contract there is no specific formulation in the Act, but it is concluded from several Article in the Civil Code

Based on that concluded that overmatch is a condition that releases a person or a party who must fulfil it based on an agreement (the debtor or debtor), who does not or cannot fulfil his obligations, from the responsibility to provide compensation, costs and interest, and/or from the responsibility to fulfil these obligations.

Thus, it can also be emphasized that a coercive situation is a condition that a person (debtor/creditor) does not fulfil due to an unknown or unpredictable event when making the engagement. In a state of coercion, the debtor/creditor cannot be blamed, because this situation arises beyond the will and ability of the debtor/creditor.^[8] To find out whether the National Disaster in the form of the spread of Corona Virus Disease 2019 (COVID-19), is classified as a state of coercion (*overmatch/force majeure*), the very principle is to conduct a study related to whether it meets the requirements or elements to be called a Force (*overmatch/force majeure*).^[9]

In almost every agreement that is contained in a contract document, certainly, the parties implementing the agreement will not forget to include a clause regarding *overmatch* or *force majeure* or better known as a state of coercion. This state of coercion can be used as a defence by the debtor to avoid a default claim.

In Article 1245 of the Civil Code it is stated that in a state of coercion, the debtor cannot be sued for reimbursement of costs, losses and interest due to not meeting performance. However, in Article 1244 of the Civil Code, the debtor's non-performance due to an unexpected event must be proven by the debtor. Waprestasi of this coercive situation can occur due to two things, namely:

- 1) the object of the engagement is destroyed (*objective overmatch*), if the object is destroyed, then its nature is eternal and the engagement is nullified; and
- 2) the will of the debtor to perform the performance is hindered (*relatively overmatch*), temporary because it can be caused by natural disasters or war conditions.

No one party with good intentions in the agreement wants a situation that will interfere with the implementation of the agreement, so that when a compelling situation occurs, there will be a party who is harmed and how to resolve the risks that occur due to coercive circumstances. From these problems, it is necessary to know in advance what conditions can be categorized as coercive circumstances.

Referring to the classification of the type of coercive state mentioned by Soemadipradja, it can be concluded that the categories that can be said to be a state of coercion are:

1. Based on causes: *Overmacht* due to natural conditions, emergencies, due to the destruction or loss of the object of the agreement, due to changes in government policies or regulations.
2. Based on the nature: Permanent that an agreement is impossible to implement or cannot be fulfilled at all, temporary is a forced condition which causes the implementation of an agreement to be postponed more than the specified time.
3. Based on the object: it can be about all achievements or some achievements that are not carried out by the debtor
4. Based on the subject: a) objective is a compelling situation that makes it impossible for anyone to fulfil achievements due to impossibility; b) subjective, which occurs when the fulfilment of achievements causes implementation difficulties for certain debtors. The debtor may still fulfil the achievement, but at a disproportionately large sacrifice, or pose a huge danger of loss to the debtor. This situation in the *Anglo-American* is called *arduous* which gives rise to the right to renegotiate.

5. Based on the scope:

- a) General can be in the form of climate, loss, and theft;
- b) Specifically, it can be in the form of enactment of a regulation (Law or Government Regulation). In this case, achievements are not impossible, but achievements should not be made.

6. Other criteria in contract law: consist of impossibility, impracticality, frustration with the contra intent. From this category, the parties can consider what conditions might be claimed by the debtor as a state of coercion. This can be used as anticipation by the creditor about the debtor's failure to fulfil the contract performance because of coercive circumstances, which may be taken into consideration by the judge when the creditor and debtor take their dispute to court.

Based on the description of the views and the articles contained in the Civil Code as mentioned above, it would be possible to detail the elements of the (*overmatch/force majeure*) including the following:

1. Unforeseen events;
2. cannot be accounted for to debtors/creditors;
3. There is no bad faith from the debtor/creditor;
4. The existence of unintended circumstances by the debtor/creditor;
5. This situation prevents outstanding debtors/creditors;
6. If the achievement is carried out, it will be subject to a ban;

7. Circumstances beyond the fault of the debtor/creditor;
8. The debtor/creditor does not fail to perform (deliver goods);
9. The incident cannot be avoided by anyone (both debtors/creditors and other parties);
10. The debtor/creditor is not proven guilty or negligent.

In connection with the spread of Corona Virus Disease 2019 (COVID-19), as a National Disaster, it can be described as follows:

Ad 1. Unforeseen events;

As it is understood that the spread of Corona Virus Disease 2019 (COVID-19), is an event or occurrence that comes suddenly or unexpectedly.

Before the emergence of the spread of Corona Virus Disease 2019 (COVID-19), no one had ever predicted or predicted that there would be such a national disaster, a disaster that brought many disasters in various aspects in the form of casualties, property victims, work victims and so on. .

Based on the description above, it can be emphasized that the first element, namely the existence of an unexpected event, can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19), as an overnight *force majeure*. This is confirmed in Article 1244 of the Civil Code which states; "..... due to something unexpected..."

Ad 2. Cannot be accounted for by debtors/creditors.

As a result of coercive circumstances, a person cannot be accounted for or cannot be sued or asked for responsibility because he is in a state of not fulfilling his obligations. This is confirmed in Article 1244 of the Civil Code as follows; "...because of something unexpected, nor can he be held accountable..."

The spread of Corona Virus Disease 2019 (COVID-19), is an event or occurrence that causes a person to be irresponsible or unable to be prosecuted or asked to be responsible for being in a state of inability to fulfil obligations because it is hampered by an event in the form of the Spread of Corona Virus Disease 2019 (COVID19).

Thus, it can be emphasized that the second element, which cannot be accounted for by debtors/creditors, can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a situation *force majeure*.

In addition, it is also emphasized in Article 1245 of the Civil Code as follows "There is no cost of loss and interest, it must be replaced, especially because of compelling circumstances ...".

Ad 3. There is no bad faith from the debtor/creditor.

This is confirmed in Article 1244 of the Civil Code which states as follows; "..... even if the bad faith is not on his side".

The spread of Corona Virus Disease 2019 (COVID-19), is an event or incident originating from outside a debtor/creditor, which causes a person to be unable to fulfil his obligations, so that there is no connection with a person's intentions or intentions, either as a debtor or as a creditor. .

Based on the article and description, it can be emphasized that the third element, namely there is no bad faith from the debtor/creditor, can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a state of force (*overmatch/force majeure*).

Ad 4. There is an unintentional situation by the debtor/creditor;

In Article 1245 of the Civil Code, it is stated as follows, "...because of a compelling situation or due to an unintentional incident, the debtor is unable to give or do something that is required..."

The spread of Corona Virus Disease 2019 (COVID-19), is an event or occurrence that originates from outside a debtor/creditor, so he cannot be blamed because it was not intentional on his part, if it causes a person to be unable to fulfil his obligations,

Based on the article and description It can be emphasized that the fourth element, namely the existence of an unintentional situation by the debtor/creditor, can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a state of (*overmatch/force majeure*)

Ad 5. This situation hinders outstanding creditors;

It is undeniable that the existence of Corona Virus Disease 2019 (COVID-19) has prevented the debtor/creditor from fulfilling its obligations, this can be seen by the appeal to stay *at home* which results in someone not working which has an impact on reducing or loss of income so that you cannot pay your k obligations as debtors or creditors. Likewise in various other business aspects, such as contractor activities that have to be stopped, the closing of various malls and shopping centres which have an impact on employees being laid off or being laid off which in turn causes loss of profits for employers and lost or reduced income for employees.

This is confirmed in Article 1245 of the Civil Code as follows: "...because of compelling circumstances or due to an unintentional incident the debtor is unable to give or do something that is required..."

Based on the article and description, it can be emphasized that the fifth element, namely the situation that hinders outstanding debtors/creditors, can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a state of (*overmatch/force majeure*).

Ad 6. If the achievement is carried out it will be subject to a ban;

this is confirmed in Article 1245 of the Civil Code which confirms the following: "...or because of the same things have done a forbidden act."

As it is understood that the existence of Corona Virus Disease 2019 (COVID-19) has prevented the debtor/creditor from fulfilling its obligations, and if there is an attempt to fulfil it, it will be faced with a ban that must be obeyed. Rules that can be violated if they are still trying to fulfil their activities or obligations include:

- a. Law Number 24 of 2007 concerning Disaster Management,
- b. Law Number 6 of 2018 concerning Health Quarantine,
- c. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19),
- d. Presidential Regulation Number 17 of 2018 concerning Implementation of Disaster Management in Certain Circumstances,
- e. Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) as amended by Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) -19),
- f. Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (COVID-19) as National Disasters.

Based on the article and description, it can be emphasized that the sixth element, namely if the achievement is carried out, it will be subject to a ban, is fulfilled for Corona Virus Disease 2019 (COVID-19) as a state of (*overmatch/force majeure*).

Ad 7. Circumstances beyond the fault of the debtor/creditor;

As it is understood and undeniable that the existence of Corona Virus Disease 2019 (COVID-19) has prevented the debtor/creditor from fulfilling their obligations, this can be seen by the appeal to stay *at home* which results in a person not working which has an impact on reducing or loss of income so that it cannot fulfil its obligations as a debtor/creditor, and all of these emphasize that the error or negligence in fulfilling obligations is not at all on the debtor or creditor.

Based on the article and description, it can be emphasized that the seventh element, namely the circumstances beyond the fault of the debtor/creditor, can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a state of (*overmatch/force majeure*).

Ad 8. The debtor/creditor does not fail to perform (submit or fulfil obligations);

It is undeniable that the existence of Corona Virus Disease 2019 (COVID-19) has prevented the debtor/creditor from fulfilling their obligations. In this case, the debtor/creditor does not carry out the obligation because of conditions that prevent them from achieving, not failing to perform (submit or fulfil obligations) so far.

Based on the article and description, it can be emphasized that the eighth element, namely the debtor/creditor does not fail to perform (submit or fulfil obligations), can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a state of (*overmatch/force majeure*).

Ad 9. This incident cannot be avoided by anyone (both debtors/creditors and other parties)

As it is understood and undeniable that the existence of Corona Virus Disease 2019 (COVID-19) has prevented the debtor/creditor from fulfilling its obligations, this can be seen with an appeal to stay at home (*stay at home*) which results in a person not working which has an impact on reducing or losing income so that he cannot fulfil his obligations as a debtor/creditor. This national disaster event or occurrence is something that cannot be avoided by anyone (both debtor creditors or other parties) without exception;

Berd Based on the article and description, it can be emphasized that the ninth element, namely "the incident cannot be avoided by anyone (both debtors/creditors or other parties)", can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as a state (*overmatch/force majeure*)

Ad 10. The debtor/creditor is not proven guilty or negligent.

As it is known that the existence of Corona Virus Disease 2019 (COVID-19) has prevented the debtor/creditor from fulfilling their obligations, this can be seen by the appeal to stay *at home* which results in a person not working which has an impact on reducing or losing income so that unable to fulfil obligations as debtor/creditor.

The event or occurrence of a national disaster is something that cannot be avoided by anyone without exception so that it is proven that the debtors/creditors are not proven to have made mistakes or negligence.

Listening to the description above, it seems clear that the tenth element, namely "the debtor/creditor is not proven to have made a mistake or negligence" can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) as an *overmatch /force majeure*.

Based on the various descriptions and explanations mentioned above, it seems clear that all elements can be said to be fulfilled for Corona Virus Disease 2019 (COVID-19) to be affirmed as an *overmatch /force majeure*.

IV. Conclusion

1. That Covid 19 as a National Disaster according to statutory regulations, including the *Overmacht/force majeure* which is the juridical basis so that a person cannot be categorized as negligent, breach of contract or default
2. That the legal consequences caused by Covid 19 as a National Disaster are included in the category *overmatch/force majeure* or coercive circumstances, namely: a). Giving freedom to debtors/creditors to pay compensation (*schadevergoeding*), and b). Freeing the debtor/creditor from the obligation to fulfil the performance (*making*).

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