

**Analysis of Overmacht Credit Agreements During Pandemic  
(Case Study of Loss Claims Rejections By Judges)**

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**Abstract**

The purpose of this research is to identify and analyze Covid-19 as a form of comparative advantage and the consequences of the advantage method in loan agreements and loan termination policies due to the Covid-19 pandemic. The research method is norm-law. It is a legal research method that examines and studies the provisions of legislation as a basis for subsequent analysis of the issues discussed. The research uses primary and secondary legal material for analysis through the study of relevant documents and literature. The analysis is a qualitative analysis that addresses the question in question. According to the research, Covid-19 is an unnatural disaster and thus can be classified as a measure of superiority. As a priority relationship, the laws governing the spread of Covid-19 result in a priority relationship with the loan agreement, which means that the debtor must continue to meet his obligations to the debtor even after Covid-19 is over. When it was implemented following POJK 11/2020, the debtor obtained credit relief through restructuring in the form of interest rate cuts, extension of maturity, reduction of funds owed, and interest reduction in arrears according to the restructuring table issued by the bank. After verification and analysis by the bank, the affected debtor Covid- 19.

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## I. INTRODUCTION

Overmacht or Force Majeure is a form of theory in civil law and considered a legal basis. According to the doctrine of legal experts, Overmacht is defined as an unexpected situation that prevents the debtor from carrying out his achievements or obligations in accordance with the agreed agreement, and this situation is absolutely unavoidable by the debtor.<sup>1</sup> Mochtar Kusumaatmadja explains that conditions beyond control can be considered as a form of argument with the aim of not carrying out the obligation due to the scorching of the object of the agreement. This condition is focused on legal activities that are physical, not only due to difficulties during the implementation of existing obligations. Conditions that enforce the regulation can be observed in Articles 1244 and 1245 of the Criminal Code. In spite of this, they explicitly explain the force conditions, if reviewed, this decision to be more focused on the procedure for the process of reimbursement of funds and interest. However, this can be used as a guideline for managing forcing conditions. In the discussion of conditions that force them to protect against losses caused by natural disasters and tragedies beyond their control.<sup>2</sup>

In the era of the Covid-19 pandemic as it is currently, the existence of Covid-19 is a disaster that included the issuance of a Government Regulation No. 21 of 2020 regarding Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 which was later known as Government Regulation No. 21 of 2020. Regulation of the Minister of Health of the Republic of Indonesia No. 9 of 2020 regarding Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 then known as Minister of Health Regulation No. 9 2020 through Presidential Decree No. 12 of 2020 regarding Determination of Non-Natural Disasters Spread of Corona Virus Disease 2019.<sup>3</sup> The spread of the Covid-19 virus is very fast from one country to another.<sup>4</sup>

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<sup>1</sup> Tauratiya, Overmacht: Analisis Yuridis Penundaan Pelaksanaan Prestasi Akibat Pandemi Covid-19, *MIZANI: Wacana Hukum, Ekonomi dan Keagamaan*, Volume 7, No. 1, 2020, p. 3.

<sup>2</sup> Tjoanda, Merry. 2021. "The Outbreak of Covid-19 as an Overmacht Claim in Credit Agreements." *Fiat Justisia: Jurnal Ilmu Hukum* 15 (1): 75-92.

<sup>3</sup> Aminah. 2020. "The Effect of the Covid 19 Pandemic on the Implementation of the Agreement." *Diponegoro Private Law Review* 7 (1): 650-56.

<sup>4</sup> Fransisco, W. 2020. "Interaktif Masyarakat Terhadap Hukum Dalam Kehidupan Normal Baru Pasca COVID-19". *Journal of Judicial Review*, 22 (2), 151-164.

After this pandemic, a credit agreement due to a forced situation is a condition where a debtor is prevented from carrying out his performances due to unexpected conditions or circumstances when the contract was made. This conditions make all people to not be able to do activities outside their homes, many companies and restaurants have to close. Many companies have stopped their operational activities even to the point of termination of employment (PHK) for their workers.<sup>5</sup> Many restaurants are also closed to prevent the spread of the Covid-19 virus. In addition, when regulations were first enacted regarding large-scale social restrictions (PSBB) in certain cities, which further hampered community activities.<sup>6</sup>

This condition cannot be held accountable to the debtor. On the other hand, debtors have the right to pay their bills and have abnormal opportunities due to pandemic conditions. Without a pandemic, the debtor's situation and cases of force majeure or coercive situations have been regulated in Article 1244 and Article 1245 of the Criminal Code. A force situation is a condition that arises beyond the desire of the party that results in loss to one of the existing parties.

The causes of non-performing loans can be described in various ways. First, the weakness of the debtor's internal body is due to the decline in the debtor's business which causes a decrease in the competence of the debtor to pay bills. Second, the weakness of the financial institution or bank system with the lack of ability of financial institutions or bank officers in processing credit from submitting applications to disbursing credit. Third, the weakness of the external system of financial institutions or banks can be caused by a situation that forces changes that exist due to an epidemic that can result in losses for debtors.<sup>7</sup>

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<sup>5</sup> Taniady, V., Riwayanti, N. W., Anggraeni, R. P., Ananda, A. A. S., & Disemadi, H. S. (2020). PHK Dan Pandemi Covid-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan Di Indonesia. *Jurnal Yustisiabel*, 4 (2): 97-117.

<sup>6</sup> Kang, C., & Disemadi, H. S. (2021, March). The COVID-19 Pandemic Outbreak Impact And Prevention From Legal Perspective: An Indonesian Experience. In *CoMBInES-Conference on Management, Business, Innovation, Education and Social Sciences* 1 (1): 134-144., hlm. 138 in Sherlin & Lu Sudirman, 2021. "Pandemi Covid-19 Sebagai Bentuk Overmacht Terhadap Pelaksanaan Perjanjian Kredit Di Perbankan", *Widya Yuridika: jurnal Hukum*, 4 (2): 401-412.

<sup>7</sup> Gani, Hamsu Abdul, and Andika Wahyudi Gani. 2021. "Analisis Yuridis Terhadap Pandemi Covid-19 Sebagai Kategori Overmacht Dalam Melakukan Restrukturisasi Perjanjian Kredit." *Penguatan Riset, Inovasi, Dan Kreativitas Peneliti Di Era Pandemi Covid-19* 7 (13): 2012-21.

Concerning the effects on the economic cycle of the pandemic, credit problems in the banking world have become an important issue related to credit problems means risk in every loan delivery by banks. This risk is a condition where the debtor cannot carry out his obligations to the relevant bank according to the specified time. Credit problems influence the ups and downs of the economy received by the bank. Then, this has an impact on the bank's condition. A situation in which work will be difficult and will result in a decline in value from all aspects, even in the banking aspect. Weaknesses and even the risk of arrears on bank loans make aspects of the financial space must be alert. Besides, it can damage financial regulatory activities in banks and cause the bank concerned to go bankrupt.

After reviewing the overmacht case due to the 2019 Corona Virus Disease pandemic, it can be concluded that the overmacht conception of the credit agreement as a result of the case and how the regulations issued by the state apparatus and the settlement process for the credit agreement overmacht case can be drawn.

## **II. METHODOLOGY**

The results of this research are based on normative legal research, which is library research that refers to legal norms that exist in international legal regulations. The concentration of this research is positive law which gives the understanding that the current law and regulations or written norms are officially formed and promulgated by the state apparatus. In addition, there are unwritten norms that have effectively regulated people's behaviour.

## **III. RESULT AND DISCUSSION**

### **1. Concepts Related to Overmacht towards Credit Agreements**

Indonesian treaty law now believes in the custom of civil law, with its rules inherited from the colonial government of the Dutch East Indies, another truth that has emerged is the impact of the Dutch, by laying down conditions that bind the pillars, lord of society, and public itself. Besides, the relationship between Dutch and Indonesian law is the Civil Code or Burgerlijk Wetboek (BW), especially in the third volume regarding conventions and more specifically in chapter two regarding conventions originating from treaties.

An agreement is a legal relationship between two or more parties based on an agreement with legal consequences. During the implementation of the agreement, if the condition change, the principle of binding is sometimes difficult to implement. These changes greatly affect the performance of the parties bound in the agreement. If the agreement is implemented, a change of situation often happens. Some problems in the agreement are caused by a change of situation, but the Civil Code which is the main clause in contract law, does not discuss this provision, usually relating to circumstances beyond the estimates/estimates or the will of the parties, which is often called force majeure or overmacht.

In the Civil Code, it is stated that excess is a condition that prevents the debtor from submitting or carrying out something or carrying out what is prohibited in the agreement. The explanation will later adapt to the term used, namely the state of coercion. A coercive situation is defined as an event beyond the control of one party. The consequences that cannot delay or cause one of the parties to carry out their obligations stem from an agreement, and once that happens, the parties cannot step aside or deal with the event.

According to Article 1338 of the Civil Code, each agreement must be carried out according to the principle of good faith because it is legally binding.<sup>8</sup> However, the provisions of Article 1338 of the Civil Code are excluded. The difference can be found in the provisions of excess jurisdiction in Articles 1244 and 1245 of the Civil Code. The legal system of the Civil Code does not introduce the principle of escapism in the field of contract law but prioritizes the superpower aspect.<sup>9</sup>

## **2. Legal Consequences for Overmacht Credit Agreements during the Pandemic**

The agreement regarding the conditions of the Covid-19 pandemic has had quite an impact on the implementation of the agreements that have been determined and approved by various parties, consequently, this agreement is binding on various parties. Therefore, the party will obey the contents of the agreement. Agreements are made legally and then implemented.

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<sup>8</sup> Ricardo Simanjuntak, "Akibat Dan Tindakan-Tindakan Hukum Terhadap Pencantuman Klausula Baku Dalam Polis Asuransi Yang Bertentangan Dengan Pasal 18 Undang-Undang No.8/1999 Tentang Perlindungan Konsumen", *Jurnal Hukum Bisnis*, 22, (2), 2003, pp. 53-59.

<sup>9</sup> Kitab Undang-Undang Hukum Perdata

Occasionally, when one of the parties cannot implement the agreement on the grounds of overmacht or default/force Majeure/forced situations. Default, commonly known as breach of contract, is a condition caused by one of the parties not carrying out their obligations or releasing a condition that occurs (non-performance) in such a way that causes the other parties to feel disadvantaged and unfair because they cannot get their rights based on the agreed agreement. Overmacht is a condition where the debtor cannot carry out his achievements to the creditor after an agreement is formed, which hinders the debtor from carrying out his achievements, where the debtor cannot be blamed and is not obliged to handle risks and cannot estimate the agreed period of agreement caused by circumstances.<sup>10</sup>

According to Article 1338 paragraph (1) of the Criminal Code, all agreements made legally apply as law for those who make them. This means that the agreement must be implemented and binding on the parties. This is following the principle of *pacta sunt servanda*. However, there are various disturbances to the community individually or industrially when agreeing. During the event to eradicate the complexity of implementing agreements during the Covid-19 pandemic era, the government as the governing body and responsible for eradicating the epidemic by intervening in implementing Financial Services Authority regulations Number 11/POJK.03/2020 related to the national economic stimulus as a countercyclical policy due to the impact of the 2019 Corona Virus Disease.

The occurrence of Covid-19 resulted in a decline in economic value and affected the implementation of the agreement for the parties. Corona Virus Disease 2019 can be used as an argument for not being able to make a contract due to overmacht, but not all agreements in the pandemic era use the overmacht argument, because the covid-19 pandemic cannot be generalized as overmacht for all parties, but must be compared case by case in line with the facts.

Articles 1244 and 1245 of the Criminal Code have interpreted that overmacht is a juridical basis that makes the debtor free from his obligations and compensation even though the debtor has carried out *onrechtmatig*. 19 of the Criminal Code Article 1244; If there is a reason for

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<sup>10</sup> I Made Widnyana Putra, Ni Luh Made Mahendra Wati, Komang Arini Styawati. "Akibat Pandemi Covid-19 Sebagai Alasan Force Majeure Dalam" 2 (2), 2021, pp. 234–40.

being indebted, they are obliged to pay losses along with interest and if it cannot be proven, it cannot be done or it is not at the time when the agreement is made, due to unexpected things, even if they cannot be held accountable, overall if there is a bad intention, it is not on their part. Furthermore, Article 1245 of the Criminal Code stipulates no costs, losses, and interest must be replaced. If this is due to overmacht or by accident, the debtor has obstacles in submission or mandatory actions or because the same thing has been carried out prohibited things.

The consequences of the Overmacht law are as follows:

- a. The debtor does not pay compensation (Article 1244 of the Criminal Code);
- b. Fixed risk, especially in temporary forced conditions, and
- c. Creditors do not need to carry out the full performance, even though they can be free from their obligations to submit performance contrasts.

Therefore Covid-19 can be classified as a relative overmacht, the impact of overmacht on creditors makes the risk burden unchanged. In another sense, the debtor continues to fully fulfill his performances after the coronavirus disease 19 pandemic is over or goes through a credit restructuring method where this method has been confirmed by the government to be carried out by the bank or funding institution with the debtor.

### **3. Government Policy in Resolving Credit Agreement Problems Due to Overmacht Due to the Spread of Covid-19**

The spread of Covid-19 (Coronavirus Disease) 2019 caused many negative impacts. One of them has resulted in the economy in Indonesia and even in the world has declined. In the world of credit, many debtors complain to compensate creditors. Therefore, the Government in particular the Financial Services initiated a policy to regulate the stimulus/stimulus for increasing the national economy so it is always expected to reduce the number of problems related to complaints about difficulties in accessing credit relief. In addition, to provide credit relief to online motorcycle taxis, MSME entrepreneurs, taxi drivers, as well as non-permanent

employees and workers/employees who are victims of layoffs of a company through credit reactions.<sup>11</sup>

Therefore, the Financial Services Authority issued the Financial Services Authority regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical policy for the impact of the spread of coronavirus disease 2019. The issued rules are valid until March 31, 2021. This is less effective because it is a quick response and forward-looking policy due to the impact of the spread of the Covid-19 virus. After that, it turns out that the spread of COVID-19 is still high. Thus, making the government issued a stimulus policy, POJK 48/POJK.03/2020 which is enforced until March 31, 2022.

The points regulated in the Covid-19 POJK stimulus are a relaxation policy for debtors who feel the impact of the spread of Covid-19, one of which is the assessment of credit quality only based on the similarity of principal and interest payments, which is only determined to reach 10 billion Rupiah. In addition, the funding arrangement is only based on the provisions for repayment of the same principal or interest with provisions of up to 10 billion Rupiah. After that, it is also determined that the credit or borrowing capacity will be smooth and smooth after restructuring. Also, quality assurance solutions for new credit or financing.

There are certain points regulating the POJK Stimulus as a result of Covid-19. Restructuring is also determined and regulated to provide periodic strength, especially on the ability to decline in the value of credit or funding which makes improvements to bank liquidity and capital. It is related to credit or funding which was then restructured, but from the calculation of low-quality assets (KKR) in assessing the soundness of banks for sharia commercial banks or conventional commercial banks or sharia business unit. To be able to match the approval mechanism for credit or financing restructuring, it is necessary to comply with the principle of prudence in every agreement.

Banks should also implement liquidity and capital policies as a result of the spread of Covid-19. This is contained in the group of Book three (3), Book four (4) and foreign banks will also

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<sup>11</sup> Tjoanda, Merry. 2021. "The Outbreak of Covid-19 as an Overmacht Claim in Credit Agreements." *Fiat Justisia: Jurnal Ilmu Hukum* 15 (1): 75–92.



be able to adjust the lower limit for meeting the net stable funding ratio and fulfilling liquidity coverage from 100% to 85% which is only valid until March 31, 2022.

On the other hand, Sharia commercial banks and conventional commercial banks can allocate an education budget of no more than 5% of the human resource expenditure budget for 2020 and 2021. There are two procedures for handling non-performing loans/financing, as follows:<sup>12</sup>

- a. Relief for non-performing loans is through re-deliberation between creditors and debtors.
- b. Credit assistance in conflict or settlement through legal entities, for example, the State Receivables Committee (PUPN) and the Directorate General of State Receivables and Auctions, the Arbitration Court.

Credit assistance is usually carried out by rescheduling. Using this method can make modifications to some credit agreements to coincide with the repayment schedule or credit term, also including the transition of instalment amounts.

Restructuring policies often increase conflict for customers/bank debtors/financing entities. Referring to searches in several national online media, some customers protested that banks or funding agencies still often stipulate the obligation to make monthly instalments. Then what they saw was leeway in the form of delay in instalments as well as a reduction in interest as has been described by Jokowi as the President of Indonesia. There are two discrepancies between the President's explanation and POJK 11/2020 in responding to credit relaxation, as follows:

- a. Financial Services Sector Consumer Protection 11/2020 is solely explained to depositors/customers obtaining instalment allowances using several options, like lower interest rate, extended period, reduced interest arrears, increased credit facility

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<sup>12</sup> Aminah. 2020. "The Effect of the Covid 19 Pandemic on the Implementation of the Agreement." *Diponegoro Private Law Review* 7 (1): 650–56.

financing, investment model converted from credit/financing, and reduced principal arrears.

- b. Article 1 of Consumer Protection for the Financial Services Sector 11/2020 also explains that the Banking Agency does not include Non-Bank Financing Companies/Institutions such as Multifinance (Leasing). The banks discussed are Islamic Commercial Banks, Rural Banks, Conventional Commercial Banks, Sharia Business Units, and Sharia Rural Banks.

On the other hand, the President is concentrating on reaching out to business workers in the self-employed sector or informal workers, such as motorcycle taxi bike and car drivers who have vehicle instalments. It can be said that Consumer Protection for the Financial Services Sector has not fully coordinated what President Joko Widodo explained, which is lowering interest and delaying instalments within only a year. Since micro and small business workers during the Covid-19 outbreak, the condition of these informal workers are getting more worrying.

#### **IV. CONCLUSION**

The Covid-19 pandemic is a condition that can be regarded as a relative overmacht. It can be concluded that the legal consequences of this pandemic on credit agreements are that debtors are obliged to carry out their obligations and their performances to debtors after this pandemic is over. During its implementation, POJK 11/2020, debtors are given credit facilities during realignment in line with the rules promulgated by the bank such as duration extension, main bill discount, interest rate reduction, interest discount and other forms that are in line with the verification and analysis of the parties to the debtor who impacted by Covid-19.

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