ACTUALIZATION OF THE FORCE MAJEURE CLAUSULA IN THE LAW OF AGREEMENT IN THE MIDDLE OF PANDEMIC COVID-19

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Abstracts :
As the governing body for social life, the existence of law cannot just be released. The importance of law in human life is solely for creating justice and order. One of the law itself's essence is that there are rules for the relationship between the state and its people and between individuals. In general, laws that regulate relationships between individuals in society are civil laws. In civil law, there are several scopes, including agreement. An agreement is essentially an agreement between the parties, which then creates a legal relationship between the parties. However, in its application, there are Either party can use several reasons for not fulfilling its achievement. One of the reasons for this is force majeure or better known as a state of force. In general, the state of force is only synonymous with natural disasters or the act of God. But now, the scope of force majeure has expanded in practice. Currently, almost all countries in the world are being hit by the COVID-19 pandemic. This pandemic condition certainly affects all aspects of life, including the enforcement of an agreement. This paper will discuss the conception of force majeure and how it correlates with the current pandemic situation. The method used in this paper is a normative juridical approach to laws and regulations, conceptual approaches, and case approaches.
Keyword : *Agreement, Froce Majeure, The Covid-19 Pandemic.*

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1. Introduction

The existence of law in society's social life is like two sides of a coin that cannot be separated. In fact, a long time ago, an adage was introduced by Marcus Tullius Cicero, namely ibi societas ibi ius. According to Cicero, in a society, of course, there must be a law that becomes a social institution to regulate that community's life to create an order. Law as an institution to regulate people's lives is necessary because in essence the potential for conflict between individuals is very vulnerable to occur.

Frédéric Bastiat in his book The Law, once stated that law is an organization of natural rights with society to protect the interests of individuals in it. The law aims to preserve the individual and collective rights of society solely to achieve justice.[1] The argument presented by Frédéric Bastiat shows that law is a suggestion to protect the interests of individuals and society to achieve justice.

Talking about law, at least it can be classified into two major groups, namely public law and private law. Public law is a law that regulates the legal relationship between the state and its people. Meanwhile, private law is the law that regulates relationships law between individuals in the social life of society. The fields of law that are included in the category of public law are constitutional law, state administrative law, criminal law and international law. Meanwhile, those included in the private law category are civil law.

Historically there has been a classification of the two groups of laws has existed in the French legal culture.[2] The classification of public and private law is also related to the legal system adopted in a country. In countries that adhere to a civil law system, this classification is related to the judicial process that adjudicates a case because of the difference between public and private judicial processes. Whereas in countries that adhere to the common law system, even though there is a classification between public and private law, the judicial process is still carried out by the same court.[3]

In this paper, the author will discuss the specifics relating to civil law, especially regarding agreements. According to Article 1313 of the Civil Code (KUHPerdata), an agreement is meant by an act in which one or more people bind themselves to one or more people. The result of this agreement is the emergence of a legal relationship between the parties. This is also in line with the principles contained in an agreement, namely pacta sunt servanda.

According to Soebekti, an agreement is a concretization of an engagement, while an engagement is an abstract thing. This is because in an agreement, there is an obligation for the parties to fulfill the achievements they have agreed on.[4] Etymologically the agreement comes from the Dutch language, namely overeenskomst which means a an event where someone promises to another person to carry out something that is mutually agreed upon.[5]

Yahya Harahap argued that it contained an obligation for the debtor to fulfill his obligations to the creditor voluntarily because of a legal relationship between the parties

[1] Frédéric Bastiat. (2010). *Hukum Rancangan Klasik untuk Membangun Masyarakat Merdeka*. Jakarta: Freedom Institute. p. 3.
[2] Rahayu Prasetianingsih, (2010). Konstitusionalitas Hukum Privat: Beberapa Pandangan yang Berkembang dalam Pengkajian Ilmu Hukum. *Padjajaran Jurnal Ilmu Hukum*, 1(2): p. 369.
[3] Elizabeth Zoller. (2008). *Introduction to Public Law: a Comparative Study*. Leiden: Martinus Nijhoff Publishers. p. 3.
[4] R. Soebekti. (1992). *Aspek-Aspek Hukum Perikatan Nasinal*. Bandung PT. Citra Aditya Bakti.
[5] J. Satrio. (2001). *Hukum Perikatan-Periaktan Yang Lahir Dari Perjanjian*. Bandung: PT. Citra Aditya Bakit.

in the agreement (creditor and debtor). If the debtor does not wish to fulfill his obligations, the creditor can enforce his rights. Coercion on the debtor by the creditor to fulfill his obligations can be done through the judicial institution.[6]

The achievements agreed upon by the parties can be in the form of giving something, doing something, or not doing something. When a debtor does not meet this achievement, the debtor can be said to have defaulted. A debtor is said to have defaulted when he did not give something, did not do something, or did something that was agreed not to be done. If a debtor has defaulted, the creditor can legally sue the debtor through a judicial process.

However, this does not mean that the debtor is unable to ward off allegations of default submitted by the creditor. There are at least 3 (three) reasons for the debtor to ward off default accusation. The three reasons are that the creditor has previously neglected to fulfill his obligations (exeptio non adimpleti contractus), the existence of a force majeure /overmacht, or the creditor has given up his/her rights (rechtsverwerking). In this case the author will discuss specifically the force majeure/overmacht.

*Force majeure*is one of the reasons that is often used when the achievement of an agreement is not fulfilled due to something that is outside the control of a human being. Historically, the concept of force majeure has been known since Roman times. In the common law system the doctrine of force majeure Interpreted as an inability to carry out an achievement.[7] Mochtar Kusumaatmadja argues that a force majeure clause can be accepted when the result of an unexpected event destroys the object of the agreement. This situation is intended not only for physical implementation but also for the implementation of the law.[8]

Mieke Komar Kantaatmadja also stated that at least there are several bases for an evenet that can ben categorized as force majeure. As for some of the foundations, namely:[9]

1. A change in circumstances does not exist at the time of the formation of the agreement;
2. The change concerns a condition which is fundamental to the agreement;
3. These changes cannot be predicted in advance by the parties;
4. The result of these changes must be radical, thus changing the scope of the obligations that must be carried out according to the agreement.

The force majeure clause in an agreement is intended to prevent the incidence of losses for one of the parties due to the inability to fulfill his/her achievement. Even though this inability occurred not because of his fault or negligence but because of an unexpected event. The unexpected events can be in the form of fire, earthquake flood, rainstorm, hurricane, or natural disaster other, power cut, catalyst damage, sabotage, war, invasion, civil war, rebellion, revolution, military coup, terrorism, Nationalization, blockades, embargoes, labor disputes, strikes and sanctions against a government.[10]

If there has been an unexpected event that fundamentally affects the implementation of the agreement, the debtor is released from his obligation to provide

[6] M. Yahya Harahap. (1986*). Segi-Segi Hukum Perjanjian*. Bandung: Alumni.
[7] Anonim. (2011). *Force Majeure in Troubled Times: The Example of Libya*. Houston: Jones Day Publication. p. 1.
[8] Harry Purwanto. (2011). Keberadaan Asas Rebus Sic Stantibus Dalam Perjanjian Internasional. *Jurnal Mimbar Hukum Hukum Edisi Khusus*. p. 115
[9] Ibid.
[10] Thomas S. Bishoff & Jeffrey R. Miller. (2009). Force Majeure and Commercial Impractiability: Issues to Consider Before the Next Hurricane or Matural Disaster Hits. *The Michigan Bussiness Law Journal, 1(1)*. p. 17.

compensation to the creditor. This is as stated in Articles 1244 and 1245 of the Civil Code. A debtor is released from his obligation to provide compensation and interest in the event of coercive circumstances. The loss of the debtor's obligation to compensate for losses due to force majeure is solely to protect the debtor from losses that do not come from his fault or negligence.

If we look at some examples of unexpected events that fall into the force majeure category, these events are physically visible to have had a major impact on certain areas. It becomes a question if an event occurs in the form of a disease outbreak, whether it can be categorized as force majeure in an agreement. This is because currently, almost all countries in the world are facing the 2019 Corona Virus Disease (COVID-19) pandemic.

COVID-19 is a virus that is still categorized as a family of Severe Acute Respiratory Syndrome (SARS). COVID-19 was first identified in Wuhan, China at the end of 2019.[11] Currently, the spread of COVID-19 has spread to all countries in the world including Indonesia. According to the Decree of the Minister of Health of the Republic of Indonesia Number 300/Menkes/SK/IV/2009 concerning Guidelines for Pandemic Epicenter Management. Influenza Pandemic is an epidemic that has infected many countries in the world. This is in line with the definition set by WHO, namely pandemic can be said to occur annually in *each of the temperate southern and northern hemispheres, given that seasonal epidemicscross international boundaries and affect a large number of people.*[12]

A pandemic is a condition in which the spread of infectious diseases between humans is widespread throughout the world. Historically there have been several diseases that were categorized as pandemics, namely the Spanish Flu, Hong Kong Flu, SARS, H7N9, Ebola, and Zika.[13] The term 'pandemic' is etymologically derived from Greece, namely pan which means 'all' and demos which means 'person' . A pandemic is generally defined as a widespread epidemic or an infectious disease that occurs throughout a country or in one or more continents at the same time.[14]

Through this paper the author will dissect how the concept of force majeure in contract law and its implementation. In addition, the author will also relate whether the current pandemic situation can be said to be a force majeure so that it can free debtors from default. The author conducts both theoretical assessments accompanied by cases of default that occurred during the current pandemic. It is hoped that this paper can contribute to the dynamics of the development of civil law both in Indonesia and globally.

Formulation of the problem

Based on the background that the writer described earlier formulation problems that can be drawn to determine the focal point in the next discussion are as follows:

1. How is the concept of force majeure clauses in contract law?
2. How is the application of the force majeure clause in the agreement in the midst of the COVID-19 pandemic situation?

[11] UNICEF. (2020). Frequently Asked Question about coronavirus disease (COVID-19). https://www.unicef.org/indonesia/coronavirus/FAQ, accessed on 10 Oktober 2020.
[12] Health Kelly. (2011). The Classical Definition of a Pandemic is Not Elusive. Bulletin of World Health Organization.
[13] W. Qiu S. Rutherford, A. Mao & C. Chu. (2017). The Pandemic and Its Impact. *Health Culture and Society*. p. 9-10.
[14] Mark Honingsbaum. (2009). *Historial Keyword Pandemic*. The Lancet

2. Writing Method

The type of research in this article is juridical normative or also known as doctrinal legal research[15], namely researchers examine primary legal materials[16] then proceed with research on secondary legal materials to answer problems that are the focus of research conceptualizing law as rules or norms that are benchmarks for human behavior that is considered deserved. The writing approach method used in this research is the statute approach, namely by examining and analyzing statutory regulations.[17] A conceptual approach, namely by examining how the concept of a force majeure clause in an agreement. The case approach The case approach, namely by examining and understand cases related to default or obstacles to implementation of the agreement due to the COVID-19 pandemic.[18]

3. Result and Discussions

3.1 Concept Clause Force Majeure in the Law of Agreement

Force Majeure in Indoneisan it is known as a state of force or force majeure. Force majeure is a situation where the debtor is unable to carry out his performance due to an unexpected event (act of God). Due to the unforeseen circumstances, this can be an excuse for not fulfilling one's achievement.[19]

R. Soebekti explained that force majeure is an excuse that can be used by a debtor to free him from the obligation to fulfill his/her achievements. Abdulkadir Muhammad explained that force majeure is a condition in which a debtor is unable to fulfill his / her performance to the creditor as promised because of an unexpected event that gets in his way. According to Setiawan, force majeure is a condition after an agreement is signed between a creditor and a debtor, but later the debtor is unable to fulfill his performance due to an event that has prevented him from being previously suspected. Because of this incident the debtor cannot be blamed or held responsible because it is not his fault or negligence.[20]

In general, force majeure can be classified into 2 (two), namely absolute force majeure (absolute onmogelijkheid) and relative force majeure (relatieve onmogelijkheid). Absolute force majeure is a condition that fundamentally makes the debtor unable to carry out his performance at all. However, force majeure is relatively a situation making the debtor maybe able to meet his performance but it can cause the debtor to experience enormous losses.[21]

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[15] B. Sukismo. *Karakter Penelitian Hukum Normatif dan Sosiologis*. Yogyakarta: Penerbit Puskumbangsi LEPPA UGM.
[16] Roni Hanitjo Soemitro. (1988). *Metodologi Penelitian Hukum dan Jurimeteri*. Jakarta: Ghalia Indonesia
[17] Soetandyo Widnjoesobroto. (2002). *Hukum, Paradigma, Metode, dan Dinamika Masalahnya*. Jakarta: ELSAM-HUMA.
[18] Peter Mahmud Marzuki. (2005). *Penelitian Hukum*. Jakarta: Kencana.
[19] H. Amran Suadi. (2018). *Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum*. Jakarta Prenamedia Group. p. 115.
[20] P. N. H. Simanjuntak. (2017). *Hukum Perdata Indonesia Cetakan ke-3*. Jakarta: Kencana. p. 295.
[21] Agri Chairunisa Isradjuningtyas. (2015). Force Majeure (*Overmacht*) Dalam Hukum Kontrak (Perjanjian) Indonesia. *Veritas Et Justitia*, 1(1), p. 145-146.

A force majeure in essence does not necessarily cause the loss of the engagement that arises because of the agreement of the parties. The force majeure that occurs only eliminates the working power of the engagement. Therefore, if a force majeure occurs then:[22]

a. The creditor cannot demand that the agreement be fulfilled by debtor.
b. The creditor cannot claim that the debtor was negligent and then sue him.
c. Krediur cannot demand termination of the agreement.
d. On agreement lead behind, then fall obligation to counter-achievement.

In the Civil Code, there are several provisions regarding the validity of a contract in the event of a force majeure. In a sale and purchase agreement, for example, Article 1460 of the Civil Code stipulates that if the object of the agreement is destroyed, the buyer shall bear it. Whereas in the exchange and lease agreement the Civil Code stipulates that the risk in the event of a force majeure is borne jointly by the parties making the agreement.[23]

Rahmat SS Soemadipradja stated that currently force majeure is not only an act of God such as natural disasters or because the promised object was destroyed but there has been an expansion of the concept of force majeure in practice. The expansion of force majeure also includes administrative actions of the authorities, political conditions, and other situations.[24] The scope of force majeure can be classified as follows:[25]

a. The risk of war, natural disasters such as tsunamis, earthquakes, landslides, flash floods, and others.
b. The administrative action of the ruler that the parties did not expect in making the previous agreement.
c. Legal consequences of the issuance of a regulation by the government.
d. An accident that happened at sea.
e. Emergency state.
f. Extraordinary situations or circumstances that are beyond the control of the parties and have never been predicted beforehand that such situations or circumstances will occur so that achievements can be fulfilled.

So it can be seen that the conception of force majeure has developed in practice. This shows that force majeure is not only limited to a state of force that occurs as a result of the act of God but has expanded in several aspects. As for the risks that must be borne due to the occurrence of force majeure, it is based on the provisions of statutory regulations and judges' considerations in deciding cases.

Sometimes in making an agreement the parties have established a force majeure clause which may result in the inability to fulfill the achievement. This is solely aimed at minimizing risks arising from force majeure and creating legal certainty. In general, the force majeure clause stipulated by the parties in the agreement is in the form of God's act, which normally becomes an obstacle in fulfilling achievements. However, it does not rule out extraordinary situations or conditions that the parties have never suspected in making an agreement, for example the current COVID-19 pandemic.

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[22] Mariam Darus Badrulzaman et al. (2001). *Kompilasi Hukum Perikatan*. Bandung: PT. Citra Aditya Bakit. p. 26.
[23] Agri Chairunisa Isradjuningtyas. Op.cit., p. 151-152.
[24] Rahmat S.S. Soemadipradja. (2010). *Penjelasan Hukum tentang Keadaan Memaksa*. Jakarta: Nasional Legal Reform Program-Gramedia. p. 120.
[25] Agri Chairunisa Isradjuningtyas. Loc.cit.

3.2 Application of the Force Majeure Clause in the Agreement in the Middle of a COVID-19 Pandemic Situation

During the period of the spread of the pandemic from the beginning of 2020 untul entering the third quarter of this year, many busniness sectors have been forced to "go out of busnines". For example, the big world gas company The Chesapeake suffered a heavy first first quarter loss of 8.3 billion USD. On the other hand, at the end of last year the company owed 9.5 billion USD and at the same time had the obligation to pay bonds amounting to 192 billion USD which matures in August 2020. Not only Chesapeake suffered losses until bankruptcy during the COVID-19 period, it was recorded in America has about 20 oil and gas producers who also filed for bankruptcy during the pandemic, including the two big companies Ultra Petroleum and Whiting Petroleum.[26]

By looking at the global economic situation amidst the threat of a recession, many companies cannot develop optimally. In Indonesia, according to BPS data, it shows negative economic growth in the second quarter of 5.32%[27] which indicates slowing productivity in the business sector. The decrease in productivity of the business sector will directly impact the fulfillment of achievements in ongoing contracts. However, with the stipulation of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (Covid-19) As a National Disaster, there was an opportunity to renegotiate on ongoing contracts.

Even COVID-19 cannot by itself be a deterrent to debtors as a force majeure considering that the state of force majeure is very dependent on the clause of the agreement, the debtor's goodwill towards accomplishment of achievements and how much influence an event has on the fulfillment of achievements. For example, when Rudy Suardana sued a local shipping company because he was deemed a default after the ship carrying goods (achievement) and would be handed over to the plaintiff unexpectedly sank. That at that time the Supreme Court in decision No. 409 K/Sip/1983 decided that the sinking of the ship was an impossible condition suspected (force majeure). At that time, the judge's consideration was that the ship that would deliver the achievement already had a sailing permit and had been declared fit to go to sea. So the judge decided that the defendant was indeed in a state of force majeure that because the ship had a sailing permit, it was deemed able to deliver achievements to the creditors, but other unexpected factors eventually resulted in the ship sinking.

These unpredictable factors are not merely a force majeure condition. In this case, the force majeure condition's determination must be thoroughly analyzed through other possibilities that should be done with more effort by the debtor to make achievements or prevent these unforeseen circumstances from being avoided with great effort. Therefore, if you make COVID-19 a debtor's deterrence from obstructing achievement, it is necessary to examine how far COVID-19 affects achievement and how much effort is made by the debtor to meet this achievement.

During COVID-19 in Indonesia, several civil cases resulted in debtors failing to fulfill their achievements under the pretext of force majeure. The first case is a case involving PT. Toyota Astra Financial Services Bengkulu Branch (plaintiff) with Koriyanti

[26] Clifford Krauss, Chesapeake Energy, a Shale Pioneer, Files fot Bankruptcy Protection, https://www.nytimes.com/2020/06/28/business/economy/chesapeake-energybankruptcy.html. (Accessed on 12 September 2020).
[27] BPS. Ekonomi Indonesia Triwulan II 2020 Turun 5,32 Persen. Available From https://www.bps.go.id/pressrelease/2020/08/05/1737/-ekonomiindonesia-triwulan-ii-2020-turun-5-32-persen.html. (Accessed on 12 September 2020).

(defendant) in alleged default in the financing agreement. In this case, the defendant was involved in a financing agreement against the plaintiff regarding the financing of one vehicle using credit in 60 installments of Rp.208,440,000. However, Koriyanti did not carry out the installments starting January 25, 2020 or the 30th installments due on that date. As a result of not fulfilling the agreed achievements, the plaintiff suffered a loss of Rp. 109,000,224, - including late payment penalties. the debtor's business is not running smoothly. In this case the judge decided in decision number 5 / Pdt.GS / 2020 / PN Bgl that COVID-19 is not a force majeure condition for the debtor considering that COVID-19 has only been detected in Indonesia since March 2020 and has no connection with COVID-19. against the default by the defendant at the 30th maturity date on January 25, 2020. So that in this case it is clear and clear that the debtor cannot fulfill the achievement not due to COVID-19 which is considered as force majeure.

The second case involved M. Roem Djibran (the applicant) and PT. Sari Keramindo International (respondent) in a case of requesting a postponement of debt payment obligations (PKPU). In this case the applicant is a legal consultant who has carried out his obligations to the respondent as a consultant. Therefore, the respondent has an obligation to pay the bill to the applicant every month according to the agreement between the two parties. The Respondent argued that his business was hampered due to COVID-19 which the Respondent considered a force majeure which resulted in hampered performance. On the other hand, the respondent has a good intention to complete the achievement by means of installments and notifies the applicant regarding his company's economic situation. The panel of judges was also in its deliberation on decision number 214 / Pdt. Sus-PKPU / 2020 / PN Jkt.Pst stated that it was true that the defendant was experiencing unfavorable financial conditions due to COVID-19 so in this case the panel of judges confirmed that the defendant was in a state of force majeure followed by the respondent's good faith to inform his financial condition to the applicant and also tried to pay in installments to the applicant but later it was not accepted by the applicant. In this case the respondent is in a very tight condition even though he has good faith to try to pay for the achievement in installments due to unforeseen circumstances that result in disruption of the company's finances.

The third case involves Aharis (plaintiff), the head of PT Reksa Finance, with Aria Gusmara (defendant) in a financing agreement. The defendant, who is the plaintiff's debtor, is suspected of defaulting on his obligation to pay credit to the plaintiff. The Defendant was unable to pay installments that should have been paid for 36 months to the plaintiff. However, in the 14th installment, which was due on April 8, 2019, the defendant did not pay the installments, which caused losses to the plaintiff. If the achievement was not carried out, the defendant argued that the oil palm plantation, which was a source of income to pay for credit, had been tracked (did not bear fruit) and was added to the existence of the COVID-19 situation, which was considered by the defendant to be a force majeure event. The panel of judges has another opinion regarding COVID-19 which is considered a force majeure by the defendant. In his consideration, the judge considered that COVID-19 in this case, was in the category of force majeure as claimed by the defendant. According to the author, the defendant who has defaulted since 2019 is irrelevant when postulating COVID-19 as one of the reasons for not fulfilling achievements. Given that the due time when the defendant defaults with the presence of COVID-19 in Indonesia is so far away that there is no connection between COVID-19 and the defendant's default actions.

When comparing with force majeure provisions in other countries indeed it is not much different from what is meant in Indonesia. For example, in China, the PRC General

Provisions of the Civil Law which was passed in 2017 has regulated the provisions of force majeure. In Article 107 of the Legal Provisions Civil PRC explains that the debtor will not bear civil liability in the event of failure to fulfill the contract or damage to performance for a force majeure. Furthermore, Article 153 of the PRC Civil Law Provisions explains that force majeure is a condition that cannot be predicted, avoided, and resolved. So for the debtor, it is necessary to prove that a situation really fulfills the provisions of Article 153. In practice, China has one of the policies that Indonesia does not have regarding force majeure. The policy is to issue a force majeure certificate issued by The China Council for the Promotion of International Trade to protect companies that have claimed that they are unable to fulfill their contracts and thus avoid penalties for default. However, this does not mean that the contract will be canceled, but rather the implementation is postponed or postponed. This certificate is only binding on contracts regulated by China to not bind on contracts regulated by the UK and other countries.

Apart from Indonesia and China, the United States will also get ready to face many problems in business contracts following the economic recession. Even in CNN Indonesia, quoting the Jefferies Investment Bank's prediction, it is estimated that the number of companies experiencing bankruptcy has increased by 244 percent compared to last year in the July and August period.[28] This certainly has a profound impact on business contracts whose performance fulfillment is ongoing. COVID-19 is a very relevant reason to provide a deterrent to current debtors by taking into account the legal provisions that apply in America. For example in the State of California, to test one situation is categorized as force majeure depending on the impact of the event on achievement of the criteria cannot be prevented by caution.[29] Several courts in America force majeure clauses are not only interpreted as a situation that is impossible to do, but in a situation where it is possible to fulfill the achievement but find difficulties in implementing it. One example is Hurricane Hugo which damaged oil facilities which resulted in delays in the supply of oil after the storm. In its decision, the court considered this matter categorized as force majeure and forgave the delay.

In India, since the emergence of COVID-19 in February, the Indian government immediately issued an office memorandum stating that COVID-19 is a natural disaster and can be categorized into a force majeure clause. However, the office memorandum provisions are only binding on contracts entered into by the government, so that contracts entered into by private parties will only be an indication of a force majeure situation. In India there have been several court orders relating to contract disputes over force majeure and frustrating doctrines related to COVID-19, such as the Bombay High Court ruling in the case of Rural Fairprice Wholesale Limited as a plaintiff against IDBI Trusteeship Services Limited. In this case, COVID-19 was argued as the cause of the collapse in stock prices in the market.

[28] CNN Indonesia. Resesi AS, Puluhan Perusahaan Kakap Ajukan Pailit. Available From https://www.cnnindonesia.com/ekonomi/20200913113937-92-545834/resesi-as-puluhan-perusahaan-kakap-ajukan-pailit. (Accessed on 12 September 2020).
[29] Shearman. Covid 19: Force Majeure Event?. Available From https://www.shearman.com/perspectives/2020/03/covid-19--forcemajeure-event. Accessed on 12 September 2020).

4. Conclusion

In practice, COVID-19 cannot unilaterally be considered a force majeure clause considering that by looking at the concept and practice of force majeure in Indonesia and countries that are familiar with the concept of force majeure, it can be concluded that the application of the force majeure clause during the pandemic period is very dependent first; on the force majeure clause contained in the agreement, second; impact of COVID-19 on compliance achievement, and third; efforts undertaken by the debtor towards meeting achievement (good faith). The issuance of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster is only an entry point for renegotiation. However, in several other countries, such as China and India, which issued force majeure certificates and office memoranda on the state of COVID-19 is stated firmly as a state of force majeure even though the two have exceptions stipulated by state regulations.

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