

Force Majeur as a reason for default in the authentic deed during the covid 19 period

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ABSTRACT

Authentic Deed is an agreement that contains rights and obligations between the parties in the agreement where the agreement has perfect legal force and can be used as perfect evidence in court. During the Covid 19 pandemic, many people or business entities that made agreements in authentic deeds found it difficult to fulfill their obligations and were even unable to continue their obligations to other parties in authentic deeds. This raises the issue of default in the authentic deed caused by the Covid 19 epidemic. This study uses normative juridical analysis with qualitative data to answer questions to what extent Covid 19 is used as a reason for force majeure on the issue of default on authentic deeds. The results of this study found that the Covid 19 epidemic turned out to have a tremendous impact on the business and economy of the community and the country which had implications for not fulfilling agreements in authentic deeds. Force Majeure is a reason for protection for parties who are unable to perform but not absolutely because in some conditions the Covid pandemic cannot be used as an excuse for force majeure. The conclusion in this study needs clear proof whether the legal event in the business is an event that is really affected by the Covid 19 pandemic or not which is only used as an excuse to be released from civil cases due to default.

Keywords: Force Majeure, Wanprestasi, Agreement Authentic, Pandemi Covid 19

1. Introduction

Authentic Deed is a binding agreement between one party and another which is strong and can be used as perfect evidence in court. A business transaction requires an agreement to be binding between one party and another so that an agreement is used that the agreement can be made by a notary so that it is authentic and the strength of the agreement is not in doubt so that authentic deeds are often used in business agreements.

In recent months there has been a big change in business in Indonesia and globally in general due to the Covid 19 pandemic, where almost all business sectors have been affected by Covid 19. Covid 19 is a virus outbreak that originated in Wuhan, China, which has caused it to go home. millions of people have died in the world even though many have recovered from this disease. Various government policies in the world to prevent the development of victims from the Covid 19 epidemic, such as closing transportation access to and from abroad to the imposition of Lock Down and PSBB in Indonesia¹, Businesses concerning the agreements contained in the agreement are affected by the Covid 19 pandemic, including those that have been stated in an authentic agreement. An authentic agreement, which is an agreement that has perfect legal force based on law,

¹ Rachmat S.S. Soemadipradja. Penjelasan Hukum tentang Keadaan Memaksa. Gramedia Jakarta 2010. Hal. 32.

certainly cannot be canceled from only one party. During the Covid 19 pandemic, many business transactions contained in authentic deeds could not be continued due to the inability to continue the achievements in the agreement which resulted in default by one party to the other party in the agreement.

Force Majeure is the prima donna reason to be released from claims against parties who feel aggrieved because of the default on the authentic deed. Force Majeure is a situation beyond expectations because it cannot be predicted when, how and what happened so that it is unable to anticipate the occurrence of the event. The Force Majeur reason is a forgiving reason that can avoid demands from parties who feel disadvantaged as a result of the covid 19 pandemic. Legal events in the authentic agreement cannot take place or occur because of the Covid 19 pandemic.

Force Majeure is an excuse to avoid claims from the aggrieved party in an event of default in an agreement, especially an authentic agreement. Is the Covid 19 pandemic event an absolute or full event that causes default in the authentic deed due to Force Majeure or a national disaster that has been regulated in Presidential Decree No. 12 of 2020 concerning the determination of non-natural disasters for the spread of Corona Virus Disease 2019 (Covid19) as a national disaster.

2. Research Methods

This article uses a normative method with qualitative analysis.

3. Results and Discussion

A coercive condition is a condition that cannot be predicted in advance so that a legal event that has been previously agreed upon cannot or cannot be carried out properly. The term used to refer to force majeure / overmacht is a state of force even though legal experts and academics have made the terminology in a coercive state, in the discussion they still use the term overmacht.

The definition of overmacht in detail, not directly explained, but gives an understanding of overmacht, based on two teachings about overmacht, namely the old teaching called Overmacht Objective and a new teaching, namely Overmacht Subjective. The meaning of objective Overmacht is that it is absolutely impossible for everyone to fulfill the verbintenis (engagement). Kusumadi is referred to as Impossibility, while subjective Overmacht is the unfulfilled verbintenis due to "difficult" factors (which is the opposite of impossibility).

From the provisions regarding force majeure in the Civil Code, it can be seen that a force majeure or overmacht is a situation that is unexpected, unintentional, and cannot be accounted for to the debtor as well as forcing, in the sense that the debtor is forced to not keep his promise. Based on the causes of forcemajeure / Overmacht due to natural conditions, namely a forceful situation caused by a natural event that everyone cannot predict and avoid because it is natural without an element of intent, for example floods, landslides, earthquakes, storms, volcanoes, etc. Overmacht due to an emergency, namely a coercive situation caused by an unreasonable situation or condition, a special situation that is immediate and short-lived, unpredictable, for example wars, blockades, strikes,

epidemics, terrorism, explosions, mass riots, including in which there is damage to a tool which causes an engagement to not be fulfilled. ("Study of Force Majeure According to Article 1244 and Article 1245 Civil Law Book," 2016")

The non-fulfillment of the agreement can be due to 2 (two) things, namely default and force majeure. Both default and force majeure resulted in the agreement not being carried out as required.² Default caused by a certain force majeure is different from default caused without force majeure. Default caused by force majeure can be released from sanctions or lawsuits for an act or action of not performing the achievement.

This can happen with an authentic deed that has perfect strength as evidence in court. Authentic deeds have stronger legal force than underhand agreements, warmerking and legalization. In the authentic deed, the parties make legal promises because of the nature of the agreement, a constitutive deed where the deed becomes law and becomes law for the parties therein.

Default caused by force majeure in an authentic deed must be ascertained in advance whether the person in the deed is a party or debtor and creditor or not in article 1244 of the Civil Code, the debtor has the right to be released from the creditor's lawsuit based on compelling circumstances must have good faith. The state of force is spread out in articles 1244 - 1245, namely: Article 1244³ of the Civil Code states, the debtor must be punished to compensate costs, losses and interest if he cannot prove that the contract was not carried out or the timing of the agreement was not carried out due to an unexpected thing, which could not be borne by him even though there was no bad faith to him. Article 1245 of the Civil Code states, there is no compensation for costs, losses and interest if due to coercive circumstances or because of something that happens by chance, the debtor is prevented from giving or doing something that is required or doing something that is prohibited for him.

Based on these provisions, it can be concluded that the main factors causing force majeure are: There are unexpected events, obstacles that make an achievement impossible; the inability is caused by the debtor's error; The inability cannot impose a risk on the creditor. Judging from the legal consequences, there are two types of force majeure, namely: absolute force majeure and relative force majeure⁴. The state of imposing absolute or a condition that is still in nature is a condition where the obligation cannot be fully carried out, for example because objects are destroyed and due to natural disasters, while this relative force only suspends the parties' obligations to carry out achievements in an authentic deed, it can still be done if the covid pandemic condition 19 has been declared safe as stated from the place where the virus originated, namely that Wuhan is safe. Although in Indonesia it cannot be categorized as safe, it does not mean that in the future conditions in Indonesia will be safe from the Covid 19 epidemic.

There are at least 3 criteria to test for enforceable state clauses to be applied. First, the event must be beyond the control of the parties, the parties' ability to carry out contractual obligations is not fulfilled as a result of the event, the parties have taken all possible steps to avoid the consequences of the event. If the party in the authentic deed

² Sufiarina & Wahyuni, S. Force majeure dan notoir fiten atas kebijakan PSBB COVID 19. Jurnal hukum sasana

³ Pasal 1244 KUHPerdato

⁴ Subekti, Pokok Pokok hukum Perdata, hal 154

can prove that he or she has met the three elements of the criteria, the party can avoid a civil suit for default⁵.

Certain legal events or conditions may not be categorized as force majeure if the elements in the force majeure are not met. The impact of the pandemic could have an impact and not have an impact on an obligation in achievement. Have the parties tried their best to avoid the consequences of the Covid 19 epidemic against the obligations in the authentic deed or not.

In the explanation above, given the condition of the Covid 19 epidemic in several countries such as the city of Wuhan, China is safe from the Covid 19 pandemic, this force majeure can be categorized as a relative force majeure. For this reason, this relative coercive situation only suspends the parties' obligations to carry out achievements or carry out contractual obligations that can still be done and if the forced circumstances no longer apply or conditions in Indonesia have disappeared from the Covid 19 virus outbreak, the obligations in the authentic deed must be carried out back.

Conclusion

For this reason, it is necessary to be careful in responding to incidents of coercion in an authentic deed whose contents have rights and obligations between the parties in the authentic deed. The parties must be kept away from bad ethics that always take advantage of the Covid 19 pandemic for reasons that are actually true, the parties can still fulfill the obligations of the contents of the authentic deed agreement.

Good faith is highly expected in this force majeure event considering that the Covid 19 pandemic is a relative force forward because the reason this pandemic event is not an eternal event considering the facts in other countries that are starting to clear of the Covid 19 virus cases. Thus the failure to fulfill these achievements is only temporary and to see when the Covid 19 epidemic ends so that the achievements in the authentic deed can be resumed in accordance with the contents of the agreement in the authentic deed as a form of fulfilling the achievements

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Subekti, Pokok Pokok Hukum Perdata, hal 154

Bismar Nasution, www.bismarnasution.com , bencana nasional covid 19 (bukan) keadaan memaksa

⁵ Bismar Nasution, www.bismarnasution.com, bencana nasional covid 19 (bukan) keadaan memaksa.