

THE JURIDICAL IMPLICATION OF CORONAVIRUS DISEASE 2019 (COVID-19) PANDEMIC NATIONAL DISASTER STATUS DETERMINATION TOWARD COMPANIES EXPERIENCING BANKRUPTCY

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Abstract: This study aims to determine the juridical implications of the juridical implication of coronavirus disease 2019 (Covid-19) pandemic national disaster status determination for companies experiencing bankruptcy. This research is normative juridical research. In this study, the sources of legal materials used consist of 3 (three) legal materials, namely primary, secondary, and tertiary legal materials. The technique of collecting legal materials uses a literature study model using analysis of legal materials in the form of qualitative descriptive content analysis. The result of the study shows that the juridical implication of the coronavirus disease 2019 (Covid-19) pandemic national disaster status determination toward companies experiencing bankruptcy has implications for broad socio-economic aspects in Indonesia. Even the World Health Organization (WHO) as a world health organization has declared Covid-19 as a global pandemic. Furthermore, the issuance of Presidential Decree Number 12 Year 2020 concerning the Determination of Non-Natural Disasters for the Spread of Covid-19 as a national disaster, which at the implementation level was followed up with government policies in the implementation of Large-Scale Social Restrictions (PSBB) and social distancing, which in turn led to obstruction of debtor obligations to fulfill his achievements to creditors used as a reason to defend himself against a claim for default because of force majeure or overmatch, this also triggers the bankruptcy of a company.

Keywords: Juridical Implication, Bankruptcy, Covid-19

Abstrak: Penelitian ini bertujuan untuk mengetahui implikasi yuridis tentang penetapan status bencana nasional pandemi Coronavirus Disease 2019 (Covid-19) terhadap perusahaan yang mengalami pailit. Penelitian ini merupakan penelitian yuridis normatif. Dalam penelitian ini sumber bahan hukum yang digunakan terdiri dari 3 (tiga) bahan hukum yaitu bahan hukum primer, sekunder dan tersier. Teknik pengumpulan bahan hukum dengan menggunakan model studi kepustakaan dengan menggunakan analisis bahan hukum yang digunakan adalah berupa content analysis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa implikasi yuridis terhadap Penetapan Status Bencana Nasional Pandemi Covid-19 di bagi perusahaan yang mengalami pailit menimbulkan implikasi pada aspek sosial ekonomi yang luas di Indonesia. Bahkan, World Health Organization (WHO) sebagai organisasi kesehatan dunia telah menyatakan Covid-19 sebagai Global Pandemi. Selanjutnya dengan diterbitkannya Keputusan Presiden Nomor 12 Tahun 2020 tentang Penetapan Bencana Non Alam Penyebaran Covid-19 sebagai Bencana Nasional, yang selanjutnya pada tataran implementasi ditindaklanjuti dengan kebijakan pemerintah dalam penerapan Pembatasan Sosial Berskala Besar (PSBB) dan social distancing, yang pada akhirnya menyebabkan terhalangnya kewajiban debitur untuk memenuhi prestasinya kepada kreditur dapat dijadikan alasan untuk membela dirinya atas tuntutan wanprestasi dengan alasan keadaan memaksa (force majeure atau overmatch), hal tersebut juga memicu adanya kepailitan dari suatu Perusahaan

Kata Kunci: Implikasi Yuridis, Pailit, Covid-19

INTRODUCTION

The World Health Organization in 2020 announced that "Covid-19" became the new official name for the coronavirus that was first identified in China on December 31, 2019.¹ WHO General Director, Tedros Adhanom Ghebreyesus, gave an explanation about the origin of the name Covid-19 which "co" means "corona", "vi" for "virus", and "d" for "disease".² Covid-19 has spread to 118 countries and infected 119,179 people as of Wednesday (11/3/2020) which made WHO declared the Covid-19 outbreak as a global pandemic.³

According to the official website of the World Health Organization (WHO), it is stated that coronavirus is a group of viruses that can cause disease in animals or humans. Several types of coronavirus are known to cause respiratory tract infections in humans ranging from coughs and colds to more serious ones such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). A new type of coronavirus found to cause Covid-19.⁴

It is undeniable that the emergence of the Coronavirus Disease 2019 (Covid-19) pandemic, has indeed caused a lot of controversies. However, along with the various discussions about Covid-19, the World Health Organization (WHO) has finally determined the spread of Covid-19 as a Global Pandemic. In terms of name, a

pandemic refers to a disease that spreads and infects many people in several countries at the same time. The number of spreads of the coronavirus is increasing significantly and continuing globally.

The spread of the Coronavirus Disease 2019 (Covid-19) outbreak as a global pandemic has caused a variety of new problems in various sectors in Indonesia, and even the world. Not only health issues, but the spread of the Covid-19 outbreak also causes a global financial crisis. The Finance Minister of The Republic of Indonesia, Sri Mulyani, said the same thing, that the economic sector will experience a very deep contraction this year. Unemployment has risen sharply in many countries. All countries have double-digit unemployment growth. Activity in the economic sector has decreased sharply due to social distancing, thus, human mobility is reduced.⁵ Based on data released by the Indonesian Ministry of Manpower as of April 2020, the number of workers who were laid off and fired due to Covid-19 has reached 2,084,593 workers, which came from 116,370 companies that went bankrupt. Besides, the Minister of Manpower, Ida Fauziyah, also stated that the informal sector was also hit by the loss of 538,385 affected workers from 31,444 companies or MSMEs.⁶

In line with that, Fornano & Wolf (Corona and Macroeconomic Policy, 2020), stated that "the coronavirus outbreak will

¹ Giuseppe Pascarella and others, 'COVID-19 Diagnosis and Management: A Comprehensive Review', *Journal of Internal Medicine*, 2020 <<https://doi.org/10.1111/joim.13091>>.

² Hussin A. Rothan and Siddappa N. Byrareddy, 'The Epidemiology and Pathogenesis of Coronavirus Disease (COVID-19) Outbreak', *Journal of Autoimmunity*, 2020 <<https://doi.org/10.1016/j.jaut.2020.102433>>.

³ José Ricardo Navarro Vargas, 'The COVID-19 Pandemic', *Revista Facultad de Medicina*, 2020

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⁴ Souvik Dubey and others, 'Psychosocial Impact of COVID-19', *Diabetes and Metabolic Syndrome: Clinical Research and Reviews*, 2020 <<https://doi.org/10.1016/j.dsx.2020.05.035>>.

⁵ Silpa Hanoatubun, 'Dampak COVID-19 Terhadap Perekonomian Indonesia', *Journal of Education, Psychology and Counseling*, 2020.

⁶ Andi Amri, 'Dampak Covid-19 Terhadap UMKM Di Indonesia', *Jurnal Brand*, 2020.

cause a negative supply shock to the world economy, by forcing factories to shut down and disrupting global supply chains". The Institute for Development of Economics and Finance (INDEF) abstracted the result of Fornano & Wolf's research in simpler language that the Covid-19 pandemic is predicted to cause supply-demand shocks which include a decrease in goods production, a decrease in income, a wave of layoffs, decreased of purchasing power, and demand for goods.⁷

The weakening performance of the domestic economy will certainly have an impact on increasing the burden of government spending. Meanwhile, in terms of civil law, the decrease in turnover due to reduced demand will have an impact on the ability to pay debtors to creditors; it can even result in default for debtors until the creditor almost goes bankrupt. As reported by Sindonews that Avianca Holdings, the second-largest airline in Latin America, filed for bankruptcy proceedings, for failing to pay maturing bonds. It's not just Avianca, British conglomerate Richard Branson is trying hard for his airlines, Virgin Atlantic and Virgin Australia, to survive despite the global pandemic.⁸

In Indonesia, the Deputy Chairperson of the Indonesian Chamber of Commerce, Shinta Wijaya stated:

"Khususnya sektor-sektor hospitality sudah banyak yang hampir mengajukan kepailitan. Terlebih belum adanya kepastian kapan wabah pandemi virus corona ini berakhir. Jika semakin lama membiarkan kondisi wabah seperti ini dan pemerintah tidak memberikan relaksasi tekanan finansial yang efektif kepada pelaku usaha sektor

*riil yang terkena dampak, maka opsi gulung tikar akan semakin banyak dipilih pengusaha"*⁹

which means

"In particular, the hospitality sector has almost filed for bankruptcy. Moreover, there is no certainty when the coronavirus pandemic will end. If the longer the epidemic is left like this and the government does not provide effective relaxation of financial pressure to the affected real sector business actors, the option of going out of business will be more chosen by entrepreneurs."

Based on the survey data from the LIPI Population Research Center, it was stated, "the survey result noted that 39.4 percent of businesses had stopped, and 57.1 percent of businesses experienced a decline in production. Only 3.5 percent are unaffected".¹⁰ The condition of default by the debtor, which occurs on a massive scale, does not even rule out the possibility of cross-border crossings, indeed, a problem that needs further explanation related to the determination of the Coronavirus Disease 2019 (Covid-19) pandemic national disaster status, especially for companies.

Based on this description, the authors are interested in studying deeply related to the juridical implication of the coronavirus disease 2019 (Covid-19) pandemic national disaster status determination toward companies experiencing bankruptcy.

METHOD RESEARCH

This research is normative juridical research using a statutory approach, and a conceptual approach. This research is a

⁷ Luca Fornaro and Martin Wolf, 'Covid-19 Coronavirus and Macroeconomic Policy', *CEPR Discussion Papers*, 2020.

⁸ Amri.

⁹ Syafrida, Safrizal, and R Suryani, 'Pemutusan Hubungan Kerja Masa Pandemi Covid-19

Perusahaan Terancam Dapat Dipailitkan', *Pamulang Law Review*, 2020.

¹⁰ Wibowo Hadiwardoyo, 'Kerugian Ekonomi Nasional Akibat Pandemi Covid-19 [National Economic Losses Due to the Covid-19 Pandemic]', *Baskara Journal of Business and Entrepreneurship*, 2020.

normative juridical with a literature approach by studying journals, books, legislation, and other documents related to this research. Normative law is directly related to the practice of law which involves two main aspects which are the formation of law and the application of the law.¹¹ This approach views law as synonymous with written norms made and promulgated by official institutions or officials.

There are 3 (three) legal materials in this study: primary, secondary, and tertiary. Primary legal materials are provisions relating to the juridical implications of determining the status of the national disaster for the coronavirus disease 2019 (Covid-19) pandemic for companies experiencing bankruptcy. Secondary legal materials are all publications on the law that are not official documents (books, dictionaries, journals, and court decisions). In addition, tertiary legal materials are large Indonesian language dictionaries, legal dictionaries, encyclopedias, etc. The technique of collecting legal materials uses a literature study model.¹²

The legal material analysis technique used is content analysis. Content analysis is any systematic procedure that is encouraged to examine the content of the information obtained. This analysis focuses on all the secondary data obtained. After obtaining the necessary data, this paper analyzes the data logically, systematically, and juridically. Logical means the data collected is analyzed under the principles of deductive logic, namely concluding a general problem to the

concrete problems faced. Systematic means analyzing data by linking data with one another that are interconnected and dependent. Furthermore, the data are analyzed juridically, namely starting from the existing regulations and related to the positive law that is currently in effect.

RESULT AND DISCUSSION

Before answering the legal implications of determining Covid-19 as a national disaster for companies experiencing bankruptcy, it must first be known whether the determination of Covid-19 as a national disaster is in the Force Majeure category. Force Majeure comes from the word "Vis Major" or "Vis Divina" in Roman Law which means an event that is "irresistible" and "unforeseeable", thus, there is a basis for forgiveness in its implementation.¹³ Similar to the "Pacta Sunt Servanda", Force Majeure is a dogma that is stated in the articles in the Civil Code.¹⁴

Force Majeure is also known as Overmatch or Force Majeure. According to Black's Law Dictionary, Force Majeure is "an event or effect that can be neither anticipated nor controlled". In the opinion of Marnia Rani, Force Majeure (a state of coercion or emergency) is defined as a condition that causes one party to be unable to carry out its obligations as stated in the business contract, due to an event beyond the ability of that party.¹⁵

Forced circumstances, according to Abdulkadir Muhammad as quoted by

¹¹ I Wayan Rideng, 'Metode Penelitian Hukum Normatif', *Kertha Widya*, 2013.

¹² Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta : Rajawali Pers, 2015.

¹³ Muhammad Fajar Hidayat and Desi Sommaliagustina, 'Implikasi Yuridis Penetapan Covid-19 Sebagai Bencana Nasional Dalam

Pelaksanaan Kontrak', *Jurnal Selat*, 2020 <<https://doi.org/10.31629/selat.v8i1.2431>>.

¹⁴ A B Lumowa, 'Tanggung Jawab Perusahaan Yang Dinyatakan Pailit Terhadap Pihak Ketiga', *Lex Privatum*, 2013.

¹⁵ 'HUKUM KEPAILITAN DAN PERMASALAHANNYA DI INDONESIA', *JURNAL ILMIAH HUKUM DIRGANTARA*, 2014 <<https://doi.org/10.35968/jh.v7i1.129>>.

Leonora Bakarbessy and Ghansham Anand, stated that coercive circumstances were conditions that the debtor could not fulfill due to an event that was not due to his fault, which events could not be known or expected to occur at the time of making the engagement.¹⁶

Force Majeure is a condition in which the debtor's performance cannot be fulfilled due to an event that is not their fault. The event is unknown or unpredictable. In simple terms, Force Majeure is about events that do not allow the obligations of the parties to carry out achievements according to the agreement. Without good faith, it is not good to avoid the Pacta Sunt Servanda principle of an agreement that is legally made and becomes law for the parties. The principle of Pacta Sunt Servanda is a principle in civil law concerning contracts or also known as the principle of legal certainty. Under the principle of Pacta Sunt Servanda, judges or third parties should not intervene in the contract. Anyone must respect the substance of the contract made by the parties. A contract made based on a consensus is a rule that must be obeyed by the parties to the contract. The principle in this principle is that a contract must be implemented, kept, and binding on both parties.¹⁷

Concerning the public health emergency statement in the Presidential Decree of the Republic of Indonesia Number 11 Year 2020 concerning the Determination of the Coronavirus Disease 2019 (Covid-19) Public Health Emergency and the stipulation of Covid-19 as a national disaster

in the Presidential Decree of the Republic of Indonesia Number 12 Year 2020 concerning the Determination of Non-Disaster, The Nature of the Spread of Coronavirus Disease 2019 (Covid-19) as a National Disaster is an event that can be predicted or cause forced circumstances. Mukti Fajar ND believes that it is very relative to be interpreted as a Force Majeure event. The regulation must be seen case by case related to the agreement that has been made by the parties because Covid-19 can be an event that is directly related to or not related to the obligations (achievements) of the subject or object of the agreement.¹⁸

The fact that shows that an extent of the coverage area affected by the disaster, as well as having implications for broad socio-economic aspects in Indonesia, along with the increasing number of victims and property losses, is evidence that the impact caused by the spread of Coronavirus Disease 2019 (Covid-19) can no longer be overlooked. Even World Health Organization (WHO) as a world health organization has declared the Covid-19 outbreak a Global Pandemic.

As described in the previous section, the issuance of Presidential Decree Number 12 Year 2020 is the legal basis for determining the Covid-19 Pandemic as a Non-Natural National Disaster. However, the issuance of Presidential Decree No. 12 Year 2020 also does not fail to cause its polemic regarding Civil Law Acts, especially regarding the legitimacy of force majeure. Several parties say that this Presidential Decree can be used to legitimize that the Covid-19 pandemic is

¹⁶ 'AKIBAT HUKUM TERHADAP PENJATUHAN PAILIT PADA PERSEROAN TERBATAS (PT)', *LEX ET SOCIETATIS*, 2015.

¹⁷ Carter B. Casady and David Baxter, 'Pandemics, Public-Private Partnerships (PPPs), and Force Majeure | COVID-19 Expectations and Implications', *Construction Management and Economics*, 2020

<<https://doi.org/10.1080/01446193.2020.1817516>>.

¹⁸ Presiden RI, *Keputusan Presiden Republik Indonesia Nomor 11 Tahun 2020 Tentang Penetapan Kedaruratan Kesehatan Masyarakat Coronavirus Disease 2019 (Covid-19)*, Keppres/RI/11/2020, 2020.

a Force Majeure so that it can be used as a basis for canceling an agreement or contract. However, not a few people think that the issuance of Presidential Decree No. 12 Year 2020 cannot immediately be used as an excuse to determine force majeure.

Therefore, Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Covid-19 as a National Disaster was issued which was then followed up at the implementation level by the government's policies of Large-Scale Social Restrictions (PSBB) and social distancing, which in turn led to the obstruction of obligations. It causes the debtors to fulfill their achievements to creditors and can be used as an excuse to defend themselves against demands for default because of force majeure or overmatch.

According to Soemadipraja in his book entitled "Legal Explanation on Force Majeure" states that force majeure based on cause is a state of coercion caused by a situation where there is a change in government policy or abolishing and or the issuance of a new policy which has an impact on current activities take places. For example, the issuance of a Government Regulation.¹⁹ Ricardo added in the context of the Covid-19 pandemic, force majeure can be claimed because the parties cannot predict a pandemic and do not have a contributory effect and this pandemic is an obstacle that occurs in general.

Based on this, the authors conclude that the occurrence of the Covid-19 outbreak is included in force majeure which is explained in the following.

1. Force Majeure which is subjective. The Covid-19 outbreak can be categorized

as a subjective force majeure reason, in which this situation is a forced condition so that the achievements issued from an agreement cannot be fulfilled due to matters related to the actions or abilities of the debtor without any elements of the mistake and good faith from the debtor concerned. In another sense, for example, if someone is tested positive for the Covid-19 virus or someone is being monitored, then this is considered the debtor unable to excel at that time.

2. The Covid-19 outbreak is categorized as a relative force majeure reason, which is a forced situation where achievements under normal circumstances are not possible, even though it is still possible to do it abnormally. For example, with the prohibition on going home, PSBB (Large-Scale Social Restrictions) and social distancing have an impact on the non-fulfillment of the implementation of the agreement. With the prohibition of not selling, low income from a company results in losses that make the company go bankrupt. It then results in the fulfillment of the agreement having to be postponed until an undetermined time. This risk management must be planned by the parties after the implementation of government policies related to the Covid-19 outbreak.

3. The Covid-19 outbreak is categorized as a temporary force majeure reason, which is a forced situation where the achievements issued from an agreement are not possible for a while. It means that some scientists predict several possibilities of this Corona Outbreak will end at the end of the year. Then, the

¹⁹ Rifqi Hidayat and Parman Komarudin, 'TINJAUAN HUKUM KONTRAK SYARIAH TERHADAP KETENTUAN FORCE MAJEURE

DALAM HUKUM PERDATA', *Syariah Jurnal Hukum Dan Pemikiran*, 2018 <<https://doi.org/10.18592/sy.v17i1.1908>>.

Covid-19 outbreak was categorized as a temporary force majeure reason, not permanent.

4. The state of the Covid-19 outbreak is a form of force majeure for agreements in general. This is due to the existence of government policies. The agreement is not only in certain agreements, but included in this group. The agreement in question is an agreement that has been agreed upon by the parties, is binding on the parties, and does not violate public order, laws, regulations, or morality, including this general agreement.
5. This Covid-19 outbreak is also a force majeure due to impracticality. The impracticality of carrying out the performance, an event occurred which is also without fault of the parties to the agreement, the event occurred in such a way where with the event the parties are theoretically still possible to perform the agreement achievement, but practically it happened in such a way, thus, even if the implementation of that achievement, it will require a very large sacrifice and is not worth it in terms of cost, time, or other sacrifices. Therefore, the implementation of such an agreement by law is considered "impracticable" or "hardship". The Covid-19 outbreak has an impact on the impracticality of implementing the agreement. If the agreement will continue to be implemented, it will require enormous sacrifices, in terms of costs, time, and health sacrifice from each party itself.

Based on the description of the force majeure classification for the occurrence of a Covid-19 disease outbreak, this is the basis

for risk-taking for the implementation of the agreement. Risk is the obligation to bear losses caused by an event that occurs outside the fault of one of the parties, which befalls the object of the agreement.²⁰

However, the submission of a force majeure claim is highly dependent on several factors including the type of agreement and the character of the business actor.

CONCLUSION

According to the result of the discussion, it is concluded that the juridical implications for the Determination of the National Disaster Status of the Covid-19 Pandemic for companies experiencing bankruptcy have implications for broad socio-economic aspects in Indonesia. Even the World Health Organization (WHO) has declared Covid-19 as a global pandemic. Furthermore, the issuance of Presidential Decree Number 12 Year 2020 concerning the Determination of Non-Natural, Disasters for the Spread of Covid-19 as a National Disaster, which is then followed up at the implementation level with government policies in the implementation of Large-Scale Social Restrictions (PSBB) and social distancing. It obstructs debtors to fulfill their achievements to creditors and can be used as an excuse to defend themselves against claims for default because of force majeure or overmatch which also triggers the bankruptcy of the company.

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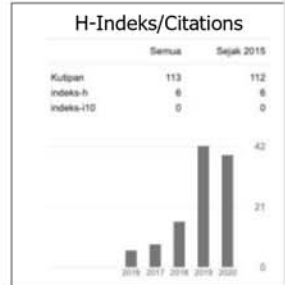
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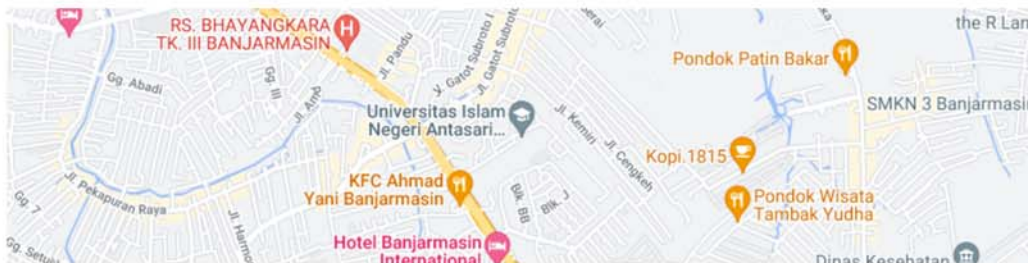
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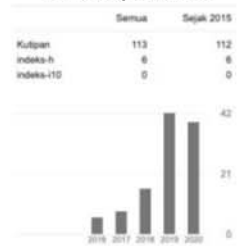
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