

ANALYSIS OF DEBTOR'S EFFORTS IN SETTLEMENT OR IMPLEMENTING CREDIT OBLIGATIONS DURING THE NON- NATURAL NATIONAL DISASTERS OF THE COVID-19 PANDEMIC

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Abstract

Due to Covid-19 pandemic many debtors unable to fulfill their obligations to creditors in a credit agreement. Such conditions rising the opinion and/or use the Covid-19 Pandemic as an excuse for debtor not to fulfill their obligations to creditors in a credit agreement on the grounds of forced circumstances (overmacht). This study aims to find out the debtor's efforts in settlement or implementing credit obligations during the non-natural national disasters of the covid-19 pandemic. The type of research used is normative legal studies, which are conducted through a process of legislation and regulatory evaluation. In terms of technique, scientifically normative legal science disclosure methods are constrained by deductive logic criteria. This study employed normative legal research methods. This method investigates law from an internal juridical standpoint, examining legal norms, legal conceptions, legal principles, and legal doctrines. The technique taken in this research is a legal and conceptual one, with primary and secondary legal material sources. The technique for collecting legal materials is to assess all books relevant to the subject of the research, and then compile them in a quantifiable and systematic manner. The findings highlight that with the prevailing laws and regulations due to the Covid-19 Pandemic, business actors are given legal certainty for business loans made in this case debtors, both individual debtors and business entity debtors, so that the impact of credit risk caused by the Covid-19 pandemic can be overcome properly and does not cause a debate over credit conditions during the Covid-19 Pandemic.

Keywords: Debtor, Credit Obligation, Non-Natural National Disaster, Covid-19

1. INTRODUCTION

The debtor is a party that owes another party, normally through obtaining something from the creditor that the debtor agrees to repay over time. Loans may occasionally need collateral or securities provided by and on behalf of the debtor. Nevertheless, if somehow the debtor fails to meet his responsibilities to the creditor within the agreed date, a legal collection action can be initiated, which may include the seizure of the debtor's property in order to compel payment or performance of the debtor's obligations to the creditor.

At the moment, the world and the Unitary State of the Republic of Indonesia in particular are beset by the Covid-19 pandemic, which is a pandemic of a disease or virus that is rapidly spreading throughout the globe, having a significant effect on human lives (Putra & Pradnya, 2022).

Many debtors have the opinion and/or use the Covid-19 Pandemic as an excuse not to fulfill their obligations to creditors in a credit agreement on the grounds of forced circumstances (*overmacht*) which resulted in the debtor being unable to perform his obligations to creditors, especially on April 13, 2020, President of the Republic of Indonesia

has issued Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID 19) as National Disasters.

The author of this case intends to examine the efforts made by debtors to meet their responsibilities as a result of the Covid-19 Pandemic in a credit agreement that is related with relevant rules and regulations in terms of handling a credit agreement during the Covid-19 Pandemic in this instance.

As explained in the background above, the authors formulate the main problem as follows:

1. Can the non-natural national disasters of the Covid-19 pandemic be categorized as coercive circumstances (*overmacht*)?
2. What efforts can be made by debtors to avoid default on creditors in a credit agreement during the Covid-19 Pandemic?

2. RESEARCH METHOD

The type of research used is normative legal studies, which are conducted through a process of legislation and regulatory evaluation. In terms of technique, scientifically normative legal science disclosure methods are constrained by deductive logic criteria (Atmadja & Budiarta, 2018). This study employed normative legal research methods. This method investigates law from an internal juridical standpoint, examining legal norms, legal conceptions, legal principles, and legal doctrines (Diantha & SH, 2016). The technique taken in this research is a legal and conceptual one, with primary and secondary legal material sources. The technique for collecting legal materials is to assess all books relevant to the subject of the research, and then compile them in a quantifiable and systematic manner.

3. RESULT AND DISCUSSION

3.1. Non-Natural National Disasters of The Covid-19 Pandemic as a Coercive Situation (*Overmacht*)

When a clause is included in an agreement or contract regarding the provision of coercive circumstances, it basically regulates a situation that occurs after the occurrence of the agreement or contract and prevents the debtor from carrying out his obligations. If indeed the debtor is unable to carry out his contractual obligation, the debtor cannot be blamed or considered a renegade promise (default), as is also regulated in Article 1244 as well as Article 1245 of the Civil Code (Hutabarat et al., 2022).

In a nutshell, the coercing condition clause in an agreement/contract is designed to protect one of the parties in the agreement/contract from the loss of one of the parties in the agreement/contract due to fire, flood (or other natural disaster), power outage, damage to catalyst, terrorism, nationalization, blockades, embargoes, labor disputes, strikes, and government sanctions.

With the implementation of the Decree of the President of the Republic of Indonesia No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID 19) (Nurudin et al., 2021), the author believes that a number of questions have arisen from debtors who have obligations to creditors under credit

agreement agreements, including whether the situation of the Covid Pandemic falls into the category of coercive circumstances or not.

As long as the Covid-19 Pandemic situation is linked to the coercive circumstance (*overmacht*), there is an overlapping situation, but it must first be established that the actual impact occurs, especially in regard to the debtor itself, the impact in question is whether in a Covid-19 pandemic a debtor is able or not to carry out their obligations to creditors, as this can be seen from the activities of the debtor itself.

As an example, the author uses PT X, a pharmaceutical company based in Jakarta, as a debtor with Bank XYZ, a financial institution, as a creditor; where, under the terms of the credit agreement between the two companies, PT X is required to make credit payments to Bank XYZ as a creditor; and where, during the Covid-19 Pandemic, PT X's business activities are not affected, but PT X reaps above- On the basis of that kind of, it is very clear and based that the state of the Covid-19 Pandemic has a positive impact on the business activities of PT X as a debtor at Bank XYZ, due to the fact that PT X can still carry out its business activities in the state of the Covid-19 Pandemic and is also still able to carry out its business activities.

In contrast to other debtors, PT Z, which is based in Jakarta and is engaged in beauty treatments or services (such as salons, spas, or massage places) and is obligated to make credit payments to Bank XYZ as a creditor under the terms of a credit agreement between PT Z and the Bank XYZ, experienced a significant decrease in sales as a result of the Covid-19 Pandemic. As a direct consequence, PT Z experienced a significant decrease in financial distress conditions.

According to the results of two (2) illustrations of the impact of the Covid-19 Pandemic on the debtor, it is very logical which debtor can use the state of the Covid-19 Pandemic as a basis for the forced state (*overmacht*) on a credit agreement with creditors, but this is not a conclusion of whether the national non-natural disaster of the Covid-19 Pandemic can be classified as a coercive condition (*overmacht*).

As the explanation and illustration that the author has described above, then the next author will analyze related to the impact of the Covid-19 pandemic that occurred in Indonesia which is associated with the Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of the Corona Virus Disease 2019 (COVID-19) (Darwis & Pakpahan, 2021; Subiyanto et al., 2021).

In the Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of the Corona Virus Disease 2019 (COVID 19) in essence, it has been stated that the Covid-19 Pandemic is a non-natural disaster and a national disaster, which does not necessarily mean that the determination of the Covid-19 Pandemic disaster became the basis for an *overmacht* in a credit agreement.

So far, the number of people infected with Covid-19 has increased a lot due to a new variant, namely the Delta Covid-19 variant which triggered a spike in Covid-19 cases so that the Central Government imposed an Emergency Community Activity Restriction (hereinafter referred to as PPKM) (Supriyadi et al., 2022) from 3-20 July 2021 by issuing an Instruction Minister of Home Affairs Number 15 of 2021 concerning the Implementation of Covid-19 Emergency Community Activities in the Java and Bali Regions.

The Emergency PPKM basically regulates the restrictions on community activities, including the division of categories of companies that can carry out their business activities directly at the office (at work as usual) or at home, while the category is divided into 3 (three) sectors, namely essential, critical and non-essential sectors (VOI, 2022). The sectors that are allowed to carry out their business activities from the office are the essential sectors (Finance and banking, capital markets, payment systems, information and communication technology, non-COVID-19 quarantine handling hotels, export-oriented industries) and critical sectors (Energy, Health, Security, Logistics) transportation, Food, beverage and supporting industries, Petrochemicals, Cement, National vital objects, Disaster management, National strategic projects, Construction, and Basic utilities (such as electricity and water) .

Based on the Government's policy, there are types of businesses that do not have an impact on the Emergency PPKM policy and there are several types of businesses that cannot carry out their business activities at all. Where this is the basis of the author's analysis in answering the debtor's question whether non-natural disasters and the national disaster of the Covid-19 pandemic can be used as a basis for an *overmacht* in a credit agreement.

As the author has described above, for debtors who are able to carry out their will or ability (run a business activity) even in a non-natural disaster, the Covid-19 Pandemic, the Covid-19 Pandemic cannot be categorized as a state of coercion (*overmacht*) in an agreement. credit, but for debtors who are unable to carry out a will beyond their capabilities due to the non-natural disaster of the Covid-19 Pandemic, the Covid-19 Pandemic can be categorized as an *overmacht* in a credit agreement.

3.2. Actions that can be taken by debtors to avoid default actions against creditors in a credit agreement in a Covid-19 pandemic situation

With the stipulation of the Covid-19 Pandemic as a national non-natural disaster by the Government, the Government has followed up by issuing a policy of relaxation or debt restructuring for debtors on credit agreements with banking institutions which are directly supervised by the Financial Services Authority, while the policy is stated in the Financial Services Authority Regulation Number 48/POJK.03/2020/2020 concerning Amendments to Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus Disease Spread (Mandiri, 2021).

In essence, the Financial Services Authority Regulation provides an opportunity for debtors affected by the Covid-19 pandemic to be able to relax or restructure debts to debtors (Panin, 2020) on credit agreements with banking institutions with the conditions that the authors conclude are;

1. Debtors who request relaxation or debt restructuring must be able to prove that their business activities are affected by the Covid-19 Pandemic which results in financial distress (Anggarini & Rakhmanita, 2020);
2. Prior to the Covid-19 pandemic, it must be proven that the debtor has not defaulted on his obligations to the creditor as agreed in the credit agreement between the debtor and creditor.

As the authors have described above, the actions that debtors can take to avoid default on creditors in a credit agreement in a Covid-19 pandemic are to carry out payment

obligations to credit agreements for debtors who are not affected by the Covid-19 pandemic and for creditors those who affected by the Covid-19 Pandemic apply for relaxation or debt restructuring of credit agreements to banking institutions as creditors with the conditions determined by POJK Number 48/POJK.03/2020 (Mukti & Fitriana, 2022; Tjoanda et al., 2021).

4. CONCLUSION

With the prevailing laws and regulations due to the Covid-19 Pandemic, business actors are given legal certainty for business loans made in this case debtors, both individual debtors and business entity debtors, so that the impact of credit risk caused by the Covid-19 pandemic can be overcome properly and does not cause a debate over credit conditions during the Covid-19 Pandemic.

Likewise, the government's efforts to restore the business world and communities affected by the Covid-19 pandemic are visible, so it is hoped that there will be cooperation between the business world and the community and the government to carry out economic recovery in the Republic of Indonesia.

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