



Analysis of Legal Liability in Force Majeure Arbitration Civil Matters Due to Decrease in Currency Value (Study of Decision Number 976 K/Pdt/2012)

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Info Articles	Abstract
<p>Article History Received : 2024-08-13 Revised: 2024-08-15 Published: 2024-09-30</p> <p>Keywords: <i>Arbitration, Force Majeure, Default</i></p>	<p>A currency downgrade refers to an economic downturn that has a significant impact on the economy of one or more countries, including inflation and international trade. This can affect business relationships. In some cases, a currency downgrade can lead to a default, and the party who suffered the loss can invoke force majeure. However, currency downgrades are not considered force majeure under Indonesian law. In the case of business disputes, arbitration is often a strong and final resolution mechanism, although the award can still be overturned if there is fraud or forged documents. Force majeure must be caused by an extraordinary event that cannot be foreseen, such as a natural disaster or social conflict. A valid sale and purchase agreement is legally binding on both parties, and breaches of the agreement can be resolved through the courts or arbitration. Dispute resolution through arbitration is seen as a faster and more flexible alternative to litigation in court.</p>

I. INTRODUCTION

Currency depreciation is an economic phenomenon that can affect various aspects of a country's economy. Exchange rates serve as a crucial indicator reflecting the health of an economy, where fluctuations in exchange rates can have a direct impact on international trade, inflation, and purchasing power. Currency depreciation can also be driven by an increase in the money supply. When the amount of money in circulation increases, it can lead to inflation, which negatively affects those who save in cash, as the real value of their savings decreases (Roring et al., 2023).

Currency depreciation can also result in a breach of contract between two parties involved in a business partnership. This may occur due to several factors, such as businesses that rely on imported raw materials, which face higher costs due to the currency depreciation in the business partner's country. However, if one party breaches the contract, they may defend themselves by citing reasons such as force majeure (Alifadina, 2023).

In business dealings, dispute resolution is an inevitable aspect due to the complexity of relationships between partners and the various issues that may arise (Wilhelmus Renyaan, 2022). Dispute resolution can also be carried out through out-of-court methods such as arbitration. Arbitration has been widely adopted by several

countries as a dispute resolution mechanism with strong legal standing (Hakim, 2022).

Out-of-court dispute resolution, particularly arbitration, is specifically designed for business-related civil disputes. However, in the event of a mistake or breach of contract, the resolution of such disputes may not always fall under arbitration. In cases where a business breach occurs due to force majeure, it may not be appropriate to immediately file a lawsuit in the district court. This raises several questions: Why does the district court lack the authority to handle force majeure disputes caused by currency depreciation in this case? What is the district court's perspective on handling such cases? Is the breach of contract due to currency depreciation during a business transaction valid from the standpoint of arbitration law? And how can this issue be resolved?

II. RESEARCH METHODS

This research uses a normative method (legal research), in which this research examines sources or legal materials from all forms of legal sources and legal expert opinions. This research uses a state approach to try to find the cause of the problems that arise regarding arbitration in relation to force majeure.

III. RESULTS AND DISCUSSION

A. The District Civil Court Has No Authority in Resolving Force Majeure Disputes Related to Currency Depreciation (Case Study of Decision Number 976K/Pdt/2012)

In the case of S.A. Metal and Machinery Co., based in South Africa, being sued by PT. Jakarta Cakra Tunggal Steels Mills due to an alleged breach of contract, PT. JCT requested documents concerning the safety of purchased goods in the agreement, particularly ensuring they were free from hazardous substances like radioactivity. According to laws and regulations, goods exported or imported from other countries must be free of dangerous substances. As a result, S.A.

Metal and Machinery Co., which sold scrap iron free from radioactive materials, hazardous/explosive substances, and packaging materials, was sued for not fulfilling the requested documents proving that the imported goods were free from hazardous substances. In response, the defendant, S.A. Metal and Machinery Co., filed a countersuit against PT. JCT for incomplete payment for the scrap iron previously agreed upon. In this situation, the plaintiff submitted a request to the court regarding force majeure due to the economic crisis and global economic turmoil, where the price dropped from USD 710/MT to only USD 250/MT. PT. JCT argued that it was unfair to pay the full agreed price due to the economic fluctuation and currency depreciation (Decision 976K/Pdt/2012) (Rudy & Mayasari, 2022).

The Supreme Court Judges held that *Judex Facti* had clearly neglected the Indonesian legal provisions, which strictly regulate the absolute competence of arbitration. The Supreme Court Judges understood that under Articles 3 and 11 (1) and (2) of Law Number 30 of 1999 on Arbitration, the existence of an arbitration clause results in the District Court having no authority to adjudicate disputes between parties bound by such a clause. The Judicial Technical Development Project of the Supreme Court of the Republic of Indonesia states that if there is an agreement between the parties to resolve disputes through arbitration, the court has no authority to examine or adjudicate the case.

Moreover, the Judicial Order and Legal Development Project of the Supreme Court of the Republic of Indonesia confirms that an agreement between the parties to submit disputes to arbitration causes the court to lose its authority to examine and adjudicate the matter. Finally, the Supreme Court's guidelines from the National Work Meeting in Denpasar, held on September

18-22, 2005, emphasize that the District Court or General Court does not have the authority to adjudicate cases in which the parties are bound by an arbitration agreement, even if the case involves a lawsuit for unlawful acts (Fahmi, 2019).

In this case, since the parties had initially agreed to conduct their business under arbitration, any related issues should be handled through arbitration, including investigation and adjudication. The case shows that there was indeed a breach of contract, as the plaintiff only allowed 10 days from the ship's departure to present the necessary documents. However, the defendant provided the requested documents in August, which exceeded the agreed deadline. Although arbitration rulings are final and binding, the court still allows for the possibility of overturning such rulings. Furthermore, dissatisfied parties can oppose the seizure of assets decided in arbitration or file other lawsuits related to the case. This is based on the fundamental principle that courts cannot refuse to hear a case and are still obligated to examine, decide, and adjudicate it, even if the case does not meet formal or material requirements. According to Article 60 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitration decisions are final and have permanent legal force, binding both parties. However, despite being final and binding, one party may still apply to annul the arbitration decision if they are dissatisfied. The legal procedure for annulment is regulated in Article 1065 Rv and Article 70 of the APS Law, which state that an arbitration award may be annulled if there are falsified documents presented during the examination, or if critical documents concealed by the opposing party are discovered after the decision is made. Additionally, decisions made through fraud by one of the parties can also be grounds for annulment (Nadila, 2024).

The court cannot rule on a case or hear an appeal once the disputing parties have reached a final arbitration decision. Therefore, the court has no authority to conduct a cassation even if the petitioner submits insufficient evidence. The arbitration ruling (BANI) is absolute and cannot be challenged, except in cases of suspected fraud in the agreement, where the petitioner has the authority to act if strong evidence is presented (MUNIROH, 2021). In this case, the court rejected the force majeure claim based on currency depreciation, as the depreciation was not within the scope of the written agreement between the disputing parties. Under Indonesian law, price

fluctuations are not considered a force majeure event. An event is only categorized as force majeure if it prevents the debtor from fulfilling their obligations to the creditor. In this case, the price reduction did not prevent the respondent from fulfilling their obligation. Additionally, the price reduction did not alter the respondent's obligation to pay the petitioner. The commodity price remained the same, at USD 710 per MT. Moreover, the respondent had expressed their willingness to make the payment, as evidenced by documents T-1 and T-12. Therefore, it can be concluded that the respondent was never in a state of force majeure (Alifadina, 2023).

B. Breach Of Contract Due To Currency Depreciation During Ongoing Sales Transactions, Viewed From An Arbitration Law Perspective

Breach of contract refers to the failure of a party to fulfill their obligations as per the agreement between the creditor and debtor, which can occur either intentionally or unintentionally. This term, also known as default, refers to one party's failure to fulfill the terms of the contract, either by not performing, performing late, or performing incorrectly. According to Ahmadi Miru in Sandrarina and Gunawan (Hertanto & Djajaputra, 2024), breach of contract can include:

- 1) Failure to perform the obligation at all.
- 2) Performing the obligation imperfectly.
- 3) Failure to perform the obligation on time.
- 4) Engaging in prohibited acts as outlined in the contract.

Breach of contract refers to a failure to comply with contractual obligations, which results in legal consequences for the party at fault. According to Abdul Kadir Muhammad, the concept of breach of contract can be understood through two main possibilities (MURTI, n.d.). First, there is a situation known as force majeure, or "overmacht" in legal terms. This occurs when the debtor cannot fulfill their obligations due to unforeseen events or conditions beyond their control, such as natural disasters like earthquakes, floods, and other external events such as wars and civil disturbances. In such situations, the debtor cannot be held responsible for the breach. This is because an impediment has arisen due to factors outside of their free will.

Second, a breach of contract can be caused by the debtor's fault, either due to negligence or even deliberate wrongdoing. In this case, the breach occurs when the debtor fails to fulfill their

obligations due to a failure that is within their control. For instance, if the debtor fails to perform actions they are required to carry out according to the agreement. In such a scenario, the debtor is fully liable for their breach or negligence.

It should be noted that currency depreciation is not considered a force majeure under Indonesian law. In civil law, the concept of good faith applies when invoking force majeure. An event is considered force majeure if it forces the debtor to be unable to fulfill their legal obligations to the creditor.

The emergence of a sales contract between the seller and buyer occurs when there is an agreement regarding various goods and prices, even though the goods agreed upon in the contract have not yet been delivered and the price has not been fully paid. Although there is an agreement, the goods do not automatically become the property of the buyer. This is because a process of delivery (levering) must still take place.

In general, individuals or legal entities can act as subjects in a sales contract, provided they are of legal age or married. A sales contract can be made orally or in writing. An oral agreement is sufficient based on mutual consent regarding the goods and the price, while a written agreement is made in the form of a document, either a private deed or an authentic deed. For land sale contracts, an authentic deed is usually drawn up by an authorized official. The official authorized to draft a land sale deed is a district head and/or a notary public (PPAT) (Hidayati & Tanjung, 2022).

The presence of legal mechanisms and dispute resolution is crucial. If both parties in a sales contract fail to fulfill their obligations, the law must provide clear and fair solutions. Dispute resolution can be pursued through the courts or other means, such as mediation or even arbitration. Therefore, breach of contract requires legal instruments to resolve the issues, which, of course, necessitates a judge's ruling (Hulu, 2020).

In practice, the absolute nature of a contract serves as a legal instrument binding on all parties involved, similar to how laws are enforced. Every party participating must adhere to the terms of the agreement as agreed upon. In many cases, contracts are reciprocal, meaning that each party has interrelated rights and obligations that are mutually beneficial. As such, contracts are a crucial tool in law that governs the rights and obligations of the parties involved. These contracts are an inseparable part of legal certainty (Sinaga, 2021).

Contracts, especially those with a correlation, are critical in regulating legal relationships between individuals or entities. They ensure that the parties are bound to their mutual agreement, promoting legal compliance and ensuring fairness in this mutual engagement. However, it should be noted that the validity of a contract must conform to existing legal provisions and principles of justice.

If one party fails to fulfill the agreement, the other party can sue the defaulting party based on the contract. The courts and judges are involved in resolving disputes in accordance with applicable laws. It is essential to note that a valid contract can only be terminated by mutual agreement and cannot be revoked unilaterally. Furthermore, fulfilling a commitment has serious moral consequences. Besides violating the law, breaking a commitment also contradicts religious and moral teachings, which emphasize the importance of keeping promises for social justice and moral integrity. Therefore, upholding contractual promises is a matter of law, ethics, and morality.

From a contractual law perspective, contracts in Indonesia can be either written or oral, as long as they do not violate the terms of the contract. What matters most is being able to prove the existence of the contract, though it is ideal if contracts are made in writing because this facilitates the process of proving its existence. According to Article 1313 of the Indonesian Civil Code (KUHPerdata), a contract or agreement is an action in which one or more persons bind themselves to one or more other persons (Lubis, 2021).

Resolving disputes that begin with a contract simplifies the process of proving claims, as everything, including the rights and obligations of each party, is already stated in the contract note. The process of proving claims will always refer to the provisions written in that note. On the other hand, unwritten contracts complicate the process of proof due to the absence of concrete evidence, making it difficult for the parties to avoid responsibility if such proof is deemed unfavorable to them (Syah, 2016).

C. Solution To The Problem

Force Majeure refers to circumstances where extraordinary and unforeseen events prevent the parties in a contract from fulfilling their obligations. In such situations, a breach of contract may occur if the debtor is unable to fulfill their obligations due to an unexpected event

beyond their control, such as natural disasters (earthquakes, floods, storms) or other external events like war and social unrest.

A decrease in price cannot be considered as force majeure under Indonesian law. Civil law requires good faith in the submission of a force majeure claim. In this case, the Respondent in Cassation did not demonstrate good faith when submitting the force majeure claim because, in reality, the Respondent in Cassation had still declared their ability to settle the Claimant in Cassation's payment one day before the last shipment from the Claimant in Cassation arrived at Tanjung Priok port.

Furthermore, in this case, the Defendant (the seller) committed a breach of contract by failing to deliver the original documents to the Plaintiff (the buyer) within 10 (ten) days before the ship arrived at the destination port. As a result of this breach, the Plaintiff had the right to demand the cancellation of the sale and purchase agreement. However, the *Judex Facti* decision (evidence or facts presented) in this case did not violate any laws and/or regulations, thus the cassation appeal filed by the Claimant in Cassation, S.A. METAL AND MACHINERY CO (PTY) LTD, was rejected by the judge in their ruling. Therefore, the Claimant in Cassation was ordered to pay the legal costs for the cassation process.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

A decline in currency value is not considered force majeure under Indonesian law and therefore cannot be used as a reason to avoid obligations in a sale and purchase agreement. If a breach of contract occurs due to this factor, the aggrieved party has the right to seek contract termination or compensation. Dispute resolution can be carried out through the courts or arbitration, depending on the clause agreed upon in the contract. In every case of breach of contract, the principle of good faith must be prioritized, and dispute resolution should take into account fairness and the protection of the rights of the parties involved. Arbitration is often favored as a method of resolution due to its efficient and final process.

In cases of breach of contract due to currency depreciation in a sale and purchase agreement, the depreciation of the currency cannot be considered force majeure under Indonesian law. As a form of breach of contract, failure by one party to fulfill their obligations in a sale and

purchase agreement can occur due to negligence or error, whether intentional or unintentional.

Indonesian civil law emphasizes the importance of good faith in submitting a force majeure claim. If one party fails to demonstrate good faith in certain circumstances, such as currency depreciation, the force majeure claim will not be valid. In the case discussed, the court rejected the force majeure claim made by the defaulting party because there were no truly compelling or uncontrollable circumstances causing the failure to fulfill contractual obligations.

Additionally, breach of contract in this case also arose from the seller's failure to deliver the original documents to the buyer on time, which provided grounds for the buyer to seek contract cancellation. Based on the evidence and facts presented, the court rejected the cassation appeal of the defaulting party and ordered them to pay the court fees. Therefore, the resolution of disputes arising from a breach of contract not based on force majeure can be legitimately pursued through legal means, whether through the courts or arbitration mechanisms if agreed upon in the contract.

B. Suggestion

Based on the research conducted with various references, it is recommended that arbitration establish clear and comprehensive criteria when identifying force majeure conditions. The parties should also include adjustment clauses in the contracts they draft, taking into account changes in currency value. This requires an initiative to disseminate information on how arbitration handles force majeure cases resulting from currency depreciation.

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