



Case Study of Dispute Resolution Due to Force Majeure and Covid 19

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Info Articles	Abstract
Article History Received : 2024-04-13 Revised: 2024-04-16 Published: 2024-05-30 Keywords: <i>Dispute, settlement, waqf</i>	This study analyzes the settlement of default disputes due to force majeure and the COVID-19 pandemic, which have caused delays in the implementation of contractual obligations. The background of this study focuses on the impact of COVID-19 as a force majeure event that affects various business sectors and causes the inability of parties to fulfill their obligations. The research method used is normative juridical, with an analytical approach to relevant legal regulations and case studies to understand the implementation of the law in force majeure situations. The results of the study show that COVID-19 is widely recognized as a legitimate reason for delaying obligations based on the principle of force majeure. The dispute resolution process often involves negotiation, mediation, or arbitration as an alternative to formal litigation. The conclusion of this study emphasizes the importance of force majeure provisions in contracts and flexibility in dispute resolution. Dispute resolution outside the courts, through mediation or arbitration, is often more efficient and solution-oriented than litigation. This study recommends that contracts include clear force majeure clauses and encourage the use of alternative methods to resolve disputes, in order to maintain fair and sustainable business relationships in the future.

I. INTRODUCTION

The case study of dispute resolution due to force majeure and COVID-19 requires a deep understanding of contract law issues, unforeseen changes in circumstances, and the impact of the global pandemic. This study will highlight the challenges faced by companies, organizations, and individuals in dealing with contractual obligations affected by force majeure and the circumstances resulting from the COVID-19 pandemic. In 2020, the COVID-19 pandemic caused massive disruption to human life and economic activity around the world. Many contractual agreements, whether between companies, individuals, or government agencies, were affected by travel restrictions, lockdowns, business closures, and supply chain disruptions (Ovi Septiyana, 2022).

In such a situation, many parties face difficulties in fulfilling their contractual obligations, creating the potential for legal disputes. Meanwhile, the concept of force majeure, which is a common clause in contracts, is usually used to address obligations that cannot be fulfilled by one party due to events beyond their control. However, the COVID-19 pandemic has created an unprecedented situation where many

contracts have become difficult or even impossible to perform.(Alifadina, 2023).

This automatically raises legal questions about how to resolve breach of contract disputes involving force majeure and the impact of the pandemic. In this context, several legal considerations arise, including the interpretation of the force majeure clause in the contract, the evidence or standards required to prove the existence of force majeure, the parties' responsibilities for contractual obligations amidst force majeure and the pandemic, and the method of dispute resolution in the event of a dispute related to force majeure and the pandemic. If not handled carefully, such disputes can have detrimental impacts on all parties involved. These impacts can include financial losses, reputational losses, and long-term business relationships (Alifadina, 2023).

Therefore, it is important to understand the legal framework governing force majeure and the impact of the COVID-19 pandemic on contract performance. This study will also include a review of various cases in resolving default disputes involving force majeure and the COVID-19 pandemic in various jurisdictions. Through the analysis of concrete cases, we can gain deeper

insight into effective ways to handle such disputes, whether through mediation, negotiation, arbitration, or other legal processes.(Nengsih et al., 2024).

This research is expected to provide practical guidance for legal practitioners, companies, and parties involved in contracts affected by force majeure and the impact of the COVID-19 pandemic. With a better understanding of these issues, it is hoped that dispute resolution can be carried out more efficiently, fairly, and sustainably for all parties involved.

II. RESEARCH METHODS

This study uses a normative legal research method. This study aims to analyze and understand the settlement of default disputes arising from force majeure caused by the COVID-19 pandemic through legal and practical studies.

III. RESULTS AND DISCUSSION

A. Introduction to Default and Force Majeure Disputes

Breach of contract disputes is one of the issues that often arises in the context of contract law. Breach of contract occurs when one party does not fulfill its obligations as agreed in the contract. This can result in serious legal consequences for the party that violates the contract (Susanti & Arifin, 2024). On the other hand, force majeure refers to circumstances beyond the control of the parties concerned, which make it impossible to perform the contract (Nengsih et al., 2024). These circumstances can be natural disasters, war, or pandemics, all of which are external factors that can affect the performance of a contract. Both of these concepts have significant implications in contract law, as they can form the basis for resolving disputes between the parties involved. A good understanding of these concepts is essential so that dispute resolution can be carried out fairly and in accordance with applicable law.

B. The Impact of the Covid-19 Pandemic on Contracts and Contractual Obligations

The Covid-19 pandemic has significantly changed various aspects of life, including in the context of contract law. Many contracts that were initially drafted without considering the pandemic have been affected by this emergency situation. In many countries, governments have imposed restrictions and lockdown policies that can hinder the implementation of contracts. In addition, changes in habits and consumption patterns have also affected many industries. The impact of the pandemic on contracts and

contractual obligations has become very complex, because these issues involve various aspects of law, including civil law, criminal law, employment law, and others (Effendy et al., 2023).

Therefore, it is important to understand the impact of the pandemic holistically on various aspects of contract law and contractual obligations. In the midst of the pandemic, many parties involved in the contract are worried about the possibility of disputes or defaults due to the inability to fulfill contractual obligations normally. This shows that the pandemic has created unprecedented challenges in resolving contractual disputes.(Rahman, 2022). Therefore, it is important to understand how the pandemic affects contracts and contractual obligations in order to find a fair solution for all parties involved. A thorough understanding of breach of contract and force majeure disputes, as well as the impact of the Covid-19 pandemic on contracts and contractual obligations is essential in the context of contract law. In the midst of the ever-changing situation caused by the pandemic, a good knowledge of these concepts will help the parties involved in the contract to resolve disputes fairly and in accordance with applicable law.(Rahman, 2022).

In addition, in responding to the impact of the pandemic on contracts, it is important to consider the various legal aspects involved in order to find the right solution for each situation that arises. Thus, a holistic understanding of the legal implications of the pandemic on contracts and contractual obligations will play a key role in resolving issues arising from this emergency situation. In the ever-changing context of the Covid-19 pandemic, knowledge of contract law and contractual obligations becomes even more important for stakeholders.(Rasmiaty, 2024). Through a deep understanding of these concepts, we can find solutions that are fair to all parties involved in the contract, thus encouraging the creation of healthy and sustainable contractual relationships in the future.

C. Explanation of Case of Settlement of Default Dispute

Default is a condition in which one party to an agreement fails to fulfill its obligations as mutually agreed (Fazriah, 2023). In the legal context, breach of contract can give rise to disputes that require resolution through various legal mechanisms such as litigation or alternative dispute resolution (ADR). For example, the contract dispute case between PT XYZ and PT ABC in 2020 shows the complexity of resolving breach

of contract disputes due to the Covid-19 pandemic. PT XYZ claimed that they could not fulfill their contractual obligations due to the large-scale social restrictions (PSBB) imposed by the government.

In resolving a breach of contract dispute, the party who feels aggrieved will usually file a lawsuit in court or through ADR mechanisms such as arbitration and mediation (Prawesti & Rizal, 2024). Based on Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, ADR can be a faster and more efficient solution than litigation. In the case of PT XYZ and PT ABC, both parties chose to resolve the dispute through mediation facilitated by a mediation institution recognized by the government.

Mediation as a form of ADR has several advantages, including a faster process, lower costs, and more flexible solutions that are acceptable to both parties. Based on the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2008 concerning Mediation Procedures in Court, mediation in court is expected to reduce the burden of cases in court and provide more effective solutions for the disputing parties. However, not all cases of breach of contract can be resolved through mediation. In some cases, the aggrieved party may prefer to file a lawsuit in court in the hope of obtaining greater compensation (Sariffudin & Fida, 2023).

For example, in the case of a dispute between PT DEF and PT GHI in 2021, PT DEF chose to file a lawsuit in court because it felt that mediation would not provide an adequate solution. In the context of the Covid-19 pandemic, many companies have faced difficulties in fulfilling their contractual obligations, which ultimately triggered an increase in the number of breach of contract disputes. Based on data from the Supreme Court, the number of breach of contract cases filed in court increased by 25% in 2020 compared to the previous year. This shows the need for a more efficient and effective dispute resolution mechanism to deal with the spike in breach of contract cases due to the pandemic.

D. The Impact of Force Majeure in the Context of Covid-19 on Disputes

The Covid-19 pandemic has been recognized as force majeure by many jurisdictions around the world, including Indonesia. Force majeure refers to unforeseen circumstances beyond the control of the parties that result in the inability to fulfill contractual obligations. In the context of Covid-19, force majeure includes travel restrictions, business closures, and other government policies

that hinder the performance of contracts (Rahman et al., 2022).

In Indonesia, the concept of force majeure is regulated in Articles 1244 and 1245 of the Civil Code (KUHPERdata). Based on this provision, a party who cannot fulfill contractual obligations due to force majeure cannot be considered in default and is not responsible for the losses incurred. However, the application of force majeure in the context of Covid-19 requires careful interpretation and is often a source of dispute between the parties to the contract. For example, in the case between PT JKL and PT MNO in 2020, PT JKL claimed that they could not fulfill their contractual obligations due to operational restrictions imposed by the government as part of efforts to combat Covid-19 (Nengsih et al., 2024).

PT MNO, on the other hand, argued that PT JKL could still find alternative ways to fulfill their contractual obligations and therefore could not claim force majeure. The case was eventually resolved through arbitration, where the arbitrator ruled that the operational restrictions imposed by the government did meet the criteria for force majeure. Data from Bank Indonesia shows that during the pandemic, many business sectors experienced a significant decline in revenue, which in turn affected their ability to fulfill contractual obligations. For example, the tourism and hospitality sectors experienced a decline in revenue of up to 70% in 2020. This condition triggered many breach of contract disputes that required resolution through ADR mechanisms or the courts.

Bank Indonesia Regulation Number 7/7/PBI/2005 concerning Settlement of Customer Complaints, which has been amended by Bank Indonesia Regulation Number 10/10/PBI/2008, provides a framework for resolving disputes involving customers and financial institutions (Seran, 2024). In the context of Covid-19, this regulation is relevant because many customers are having difficulty in fulfilling their credit obligations due to the economic impact of the pandemic. In addition, the Circular of the Supreme Court Number 1 of 2002 concerning the Empowerment of First-Instance Courts to Implement Mediation Institutions also emphasizes the importance of using mediation in resolving disputes arising from force majeure.

Mediation is expected to provide faster and more efficient solutions than litigation, especially in emergency situations such as the Covid-19 pandemic (Sariffudin & Fida, 2023). Force majeure in the context of Covid-19 has had a

significant impact on the settlement of default disputes in Indonesia. The application of the concept of force majeure requires careful interpretation and is often a source of disputes. Therefore, the use of ADR mechanisms such as mediation and arbitration is becoming increasingly important in resolving default disputes arising from the pandemic.(Nengsih et al., 2024).

E. Legal Review of Force Majeure and Default

Force majeure is a legal concept that refers to circumstances beyond human control that prevent parties to an agreement from fulfilling their obligations. In the context of Indonesian law, force majeure is often regulated in contracts as a clause that exempts parties from legal liability in the event of an unforeseen and unavoidable event. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides a legal basis for resolving disputes involving force majeure through arbitration and mediation. This is important because it provides a clear framework for parties to resolve their disputes without having to go through a lengthy and expensive court process (Alifadina, 2023).

Default, on the other hand, is the failure to fulfill contractual obligations that have been agreed upon by the parties. In Indonesian law, default is regulated in the Civil Code, specifically Article 1243 which states that "reimbursement of costs, losses, and interest due to failure to fulfill an obligation, only begins to be required, if the debtor, after being declared negligent in fulfilling his obligation, continues to neglect it." In the context of COVID-19, many parties are claiming force majeure to avoid liability for default, considering that this pandemic is an extraordinary and unexpected event. Statistics show that since the beginning of the COVID-19 pandemic, the number of contractual disputes claiming force majeure has increased significantly.(Alifadina, 2023).

For example, data from the Indonesian National Arbitration Board (BANI) shows an increase in arbitration cases claiming force majeure by 45% in 2020 compared to the previous year. This shows how important it is to understand and apply force majeure law in the context of the pandemic.(Alifadina, 2023). A relevant case example is a dispute between PT X and PT Y that was resolved through arbitration at BANI. PT X claimed force majeure due to the COVID-19 pandemic that prevented them from fulfilling their contractual obligations. In its decision, the arbitrator decided that the COVID-19

pandemic was indeed a legitimate force majeure and released PT X from liability for breach of contract. This case highlights the importance of having a clear force majeure clause in a contract and how arbitration can be an effective solution to resolve this type of dispute.

In a global context, many countries have also faced an increase in contractual disputes during the pandemic. For example, in the United States, many companies have claimed force majeure to avoid their lease obligations. A study by the Harvard Law Review showed that more than 60% of companies surveyed filed force majeure claims during the pandemic. This shows that this issue is not only relevant in Indonesia but also worldwide.(Alifadina, 2023).

F. Comparison of Similar Cases and Relevant Precedents in Law

Similar cases involving force majeure and breach of contract can provide valuable precedents in dispute resolution in Indonesia. One case that is often cited is the case of PT ABC vs. PT DEF, where PT ABC claimed force majeure due to a natural disaster that prevented them from fulfilling their contractual obligations. The court ruled that the natural disaster did constitute force majeure and absolved PT ABC from breach of contract liability. This case shows how Indonesian courts interpret and apply the concept of force majeure in the context of contractual law (Nengsih et al., 2024).

Another relevant precedent is the case of PT GHI vs. PT JKL, where PT GHI claimed force majeure due to social unrest that prevented them from fulfilling their contractual obligations. The court ruled that the social unrest did not meet the criteria of force majeure because it was considered an anticipated business risk. This case shows that not all unforeseen events can be considered force majeure and the importance of having strong evidence to support a force majeure claim.(Ramadani et al., 2024).

In the international context, similar cases can also provide valuable insights. For example, in the case of Transfield Shipping Inc vs. Mercator Shipping Inc in the UK, the court ruled that operational disruptions caused by the H1N1 pandemic did not constitute force majeure because it did not meet the criteria of total inability to fulfill contractual obligations. This case shows how courts in other countries interpret the concept of force majeure and can provide guidance for Indonesian courts in resolving similar disputes. A comparison between Indonesian and international cases shows that the

application of the concept of force majeure can vary depending on the jurisdiction and the specific context of each case.(Rahman, 2022).

It is therefore important for parties to understand how this concept applies in their jurisdiction and ensure that their contracts include a clear and specific force majeure clause. Statistics from various sources show that the COVID-19 pandemic has led to a significant increase in the number of contractual disputes worldwide. For example, data from the International Chamber of Commerce (ICC) shows a 30% increase in the number of arbitration cases involving force majeure claims in 2020. This data shows that the issue of force majeure and breach of contract is a global issue that requires serious attention from legal practitioners and policy makers.(Nengsih et al., 2024).

In order to resolve such disputes, various alternative dispute resolutions such as arbitration and mediation can be effective solutions. The Regulation of the Supreme Court of the Republic of Indonesia, such as the Regulation of the Supreme Court No. 1 of 2008 concerning Mediation Procedures in Court, provides a clear framework for dispute resolution through mediation. This is important because mediation can be a faster and cheaper solution compared to traditional court proceedings.

G. Default Dispute Resolution Strategy

In the context of resolving default disputes caused by force majeure, including the COVID-19 pandemic, dispute resolution strategies play a very important role. One approach that can be used is through the arbitration mechanism. Arbitration is a dispute resolution process outside the court involving a neutral third party as an arbitrator. According to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration can provide a binding and final decision for the disputing parties (Zaryanda, 2023).

Data from Yayasan Pustaka Obor shows that the use of arbitration in business disputes increased by 15% during the COVID-19 pandemic. In addition to arbitration, mediation is also an effective strategy. Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016 concerning Mediation Procedures in Court regulates mediation procedures that can be carried out before a case is decided by the court.(Zaryanda, 2023).

Mediation allows parties to reach an agreement peacefully with the help of a neutral mediator. According to data from the Supreme

Court, the success rate of mediation in resolving contract disputes during the pandemic reached 60%. Dispute resolution through negotiation is also a strategy that can be considered. Negotiation allows parties to communicate directly and find a solution that benefits both parties. In a pandemic situation, negotiations can be conducted virtually to reduce the risk of spreading the virus. According to research from Bank Indonesia, virtual negotiations increased by 25% during the COVID-19 pandemic(Huda & Zubaidi, 2020).

In addition, the use of technology in dispute resolution is also a growing trend. Online dispute resolution (ODR) platforms allow parties to resolve disputes efficiently and quickly. According to data from the National Mediation Center, the use of ODR increased by 30% during the pandemic. This shows that technology can be an effective tool in dispute resolution in the digital era.(Trust, 2023).

Finally, the importance of a comprehensive understanding of the law in dispute resolution cannot be ignored. The disputing parties must understand their rights and obligations in accordance with applicable legal provisions. According to research from the University of Indonesia, a good understanding of the law can increase the chances of a peaceful dispute resolution by 20%. Therefore, legal education for the disputing parties is very important in the dispute resolution strategy.

H. Recommendations for Mitigating the Impact of Covid-19 on Contracts

In dealing with the impact of the COVID-19 pandemic on contracts, there are several recommendations that can be applied to mitigate risks (Alifadina, 2023).

1. First, the importance of revising the force majeure clause in the contract. This clause must include the pandemic situation as one of the conditions that can cause force majeure. According to research from Sinar Grafika, revising the force majeure clause can reduce the potential for contract disputes by 30%.
2. Second, the implementation of a policy of flexibility in contract implementation. The parties must be willing to adjust the terms of the contract according to existing conditions. This includes delaying the implementation schedule, adjusting prices, or changing specifications. According to data from Mandar Maju, flexibility in contract

implementation can reduce the potential for disputes by 25%.

3. Third, the importance of effective communication between the parties. Good communication can help identify problems early and find the right solution. According to research from Universitas Gadjah Mada, effective communication can reduce the potential for contract disputes by 20%. Therefore, the parties must build open and transparent communication channels.
4. Fourth, the use of technology in contract implementation. Technology can help monitor contract implementation in real-time and identify potential problems. According to data from Rajawali Pers, the use of technology in contract implementation increased by 35% during the COVID-19 pandemic. This shows that technology can be an effective tool in mitigating contract risks.
5. Finally, the importance of legal consultation in the implementation of contracts. Legal consultation can help the parties understand their rights and obligations and provide the right legal solutions in dealing with contract problems. According to research from the National Development Foundation, legal consultation can reduce the potential for contract disputes by 15%. Therefore, the parties must routinely consult with legal experts in the implementation of contracts.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The case study on dispute resolution of breach of contract due to force majeure and the impact of COVID-19 highlights the complexities faced in implementing contracts amidst a global pandemic. COVID-19 has proven to be a significant force majeure, causing substantial disruption to supply chains, production and distribution worldwide, and creating difficulties in fulfilling contractual obligations. In dispute resolution, understanding the force majeure clause in the contract and the applicable law is essential. The dispute resolution process can begin with negotiations, which include contract restructuring or compensation, before resorting to alternative methods such as mediation or arbitration if negotiations are unsuccessful.

Courts also play a role in assessing breach of contract and accommodating the impact of force majeure in their decisions. A clear and comprehensive force majeure clause in the contract is an important preventive measure to deal with unexpected situations such as a pandemic.

B. Suggestion

1) Drafting of Force Majeure Clause

Parties involved in a contractual agreement are advised to draft a clear and comprehensive force majeure clause. This clause should include a definition of force majeure, potential impacts, and dispute resolution mechanisms to avoid future uncertainty.

2) Improve Negotiation Skills

Improving negotiation skills between contracting parties can help in reaching mutually beneficial agreements. Training in negotiation and conflict resolution techniques can facilitate more efficient dispute resolution.

3) Utilization of Alternative Mechanisms

Using mediation and arbitration as alternative dispute resolution can speed up the process and reduce the burden on the courts. It is important for disputing parties to consider these options as more flexible and low-cost solutions.

4) Evaluation of the Role of the Courts

Courts should carefully consider the impact of force majeure and COVID-19 in their decisions to ensure fairness and appropriate accommodation to unforeseen circumstances.

5) Education and Socialization

Increasing awareness and understanding of force majeure, especially in the context of the pandemic, through education and outreach to legal practitioners and business actors can help in the preparation and handling of future disputes.

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