
Assessing The Legal Consequences Of Delaying The Payment Of Achievements To Creditors

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ARTICLE INFO

Keywords :

Menakar; Legal consequences; Lender.

How To Cite :

Yunus, U. (2020). Assessing The Legal Consequences Of Delaying The Payment Of Achievements To Creditors After Presidential Decree No. 12 Of 2020. *Estudiante Law Journal*. Vol. 2 (1): 278-292

DOI :

ABSTRACT

The purpose of this study is to find out the legal consequences of delaying the payment of achievements to creditors after Presidential Decree No. 12 of 2020. The methods used in this study are normative research and The type of approach used is the legal approach, the conceptual approach. The technique of analyzing legal materials in this study uses descriptive methods. The results showed that the legal consequences of delaying the payment of achievements to creditors after presidential decree number 12 of 2020 related to the Determination of Non-Natural Disasters spreading Corona Virus Disease 2019 as a National Disaster falls into the category of force majeure which is temporary, meaning that debtors will not be legal if there is good faith by providing reasons and evidence that Covid-19 causes delayed achievement, However, if it does not violate good faith and does not provide valid reasons/evidence then the debtor can still be legal with the provisions of the applicable legislation. There needs to be a reaffirmation of the emergency intended in Presidential Decree 12 of 2020, in the sense of adding phrases related to economic difficulties. This is necessary so that the creation of legal certainty for debtors and creditors that the emergency due to covid-19 is classified as *force majeure* and delay achievements can be done

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1. Introduction

The ideals of the Indonesian nation are listed in the 1945 Constitution as the basis of the Constitution of the Republic of Indonesia, both before and after being amended, have a strong spirit of the welfare of citizens and form a welfare state.¹ Indonesia is one of the countries that put forward the constitution in every aspect of national and state life.² State involvement is also one of the characters of the phenomenon of conflict.³ So that this becomes a constitutional right for every citizen of Indonesia.⁴

Because also human rights are part of the implementation of the judiciary within the framework of independent judicial power.⁵ The existence of human rights will have no meaning if it is not followed up with the law that regulates the relationship of rights, meaning that the law formalizes human rights into a set of rules to maintain and protect so as not to become clashes in the life of society and state.⁶ The government has not implemented the level of service expected, especially by the people who are targeted by their services.⁷ This is a strategic step towards realizing this national goal.⁸ This can happen if the village government realizes the inherited conditions are internalized into the development program (endogenous development).⁹ Solely in the implementation of such development is nothing but the welfare of the people themselves.¹⁰

With the covid-19 pandemic, the government took the policy of the PSBB so that it had an impact on debtors who experienced economic difficulties resulting in the cancellation of the agreement. In a business environment, failure to fulfill an agreement aka default

¹ An handrawulan, *Hukum Perusahaan Multinasional, Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*. (Bandung: CV. Pustaka Media, 2011), 15.

² Fakhris Lutfianto Hapsoro, (2020). Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution, *Jurnal Law Review*. 2 (2), 144

³ Yudha Chandra Arwana, (2019), Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia. *Jurnal Law Review*. 1 (2), 216

⁴ Nggilu, N., & Wantu, F. M, (2020). Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi. *Jurnal Hukum Samudra Keadilan*, 15(1), 128

⁵ Nabih Amer, (2020). Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum. *Jurnal Legalitas*. 13 (1), 12

⁶ Tijow, Lusiana. (2010), Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas* 3 (2), 80

⁷ Fahmi Kamuli, (2021), Regional Head's Authority in Determining Work Placement Due to Mutations of Government Employees, *Jurnal Law Review*. 3 (1), 39

⁸ Ahmad Rustan Syamsuddin. (July, 2020) Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa. *Jurnal Law Review*. 2 (2), 163

⁹ Zamroni, S. (2016). Desa Membangun Tanpa Meninggalkan Kelompok Pinggiran. *Institute for Research and Empowerment (IRE)*, 2, 6

¹⁰ Ariefulloh. (2019). Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak. *Jurnal Law Review* 1 (2), 199

can often be justified by law if people who do not meet achievements can prove some obstacles cannot be avoided. Natural disasters, for example. Related to the Covid-19 outbreak, whether legally this global pandemic can be used as an excuse as a force *Majeure* not to carry out the agreement Practitioner who has been steeped in contract law, Ricardo Simanjuntak argues Force Majeure is an obstacle where one party cannot avoid the obstacle despite making the best efforts. Other elements that support the occurrence of Force Majeure, the party can never predict when the obstacle occurs, and it does not have a contributory factor to the occurrence of the obstacle.¹¹

In civil law, the conditions of the agreement or contract that are not fulfilled by the content of the agreement certainly lead to legal problems called broken promises or defaults. Performance is something that must be fulfilled by the debtor in every engagement, performance is the content of an engagement. Arabia's debtor does not fulfill the achievement as specified in the agreement, so he is said to be negligent (negligence)¹². Wanprestasi in the time of the covid-19 virus pandemic became the subject of public conversation, where we can meet in various media due to the spread of the covid-19 virus, many companies make job cuts with their employees so that many people or debtors who experience default conditions or are not fulfilled obligations in the agreement.

Along with the demands of the development of increasingly urgent situations and conditions, and the handling of the Spread of *Corona Virus Disease 2019* (Covid-19) that cannot be handled under 'normal' conditions, president Joko Widodo on April 13, 2020, issued Presidential Decree No. 12 of 2020 on The Determination of Non-natural Disasters spreading *Corona Virus Disease 2019*. (COVID-19) as a national disaster. Therefore, the birth of Presidential Decree No. 12 of 2020 dated April 13, 2020, concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster is the next reference as well as a legal basis for provincial / regency / city governments to establish the Emergency Status of Non-Natural Disasters pandemic COVID-19, through the Decree of the Regional Head of Governor / Regent / Mayor in their respective regions. Based on the President Decree, the covid-19 virus is considered as a reason for not being compensated in the event of a delay or failure to pay debtors.

Government Regulation instead of Law No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Coronavirus Disease Pandemic 2019 (Covid-

¹¹Norman Edwin Elnizar, Masalah Hukum Penundaan Kontrak Akibat Penyebaran Covid-19. <https://www.hukumonline.com/berita/baca/lt5e70df2e855cf/masalah-hukum-penundaan-kontrak-akibat-penyebaran-covid-19> (diakses pada tanggal 23 November 2020)

¹²Budiman N.P.D Sinaga, *Hukum Kontrak dan Penyelesaian Sengketa dari Prespektif*. (Jakarta: PT Raja Grafindo Persada, 2005), 20.

19) And/or To Deal with Threats That Endanger the National Economy and/or Financial System Stability and Presidential Decree No. 12 of 2020 on The Determination of Non-natural Disasters spreading Corona Virus Disease 2019 (Covid-19) as a National Disaster. The issuance of the regulation is even more polemic in the community, whether the Covid-19 pandemic can be said as force majeure or the Covid-19 pandemic can be qualified as a force majeure is important for study. This is because qualifying pandemic as force majeure will have implications for treaty obligations in civil law. If we observe Article 1338 of the Civil Code, each agreement must be subject to the principle of good faith in its implementation, because of its binding nature as a law. The exception of the provision is found in the provisions governing the state of force Majeure, namely in Article 1244 and Article 1245 of the Civil Code.

In business practice, the Covid19 pandemic is also a point of debate between business actors who are bound by business contracts. Debtors who have contractual obligations make the pandemic situation an excuse to free themselves from their obligations to fulfill achievements, there are even some business actors who make the pandemic situation as a reason for the cancellation of existing contracts. Especially when the Government issues several legal umbrellas for handling Covid-19 including Government Regulation instead of Law No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (Covid-19) and/or to deal with threats that endanger the national economy and/or financial system stability and Presidential Decree No. 12 of 2020 on The Determination of Non-natural Disasters of Corona Virus Spread Disease 2019 (Covid-19) as a National Disaster.

Conditions like this mentioned above force *Majeure*. An agreement in general always includes clauses regarding force *majeure*. This is so that the parties understand between omissions that occur due to coercive circumstances. The Covid-19 pandemic certainly causes debate between business actors related to business agreements. Debtors who have contractual obligations make pandemic circumstances the reason for the cancellation of existing contracts or agreements. In this case, Dona Budi Kharisma said that:¹³

“Especially when the government issues several legal umbrellas for handling Covid-19 including Government Regulation instead of Law No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (Covid-19) and/or To Deal with Threats That Endanger the National Economy And/or Financial System Stability and Presidential Decree No. 12 of 2020 on The Determination of Non-natural Disasters of Corona Virus Spread Disease 2019 (covid-19) as a National Disaster. The *issue of force majeure* becomes a problem that deserves legal certainty.”

¹³ Dona Budi Kharisma, (2020). *Pandemi Covid-19 Apakah Force Majeure?*, Jurnal Rechtsvinding Media Pembinaan Hukum Nasional, 1

Mochtar Kusumaatmadja stated that *force majeure* can be accepted as an excuse for not fulfilling the implementation of obligations due to the loss/disappearance of objects or purposes that are the subject of the agreement. This situation is directed towards the physical and legal implementation, not because it is only difficult to carry out obligations.¹⁴ The basic principles that mark *universal clean government* include legal certainty, transparency, and accountability.¹⁵

Analysis of the Covid-19 pandemic whether it can be qualified as a force majeure is important to keep the situation and economic conditions stable. Unilateral cancellation of business contracts can also be avoided if the parties can understand the legal consequences of the Covid-19 pandemic in business contracts. Therefore, the question of whether the Covid-19 pandemic can be qualified as force majeure is important to answer. This is because pandemic qualification as a *force majeure* will have implications for the contractual obligations of the parties to the business contract.

B. Problem Formula

In this paper, the author formulates problems related to assessing the legal consequences of delaying the payment of achievements to creditors after presidential decree number 12 of 2020 related to the Determination of Non-Natural Disasters spreading Corona Virus Disease 2019 (COVID-19) as a National Disaster.

C. Research Methods

The type of research used in this study is Normative which is focused on reviewing the application of rules or norms in the prevailing positive law, which is then connected to the central issue discussed in this study. The approach used in this research consists of *the Statue Approach* and the Conceptual Approach as well as *the case approach*. The technique of analyzing legal materials in this study uses descriptive methods.¹⁶

2. DISCUSSION

Assessing The Legal Consequences Of Delaying The Payment Of Achievements To Creditors After Presidential Decree No. 12 Of 2020

Related to that the relationship of debtors and creditors must be based on good faith, create mutual trust, and *win-win solution* in the resolution of problems/disputes. Therefore,

¹⁴ Harry Purwanto, (November, 2011). *Keberadaan Asas Rebus Sic Stantibus Dalam Perjanjian Internasional*, Jurnal Mimbar Hukum. Edisi Khusus, 115.

¹⁵Fitria Andalus Handayani dan Mohamad Ichsana Nur. (2019), *Implementasi Good and Clean Governance di Indonesia*. Jurnal Pemikiran Administrasi Negara. 11 (1), 8

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media Group, 2014), 93

R. Subekti and Wirjono Prodjodikoro call goodwill as honesty to carry out a contract divided into two things, namely honesty at the time of legal relations and honesty at the time of the implementation of rights and obligations in a legal relationship.¹⁷ Good Faith itself is needed in case of delays in achievement due to the Covid-19 emergency by providing evidence and honesty about economic activity during Covid-19. This will also help debtors to avoid legal problems in case of default.

The law is different. If a condition is declared as *wanprestasi*, then a person will be given a reprimand in the form of a subpoena and proceed to a civil trial in the district court, while if a condition is not fulfilled achievement due to force *majeure*, then the party who does not perform the achievement cannot be sued to the court. As has been explained that the circumstances of force and force mature are in some classifications because in the application of the law there are differences. This is stated by Sri Soedewi Masjchoen Sofwan who said that the legal consequences of the circumstances of coercion must be distinguished from its temporary or permanent philosophy. In the event of a temporary coercive situation, due to the law of not fulfilling the achievement only has the power to suspend for a while and its obligation to achieve life again if the factors that make a condition of the circumstances force it no longer exist, while the legal consequences for the force *majeure* that remains will automatically terminate for the good of the contract.¹⁸

If it is associated with Presidential Decree 12 of 2020, if it is proven that the debtor has a forced situation that results in not being able to perform then from the void engagement is the recovery in the original condition as if there has never been an engagement if the engagement has been implemented, but if one party has incurred the cost to implement the agreement before the time of release, The court at its discretion may allow it to obtain all or part of the costs from the other party, or withhold the money already paid.

Mahfud MD asserts that force *majeure* cannot automatically be used as a reason for contract cancellation but can indeed be used as an entrance to negotiate in canceling or changing the contents of the contract. The contract must still be carried out by its contents because according to Article 1338 of the Civil Code (Kuh Civil) states that any agreement made legally applies as a Law for those who make it. So, as long as the contract is not changed with the new contract agreed to remain binding as the Law. Renegotiation on the grounds of force *majeure* as a result of the impact of the COVID-19 Pandemic remains based on Article 1244, Article 1245, and Article 1338 of the Civil Code.¹⁹

¹⁷ Bandingkan, WijonoProdjodikoro, *Asas-asas Hukum Perjanjian*. (Bandung: Mandar Maju, 2011), 102

¹⁸ Rudyanti Dorotea Tobing, *Hukum Perjanjian Kredit, Konsep Perjanjian Kredit Sindikasi Yang Berasaskan Demokrasi Ekonomi*, (Yogyakarta: Laksbang Grafika, 2014), 55

¹⁹Prayogo Dewangker. (Agustus, 2020). Penggunaan Klausula Force Majeure Dalam Kondisi Pandemi, *Jurnal Education*, 8 (3) 311

If *force majeure* is applied automatically where the condition of the company can still perform achievements, what happens is only changes in risk insurance. For example, if initially the loss due to the inhibition of the implementation of achievement is borne by the debtor, but because the debtor filed force majeure finally free from the burden of the loss, and automatically the creditor must bear the loss. It does not reflect the win-win solution or the principle of fairness. Losses in the current pandemic can be borne jointly between creditors and debtors. That's why renegotiation based on the principle of good faith is the best option. So that these actions harm the general public and often even often violate the legal norms that apply to the general public.²⁰ Norms that develop in society and are flexible and encourage creativity in providing good public services.²¹ So with this the need for supervision in their respective work environments.²² Efforts that can be done on this are to bring the legal decision closer to the sense of justice lived by the community so that the implementation of the law further creates order in the community itself.²³ More important is that it is currently one of the most efficient steps in trying.²⁴ Quoting as said by Fence M. Wantu in his Journal that the nature of justice is a matter of judgment from one person to others, which is generally seen from those who receive treatment only.²⁵ The government through the law has given the starting point of justice, which is done for the sake of justice based on the Supreme Divinity.²⁶ to protect the fundamental rights or dignity and dignity of human beings, especially for seekers of justice.²⁷

Thus, in the event of a compelling circumstance, the debtor is not obliged to pay compensation and in a reciprocal agreement, the creditor cannot demand cancellation because the engagement is considered dead/ erased. In line with that, Salim H.S. stated three consequences of the circumstances of coercion, namely the debtor does not need to pay compensation as stated in Article 1244 of the Civil Code, then the risk burden does

²⁰ Novendri M. Nggilu dan Ahmad (2020). Denyut Nadi Amandemen Kelima Undang-Undang Dasar 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 16 (4), 785-808

²¹ Norma L.P. Wemben. (2010). "Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo." *Jurnal Legalitas* 3 (2), 131

²² Iriyanto Tiranda. (July, 2019). Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan. *Jurnal Law Review*. 1 (2), 132

²³ Ibrahim Ahmad, (2010), Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan. *Jurnal Legalitas*. 3 (2), 21

²⁴ Mohamad Rivaldi Moha, (July, 2020), Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. *Jurnal Law Review*. 2 (2), 115

²⁵ Fence M. Wantu. (Juni, 2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. *Jurnal Mimbar Hukum*. 25 (2), 206

²⁶ Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (Oktober, 2020). Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim. *Jurnal Gorontalo Law Riview*. 3, (2), 184

²⁷ Dian Ekawaty Ismail. (Februari, 2009). Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo. *Jurnal Mimbar Hukum*. 21 (1), 85

not change, especially in the circumstances of temporary coercion, and the creditor is not entitled to the fulfillment of achievements, but secretigis for the sake of the law is free from its obligation to submit counter achievements.²⁸

It can be said that the prominent feature of the concept of responsive law is the shift of emphasis from rules to principles and objectives, as well as the importance of the populist element as both a legal goal and a way to achieve it. Responsive law is results-oriented, i.e. on goals to be achieved outside the law. In responsive law, the legal order is negotiated, not won through subordination or force. The hallmark of responsive law is to look for implied values contained in regulations and policies. In this responsive legal model, they express disapproval of doctrines that they regard as standard and inflexible interpretations.²⁹ As the party that issues the policy, the Government must be able to see the balance in the life of society.³⁰ The results of policies issued by the Government are solely derived from the wishes of the community.³¹

Based on the description of the responsive legal theory, the law must respond to the consequences caused by the application of the concept of force majeure by the form of force majeure which is relative and subjective, then the legal consequences of force majeure between debtors and creditors are temporary. The temporary nature only delays the implementation of contracts or agreements as long as the COVID-19 pandemic is still spreading in the community or as long as the government has not been able to handle the spread of the COVID-19 pandemic. The alliance remains and all that disappears is its working force. The emphasis of engagement remains important on the temporary coercive circumstances of the COVID-19 pandemic. The engagement again has the power of work if the circumstances force it to stop.

Cancellation of unilateral agreements made by debtors without the consent of creditors or clear reasons and/or circumstances of force majeure is not proven so that there will be some legal consequences, among others:

1. Cancellation of the agreement by one of the parties to the agreement

This unilateral cancellation is related to the non-fulfillment of the subjective requirements of the validity of the agreement. Requests for cancellation of the agreement can be made if 1) There is no free agreement from the parties

²⁸ Salim H.S. *Pengantar Hukum Perdata Tertulis (BW)*, (Jakarta: Penerbit Sinar Grafika, 2011), 184- 185.

²⁹ Arsil, Fitra. (2018). Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial, *Jurnal Hukum & Pembangunan*, 48 (1), 8

³⁰ Elfrida Ratnawati, (2021). *The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia*. *Jurnal Law Review*. 3 (1), 72

³¹ Putri Handayani Nurdin, (July, 2019), *Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik*. *JALREV* 1 (2), 146

agreeing, either due to errors, coercion, or fraud by one of the parties at the time the agreement is made (Article 1321 to Article 1328 of the Civil Code). In this case, the aggrieved party has the right to request the cancellation of the agreement. 2) The incompetence of either party in making the agreement and/or having no authority in taking certain legal actions (Article 1330 and Article 1331). In this case, the inept party or its legal representative is entitled to request the cancellation of the agreement (Article 1446 to Article 1450 of the Civil Code).

2. Null and Void Agreement

Regarding it will be explained in advance the meaning of "void" and the understanding of "null and void" in. Void is: (1) does not apply; invalid: the agreement was declared; (2) it did not take place; delayed; urung: yesterday's meeting was forced, because the attendance was less than two-thirds of the number of members; (3) it did not work; fail. Thus, voiding or declaring void means that an agreement that has been mutually agreed to is invalid or does not occur. While null and void is a limitation that occurs based on the law, resulting in the legal act in question never occurring. Thus, the void is a contract that should not be executed or settled at all.³²

The debtor's actions, which can be classed as unlawful under the provisions of Article 1365 of the Civil Code, may also cause the agreement to be null and void. Cancellation applies generally to all parties, in contrast to the relative limitations that have legal consequences only on certain parties. The Legal Basis of an Agreement Declared Null and Void Elly Erawati and Herlien Budiono presented reasons that can be used as the basis of an agreement categorized as null and void, namely:³³

1. Null and void because the terms of the formal agreement are not fulfilled
2. Null and void because the objective terms of the agreement are not fulfilled
3. Null and void because it was made by an unauthorized person to perform legal acts.
4. Null and void because there are conditions that are fulfilled.

The Civil Code regulates null and void in several articles, namely:

1. Article 617 paragraph (1) of the Civil Code states: "Any deed by which immaturity is sold, given, divided, burdened, or transferred, must be made in authentic form, out of the threat of limitation".
2. Article 1254 of the Civil Code states that: "If the agreement contains conditions aimed at doing something impossible to do, or that is contrary to good decency, or even prohibited by law is null and void,"
3. Article 1256 of the Civil Code states that: "All engagements are void if their

³² Nanin Koeswidi Astuti. (April, 2016). Juridical Analysis of the Agreement Was Declared Null and Void. *Journal of Tora Law*. 2 (1), 281.

³³*Ibid*

- implementation depends solely on the will of the bound person"
4. Article 1265 of the Civil Code states that "Avoid condition is a condition which when fulfilled will eliminate the alliance and bring everything back to its original state as if there had never been an engagement".
 5. Article 1335 of the Civil Code states that: "A covenant without cause, or which has been made for a false or forbidden reason, has no power". The notion of "having no power" in article 1335 of the Civil Code is considered null and void.
 6. Article 1337 of the Civil Code states that: "A cause is forbidden, if prohibited by law, or if it is contrary to decency or public order".

Related to that *Force majeure* can be used as an excuse in presidential decree No.12 of 2020 associated with the theory of forced circumstances to have a very close relationship in the contract agreement, that the circumstances of force in law there are two things related here, namely Honesty and circumstances force, in this case, the factor of honesty is the main factor in the law that honesty will have an impact on the implementation of the agreement. or not the rights and obligations of an agreement if there is a state of Force majeure.

If the debtor is unable to perform achievements to creditors, the debtor in good faith conveys the reasons that make the debtor have obstacles in terms of his obligations of course in good faith and can be accounted for, as when making agreements of all forms of clauses made and agreed must be based on the word agreement and good agreement of both parties who do Agreements, based on the agreement and good faith of the parties to this force majeure can be said in its settlement to obtain balanced legal protection because the agreement is legal for the parties. To be realized straightforwardly on the initiative of the parties who agreed to resolve in terms of force majeure

The result of the next force majeure is the determination of the party who bears the risk of the force majeure event. In Article 1237 of the Civil Code, it is stated that in the event of an engagement to provide certain materiality, then since the engagements are born, the object becomes the dependent of the debtor. And if there is force majeure on the contract, then the risk is borne by the recipient of the achievement. If the debtor is negligent in providing achievement, then since his negligence it becomes the risk of the debtor to bear the risk.³⁴

Based on this provision, the person who is responsible for force majeure risk is a debtor because of the nature of Covid-19 emigrants that are only temporary. Although there is no element of error from the debtor, the obligation to fulfill the achievement still does not disappear in nature. In this case, the service user assumes no risk and does not bear any

³⁴ Riza Fibriani. (November, 2020). *Kebijakan Hukum Pembatalan Kontrak Dalam Keadaan Force Majeure Pandemi Covid 19 Di Indonesia*, (Humani, Universitas Semarang). 10 (2), 211

losses for the event, unless there is another agreement between the parties to the agreement. Based on the doctrine of legal experts, because even if there is no fault from the service provider, the service provider still bears the burden of compensation. The burden of compensation due to force majeure during the COVID-19 pandemic must be assessed based on casuistic, namely must be assessed based on the objectification of the business/debtor's situation.

If referring to Law No. 24 of 2007 on Disaster Management in Article 1 paragraph (1) of the Disaster Management Act states that "Disasters are events or series of events that threaten and disrupt the lives and livelihoods of people caused, either by natural factors and/or non-natural factors and human factors resulting in human fatalities, environmental damage, loss of property, and psychological impact.

In line with the progress and so rapid science and technology today.³⁵ Covid-19 includes non-natural disasters, as stated in Article 1 Paragraph (3) namely: "Non-natural disasters are disasters caused by non-natural events or series of events that include technological failure, failed modernization, epidemics, and disease outbreaks." Thus, it can be said that Covid-19 includes overnight conditions. In some people already include absolute overmatch that is those who can no longer do achievements such as Ojol handyman, a victim of layoffs. But some of the relative overmatches are that they katerogi MSMEs. However, the debtor has a choice, whether the credit restructuring/financing can be identified with relative overmatch, or declare itself in an absolute overmatch condition. However, it should be understood that overmatch will not be resolved if only from both parties (debtors and creditors). Therefore, the debtor/customer can request a determination from the court.³⁶ So in modern times is an era where humans are required to develop themselves.³⁷

Furthermore, in principle between the debtor and the creditor can negotiate the contract again. The renegotiation of the contract is done to discuss all things that can be renewed in the implementation of the cooperation of a particular business. In the event of the COVID-19 pandemic, the review by the parties who perform the contract becomes important to be implemented so that the parties can still carry out their obligations without having to default (not fulfill the promise) by changing the clauses in the contract

³⁵ Lakoro, A., Badu, L. W., Achir N, (2020). Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online, *Jurnal Legalitas*. 13 (1), 32

³⁶ Merry Tjoanda. (2021). *Covid-19 sebagai Bentuk Overmacht dan Akibat Hukumnya Terhadap Pelaksanaan Perjanjian Kredit*, *Jurnal SASI*. 27 (1), 97

³⁷Bakung, Dolot Alhasni. (2020) Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right. *JALREV* 2 (1), 67

of the debtor and creditor.³⁸

Renegotiation of contracts between creditors and debtors bound by credit contracts becomes an effort that cannot be separated during this pandemic period. To avoid circumstances where the debtor does not fulfill his achievements or defaults with the covid-19 proposition, it is necessary to pay attention to the renegotiation of the contents of credit contracts in the form of credit restructuring based on Law No. 2 of 2020 on State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic. By renegotiating or renegotiating the contents of the contract, the debtor applies for debt restructuring. Debt restructuring can be done as an effort to overcome bad credit due to declining debtor income due to the Covid-19 impact.³⁹

Based on that, it can be said that as long as there is good faith from the debtor in providing reasons/confirmation and proving the reason and impact of Covid-19 which resulted in the debtor delaying achievement, then the researcher argues the debtor can delay the achievement obligation with a record after the covid outbreak ends and the emergency is revoked the debtor can do the achievement again, but if the situation has returned to normal and the debtor still cannot perform the achievement. to creditors, the debtor can be legal with the provisions of the legislation as described above.

3. Conclusion

The legal consequences in delaying the debtor's achievement to creditors are regulated in several provisions, namely Article 617 paragraph (1) of the Civil Code, Article 1245, Kuh Civil, Article 1254 of the Civil Code, Article 1256 of the Civil Code, Article 1265 of the Civil Code, Article 1335 of the Civil Code, Article 1337 of the Civil Code. Covid-19 itself is categorized as a temporary force majeure, meaning that the debtor will not be legal if there is good faith by providing reasons and evidence that Covid-19 causes delayed achievement, but if it does not violate good faith and does not provide valid reasons/evidence then the debtor can still be legal with the provisions of the applicable legislation.

4. Suggestion

There needs to be a reaffirmation of the emergency intended in Presidential Decree 12 of 2020, in the sense of adding phrases related to economic difficulties. This is necessary to create legal certainty for debtors and creditors that the emergency due to covid-19 is

³⁸ Suhandi Light. (2012). *The Judge's View of coercive Circumstances*. (Journal of Law and Development). 42(4), 7.

³⁹ Arya Bangbang Frisyudha. (Mei, 2021). *Renegosiasi Sebagai Upaya Penyelesaian Wanprestasi Dalam Kontrak Bisnis Selama Masa Pandemi Covid-19*, Jurnal Konstruksi Hukum. 2 (2), 347

classified as force majeure and delays in achievement can be done.

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