

THE IMPACT OF THE COVID-19 PANDEMIC ON THE FULFILLMENT OF CREDIT WITH MORTGAGE RIGHTS IN LEGAL TERMS FOR THE DEBTOR

Adella Rachma Juliani^{1,}, Siti Malikhatun Badriyah²*

*^{1,2}Master of Notary, Faculty of Law Diponegoro University, Semarang, Indonesia
adellarj26@gmail.com^{1,*}, sitimalikhatun@live.undip.ac.id²*

Received 11 April 2023 • Revised 23 May 2023 • Accepted 27 May 2023

Abstract

The Covid-19 has an impact that affects many sectors, including the implementation of credit agreements that are subject to dependent rights. These effects led the debtor to experience overmacht and force majeure, so it is difficult to fulfill the obligations from the contract because income during the CoAvid-19 pandemic was unstable. The approach used in this study is normative juridical. The results showed that the situation of the Covid-19 pandemic can be used as a basis for overmacht because it has fulfilled the elements of overmacht. Thus, the execution of the debtor's liability rights object is not possible, which is hindered by the fulfillment of its credit obligations. Issuance of POJK Number 11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy on the Impact of Coronavirus Disease 2019 as a policy that provides legal protection for overmacht debtors affected by Covid-19 by providing credit restructuring.

Keywords: Mortgage, Pandemic, Covid-19, Overmacht, Force Majeure

INTRODUCTION

In 2019, some countries confronted an unexpected situation, that is the emergence of a new virus known as Coronavirus Disease (Covid-19), which originated in Wuhan, China, and is rapidly spreading throughout the world. In early 2020, Indonesia became one of the countries that got attached to the spread of Covid-19 viruses.

COVID-19 had a visible impact on both in the number of patients and the economies of the countries that experienced a sharp decline. It cannot be denied that the decline of the economy has been affected by the situation of the Covid-19 pandemic, especially in Indonesia itself. Based on the information from an online news site, Kompas.com, that was launched on May 10, 2020, according to the Badan Pusat Statistik (BPS) Indonesia growth report year-on-year, the largest source of economic growth in the first quarter of 2020 is in the information and communication sectors at around 0.53, percent and in August it was mentioned that Indonesia's economic growth in the second quarter of 2020 was negative at around 5.32%. Its condition has strung out in their economic matters. Due to the COVID-19 pandemic, even large corporations laid off their workers.

With the expansion of the economic sector, a large number of capitals were required. One way to obtain capital provisioning or financing is through a bank in the form of credit with a credit or debt agreement followed by a guarantee. This guarantee agreement contains an agreement to binding the debtor's possessions with the aim of providing a sense of security and legal certainty. Immovable guarantees related to the land are the most demanding of the bank as the debtor. The right of land on a security institution is a Mortgage. The Mortgage of certificate of land rights has more benefits for the debtor because it provides convenience for the debtor in carrying out executions against the mortgage object if the debtor defaults.

Credit funds have a fairly important position in economic development activities and the fulfillment of the necessities of life or entrepreneurship for many people, so it is necessary to have strong protection for creditors and recipients as well as other third parties concerned in credit agreements, by always paying attention to the clauses listed in the agreement made. The importance of its existence is to ensure that agreements must include force majeure or overmacht clauses.

The Mortgage is a right over collateral that is imposed on this right of land, following or not following other objects that are part of the unity of the land, for the repayment of certain debts, that give priority to certain creditors over other creditors. While making the right of land agreement, it must make a Deed of Granting of Mortgage (APHT) which is made by the Land Deed Official (PPAT). This deed is an accessory agreement to the prior principal agreement, which is the debt agreement. If the debtor defaults, then the Mortgage of guarantee object according to UUHT the execution can be carried out directly with one of them through an auction.

The Legal Guarantee is the whole rule of law that regulates the relationship between the giver and the recipient of the guarantee relating to the imposition of collateral to obtain a credit facility. In this case, the capital provider requires guarantees for lending activities for the sake of capital security and legal certainty. The default is a condition where obligations or performances imposed by a contract against certain parties as stated in the contract or agreement are not fulfilled (Busro, 2011).. When the debtor defaults, then there are some risks that need to be borne, one of which is providing compensation to the creditor who has been harmed, as stated in Article 1239 of the Civil Code. Furthermore, there are still other impacts caused by the default, which are:

- a. Risk diversion
- b. Cancellation or split agreement
- c. Pay the case fees when the settlement reaches court.

According to civil code articles 1244 and 1245, Force majeure is a situation where the debtor is obstructed in influencing its performance due to an unexpected situation that cannot be accounted for, and the debtor is released to compensate for losses and interest. There are certain elements that must be proven in a force majeure situation, such as:

- a. There is no negligence or intentional elements from debtor parties for not doing their liabilities.
- b. The occurrence of an unexpected event that causes the debtors can't fulfill their liability.
- c. The event can't be asked for accountability by the party that can't fulfill its liability.
- d. There is still good faith from the party who is not fulfilling their liability (Eko & S, 2020).

According to the background above, the authors feel important to research related to the Covid-19 Pandemic which giving a lot of impacts, especially in the economic sector even each small groups, either middle- or upper-class and the amount number of casualties who were exposed then the problems will be raised as a below:

1. Do the Covid-19 pandemic situation could be said to (overmacht, force majeure) able to postpone the debtor's fulfillment of performance to the creditor?

2. How is the legal protection owned by the debtors in the credit agreement according to MK Decision Number 21/PUU-XVIII/2020, if during the Covid-19 pandemic the debtor experienced overmacht?

This research is for the purpose of knowing the legal protections that have been given by the government to the debtors who affected from Pandemic and in the midst Covid-19 pandemic situations of the creditor who is bound by the credit agreement with Mortgage guarantee so that no one will be harmed by one another.

RESEARCH METHOD

The approximation methods that will be used in this article is normative juridical approximation methods. The normative juridical approach conducts a preliminary search to research some legal literature materials that relate to the issues raised by the authors. The research specification is analytically descriptive, providing an overview of the problems studied through data obtained from applicable laws and regulations documents and having a relationship with the problems discussed. The type of data collected in this study uses secondary data, namely, data obtained by researchers indirectly from the source but through other sources (Suteki & Taufani, 2020)..

The data collection method used by researchers is library research, where this technique is in the form of collecting data through secondary data literature searches that are linked to regulatory legal instruments that are relevant to the problems researched by researchers. The researcher's data analysis method is qualitative, with an emphasis on deductive and inductive inference processes, as well as the dynamics of the relationship between observed phenomena and their scientific logic to reach a conclusion.

RESULTS AND DISCUSSION

Main Covid-19 Pandemic and Overmacht/Force Majeure on Mortgage Agreement

The research data collected for this article can be said to indicate that the spread of the Covid-19 virus that occurred in Indonesia, in particular, is very fast and also high. According to data published by the Indonesian Ministry of Health, from March to August 2020, confirmed cases of COVID-19 exposure in Indonesia affected a total of 165,887 people with 7,169 deaths in 34 provinces, and are still increasing until 2021, WHO has even determined that the Covid-19 virus is a Public Health Emergency of International Concern (Yamali & Putri, 2020).. This Covid-19 virus is technically attracted to either human or animals breathing passages, with the first symptoms similar to the common flu that later on worsen and become severe acute respiratory syndrome (SARS) and the transmission of this virus can pass through the droplet, which is effected by people who are already infected with Covid-19 and experience coughing and sneezing.

Aside from the large number of people who were infected, the impact on the global economy is a major concern. The Indonesian government quickly issued policies aimed at preventing and treating the virus's spread. For example, with PP Number 21 of 2020 on Large-Scale Social Restrictions (PSBB), PSSB is one of the policies established by the government in an effort to discourage the possibility of Covid-19 spreading. In terms of the implementation of the PSBB policy, it is not just something that happened spontaneously but has been based on several considerations, including epidemiological considerations, political, economic, social, cultural, defense, and security considerations, the magnitude of the threat, effectiveness, and so on. Before PSBB policy can be implemented, the following criteria must be met:

- 1) The increasing number of cases or deaths due to the disease that is spreading significantly and quickly in some areas.
- 2) There is a connection with epidemiology in the same case in other areas or countries.

The government also issues other regulations to support the PSBB's goal, which is PERMENKES Number 9 of 2020 on The Guidance of PSBB in order to expedite the intervention against Covid-19. The main body of PERMENKES policy are:

- 1) Closed schools and workplaces;
- 2) Restriction of religious activities;
- 3) Restrictions on public facilities;
- 4) Restriction of cultural development activities;
- 5) Restriction of methods of transportation;
- 6) Restrictions on other activities related to defense and security aspects.

In fact, the PSBB situation does not allow schools and workplaces to be closed without a definite time limit, so the government provides another solution. The solution is diverting learning and working methods to a work-from-home system for workers and students using an online class system. The applicability of the PSBB policy has also had an impact on the economic sector of the community, which has experienced restrictions on the space for movement related to income-earning activities.

The postponement of all business during the Covid-19 pandemic impacted not only the lower-middle class but also the upper-middle class. It can be seen that around 1.943.916 employees from 114.340 companies have already been laid off. The export and import activities have been prevented because of PSBB, which is mentioned on Article 2 paragraph (1) PP Number 21 of 2020.

Apart from having an impact on the health, social, and economic sectors, Covid-19 has also had the impact of changing the economic structure in Indonesia. Prior to Indonesia's economic growth was dominated by the industrial and service sectors, but during the Covid-19 Pandemic situation, the agricultural sector also became a driver of economic growth in addition to the information and communication sector (Suryana, Rusastra, & dkk, 2020). In the land service sector, due to the COVID-19 pandemic, all service processes at the land office have been diverted to the online system in the Ministry of Land's Online Counter Service application. In addition to changing services to the online system, the ministry has also issued policies related to land services during the Covid-19 pandemic, which have been published by the Ministry of Agrarian Affairs/BPN on their official website, some of which are:

- a. The Ministry Regulation ATR/BPN Number 5 of 2020 on Integrated Mortgage Services is conducted electronically.
- b. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia decision Number 88.1/SK-HR.01/IV/2020 on the Extension of the Validity Period of Land Rights and the Registration Period of Decrees for the Granting, Extension, or Renewal of Land Rights that Have Been or Will End During the Corona Virus Disease 2019 (Covid-19) Emergency Response Status Period.
- c. Circular Letter Number 3/SE-100.TU.03/III/2020 of 2020 on Land Services to Prevent the Spread of Coronavirus Disease 2019 (Covid-19) issued by the Ministry of Agrarian and Spatial Affairs/Head of the National Land Agency
- d. The Secretariat General of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency issued circular letter Number 6/SE-100.PL.02/IV/2020 of 2020 on the Procurement of Goods/Services in the Context of The Prevention of Coronavirus Disease 2019 (Covid-19) and Execution of Contracts in the Period Emergency Coronavirus Disease 2019 (Covid-19) in the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.

The existence of a guarantee rights institution is intended as a form of anticipation of the emergence of risks that will harm one of the parties or the creditor. Because holding the credit agreement is required to provide legal protection that is guaranteed to the parties attached to it if this agreement is breached. Even though it is *accessoir*, in a credit agreement there must be a collateral with a Mortgage attached to it, as stipulated in Article 1131 of the Civil Code:

"All the assets of the debtor, both movable and immovable, both those that already exist and those that will become available in the future, are borne for all its individual engagements."

The debtor's non-fulfillment of a credit agreement is not always because of intentional negligence or default, but can also be due to an *overmacht* (force majeure) experienced by the debtor, especially during the pandemic situation like this. Based on what happened, the emergence of the Covid-19 virus which is an event beyond human control, both the government and the debtor as a party to the credit agreement, so that the Covid-19 pandemic can be used as a basis for reasons of *overmacht*, force majeure for the debtors affected by Covid-19 pandemic impact in terms of disrupted economic income that has become unstable as compared prior to the pandemic. The Indonesian Ministry of Finance also confirmed it, which has been published on the official website of the Ministry of Finance, where the Ministry of Finance stated that Covid-19 could be used as a reason for force majeure. Due to the Covid-19 pandemic having completed the elements of *overmacht*/force majeure, there are:

- a. There is no negligence or intentionality elements from debtor parties for not doing their liabilities.
- b. The occurrence of an unexpected event that causes the debtors to be unable to fulfill their liability.
- c. The event can't be asked for accountability by the party who can't fulfill their liability.
- d. There is still good faith from the party who is not fulfilling their liability (Eko & S).

Apart from fulfilling the elements of force majeure, the Covid-19 Pandemic has also fulfilled the requirements contained in a Force Majeure situation (*overmacht*, force majeure), there are:

- a. The debtor must prove the reason why they can't fulfill the default because of the obstacle that comes up beyond their capability before their due date.
- b. The obstacle cannot be reasonably foreseen at the time of closing the contract or agreement;
- c. Obstacles are temporary giving tolerance in the form of delaying the implementation of their performance by considering the effects that arise in the implementation of their performance;

- d. The debtor has the obligation to properly notify the creditor of force majeure conditions, if the notification is not carried out, the debtor is liable for losses arising from the non-fulfillment of these performance (Hernoko, 2010).

Nevertheless, the debtor cannot immediately use the Covid-19 Pandemic as a reason for overmacht/force majeure. In arguing for the Covid-19 pandemic as the basis for reasons for overmacht must also be followed, either through deliberations or legal recourse, as the debtor's rights have been guaranteed in Article 1865 of the Civil Code: "Everyone who argues that it has a right, or in order to confirm its own right or refute the right of another person, refers to an event, is obliged to prove the existence of said right or event."

The Legal Protection for The Debtor Who is Prevented to Fulfill the Default in the Covid-19 Pandemic Era

After attaching land as collateral for a debt with a Mortgage, a Mortgage certificate will be issued as proof of the existence of a mortgage-el guarantee agreement, which is now electronically based. If you take a look at the body of the Mortgage certificate, there is an executorial title that says "FOR THE SAKE OF JUSTICE BASED ON BELIEF IN THE ALMIGHTY GOD." These agreements are intended to emphasize that the mortgage certificate has the same executorial power as a court decision that has permanent legal force, so that when the debtor's default, they must also be prepared in terms of bearing the risk that the collateral will be executed, such as a court decision through administrative procedures. The method and use of separate executive institutions in accordance with the provisions of the Civil Procedure Code.

However, in reality, the existence of an executorial nature in a mortgage certificate has its pros and cons among the public. One of the cases is something that was proposed by several parties and which subsequently will be mentioned by the petitioners in SC Judgement Number. 21/PUU-XVIII/2020 with the ins and outs, namely regarding the review of several articles contained in the UUHT against the articles in the 1945 Constitution. In this case the applicants felt that their constitutional rights had potentially been violated by the existence of Article 14 paragraph (3) and Article 20 paragraph (1) UUHT. The petitioners, on the other hand, believe that the existence of an executorial nature stated in the mortgage certificate is unfair to the debtor.

In the midst of Covid-19 pandemic condition that occurred at that time, it caused concern and a sense of injustice felt by the debtor and/or applicants with the existence of an executorial in the mortgage certificate, which allowed the creditor to execute the mortgage object regardless of the reason the debtor did not fulfill the obligation. or its performance at that time. Even though it is known that with the agreement on a mortgage agreement, since then there has also been a transfer of ownership rights of land as the object of collateral for a debt.

The results of the author's analysis of MK RI decision Number 21/PUU-XVIII/2020 concluded that the conditions of the Covid-19 pandemic did not affect the existence of the provisions of Article 14 paragraph (3) and Article 20 paragraph (1) UUHT, which were considered to violate the provisions of Article 28D paragraph (1), Article 28G paragraph (1), and Article 28H paragraph (4) of the 1945, Constitution as stated by the Petitioners. It is because, by making and agreeing on the Mortgage agreement, the juridical consequences that will occur have been known by the parties related to the substance that has been stated in the clauses of the agreement. Then the basic essence from the perspective of the mortgage agreement is that the debtor has agreed to hand over the object in the form of its land to the creditor as a form of material guarantee attached to the mortgage for repayment of its own debt.

In its purpose, the executorial of the Mortgage certificate is intended to apply to debtors who are intentionally negligent or default on the fulfillment of their obligations and do not have good faith towards creditors, whereas if the creditor's obligations are not fulfilled due to the impact of the Covid-19 pandemic, then it includes conditions of force majeure (overmacht, force majeure) as the authors have explained in the first point of the research discussion above, by this, it cannot be carried out on the object of the mortgage held by the creditor.

Many impacts of the Covid-19 pandemic that have arisen in Indonesia and even around the world, especially in the economic sector, have also had an impact on the course of credit agreements in Indonesia. During the Covid-19 Pandemic phase, many people complained of difficulties fulfilling their liabilities for their performance in the credit agreements that bound them. This leads to the existence of a government policy of limiting movement space, which causes a decrease in people's income or revenue, which becomes the basis for obstructions or the breakdown of the credit.

Legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions (Hadjon, 1987). In the credit agreement, all parties have their own legal protection, but the protection that the creditor has is guaranteed in the UUHT because the UUHT

prioritizes the position of the creditor first in terms of paying off debts. The UUHT has strongly regulated and given public protection to the debtor to anticipate the risk that the debtor will default. Whereas the UUHT is quite weak in terms of providing legal protection for debtors because it is not strictly regulated, other alternatives to getting legal protection for debtors include formal procedural law and the Civil Code.

The Covid-19 Pandemic situation is included in the category of force majeure that can be the basis of overmacht/force majeure in credit agreement. As an effort to overcome the decline in the country's economy due to the Covid-19 pandemic, the government issued a policy in the form of Government Regulation in Lieu of Law (Perpu) Number 1 of 2020 on March 31, 2020, on State Financial Policies and Financial System Stability for Handling the COVID-19 Pandemic and/or in the Context of Facing Threats that are Harmful to the National Economy and/or Financial System Stability. Bank Indonesia also released some policies, such as:

- a. Regulations of Bank Indonesia Number 22/19/PBI/2020 on Changing The Regulations of Bank Indonesia Number 22/4/PBI/2020 on Incentives for Banks Providing Provision of Funds for Certain Economic Activities to Support Handling Economic Impacts Due to the Corona Virus Outbreak.
- b. Regulations of Bank Indonesia Number 22/7/PBI/2020 on Adjustments to the Implementation of Bank Indonesia Regulations As an Impact of the 2019 Corona Virus Disease (COVID-19) Pandemic.

In addition to the above policies, the government also issued policies regarding Indonesia's economic stimulus through the institutions of the Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy Impacting the Spread of Coronavirus Disease 2019. The Financial Services Authority Regulation stated in the preamble of POJK Number 11/POJK.03/2020 that the government issued policies that support economic growth stimulus for debtors affected by the COVID-19 pandemic (Hardiansyah, Taufik, & Ayu, 2021. Including debtors of micro, small, and medium-sized businesses in Article 2 paragraph (1) of the OJK regulation .

The legal protection provided in the POJK for a debtor who has fulfilled the requirements as a debtor for micro, small, and medium enterprises affected by the Covid-19 pandemic so that they experience difficulties in fulfilling their credit obligations, can carry out credit restructuring, financing, and/or the provision of funds for another one. Restructuring is relief in paying loan installments at a bank or leasing company, but that does not mean that restructuring is the same as debt relief. It is only relief from new adjustments in paying debt installments provided by the creditor in making installment payments that are obstructed because of the debtor overmacht/ force majeure during the Covid-19 pandemic.

Moreover, there is another form of relief in order to give the debtors legal protection who are facing the overmacht/force majeure condition in the Covid-19 pandemic era, there are:

1. Declined in interest rates.
2. Extended of term.
3. Reduced of main arrears and interest arrears.
4. Additional credit facility/financing.
5. Conversion of credit/financing into Equity Temporary Capital

CONCLUSION

Many debtors are the victims of Covid-19 pandemic situation in the form of income for MSME business actors or debtors who are bound by credit agreements, which have decreased drastically, making it difficult to fulfill their performances. Therefore, the debtors who have been affected by the Covid-19 pandemic can argue that Covid-19 is the basis for force majeure because the unexpected presence of Covid-19 that cannot be predicted beforehand will occur. The debtor can prove this argument based on the provisions of Article 1865 of the Civil Code, either through the stages of deliberation or through the stages of legal action in court.

Legal protection for debtors who are hindered in fulfilling their obligations during the Covid-19 pandemic according to Constitutional Court Decision No.21/PUU-XVIII/2020 is not affected by the executorial nature of the Mortgage certificate. Because the purpose of an executorial characteristic is to be given in anticipation of a default, the debtor's party has most likely done so. For debtors who are overmacht/force majeure due to the impact of the Covid-19 pandemic and lead the fulfillment of their credit obligations, the debtor's property rights cannot be exercised, but the debtor is given protection, namely in the form of an opportunity to carry out credit restructuring following the provisions issued by the Authority for Financial Services, namely POJK Number 11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019.

REFERENCES

- Busro, A. (2011). Hukum Perikatan Berdasar Buku III KUHPerduta. Yogyakarta: Pohon Cahaya.
- Burhanudin, O., Manan, A., Yusuf Hasibuan, F., & Lina, R. (2021). RESTORATIVE JUSTICE AGAINST CHILDREN AS CRIMINAL ACTORS. *Awang Long Law Review*, 3(2), 183-193. <https://doi.org/10.56301/awl.v3i2.142>
- Eko, B., & Nayasari, D. N. S. (2020). Keabsahan Force Majeure Dalam Perjanjian Di Masa Era Pandemi Covid-19. *Jurnal Humaniora*, 4(2).
- Hardiansyah, M. T., & Ayu, I. K. K. (2021). Perlindungan Hukum Terhadap Debitur Yang Kesulitan Untuk Memenuhi Kewajiban Dalam Perjanjian Kredit Akibat Pandemi Covid-19. *Dinamika*, 27(3).
- Hernoko, A. Y. (2010). Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial. Jakarta: Kencana Prenadamedia Group.
- Husni Thamrin. (2020). LAW ENFORCEMENT IN INDONESIA IN THE PERSPECTIVE OF LAW STATES. *Awang Long Law Review*, 2(2), 89-92. <https://doi.org/10.56301/awl.v2i2.84>
- Indonesia. *Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan Atas Tanah Beserta*
- Patrick, P., & Kashadi. (2009). Hukum Jaminan. Semarang: Badan Penerbit UNDIP.
- Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 11/POJK.03/2020 tentang Stimulus Perekonomian Nasional Sebagai Kebijakan Countercyclical Dampak Penyebaran Corona Virus Disease 2019.
- Philipus, M. H. (1987). Perlindungan Bagi Rakyat Di Indonesia. Surabaya: Bina Ilmu.
- Putusan Mahkamah Konstitusi Republik Indonesia Nomor 21/PUU-XVIII/2020
- Suryana, A., Rusastra, I. W., et al. (2020). Dampak Pandemi Covid-19 Perspektif Adaptasi dan Resiliensi Sosial Ekonomi Pertanian. Jakarta: IAARD PRESS.
- Taufani, G., & Suteki. (2020). Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik). Depok: PT Raja Grafindo Persada.
- Titin Roswitha Nursanthy, A. (2021). KEJAHATAN DUNIA MAYA DAN UJARAN KEBENCIAN HATE SPEECH DITINJAU DARI KITAB UU HUKUM PIDANA DAN UU NO 19 TAHUN 2016 TENTANG INFORMASI TRANSAKSI DAN ELEKTRONIK. *Jurnal Ilmu Hukum The Juris*, 5(1), 101-109. <https://doi.org/10.56301/juris.v5i1.196>
- Wijaya, A. (2017). KEABSAHAN HAK GUNA BANGUNAN TERHADAP PUTUSAN PTUN SAMARINDA NOMOR 05/G/2014/PTUN.SMD. *Jurnal Ilmu Hukum The Juris*, 1(1), 47-70. <https://doi.org/10.56301/juris.v1i1.24>
- Yamali, F. R., & Putri, R. N. (2020). Dampak Covid-19 Terhadap Ekonomi Indonesia. *Journal of Economics and Business*, 4(2).