



Force majeure Covid-19 in the implementation of the consumer financing agreement

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Abstract

The current Covid-19 pandemic has resulted in the fulfilment of consumer financing agreements, where due to the pandemic, the government has imposed large-scale social restrictions that caused some business sectors to be stopped (trying) and resulted in a wave of layoffs and of course. The Covid-19 pandemic is unexpected and uncontrolled of the parties when the agreement was made caused the debtor loss of ability to fulfil its obligations following the consumer financing agreement. This research uses research method with type/type of doctrinal law research approach or normative norm, with statute approach and case approach, using gender data sourced from primary legal material, secondary legal material and tertiary legal material. The research results have analyzed a square. The result of this research is that Covid-19, according to the concept of civil law, can be categorized as force majeure because it has fulfilled the element of force majeure as stipulated in Article 1244 and 1245 of the Civil Code. Therefore, the government establishes the Covid-19 Pandemic as a force majeure state.

Keywords: covid-19, consumer financing, force majeure

Introduction

The need for funds for a person or entrepreneur is a daily sight, both in order to meet business needs and business needs. In economic development, meeting capital, funding, and financing is one of the crucial factors, especially considering that the global economy influences the current economic development, trade, and community needs. Achieving development in the economic sector as aspired, in addition to the role of the government, the private sector role always helps ^[1]. One of the private sector roles in the economic sector is funding through financial institutions, both from banking financing institutions and non-bank financing institutions.

Conventional institutions whose names are "banks" are no longer capable and adequate in tackling various public funding needs and needs. One thing or another is due to the limited range of credit distribution by the bank, limited sources of funds, and the necessity to apply the principle of "conservative" prudent banking, which is very heavily regulated ^[2]. Therefore, the current financing offered to the public is carried out by non-bank financing institutions, namely through Financing Companies, both for capital purposes and for consumptive needs. A Financing Company is a business entity that carries out financing activities to procure goods and services ^[3]. One type of financing is Consumer Finance. Consumer financing is financing carried out by finance companies, in addition to activities such as leasing, factoring, and credit cards ^[4]. Consumer Finance is currently regulated in Indonesia based on Presidential Regulation Number 9 of 2009 concerning Financing Institutions, Minister of Finance Regulation Number 84 of 2006 concerning Financing Companies and several Financial Services Authority Regulations.

The emergence of the practice of financing with the Consumer Financing system is caused by the following factors: a) Banks are not sufficiently interested/not sufficiently interested in providing credit to consumers, which are generally small loans; b) Other traditional sources

of funds have many limitations, or the system is less flexible or does not meet needs, such as Perum Pegadaian, which has limited reach, also requires submitting something as collateral. It is very burdensome for society; c) Informal financing systems such as the practices of loan sharks are felt to be very stressful for the community and very usury oriented and very stifling to the community; and d) the formal financing system through Village Unit Cooperatives also did not develop as expected ^[5].

Consumer Finance is a financing model carried out by financial companies to provide financial assistance for purchasing specific products. Fund assistance is defined as providing credit that is not cashed in cash for purchasing an item, and the customer will only receive the item. So that it can be interpreted, Consumer Financing is a loan or credit given by a financing company to debtors for the purchase of goods and services that consumers will directly consume, and not for production or distribution purposes ^[6]. Usually, the goods financed in Consumer Financing are consumptive, namely motor vehicles (cars and motorcycles) and electronic goods. According to Article 6, KMK No. 84/KMK.012/2006, Consumer Financing is financing activities for the procurement of goods based on consumer needs with payment in instalments. These consumer needs include a) motor vehicle financing; b) financing of dated household appliances; c) financing of electronic devices; d) housing finance. Thus, Consumer Financing is a loan or credit given by the company to customers to purchase goods or services that consumers will directly consume and not for production or distribution purposes. Companies that provide financing are called consumer finance companies ^[7].

In providing consumer financing facilities, the Financing Company provides services to consumers to pay goods prices in cash to suppliers. Between the Financing Company and the consumer, there must be a consumer financing agreement like providing credit. In the agreement, consumer financing companies must credit the amount of money to consumers as goods purchased from suppliers. Meanwhile,

consumers must repay the credit in instalments to the Consumer Finance Company^[8]. The obligations of the parties are carried out based on the consumer financing agreement. The legal construction is that a certain amount of money is paid in cash to the supplier for the consumer's benefit while the supplier delivers the goods to the consumer.

With the delivery, the goods become the property of the consumer. The consumer is obliged to pay in instalments until it is paid off to the consumer financing company following the agreement. As long as the instalment has not been paid in full, the consumer's property becomes a fiduciary guarantee^[9]. With a financing system with instalments, finance companies also need a guarantee from consumers or debtors because consumer financing also has the opportunity for risk. The emergence of ordinary risks due to default, changes in legislation, monetary crises, and natural disasters is that the most significant risk in providing financing is non-payment of instalments or default by consumers or, in bank terms, the occurrence of bad loans. Bad credit is a condition where a consumer/debtor cannot pay or return the loan as agreed. For this reason, consumer finance companies make consumer financing agreements, which regulate the provision of funds for the purchase of specific goods, which are made very carefully and bind the object of financing with material guarantees. Collateral can be used as a certainty for repayment of financing debts in the future to minimize the risk because no matter how small the opportunity appears, the provision of financing will always be faced with the risk of failure (default).

Guaranteed certainty of payment of consumer financing instalments is crucial, especially at this time, where the Covid-19 pandemic is happening throughout the world, including Indonesia, where the coronavirus outbreak in Indonesia continues to expand increase significantly in the not too distant future. The number of people infected with the virus continues to increase drastically. This virus has infected people in many countries around the world. This virus outbreak developed in almost all countries in the world in a short time. Even the Chinese government, as the Covid-19 outbreak first hit the country, took a lockdown policy. Lockdown is a policy in which citizens are "homed" by force or through the government's appeal to stipulate a ban on going out of the house, prohibition of gathering in public places or the most extreme stages, isolating themselves from the outside world so that people cannot mobilize to get in and out of the country. That place^[10].

Seeing the increase in the number of positive victims and the high death rate in Indonesia, the Indonesian government has designated Covid-19 as a type of disease that causes a public health emergency, and the government has designated the Covid-19 pandemic as a national disaster and urges the public to practice social distancing and work/study at home^[11]. As a legal umbrella, the government has issued several policies, as follows: a) Government Regulation no. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19); b) Presidential Decree Number 11 of 2020 concerning the Determination of the Public Health Emergency of Corona Virus Disease 2019 (Covid-19); c) Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019

(Covid-19); d) Finally, through Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as National Disasters; and e) Specifically in Jakarta, the Governor of DKI Jakarta Province has stipulated Pergub Number 33 of 2020 concerning the Implementation of Large-Scale Social Restrictions in the Context of Handling Corona Virus Disease (Covid-19) in the Province of the Special Capital Region of Jakarta.

The Covid-19 outbreak or pandemic has brought about changes and has broad implications for various aspects of people's lives, where many economic sectors have stopped, many companies have closed, resulting in a wave of layoffs occurring in several economic sectors. This Covid-19 disrupts various sectors, especially the business sector, and impacts the inability of debtors or consumers to fulfil their instalment payment obligations according to the Consumer Financing Agreement. Regarding the failure to pay, many finance companies have ignored the provisions of the Fiduciary Law to forcibly take the object of financing that is a Fiduciary guarantee. The Financial Services Authority (in the future abbreviated as OJK) has issued Financial Services Authority Regulation (POJK) No. 11/POJK.03/2020 concerning the National Economic stimulus as a Countercyclical policy that provides credit slack or relaxation to debtors (including MSME debtors) for a value below Rp. 10 billion, loans provided by banks and non-bank financial loans industry. This provision regulates the implementation of credit/financing restructuring due to the spread of the Covid-19 virus^[12]. According to POJK No. 11/2020, Banks and finance companies can provide restructuring/credit relief/financing to debtors. The condition is that the debtor is affected by Corona Virus Disease 2019 (Covid-19), spread either directly or indirectly, which causes the debtor to have difficulty fulfilling obligations^[13].

According to contract law, failure to fulfil the agreement or default does not apply if the person who does not fulfil the performance can prove an unavoidable obstacle (forced circumstances), for example, due to natural disasters and volcanic eruptions^[14]. Covid-19 has been declared a national disaster, namely a public health emergency. In this case, the Covid-19 pandemic should be referred to as a Force Majeure state.

Force majeure is a condition where the debtor's achievements cannot be fulfilled because an unexpected event occurs that the debtor cannot predict will occur when making the engagement. Meanwhile, according to Subekti, force majeure is a reason to be released from the obligation to pay compensation. So it can be concluded that what is meant by force majeure is a situation that occurs after an agreement is made that prevents the debtor from fulfilling his achievements. Force majeure is also called a state of forcing (overmatch)^[15].

We all did not know that the Covid-19 pandemic would occur, and this condition was beyond the parties' control when the Consumer Financing Agreement was made. Therefore, the inclusion of a Force Majeure clause in an agreement is essential. Previous research, in the thesis compiled by Jeffry with the title Analysis of the Force Majeure Clause in an Agreement (Study of the Supreme Court Decision No. 587 PK/Pdt/2010) stated^[16], the inclusion of a force majeure clause in an agreement is essential because the absence of a force majeure clause in

the contract is considered an inaccuracy in making the contract which can cause a dispute between the parties. Due to the comprehensive scope of force majeure, determining a state of coercion (force majeure) can be seen from the fulfilment of the elements of force majeure. Namely, the event is an unexpected event, beyond the will, ability, and control of the parties, cannot be blamed on him or cannot be held accountable. There is no bad faith. The parties have made efforts in such a way as to avoid the incident, causing harm to the parties. The event's occurrence causes delays, delays, obstruction, or failure to carry out the parties' achievements. Parties and the incident greatly affected the implementation of the agreement. Concerning the government's decision to declare the Covid-19 pandemic a national health emergency, consumer finance companies should not take advantage of the Covid-19 conditions to carry out forced/direct executions of financing objects, which is a fiduciary guarantee, moreover the Constitutional Court Decree no. 18/PUU-XVII/2019 January 6, 2020, determines that the execution of the object of collateral must go through the courts.

Based on the explanation above, it is exciting for the author to raise it in research with the title: "Force Majeure Covid-19 in the Implementation of Consumer Financing Agreements" Based on the description of the background of the problem above, the problems in this study are: a) Is the pandemic Covid -19 can be categorized as Force Majeure in the concept of civil law in Indonesia regarding the fulfilment of the implementation of consumer financing agreements, and b) How are the guarantee of legal certainty and justice for the implementation of consumer financing due to Covid -19 referring to the Constitutional Court's decision, especially on the execution of guarantees?

Literature Review

In legal research, a theoretical basis or framework and a conceptual framework (concept) is an essential requirement. In the theoretical basis/framework, everything contained in theory is described as a system of various "theory" or teachings (in Dutch: "leertstelling), while the conceptual framework (concepts) is expressed several conceptions or understandings that will be used as the basis for legal research^[17].

This study uses several theories as to the basis for thinking. In this thesis, we will use the welfare theory of Jeremy Bentham with the concept of utility. The theory of justice from Aristotle divides justice into distributive justice and corrective justice and the theory of justice from John Rawls with the theory of justice as fairness and the balance theory of Roscoe Pound.

The Unitary State of the Republic of Indonesia's objective is independent, sovereign, just and prosperous based on "Pancasila" as stated in the Preamble of the 1945 Constitution in the fourth paragraph. It can only be achieved if the Government of the Unitary State of the Republic of Indonesia can carry out its duties to protect the entire Indonesian and the entire homeland of Indonesia to promote public welfare, educate the nation's life and participate in carrying out world order based on eternal peace and social justice for all Indonesian people^[18]. The goal of the unitary state of the Republic of Indonesia is rooted in the concept of the Welfare State Theory or a secular legal state, where the state protects the entire Indonesian nation and all of Indonesia's bloodshed for which the state intervenes and is

responsible for the welfare of its people.

The welfare state is a system of state government that is responsible for the welfare of its citizens. The welfare state is run by a democratic government responsible for the welfare and economy of its people. Government programs are aimed at reducing people's suffering due to poverty and unemployment. It is what distinguishes the welfare society. In the welfare society, people's welfare is in the hands of the community itself, such as non-departmental social institutions^[19].

The main characteristic of the welfare state is the emergence of the government's obligation to realize the general welfare of its citizens. In other words, the teachings of the welfare state are a concrete form of transitioning the principle of *staatsonthouding*, which limits the role of the state and government to interfere in the economic and social life of the community. Becoming *staatsonthouding* requires the state and government to be actively involved in the economic and social life of the community as a step to realize general welfare and maintain order and security^[20]. Countries that determine the welfare state have public policies: service, charity, protection, or prevention against major social problems.

To meet the community's need for funding for business continuity and fulfilment of consumptive needs that banking institutions cannot meet, the financial institutions take on meeting these needs in the form of providing consumer financing. It is a loan or credit given by a financing company to debtors to purchase goods and services that consumers will directly consume, not for production or distribution purposes^[21]. Implementation of the Consumer Financing Agreement sometimes occurs where the debtor is unable to carry out his obligations. In this case, it requires the role of the government, namely establishing various policies covering various aspects of people's lives, namely in the field of a political ideology called political policy, in the economic field called economic policy, in the social field called social policy which is distinguished from public welfare policies (social policy) which aims to tackle public welfare problems and a social defence policy to protect the community^[22].

The consumer financing agreement contains an agreement on each party's rights and obligations, which will become law for the parties who make it. Consumer financing agreements are not explicitly regulated in the Civil Code. The Civil Code only regulates debts due to borrowing money as regulated in Article 1756 of the Civil Code. Therefore, the Borrowing Agreement becomes the reference of the credit agreement^[23], including the financing agreement.

Hugo Grotius, a leading thinker from the school of natural law, asserts that the right to enter into a contract is a human right protected by the supreme body of law based on human reason, which he calls natural law. Furthermore, a contract is a voluntary legal act from someone who promises something to someone else with an emphasis that each will accept it and carry it out according to what has been agreed^[24]. According to Hartkamp, a contract is a legal action that is formed - taking into account the laws and regulations regarding the rules of legal form - by encountering statements of will that are mutually dependent on each other as stated by two or more parties. These are intended to cause legal consequences for the one of the parties benefit and the other parties expense, or the sake of both parties (all)

reciprocal parties.

Contracts or agreements have a philosophical function of justice for the parties who make the contract, even for third parties with a legal interest in the contract. As intended in contract law, justice is very dependent on the point of view and how to understand justice. Justice, according to Aristotle, is divided into two types of justice, namely distributive justice and commutative justice. Distributive justice is justice that gives each person a portion according to his achievements. Commutative justice gives the same amount to everyone without discriminating in their achievements in this case related to the role of exchanging goods and services.

John Rawls defines justice as fairness (justice as fairness), a theory of justice that generalizes and elevates the traditional conception of the social contract to a higher level of abstraction. Justice is the primary virtue in social institutions, as is true in systems of thought. John Rawls, who is seen as an egalitarian liberal perspective of social justice, argues that justice is the main virtue of the presence of social institutions [25]. However, virtue for the whole community cannot override or challenge everyone who has obtained a sense of justice, especially the weak people seeking justice. Specifically, John Rawls develops the idea of the principles of justice by entirely using the concept of his creation known as the original position and the veil of ignorance. Positions the existence of a similar and equal situation between each individual in society. There is no difference in status, position or having a higher position between one another so that one party and another can make a balanced agreement. While the concept of "veil of ignorance", translated by John Rawls that everyone is faced with the closure of all facts and circumstances about himself, including certain social positions and doctrines, thus blinding the concept or knowledge of developing justice. With this concept, so that people get the principle of fair equality with the theory of justice as fairness.

Contract law contributes to distributive justice through its program of mandatory terms and policing standards, which means that contract law plays a role in realizing distributive justice through its normative clauses that are formed following with predetermined legal standards [26]. Distributive justice is seen as the beginning of all kinds of justice, although in various versions and their respective views. Fairness in contracting is more manifest if the exchange of interests of the parties is distributed according to their rights and obligations proportionally. That legal thinkers including John Locke, JJ Rosseau, Immanuel Kant, and John Rawls realized that without contracts and the rights and obligations that arise, the business community would not work with and people will not be willing to be bound and depend on the statements of other parties. Contracts provide a means of guaranteeing that each individual will fulfil his or her promises, and this further allows transactions to take place between them. The consumer financing agreement is based on an agreement between the finance company as a creditor and the consumer as a debtor, where the agreement applies as law for both as stipulated in Article 1338 of the Civil Code (*pacta sun servanda* principle) [27].

Legal goals that are close to reality are legal certainty and legal benefits. Positivism emphasizes legal certainty, while the functionalists prioritize the benefits of the law, and if it can be argued that "*summum ius*", *summa injuria*, *summa*

lex, *summa crux*, which means that harsh laws can hurt, except justice can help them, even though justice is not the sole purpose of the law, but the most substantive goal of the law is justice. The new law is said to be successful or valuable if it can bring about justice as much as possible. The essence of justice is the fulfilment of everything that is a right and obligation in the relationship of human life. It is based on the underlying concept of justice, namely the balance between rights and obligations [28].

According to normative-dogmatize teachings, the purpose of the law is merely legal certainty. To achieve legal certainty, the law must meet four requirements as described by Michael Jefferson. Namely, laws must not be vague; legislature must not create offences to cover wrongdoing retrospectively; the judiciary must not create new offences, and perhaps criminal statutes should be strictly construed [29].

Referring to the elements above, the achievement of legal certainty is divided into two main elements. First, the law (law) states that the law must be firm and should not have multiple interpretations. Then the second, the power itself, which enforces the law (law) in the sense that it cannot arbitrarily apply retroactive law and still firmly applies the principle of legality. Roscoe Pound said that the law must balance competing interests in society to achieve the most significant benefit (*balancing competing interests within society for the most significant benefit*).

In contract law, based on the principle of balance, requires both parties to the contract to carry out the contents of the agreement. Creditors have the power to demand performance and, if necessary, can demand repayment of achievements through the debtor's wealth, but the creditor also bears the burden of carrying out the agreement in good faith. It can be seen here that the strong position of creditors is balanced with their obligation to pay attention to good faith so that the position of creditors and debtors is balanced. Muhammad Saifuddin said that legal certainty in contract law includes several interrelated aspects: First, protection of contract legal subjects (persons and legal entities) from other contract law subjects [30]. Belief in legal certainty that should be related to contract law subjects concerning what other contract law subjects expect other contract law subjects to do; Second, the fact that the subject of contract law must be able to assess the legal consequences of his actions, both as a result of actions and mistakes/omissions. Legal certainty in this contract guarantees predictability and fulfilment of the contract and demand legal responsibility for implementing the contract.

The Covid-19 pandemic is an extraordinary situation where the government declares the Covid-19 pandemic a national health emergency. So, default by the debtor due to an unforeseen situation frees him from the obligation to pay compensation as stipulated in the Civil Code Article 1244 and the Civil Code 1245. Article 1244 of the Civil Code states: "If there is a reason for that, the debtor must be punished to compensate for costs, losses and interest if he cannot prove that it was not or not at the right time to carry out the engagement, due to an unexpected thing, even however, these two normative provisions are only a defence of the debtor or the party who should carry out the performance in the agreement to be released from payment of compensation if he does not carry out the performance in the contract due to coercive circumstances [31].

Unexpected circumstances are also known as force majeure.

Force majeure or what is often translated as "force majeure" is a condition where a debtor is prevented from carrying out his achievements due to unexpected circumstances or events at the time the contract was made, such circumstances or events cannot be accounted for to the debtor, while the debtor is not in a state of bad intention. *Force majeure* in the agreement is: A condition where a person is obliged (the debtor) is prevented from carrying out his achievements due to unexpected and unanticipated circumstances or events that could not be anticipated at the time the agreement was made that issued the obligation, and such circumstances or events cannot be legally accounted. To the debtor concerned, while the debtor is not in a state of bad faith. So, the circumstances or events are not included in the "basic assumptions" when the agreement is made^[32].

According to the Impossibility Theory, a state of coercion is a condition where it is impossible to fulfil the promised achievement. Impossibility can be divided into two kinds: 1) Impossibility is a subjective state of coercion; 2) the impossibility of objective coercion. The objective and opposing theories as follows: a) Objective Theory, which starts from the assumption that it is "impossible" for everyone", meaning that it is impossible for everyone (Article 1444 of the Civil Code) does not apply absolute (absolute) but is closer to subjective theory, meaning that what is considered objectively applies to everyone, in the end, it is also accepted and paid attention to by the engagement subjects who are affected by the coercive circumstances; b) Subjective theory, starting from assumptions that "achievement impossible for the debtor", meaning relative impossibility (taking into account the debtor's personal or subject circumstances)^[33].

The existence of an overmatch would be associated with the risk of liability for the parties. The law provides a settlement mechanism related to the risk of overmatch in reciprocal agreements (e.g. in Articles 1543, 1533 and 1563 BW)^[34]. The arrangement of these Articles divides the burden proportionally between the parties. Pitlo argues that according to propriety (*billijkheid*), the debtor is no longer obligated, then the other party (the creditor) is also free, or in other words, the risk is borne by those who do not perform. However, it should be distinguished between *overmatch*, which hinders the performance of the debtor's performance, and the impossibility of exercising rights is a personal condition of the creditor *and therefore is not a reason for overmatch*.

Research Method

The research design used in this study is doctrinal research or norm research. The research focused on examining favourable legal rules or norms and looking for legal formulas by reviewing existing regulations, namely legal norms in the laws and regulations that regulate force majeure, Presidential Regulations, Financial Services Authority Regulations, and Constitutional Court decisions. These legal norms relate to research issues regarding the reasons for the Covid-19 force majeure in the implementation of consumer financing agreements. The data used in this research is secondary data. Secondary data is data obtained by researchers through literature study by reading, citing and reviewing laws and regulations, court decisions, books, dictionaries and other literature relating to the problems studied by researchers. The secondary data is obtained or sourced from legal materials. The legal

materials used in this research are the binding legal materials, Civil Code, Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Sector Consumer Protection Finance, Regulation of the Financial Services Authority Number 29/POJK.05/2014 concerning the Operation of Financing Companies, Regulation of the Minister of Finance Number 84 of 2006 concerning Financing Companies, Presidential Regulation No. 9 of 2009 concerning Financing Institutions. Besides, the primary legal material, the secondary Legal Materials, was also used, namely legal materials explaining primary legal materials such as books and journals as listed in the bibliography. Then, the tertiary legal materials, namely legal materials that explain primary and secondary legal materials, such as dictionaries, encyclopedias, and the internet. Furthermore, to support secondary data in this study, it was conducted by conducting interviews related to the Covid-19 Force Majeure in the implementation of consumer financing. Valid information about the Covid-19 force majeure was obtained in the implementation of consumer financing; the author interviewed various consumer sources (victims of the Covid-19 force majeure), including the author's employees. The data collection technique used by the researcher was library research. It is a form of data collection carried out by reading literature, collecting, reading documents related to the object of research. Besides, quoting secondary data includes laws and regulations, documents, and other library materials from several reference books, articles, journals, previous research results, mass media, the internet, and other relevant literature. The data analysis carried out is a descriptive-analytical data analysis of the data obtained and collected in the manner described above. The data is arranged systematically to analyze its contents qualitatively and finally what should be done. Then the analysis of primary data, which is strengthened by normative analysis, finally shows the Covid-19 force majeure in the implementation of consumer financing agreements but does not provide justice for consumers according to the formulation of the problem studied in this study. The study was conducted in Jakarta, namely at the Indonesian Christian University Library and conducted interviews at PT. Indonesian Techno.

Result and Discussion

The Impact of the Covid-19 Pandemic in the Implementation of Consumer Financing Agreements - The coronavirus outbreak is haunting the whole world. Coronaviruses Disease 2019 (Covid-19) is a disease caused by a new type of coronavirus named SARS-CoV-2. The Covid-19 outbreak was first detected in Wuhan City, Hubei Province, China, on December 1, 2019, and was designated a pandemic by the World Health Organization (WHO) on March 11, 2020. A pandemic is declared when a disease new spreads around the world beyond borders. A pandemic is a global disease outbreak^[35]. Some of the deadliest pandemic diseases in history have been recorded, including smallpox, measles, typhoid, Spanish flu, Black Death, HIV/AIDS. The term pandemic comes from the Greek *πᾶν* pan, which means all and *δῆμος* demos which means people. A pandemic is an epidemic that occurs on a scale that crosses international borders, usually affecting large numbers of people. A disease or condition is not called a pandemic just because it spreads widely or kills many people; however, the disease or condition must also be contagious^[36].

Pandemics are generally classified as epidemics in which the disease spreads rapidly from one area to a specific area. However, epidemics do not always become pandemics and do not always have a rapid or precise transition. In the case of the spread of Covid-19, WHO also does not immediately attach a pandemic label to the disease? Looking back, WHO first received a report about Covid-19 in China on December 31, 2019? However, currently according to the WHO Emergency Committee, the spread of the Coronaviruses Disease 2019 (Covid-19) is no longer a pandemic but has been included in the Public Health Emergency of International or "Health emergency" that is troubling the world ^[37]. There are several criteria for a disease outbreak as a PHEIC or health emergency, namely: a) High impact/risk for public health; b) The outbreak or the nature of the incident is not known; c) Potential to spread internationally; and d) Risk to travel or trade ^[38].

In response to the Covid-19 pandemic, the Indonesian government issued several regulations, namely: a) Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19); b) Presidential Decree Number 11 of 2020 concerning the Determination of the Public Health Emergency of Corona Virus Disease 2019 (COVID-19); c) Regulation [200] of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19); and d) Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National and Special Disaster in Jakarta, the Governor of DKI Jakarta Province has stipulated *Pergub* Number 33 of 2020 concerning the Implementation of Large-Scale Social Restrictions in Framework for Handling Corona Virus Disease (COVID-19) in the Province of the Special Capital Region of Jakarta.

The Impact of the Covid-19 Pandemic on Financing Agreements - The impact of the covid-19 pandemic has penetrated many aspects of people's lives, and the impact that is felt is on the economic aspect. The closure of the company's operations due to the prohibition to operate during the large-scale social restrictions based on Government Regulation no. 12 of 2020 has not only disrupted the company's liquidity. However, it has also caused a wave of layoffs and concerns about the impact. Covid-19 also leads to bankruptcy's potential that may befall the company due to default on debts that have matured. Not only is it detrimental in terms of health, but President Joko Widodo also said that the coronavirus had had a significant impact on the economy in Indonesia. The production of goods is disrupted, but the investment is also hampered ^[39].

The problem of the Covid-19 pandemic is not only a health problem but has had a widespread impact on various aspects of life, including the economic, socio-cultural, and legal fields. One of the spikes in Covid-19 is the uncertainty of food and economic needs in the region. For areas that are red zones for the Covid-19 pandemic, supervision of the distribution of goods and services, including food needs, is limited ^[40]. In the economic field, the impact of the spread of Covid-19 on various economic and business activities in Indonesia can be divided into four components, first, the innate impact from China which is directly related to the

Indonesian economy. China has been Indonesia's leading export destination since 2011. China is one of the largest countries from which foreign investment originates in Indonesia. Second, the inherent impact of other Covid-19 pandemic countries that are directly related to the Indonesian economy. For example, the innate impact of the European Union, United States of America, South Korea, and Australia. Third, the after-effect of the global economy as a whole. The spread of Covid-19 to 176 countries has added to global economic uncertainty after the trade war between the United States and China, Britain's exit from the European Union (British Exit) and global geopolitical shifts. This uncertainty increases the pressure on the Indonesian economy. Fourth, the local impact of the spread of Covid-19 in Indonesia. This impact was initially underestimated. Nevertheless, looking at the developments that have occurred in the last few days with the number of cases of Covid-19 infection in Indonesia, it seems that the local impact of Covid-19 will be even more significant ^[41].

Covid-19 the Covid-19 pandemic has shattered all social joints and especially business actors who are unable to run their business normally. They have to let their business go dormant, which causes economic activity to stagnate. It was stated that Indonesia's economic growth in the second quarter was minus ^[42]. This condition is certainly not expected by all parties, even beyond the ability of the parties. In the agreement context, the Covid-19 pandemic has caused the implementation of the agreement to suffer a breach of contract as a result of the debtor/entrepreneur being unable to run his business due to large-scale social restrictions or the debtor being unable to pay the debt due to layoffs. Covid-19 has caused one party to be unable to fulfil its obligations, which will bring legal consequences. The agreed obligations are termed achievements and defaults.

Consumer finance institutions arise due to the level of fulfilment of community needs, for example, the need for vehicles, encouraging people to fulfil them through financing from finance companies in the form of consumer financing. Economic conditions due to the Covid-19 pandemic, which resulted in the loss of the community's economic capacity, also affected the fulfilment of debtor obligations in paying instalments or instalments in the Consumer Financing Agreement. For example, the debtor could not pay the instalments for his motorbike or car purchased with funds from a consumer finance company.

A consumer financing agreement is a reciprocal agreement in which one party (a financing institution) provides its achievements in the form of financing (payment of funds) for the procurement of certain goods needed by other parties (consumers) with reciprocal achievements in the form of instalment payments or the amount of financing required given along with interest and other fees ^[43].

In a consumer financing agreement, the consumer gets funds from a finance company, and then the consumer will owe the amount of financing plus the agreed interest and other costs. The consumer financing agreement is substantially a form of a combined agreement between sale and purchase agreements, accounts payable and guarantee agreements.

In the practice of consumer financing, the problem of ownership of goods purchased by consumers using the funds of the financing institution is whether the goods belong to the financier (consumer finance company) or belong to the consumer or when the ownership transfer from the seller to the buyer has been ^[44]. By giving a guarantee by

the consumer, it is considered that the goods are the consumer's property.

Economic conditions due to the Covid-19 pandemic, which resulted in the loss of the community's economic capacity, also affected the fulfilment of debtor obligations in paying instalments or instalments in the Consumer Financing Agreement. For example, the debtor could not pay the instalments for his motorbike or car purchased with funds from a consumer finance company.

Refers to consumer financing agreement, where there is a sale and purchases agreement with the party as the seller and the consumer, even though a consumer financing company finances the funds/money for the buyer the purchase. This construction follows the provisions of Article 584 of the Civil Code, which reads, Ownership rights to an object cannot be obtained in any other way, but by ownership because of attachment and because of expiration. Due to inheritance and the civil event, appointment to transfer property rights is carried out by a person who has the right to act freely on the object.

The provisions of Article 584 of the Civil Code above stipulate that leveraging is one way of obtaining ownership rights to an object and other methods that have been regulated in a limited manner as to how to acquire ownership rights to an object. By signing a fiduciary agreement, consumer goods whose purchases are based on a financing relationship then become collateral for consumer debt to finance companies.

Force Majeure In the Concept of Indonesian Civil Law - Force Majeure or overmatch or translated as "force majeure" is a legal basis that "forgives" the mistakes of a debtor. Force Majeure or overmatch events "prevent" the debtor from bearing the consequences and risks of the agreement. That is why Force Majeure or overmatch is a deviation from the general principle. Force majeure or vis major could be accepted as a reason for not fulfilling the obligations due to the loss/disappearance of the object or purpose that is the object of the agreement. This situation is aimed at physical and legal implementation, not only because of difficulties in carrying out obligations^[45]. In the Civil Code, no definition specifically regulates overmatch or force majeure. However, it is concluded from several articles scattered in Book III of the Civil Code (*KUHPerdata*). Overmacht is a condition that releases a person or a party who should fulfil an obligation (i.e. the debtor or debtor), who does not or cannot fulfil his obligations from the responsibility to provide compensation, fees and interest, and from liability to fulfil its obligations. Force Majeure was first used in French law, known as the Napoleonic code or civil code^[46], which in practice was used to relieve the debtor of all obligations that must be fulfilled in the contract. Force majeure is a legal concept derived from Roman law (*vis motor Cui resistant non-potest*) adopted in various legal systems. Overmatch or coercive circumstances are a condition in which completely unpredictable things caused the non-performance of what was agreed, and the debtor could not do anything about the circumstances or events that had arisen beyond the expectations. In other words, the non-implementation of the agreement or being late in carrying out the agreement is not due to negligence. He cannot be wrong or negligent, and people who are not wrong should not be subject to sanctions that are threatened with negligence. Subekti bases the state of coercion on two articles, namely Articles 1244 and 1245 of the Civil Code. Overnight, which is a defence for debtors

who are accused of negligence, also places the burden of proof on the debtor to prove the existence of an incident called overmatch.

Force Majeure Arrangements According to Indonesian Civil Law - The force majeure clause in a contract or agreement aims to make the parties understand the negligence caused by the parties' negligence and the negligence that occurred due to coercive circumstances. However, even though a force majeure clause has been included in an agreement, this clause still often creates problems regarding the extent and how a situation can be said to be in a force majeure state. For this reason, it must be understood in advance about the regulation regarding the force majeure.

Arrangement of Force Majeure In the Civil Code - Regarding overmatch (force majeure-Penulis), Book III BW regulates it fragmentary (spread out) in several articles. Part IV on Compensation of Costs, Loss and Interest due to non-fulfilment of an engagement (Article 1244-1245 BW) and Part VII concerning the Destruction of the Goods owed (Article 1444-1445 BW). Force Majeure or overmatch is regulated in Article 1244 and Article 1245 of the Civil Code, but these two normative provisions are only a defence of the debtor or the party who should pay compensation if he does not implement performance in the contract due to coercive circumstances. Forced circumstances are also regulated in Article 1444 of the Civil Code and Article 1445 of the Civil Code^[47].

Force Majeure Arrangements in Other Laws - Related to Force Majeure or overmatch can be grouped into two major groups. Namely, a Force Majeure is determined as a clause that must be included in the contract/agreement regarding the substance regulated in the legislation, and b) Force Majeure is regulated in-laws and regulations but is not related to contracts/agreements regarding the substance regulated in-laws and regulations.

Force Majeure in Court Decisions and Jurisprudence - The concept of force majeure is recognized, considered and applied to the facts of the case by the Supreme Court (MA) and the courts below it, but not many court decisions have been published that provide an interpretation of the force majeure. However, the coercion in the court's decision shows that the Supreme Court and the courts under it apply the concept of coercion following the provisions of the law and have not provided a broader interpretation^[48].

Elements, Scope and Consequences of Force Desk according to Indonesian Civil Law - Referring to the legislation and the opinions of contract law experts, a state of coercion is a situation that occurs not because of an element of error. It is against the will and cannot be known or suspected in a design, manufacture and implementation by the debtor or parties who should carry out the achievements in the contract, for example, natural disasters which result in delays in the implementation of these contractual legal achievements or obligations, either permanently or temporarily (temporary).

According to Subekti, the purpose of self-defence using force majeure is that he is not blamed for not fulfilling the achievement. Based on Articles 1244 and 1245 of the Civil Code, it can be determined that the elements of coercive circumstances include^[49]: a) Unforeseen events; b) cannot be accounted for to the debtor; c) There is no bad faith from the debtor; d) There are circumstances that are unintentional by the debtor/beyond the debtor's fault; e) The situation prevents outstanding debtors; f) If the achievement is

carried out it will be subject to a ban; g) Circumstances beyond the control of the debtor; h) the debtor does not fail to perform; i) The incident cannot be avoided by anyone, and j) the debtor is not proven guilty or negligent.

Scope (Causing Event) Force Majeure - The scope of force majeure regulated in-laws and regulations and in various contracts is not the same. The meaning of force majeure has been adjusted to the characteristics of each statutory regulation or contract. With the principle of freedom of contract, there are various force majeure arrangements. Therefore, an understanding of the scope of force majeure is essential. The scope of force majeure includes the type, nature, object and subject of force majeure itself. The scope of force majeure or events that cause force majeure or overmatch are based on the cause includes a) force majeure due to natural conditions, namely a forced condition caused by a natural event that cannot be predicted and avoided by everyone because it is natural without any element of intent, such as floods, landslides, earthquakes, storms, and volcanoes erupt; b) force majeure due to an emergency, i.e. force majeure caused by a strange situation or condition, particular circumstances that are immediate and short-lived, without being predictable in advance, for example, war, blockade, strike, epidemic, terrorist, explosion, riot mass including the presence of equipment damage that causes the non-fulfilment of an engagement; c) Force Majeure due to economic conditions, namely Force Majeure caused by a changing economic situation, specific economic policies, or anything related to the economic sector, changes in economic conditions or laws and regulations in such a way as to result in non-fulfilment of achievements, the emergence of monetary fluctuations that lead to increases in bank costs; d) Force Majeure due to a government policy or regulation, namely a state of coercion caused by a situation where there is a change in government policy or the abolition or issuance of a new policy, which has an impact on ongoing activities, for example, the issuance of government regulations (central or regional) which causes the object of the agreement/commitment becomes impossible to implement; e) Force Majeure unforeseen technical circumstances, namely Force Majeure caused by the event of damage or reduced function of technical or operational equipment that plays an essential role in the continuity of a company's production process, and this cannot be expected to occur in advance. Included in the Force Majeure, among others, is the non-operation of machines that significantly impact the company's activities.

As a result of Force Majeure - Based on the provisions of 1244 and 1245 of the Civil Code, a state of coercion occurs when there is something unexpected and cannot be held accountable to someone. Meanwhile, those who are concerned with all efforts try correctly to fulfil their obligations. Thus, only the debtor can state the existence of a state of coercion, if after an agreement is made, an unexpected situation arises, and the situation cannot be held accountable to him ^[50]. With coercive circumstances, the debtor can state the existence of such coercive circumstances by way of repelling, based on his position, the judge cannot refuse a lawsuit based on coercive circumstances, and the debtor bears the burden of proving the existence of coercive circumstances. The occurrence of a force majeure event creates a legal consequence both on the engagement and the risks that the parties must face in the agreement. By forceful circumstances, it resulted in the

engagement no longer working even though the engagement itself remained.

The Covid-19 pandemic as a force majeure situation - In a contractual relationship, each party who agrees to an Agreement is obliged to carry out all the provisions contained in the agreement. The parties must fulfil their obligations and obtain their rights as stipulated in the agreement. However, seeing the developments in the last few days with the number of cases of Covid-19 infection in Indonesia, the Covid-19 pandemic has shattered all social and economic joints, especially for business actors who cannot run their business normally. They have to let their business go dormant, which causes economic activity to stagnate—economic conditions due to the Covid-19 pandemic, resulting in the loss of people's economic capabilities. Several policies taken by the government are large-scale social restrictions so that work is done at home (WFH) except for particular fields such as offices or strategic agencies that provide services related to defence and security, public order, food needs, fuel oil and gas. Health services, economy, finance, communication, export and import industry, distribution, logistics and other basic needs. This restriction can cause difficulties for business actors outside the excluded fields in fulfilling their contractual obligations. In this case, it is estimated that many businesses cannot carry out the agreement properly. In other words, the impact of Covid-19 has resulted in delays in the implementation of agreements in various business fields, such as banking, implementation of construction agreements and consumer financing agreements (added by the author), and other agreements. Another condition is the failure to fulfil the agreement or default, which can be justified by law if the party can prove an unavoidable obstacle or force majeure ^[51].

In the concept of contract law, parties who break their promises are obliged to compensate for losses based on Article 1243 of the Civil Code. However, when achievement cannot be fulfilled due to circumstances beyond his control, he can be released from the responsibility to compensate for losses arising from non-performance of an agreement. In this case, the non-fulfilment of achievements can be justified by law if the parties can prove unavoidable obstacles or force majeure.

The Covid -19 pandemic or Coronaviruses Disease 2019 has spawned a discourse on force majeure, especially regarding implementing an agreement. Some people think that the Covid-19 pandemic is a force majeure that can be used as an excuse for forgiveness ^[31]. However, some say otherwise. Even the Coordinating Minister for Political, Legal and Security Affairs issued a statement which essentially stated, "The conditions due to Covid-19 cannot automatically be used as force majeure. This discourse has emerged mainly since the issuance of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Coronaviruses Disease 2019 (Covid-19) as National Disasters ^[52] (Presidential Decree No. 12/2020) on April 13, 2020.

Conclusion

Based on the analysis results of the research, it can be concluded that the Covid-19 pandemic in the implementation of the consumer financing agreement can be categorized as Force Majeure. It can be used as an excuse for forgiveness in the agreement's implementation because

the element of coercion has been fulfilled. Of Force Majeure in the provisions of Articles 1244 and 1245 of the Civil Code, namely, first, people never know when this will happen (unpredictably). Second, people do not have a contributory effect on the spread of this epidemic. Third, the Covid-19 outbreak is indeed an obstacle that people cannot ignore. However, to be applicable in the agreement, the force majeure clause must be stated in the agreement following the principle of freedom of contract and consensual. Furthermore, Covid-19 can also be categorized as a state of coercion by referring to Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, which has determined Covid-19 as a non-natural national disaster based on the scope of Force Majeure is categorized as a form of force majeure caused by a pandemic.

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