

Juridical Implications of the Covid-19 Pandemic on Credit Agreements in Indonesia

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Abstract

The Covid-19 pandemic has resulted in many people losing their jobs, if the person concerned is a bank debtor, it can result in him failing to make credit instalments to the bank as the creditor. This study aims to find out how the legal consequences of the Covid-19 Pandemic have on credit agreements in Indonesia and how to resolve them in case of default. The results showed that the Covid-19 Pandemic resulted in difficulties for debtors to pay credit instalments to banks as creditors and made debtors in default. Settlement steps that can be taken if the debtor is in default are Termination of the Agreement or Postponement of Debt Payment Obligations. If the cause of the debtor's inability to carry out his obligations as a result of a decrease in income during the Covid-19 Pandemic, the settlement using the Postponement of Debt Payment Obligation is the most appropriate option because in the future after the Covid-19 Pandemic can be resolved, the debtor is considered still can settle its obligations as stated in the Credit Agreement.

Keywords: Pandemic, Credit Agreement, Legal Effects.

1. INTRODUCTION

The year 2020 can be said to be one of the times, when there are so many events that have an adverse impact on the Indonesian people and the world. How could it not be, in early 2020 the Indonesian people, especially in the Special Capital Region of Jakarta, had to experience natural disasters in the form of floods which greatly disrupted the activities of residents and even the national economy. After the flood disaster began to be resolved, an even bigger disaster struck again in the form of the emergence of a new, very dangerous virus that was first discovered in the Chinese city of Wuhan. The virus is Corona virus disease 2019, hereinafter referred to as Covid-19.

Covid-19 is an infectious disease that can attack humans or animals, causing respiratory infections, can be transmitted through the air or through direct contact with sufferers. This disease is defined by the World Health Organization (WHO) as a world health organization as a pandemic, which means that this virus has spread globally worldwide.(Fitri, 2020) The Committee for Handling Covid-19 and National Economic Recovery (KPCPEN) on December 2, 2020 released data on the distribution of Covid-19 in Indonesia and in the world. In Indonesia Positive 54,9508 people, healed 45,8880 people, died 1,7199. While globally Covid-19 has spread in 220 countries,

confirmed as many as 6,336,0234 people, who died as many as 1,475,825 people.(Komite Penanganan Covid-19 dan Pemulihan Ekonomi Nasional, 2020)

Covid-19 not only has an impact in the form of disruption to the health of the sufferer, but also has a profound impact on the weakening of the Indonesian economy even throughout the world. This virus is forcing every affected country to take extraordinary steps to contain its spread. One example is locking down the country so that economic development is also hampered. One of the clear evidences of the impact of this virus on the world economy is the decline in global stock prices and the hampering of economic growth in countries in the world. The inhibition of economic activity as a result of preventing the spread of this virus is the main cause of the global economic downturn. In Indonesia itself, this virus has also greatly affected the country's economic sector. How not, since this virus was first announced by President Joko Widodo, it has arrived in Indonesia, namely on Monday, March 2, 2020, the Indonesian economy has continued to decline until now. Appeals for physical distancing, work, study and worship at home, to prohibit activities that cause crowds, of course, almost stop the economy.

Covid-19 had an impact on the decline in the Composite Stock Price Index (IHSG), which on April 1, 2020, was at the level of 4,554, which was the last time before this virus appeared the JCI was still at the level of 6,000. The rupiah also experienced a weakening, where up to now the rupiah exchange rate against the United States dollar (US) was at the level of Rp. 16,300 which was the last time before the virus entered Indonesia, the rupiah was still at the level of Rp. 14,000 against the US dollar. The fall in the JCI and the rupiah exchange rate were only a small part of the impact of Covid-19 on the Indonesian economy, there are many other consequences caused by Covid-19 that make the Indonesian economy very concerning. So that under these conditions the role of the government is needed to provide policies that are in favor of the people.(Eduardo Simorangkir, 2020).

With the emergence of a negative impact on the economy as a result of the spread of Covid-19, it will indirectly have an impact, one of which will affect people who have credit loans, both consumer credit and working capital. Credit Loans are lending and borrowing activities between the debtor as the party receiving the loan and the creditor who provides the loan. This loan usually aims to assist the debtor in running his business and for daily consumption. This lending and borrowing activity is usually based on a written or unwritten agreement between the parties. According to article 1313 of the Civil Code "An agreement is an act, whereby one or more people bind themselves to one or more other people". Whereas the Lending and Borrowing Agreement according to Article 1754 of the Civil Code is "an agreement whereby one party gives the other

party an amount of goods or money spent due to use on the condition that the latter party will return the same amount of sorts and circumstances. the same too ”.

With this loan and loan agreement, between the debtor and creditor, a legal relationship will emerge between the two. The legal relationship that occurs as a result of an agreement is that it will give rise to rights and obligations (Ery A. Priyono et al., 2020) among the parties, one of which is the creditor will be obliged to give an amount of money or goods to the debtor in accordance with the agreement and will receive a return at a later date with or without interest, while the debtor has the right to receive an amount of money or goods from the creditor and is obliged to return the money. or said goods with the same amount or accompanied by interest in accordance with the agreement. However, the rights and obligations arising from the agreement sometimes do not work properly. One of the causes of not fulfilling these rights and obligations is a disaster, one of which is happening at this time is the result of the Covid-19 pandemic.

The obstruction of economic activity as a result of the Covid-19 pandemic has made it difficult for debtors as borrowers to fulfill their obligations to creditors to pay off the debts they have. However, in cases like this, the debtor cannot just be blamed because the cause of the debtor not fulfilling his obligations comes from things outside the debtor's estimate, even everyone. Reduced economic activity hinders the development and income of the debtor's business. Things like this are prone to causing credit problems. The main reason is the failure to fulfill the rights and obligations as previously agreed or often referred to as Default. Based on the description above, the research problems are formulated as follows; What is the legal impact of the Covid-19 virus pandemic on credit agreements in Indonesia? What if one of the parties to the credit agreement, namely the debtor, cannot fulfill his obligations (Default) to his creditors as a result of the Covid-19 pandemic?

2. RESEARCH METHOD

The approach method used in this research is the Juridical-Normative approach. The normative juridical approach is an approach that refers to laws and regulations using secondary data. (Ronny Hanitiyo, 1990) Secondary data consists of primary legal materials in the form of laws and regulations related to research problems, among others, the Civil Code, Law No. 8 of 1999 concerning Consumer Protection (UUPK), Law no. 10 of 1998 Amendments to Law No. 7 of 1992 concerning Banking, Regulation of the Financial Services Authority of the Republic of Indonesia Number 11 / Pojk.03 / 2020 of 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019, Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia No. 6 of 2020 concerning Special



Treatment for Recipients of People's Business Credit Affected by the 2019 Corona Virus Disease Pandemic, Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia No. 8 of 2020 concerning Amendments to the Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia No. 6 of 2020 concerning Special Treatment for Recipients of People's Business Credit Affected by the Corona Virus Disease 2019 Pandemic. Secondary legal materials are literature related to research problems, and tertiary legal materials. (Amiruddin, 2004) The research specification used is descriptive analytical, which describes the state of the object under study, as it is based on the facts at the moment. (Abdulkadir Muhammad, 2004) The results of the research are descriptive because they are expected to describe systematically and thoroughly everything related to the Legal Consequences of the Covid-19 Virus Pandemic Against Credit Agreements in Indonesia, are analytical because the results of this study will be systematically analyzed regarding the Legal Consequences of the Covid-19 Virus Pandemic. Against Credit Agreements in Indonesia. Data collection was carried out through literature study, document study, and legal records study. The literature referred to consists of legislation, court decisions (jurisprudence), and legal papers. (Soerjono Soekanto, 2001)

3. RESEARCH RESULTS AND DISCUSSION

The Legal Consequences of the Corona Virus Pandemic on the Credit Agreement

Economic activities, both national and global, also received a huge impact due to the outbreak of Covid-19. The rate of transmission is very fast, the risk of death is very high, especially for people with weak immune systems, until anti-viruses have not been found that have made a number of countries and governments adopt policies that have legal implications. The lockdown policy or in Indonesia it is called Large-Scale Social Restrictions (PSBB) and Social Distancing disrupts business entities. It is estimated that many companies or people cannot meet their achievements. For example, sending goods to a country that is implementing a lockdown. The Covid-19 pandemic has resulted in all office activities being closed and implementing a Work from Home (WfH) policy. (Aurelia & Oktavira, 2020) Such conditions have an impact on the possibility of many contracts, agreements, business transactions or activities being delayed and even defaulted due to the spread of the Covid-19 outbreak. The Covid-19 pandemic has weakened the economy, of course, has also had a negative impact on the Credit Agreement. The destruction of debtors' businesses as a result of weakening people's purchasing power during the pandemic will affect the ability of business actors as debtors to carry out their obligations to creditors. According to OJK data as of March 2020, Col 2 credit or debtors who have been in arrears for at least 1-2 months rose sharply by 27.3% year on year (yoy). The number of non-current (Col 3) to non-performing

loans (Col 5) also increased by 19.10 percent.(Vincent Fabian Thomas, 2020) This data shows clearly that the ability of business actors as debtors to carry out their obligations has greatly decreased from previous years due to the spread of Covid-19.

The debtor's inability to carry out the obligations as previously agreed with the creditor will violate the agreement that has been made. This has the potential to create conflicts between debtors and creditors. The decline in business performance during the Covid-19 pandemic made it difficult for debtors to fulfill their achievements to creditors, in this case, the banking sector.(Dhevi Nayasari Sastradinata, 2020) Unfulfilled achievements by the debtor, in the form of default by the debtor, of course violate the agreement that has been made between the two parties. Legally, this results in Default. Based on article 1243 of the Civil Code, a person can be declared as Default if he / she has fulfilled the following elements:

- 1) Failure to carry out the obligations as contained in the agreement
- 2) Carry out obligations but only partially
- 3) Carry out all obligations but have passed the stipulated time or are late in carrying out obligations
- 4) Doing prohibited things that have been strictly regulated in the agreement.

Furthermore, by Mariam Darus Badruzaman, there are 3 (three) forms of default, namely; "Debtors do not fulfill the agreement at all, debtors are late in fulfilling the agreement and debtors are mistaken or inappropriate to fulfill the agreement".(Prayogo, 2016) Failure to fulfill one of the elements above can result in the debtor being said to be Default. In principle, in terms of lending and borrowing money from a bank, the creditor, in this case the bank, is entitled to receive achievements from the debtor, in this case, the bank's customer.(Pangaribuan, 2019) However, in practice at this time, there was an inability of debtors to carry out their obligations as a result of the Covid-19 pandemic which is included in the Default category because the debtor may have fulfilled several elements contained in article 1243 of the Civil Code, namely the debtor carrying out obligations but only partially due to the obligation to pay installments. in the credit agreement not being fulfilled maximally as it should be, new debtors who are completely unable to carry out their obligations, debtors who are late in carrying out obligations, and even debtors do things that are prohibited in the agreement. So that by not fulfilling the rights that should be received by the creditor from the debtor, the debtor has violated the Credit Agreement and is classified as a Default.

The occurrence of Default as a Result of the Covid-19 Pandemic

In a business environment, failure to comply with covenants or default is often justified by law if a person who does not meet performance can prove that there is an unavoidable obstacle

(Force Majeur). It becomes a pro / contra when the Covid-19 Pandemic, can legally this global pandemic be used as an excuse as a force majeure for not carrying out the special agreement in the Credit Agreement? Can the determination of a non-natural national disaster that occurred as a result of the spread of Covid-19 be called a force majeure or force majeure? If associated with elements related to Force Majeure, as regulated in Articles 1244 and 1245 of the Civil Code, namely:

- 1) There is an unexpected event;
- 2) There are obstacles that make an achievement impossible;
- 3) The inability is not caused by the debtor's fault;
- 4) This inability shall not impose a risk on the debtor.

So the Covid-19 Pandemic can be categorized as the reason for Force Majeure in the Special Agreement in the Credit Agreement, because the Covid-19 Pandemic was an unexpected event because no one could predict that this Covid-19 pandemic would occur as it is now, (Harnowo, 2020) With the Covid-19 Pandemic, the implementation of achievements obstructed due to disruption of the economy, especially in credit, where debtors as entrepreneurs had difficulty fulfilling their obligations due to decreased income as a result of the Covid-19 pandemic. Not having the debtor to fulfill his obligations as stated in the Credit Agreement is not a deliberate mistake by the debtor because the decrease in income which causes the obligation not to be carried out is not due to negligence in business management but because of the reduction in sales transactions as a result of the decline in global economic quality. Because the debtor's inability to carry out his obligations was caused by the pandemic which suddenly came and disrupted the wheels of the economy, the risk could not be immediately borne by the debtor because the debtor also could not predict this incident in advance and was completely unable to avoid it.

Presidential Decree No. 12 of 2020 concerning the determination of non-natural disasters for the spread of Covid-19 as a national disaster also confirms that the Covid-19 pandemic has been recognized as a disaster that cannot be avoided or predicted beforehand so it is very appropriate for debtors who cannot carry out their obligations due to the Covid-19 pandemic. 19 received exemptions and were given relief by promoting justice between the two parties. If the debtor's achievements were not fulfilled as previously agreed with creditors, the government issued a national economic stimulus policy as a Countercyclical Policy on the Impact of the Spread of Corona virus Disease 2019, namely the Financial Services Authority Regulation (POJK) No 11 / POJK.0 / 2020. In essence, this policy provides a juridical basis for banks to restructure credit for debtors affected by the Covid-19 pandemic. (Ashinta Sekar Bidari, 2020) As for the restructuring

methods stipulated in the POJK, namely lowering interest rates, extending the period, reducing principal arrears, reducing interest arrears, increasing credit / financing facilities; and / or credit / financing conventions become temporary capital. (Kornelius Benuf, 2020) In addition, in practice due to the Covid-19 pandemic it can also lead to the termination of the Agreement, but it needs to be underlined that the termination of this agreement is not to release the debtor's responsibility in carrying out his obligations, but only to ease the burden that must be borne by the debtor and extend the time to fulfill the debtor's achievements.

Termination of the Agreement, in this case the Credit Agreement, is usually carried out if the cause of the obstruction of the fulfillment of the obligations between the two parties is permanent and cannot be continued at all. The termination of the credit agreement causes a break in the legal relationship between the parties with several consequences, including payment of costs incurred, payment of interest that should have been earned, and refunds that have been obtained by the debtor as contained in the agreement with or without selling the collateral. there is. So that the settlement with the option of terminating the agreement is very detrimental and burdensome to the debtor.

In this discussion, the reason for not carrying out an obligation is due to the very dangerous Covid-19 Pandemic which disrupted national economic activity so that the affected debtor was unable to fulfill his obligations as previously agreed with creditors. From a medical perspective, the possibility of a pandemic ending is very wide open with several efforts that can be made, one of which is a vaccination program. Although this program is not easy to do, history has proven that humans have survived several times and escaped the attacks of an epidemic. So with this there is still a big possibility that the economy will recover along with the finding of a solution in overcoming the disease pandemic that is currently happening.

If there is a possibility of a recovery in the national economy, the debtor is also considered to be able to carry out obligations in the future. So that the cause of the debtor unable to carry out his obligations on the grounds that businesses that have been affected by the economic downturn as a result of the corona virus pandemic cannot be categorized as a permanent barrier that can terminate an agreement. Therefore, settlement with the option to terminate the agreement is not considered the right solution at this time. Postponement of Liability (Restructuring) is carried out when the debtor who is in Default is still deemed to be able to perform the obligation even though it is not in accordance with the predetermined amount and time.

The ability of the debtor to meet future obligations can be seen from both internal and external sides. From the side of the internal debtor, the ability of the debtor to manage the business is of the utmost importance. The debtor's business experience, character, and guarantees are very

important to be assessed to determine whether the debtor still has the capacity to meet future obligations. From the external side of the debtor, the ability of the debtor is very influential on whether or not the economy of a country is good. The debtor's income comes from the profits from the business he runs or from the salary he gets from the work done. The income from the business and the salaries received are of course also inseparable from economic developments. If the economy decreases, it will certainly reduce the income of a company and will further affect the company's ability to provide salaries to its employees. With the corona virus pandemic that lasted for almost all of 2020, it had a very bad impact on the economy. The economic wheel has stalled with the increasing number of regulations that interfere with business activities which are directly proportional to the decline in individual and corporate income. So this is the main reason companies and individuals who become debtors cannot carry out their obligations to creditors.

However, it should be remembered that history has proven that humans have been able to rise several times from the crisis caused by disease outbreaks. Call it one example is the Spanish virus outbreak and many other viruses that previously could also weaken the economy but solutions can still be sought. The development of science is also the basis why there is still high hope that this virus outbreak will end and the economy will gradually recover. With the economic recovery in the future, it is hoped that it can increase the debtor's income and will fulfill his obligations in the future.

Postponement of Debt Payment Obligations can be done by applying for Postponement of Debt Payment Obligations (PKPU) by Debtors or Creditors to the Court or only based on the agreement of both parties (Non-Litigation). Postponement of Debt Payment Obligations can be in the form of an extension of the period for paying debts or in this case the credit period, lowering interest rates, reducing the number of installments, and writing off interest payable. It should be borne in mind that the application of the types of postponement of debt payment obligations that have been mentioned previously is in accordance with the agreement between the debtor and the creditor. So neither party can force one type of suspension of obligations without the consent of the other party. This is certainly in line with one of the principles related to the agreement, namely the principle of good faith, where an agreement must be based on good intentions and intentions for the achievement of justice between the two parties.

4. CONCLUSION

The disruption of the economy of most of the people as a result of the Covid-19 pandemic, including people bound by credit agreements, resulted in the inability to fulfill the rights and obligations as stated in the agreements that have been made between creditors and debtors,



especially in terms of credit installment payments. The debtor is in a Default condition because he has fulfilled one or several elements related to Default, namely the new debtor who did not make installment payments at all from the beginning as agreed, the debtor is late in paying installments, the debtor pays installments but not in full, or the debtor violating the things prohibited in the agreement as a result of being forced to respond to the worsening economic situation due to the Covid-19 virus pandemic.

Debtors affected by the Covid-19 pandemic who are unable to fulfill their obligations in this case do not pay credit installments as contained in the Credit Agreement are in Default. Termination of Agreement or Postponement of Debt Payment Obligations is an option in resolving problems between the two parties. Termination of the Agreement is carried out in the event that the barrier to non-compliance is a barrier that is permanent and cannot be avoided. Postponement of Debt Payment Obligations is carried out in the event that the barrier to non-compliance is a temporary barrier. The Covid-19 pandemic which disrupts the running of the economy is considered to be a temporary barrier because the viral pandemic can still be overcome in the future with several existing solutions including one of which is vaccination. So that the possibility of the economy growing in the future is still wide open and the debtor's business will gradually improve so that the debtor will carry out his obligations as promised.

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