



Implications of the COVID-19 Pandemic as an Overmacht in Credit Agreements

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Abstract— This study aims to discuss whether the Covid-19 pandemic can be classified as a force majeure event (Overmacht) in a credit agreement. This study uses a normative juridical method which is by conducting a literature study of legal materials obtained from the law, literature and other books related to this study. From the results of research that has been carried out, it is clear that the policies implemented during the Covid-19 pandemic have not gone well. This is indicated by the continued decline in the community's economy so the prestasi/ duties in the agreements are not fulfilled. Many parties are involved in the agreement, one of them is the debtor in the credit agreement, who has failed to pay by using the excuse of a force majeure event (Overmacht) to avoid responsibility for compensation. This Covid-19 pandemic can indeed be classified as a force majeure event (Overmacht) as long as the debtor can prove the reasons he stated to the creditor through several things, namely 1) An unexpected event occurred, 2) Events that occurred beyond his control/fault, and 3) some events that prevent the debtor from fulfilling his duties.

Keywords— Covid-19 Pandemic; Force Majeure Event; Credit Agreement.

INTRODUCTION

At the end of 2019, the world was shocked by the emergence of an event that shocked the public. This event is the emergence of a new type of disease that causes pneumonia or lung inflammation in human bodies. This event was first known to have originated in the city of Wuhan, China, and was identified in early January 2020 to be precise. It was officially added as a new species of the Coronavirus disease family. This new disease of the Coronavirus species is called SARS-COV2, where this virus can be the cause of Coronavirus Disease-2019 (Covid-19). This virus can be spread through liquid splashes from coughing or sneezing which can cause death in infected people. Furthermore, the World Health Organization (WHO) had gave an announcement that the spread of Covid-19 has become a global pandemic because its spread has penetrated various countries in the world.

The Covid-19 virus is spreading rapidly and it causing many new problems in all fields in every country, including Indonesia. The Indonesian government has set various regulations. In the determination of this regulation, a policy was chosen through two channels, which are prevention policy and economic policy. However, when these two policies were implemented together, the results of the policies made were ineffective. In addition, this policy also caused bad communication between central and regional governments, so the policy was not implemented properly. Thus coordination between governments in implementing policies did not go well. As a result, the goals of the policies that had been aspired to, namely breaking the chain of the spread of Covid-19 and in terms of



improving the economy had not been achieved, even the chaos that has occurred due to the Covid-19 pandemic tends to get worse .

The crisis due to the Covid-19 pandemic truly occurred simultaneously in various sectors, especially in the economic sector. Thus the parties that get impacted the most were the low economic groups who were prone to crisis. These low-income groups are casual daily workers/laborers, street vendors, business groups relying on crowds of visitors, workers who have been laid off, farmers, the poor, and so on. To overcome the economic crisis they suffer, it is not uncommon for these vulnerable economic groups to borrow funds from banks to restore their economy based on credit agreements.

The credit agreement is composed of two words, namely agreement, and credit. An agreement is a legal bond in doing or not doing something between two parties or more, hence, forming the rights and obligations between the two parties. While credit came from the Roman term "Credere" which means trust, in short, credit is defined as a monetary instrument that allows individuals and industrial entities to get money and repay interest at a certain maturity period. Based on the understanding of the agreement and credit, it can be concluded that the credit agreement/contract is a money loan contract given by the debtor (customer) to the creditor (bank) which requires the customer to settle the debt within its maturity period accompanied by additional payments of money (interest) as profit from the bank.

In the process, credit agreements do not always run smoothly as expected based on what has been agreed upon in the agreement. Sometimes one of those who agree is also unable to fulfill the dependents similar to what was promised. The economic crisis that occurred in 2020 due to the Covid-19 pandemic was one of the reasons as why debtors were unable to pay their credits on time due to the obstruction of their economic (business) movement, resulting in the debtor being considered in wanprestasi. According to Abdulkadir Muhammad, the origin of the term wanprestasi comes from the Dutch language "Wanprestatie" which means a reluctance to carry out the commitments regulated by the agreement made as a form of participation arising out of the law. Negligence in making payments by not making payments or not wanting to pay or paying but not on time can be classified as a wanprestasi.

In connection with the Covid-19 pandemic by Presidential Decree No. 12 of 2020 which was set by the government to be a national non-natural disaster. Then, the Presidential Decree caused public speculation, especially for several debtors who ended up giving the opinion that the Presidential Decree regarding the determination of a non-natural national disaster due to the spread of Covid-19 had been used as the basis of Overmacht as an excuse for committing wanprestasi. This public speculation is based on the thoughts of debtors regarding Covid-19 which is considered an extraordinary event that makes debtors unable to fulfill their prestasi. Then this resulted in many prestasi of civil agreements being unfulfilled. In line with the status of the Covid-19 epidemic which was determined to be a non-natural disaster, it was not immediately used as an excuse for Overmacht to wanprestasi. This was confirmed by the Coordinating Minister for Political, Legal, and Security Affairs of the Republic of Indonesia (Kemenko Polhukam RI) Mahfud M. D. through his statement, which stated that Presidential Decree No.



12 of 2020 Regarding the determination of non-natural disasters Covid-19 cannot be used as a kind of legitimacy for Overmacht in the reason for not fulfilling prestasi in all kinds of agreements including credit agreements.

Force majeure event (Overmacht) can be defined as coercive circumstances resulting from unexpected events that result in the debtor being incompetent to carry out his prestasi and the debtor unable to account for it, meanwhile, the condition of the debtor is in good faith at the time an agreement is made. An event that causes Overmacht to have legal consequences for all parties of the agreement, especially the debtor who is in wanprestasi, they are not required to pay compensation to the creditor if it can be proven that the wanprestasi is a result of Overmacht. This provision has been explained by articles 1244, 1245, 1444, and 1445 of the Civil Law although some of these articles do not explain explicitly Overmacht.

In connection with government policies through PP No. 21 of 2020 concerning Large -scale Social Restriction or Pembatasan Sosial Berskala Besar as we know as PSBB, which aims to ask people to stay at home and work from home, of course, it greatly hampers the implementation of prestasi in the agreement, so that the current Covid-19 pandemic condition can be classified as Overmacht.

RESULTS AND DISCUSSIONS

Implications of the Covid-19 Pandemic Regarding the Emergence of force majeure event (Overmacht).

The pandemic of the Covid-19 in Indonesia has resulted in a lot of violations of a contract, especially in the field of credit. Many customers who have made credit agreements for their business activities have suffered losses due to this pandemic. Thus, they are unable to fulfill their prestasi in terms of paying their debts to banks. Failure to achieve this prestasi could be the result of a wanprestasi, or it could be the result of a force majeure event (Overmacht). The two conditions that cause the inability to fulfill this prestasi have something in common, they are unable to carry out the prestasi (contents of the agreement) that they have made. Meanwhile, the differences lies in the elements of cause, wherein wanprestasi is caused by negligence which is purely the fault of the party in negligent. Meanwhile, Overmacht itself is caused by negligence that occurs due to the emergence of an unexpected event and is not a bad faith from one of the parties to the agreement.

In this Covid-19 pandemic situation, various parties are facing problems in the increasingly complex economy, where many people have hampered their business activities due to government policies that implement Large-Scale Social Restrictions (PSBB) as an effort to stop the Covid-19 pandemic. This is based on Presidential Decree No. 11 of 2020 concerning the determination of health emergencies. In response to this, Indonesia has issued several Covid-19 regulations in response to the eradication of the Covid-19 pandemic, namely Presidential Decree No. 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19, which concerns the acceleration of handling the Covid-19 task force, which aims to coordinate actions in dealing with the Covid-19 pandemic. Regarding the continued growth and spread of Covid-19, in following up on Law Number 6 of 2018 concerning Health Quarantine, the government has also issued a social restriction regulation in Government Regulation Number 21 of 2020 concerning Pembatasan Sosial Berskala Besar or Large-Scale Social Restrictions (PSBB) which concerns the acceleration of processing Covid-19 control to regulate areas where the PSBB will be



implemented. They will close public places temporarily such as shopping centers, companies, schools, and religious places.

From the implementation of this PSBB, the most affected sector is the economic sector. This is indicated by the number of business activities being stopped suddenly because the sellers no longer receive buyers. Business activities that are managed primarily individually have disrupted their daily operational activities so that it becomes abnormal. As a result of debtors who are no longer able to carry out their normal business activities, the economy of their business has decreased so that their income has also decreased. There is a very high possibility that business actors (debtors) who, when the PSBB is implemented, experience obstacles in their income, have a legal obligation in the form of paying a certain amount of money to creditors as a timely fulfillment of prestasi on credit agreements before the legislation of PSBB.

However, it is appropriate for those whose economic income conditions are disrupted by the PSBB situation which makes debtors suddenly hindered from fulfilling their obligations to creditors on time. This is because debtors have already entered into credit agreements but are unable to pay their credit debts due to the decline in the economy caused by the Covid-19 outbreak. The inability to fulfill prestasi in credit agreements during this pandemic is often based on the Overmacht clause. However, for debtors who are affected but are still able to carry out their prestasi, they must continue to carry out their obligations by paying their debts by adjusting to the Covid-19 PSBB policies.

In the journal written by Sufiarina and Sri Wahyuni in 2020, the definition of Overmacht according to Salim HS, is a condition that makes the debtor unable to carry out his prestasi to creditors due to events that are beyond his control, for example, due to earthquakes, floods, magmas and so on. Meanwhile, according to R. Setiawan, Overmacht is a condition that occurs after the entry into force of an agreement, which becomes a barrier for the debtor to fulfill his prestasi, where the debtor cannot be blamed and is not obliged to bear the risk and cannot think at the time the agreement was made.

An event that causes Overmacht to have legal consequences for all actors of the agreement, especially the debtor who is in wanprestasi, they are not required to pay compensation to the creditor if it can be proven that the wanprestasi is a result of Overmacht. This provision has been explained by article 1244 and article 1245 of the Civil Code, although these two articles do not explain explicitly Overmacht. Article 1244 and Article 1245 both explain that, if the debtor cannot prove the non-fulfillment of prestasi (debt) due to unforeseen circumstances, cannot be accounted for, or as a result of improper execution of the agreement, then he must be punished by way of reimbursement of costs, loss, and interest.

In addition to these two articles, the concept of Overmacht is also written in Article 1444 and Article 1445 of the Civil Code. Article 1444 states that if the goods/items that are the subject of the agreement are destroyed, then they cannot be used because they are beyond the debtor's fault, and before he neglects to deliver them until it is completely untraceable whether the goods/items are still there or not, even if the debtor is being negligence that



he does not deliver the goods/items that are not covered by an unprecedented unforeseen event, the agreement will still be terminated when the goods/items have been destroyed in the hands of the creditor in the same way, if the item had been handed over to him. On the other hand, the debtor is obligated to prove the unexpected event that he conveys, no matter how the goods/items are lost or destroyed. Whereas in Article 1445, it explains that if the goods/items owed are damaged and can no longer be traded or lost due to the debtor's fault, the debtor must give the rights and demands mentioned above to the creditor if he has the right to the goods or the right to claim compensation.

To know a condition that counts as Overmacht According to M. Isnaeni in an online seminar held by the Association of Civil Law Teachers in collaboration with Narotama University Surabaya on Wednesday, April 22, 2020, the debtor must prove the reason he declared Overmacht to the creditor through several things, namely, 1) An unexpected event occurred, 2) Events that occurred beyond his control/fault, and 3) some events prevented the debtor from fulfilling his prestasi. These three provisions must be proven at once/concurrently to fulfill the conditions for a circumstance to be declared as Overmacht. Therefore, if the debtor can provide proof of the three conditions, then he does not have to be responsible for bearing the risk.

In addition, there is one important condition that can be used to state the condition of Overmacht, namely when the event behind the Overmacht has occurred before the debtor is declared to have failed (wanprestasi) in carrying out his prestasi first. In the case of the Covid-19 pandemic, if before the enactment of the PSBB policy the debtor had already in wanprestasi and continued, then the PSBB policy cannot be used as an excuse for Overmacht for the inability to fulfill its prestasi. The debtor remains in a state of wanprestasi and the risk of compensation is borne by the debtor, due to an element of error or negligence on the part of the debtor himself.

Furthermore, if the failed agreement is caused by Overmacht that leads both parties to have not fulfilled their obligations, then the settlement is not difficult and each party can avoid accusations of breach of contract (wanprestasi) by filing a rebuttal through the submission of an Exceptio Non-Adempti Contractus, meaning that if one party does not perform, then the other party also does not need to be successful. This is by what was conveyed by Riduan Syahrini, namely, Exceptio Non-Adempti Contractus is a rebuttal that states that the debtor is not performing because the creditor himself is also not performing. Therefore, it is very unreasonable if one party declares that the other party is not performing while he is also not carrying out his prestasi.

In connection with the Covid-19 pandemic by Presidential Decree No. 12 of 2020 which was determined by the government to be a national non-natural disaster. Responding to the policy that determines Covid-19 to be a non-natural disaster, if you look at Article 1 paragraph 1, Law No. 24 of 2007 concerning Disaster Management, states that a disaster is an event or series of events that threatens the source of life and human life itself, caused by natural and/or non-natural factors that cause loss of life, environmental damage, loss of property and also can have a psychological impact on society. Based on this explanation, Covid-19 can be classified as a non-natural disaster by the explanation contained in Article 1 paragraph 3 of Law No. 24 of 2007 concerning Disaster Management which explains non-natural disasters, that non-natural disasters are disasters caused by unnatural (non-natural) events



including technological failures, modernization problems and disease outbreaks that can result in loss of life somebody.

Then, Presidential Decree No. 12 of 2020 has caused a lot of public speculation, especially for some debtors who ended up giving the opinion that the Presidential Decree regarding the determination of non-natural national disasters due to the spread of Covid-19 has become the legal basis for Overmacht. This speculation is based on the thoughts of the debtors regarding Covid-19 which is considered an extraordinary event (Overmacht) that makes the debtor unable to achieve his prestasi. Then this resulted in many prestasi of civil agreements being unfulfilled. In line with the status of the Covid-19 epidemic which was determined to be a non-natural disaster, it was not immediately used as an excuse for Overmacht to wanprestasi. This was emphasized by the Coordinating Minister for Political, Legal, and Security Affairs of the Republic of Indonesia (Kemenko Polhukam RI) Mahfud M. D. through his statement, that Presidential Decree No. 12 of 2020 Regarding the determination of non-natural disasters Covid-19 cannot be used as a kind of legitimacy for Overmacht as the reason does not meet the prestasi in the credit agreement.

Proof of Overmacht by debtors based on the enactment of the PSBB policy during the Covid-19 pandemic is more appropriate when a dispute has occurred, this is because it involves various problems that must be resolved by both parties. Overmacht's reasons must be proven by the debtor himself who stated it and must be able to convince creditors of the condition of his economy which is really in trouble due to the Covid-19 pandemic, especially due to the enactment of the PSBB. Bearing in mind, in terms of proof in court, there is the term Notoire Feiten, which is a term to state a fact that does not need to be proven again because the fact is already known in general. Based on this reason, the Covid-19 pandemic event and the PSBB policy are based on PP No. 21 of 2021 concerning Large-Scale Social Restrictions that can already be classified in the Notoire Feiten situation because it occurs all over the world and is known to all parties.

If we learn according to Notoire Feiten's theory, the PSBB due to Covid-19 can indeed be classified into it because it is known by many people around the world. However, if the debtor convinces the creditor that he is affected so that he is no longer able to fulfill his prestasi, then he must prove it personally in more detail and deepen about the PSBB effects for his economy. The existence of a Notoire Feiten caused by the PSBB does not automatically apply to all debtors, but only applies to certain debtors who have personal problems and must prove these obstacles to be released from a state of wanprestasi .

To be able to use the Covid-19 PSBB as an Overmacht, debtors must prove and convince creditors that the Covid-19 PSBB puts them in a state of not being able to achieve their prestasi. The debtor needs to prove Overmacht for him to be able to avoid obstacles in fulfilling his obligations and persuade creditors with acceptable evidence to them. That is, in this case, the term Notoire Feiten does not necessarily apply if something that is known to the public does not need to be proven again. In this case, although the Covid-19 PSBB policy has been known to the public, debtors who have problems in fulfilling their obligations due to the enactment of this policy must again prove it to the debtor. Under the conditions of the PSBB during the Covid-19 period, if the creditor's loss can be



interpreted as a risk, then the creditor's loss cannot be borne by the debtor on the condition that the debtor can provide evidence that there is indeed a compelling situation. This means that the Covid-19 PSBB has indeed occurred as an undeniable fact, but it does not necessarily place the debtor in a state of Overmacht. The debtor still has to prove directly to the debtor that due to the Covid-19 PSBB policy, he is experiencing problems in fulfilling the agreement (prestasi).

Implications of force majeure event (Overmacht) due to the Covid-19 Pandemic for debtors who committing wanprestasi on their Credit Agreements.

Initially, the credit agreement provided a function to help each other between the customer and the bank to achieve the goal of meeting economic needs both in the customer's business activities and the daily basic needs of the customer, especially in terms of funding. Explanation of credit according to Article 1 number 11 of Law no. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking is an activity of providing money or claims based on a loan agreement between a bank and other parties which provides an obligation for the borrowing party to repay its debt after a certain period accompanied by interest.

Based on the understanding of credit in the Banking Law above, credit has a principle where credit is an agreement based on Article 1313 of the Civil Code which explains that an agreement is an act between one or more people. The term agreement itself is not expressly stated in the Indonesian laws and regulations. However, based on the letter issued by Bank Indonesia No.03/1093/UPK/KPD on December 29, 1970, which was addressed to all foreign exchange banks at that time, in terms of granting credit, it must be made through a letter of agreement, so that as time goes by the term credit agreement emerged and remains valid to this day.

In a credit agreement, the creditor may not ask for a refund of the money lent before the expiration of the time limit specified in the agreement (Article 1759 of the Civil Code). On the other hand, debtors who have received money loans must repay the loan with the same amount and terms within the specified time (Article 1763 of the Civil Code). However, although the Civil Code does not explicitly regulate credit agreements, the elements of a credit agreement must not conflict with the principles stipulated in the Civil Code. This is also confirmed through Article 1319 of the Civil Code, which stipulates that all agreements, both agreements with a special name and agreements without a special name, must meet the general provisions in Chapters 1 and 2 of the Civil Code.

Since the granting of credit has been regulated as an agreement, the parties who are bound in the credit agreement should have created rights and obligations that must be carried out for each party in good faith, this is as contained in Article 1338 paragraph (3) of the Civil Code, where an agreement must be executed in good faith. This is intended to anticipate if the agreement is not carried out in good faith, which will lead to wanprestasi so which can lead to legal problems between the two parties who are already bound in the credit agreement. The emergence of things that can be said as wanprestasi, if it is necessary to understand that not all circumstances can be qualified into it. Under certain conditions, qualification in conditions that are not included in the scope of wanprestasi is divided into the following, namely, 1) Overmacht (force majeure event), 2) Rechtsverwerking (apart from certain obligations due to one party releasing the other party from the said obligation) and 3) Non-Adimpleti Contractus



(not fulfilling obligations because one of the parties also does not carry out the obligations that have been mutually agreed upon) .

Before starting credit agreement activities, a good and thorough analysis is needed in all aspects by both parties to prevent credit risk from arising. The provision of credit is very helpful for the community to achieve their needs, it is just that in providing credit, banks as financial institutions must be extra careful. There will be several relatively large risks in providing credit, for example, credit funds and the interest lent may not be returned. The credit agreement begins with an agreement between the credit beneficiary (the debtor) and the creditor (the creditor) through an agreement form. The agreement can be in the form of an oral agreement or a written agreement. The agreed credit agreement is of course a debt agreement that involves various rights and obligations between the two parties that must be adhered to correctly. However, in credit agreements, sometimes one party does not agree as agreed at the beginning, one of which is due to the force majeure events such as disease outbreaks and natural disasters .

In connection with the spread of the Covid-19 virus, the Indonesian government has declared it a non-natural national disaster that causes a health emergency. Through the Presidential Decree No. 11 of 2020 concerning the Determination of Health Emergencies, the government has made provisions for two Covid-19 disease, Second, this condition creates an obligation to take steps in prevention efforts by laws and regulations. With the regulation of community emergencies, the government then established a PSBB policy through PP No. 21 of 2020 which is based on Article 60 of Law no. 6 of 2018 concerning health quarantine by enacting various policies, including imposing Lockdown and Social Distancing, limiting the intensity of residents going in and out between regions, and the government asking people to stay at home even they are told to work at home. This is done by the government solely as a measure to contain the Covid-19 outbreak so that it subsides its spread quickly.

According to Government Regulation No. 21 of 2020 PSBB is defined as the activity limit of the population of the area whose territory is suspected of being infected with a disease to prevent the possibility of disease transmission. This PSBB will be applied during the longest incubation period, which is 14 days. However, it is also possible that various legal products will be extended if there is still evidence of the spread of Covid-19. In line with the determination of Covid-19 as a national disaster, many people have experienced a decline in income which affects their business and then has an impact on the national economy .

In Article 1 Permenkes No. 9 of 2020 concerning PSBB is a preventive activity aimed at residents in an area suspected of being infected with Covid-19 to prevent the possibility of a greater spread of Covid-19. The implementation of the PSBB also adds to the difficulties for the business world. One of the difficulties experienced by the business world is the impact in the banking world where many debtors experience financial difficulties and as a result, they cannot pay their credits. Inability or failure to pay will result in non-performing loans which have bad consequences for banks. The credit score that occurs in congestion will affect the condition or health of the bank that handles it. A condition where the bank has experienced a problem in the implementation of its credit program, namely there are obstacles in lending in the form of the inability of a debtor to pay his credit according



to the maturity which includes the principal loan and the agreed interest rate can cause the credit to be classified as a Non-Performing Loan (NPL).

The emergence of non-performing loans will lead the bank to face the risk of a large credit agreement due to the inability of the debtor to pay his creditors. Non-performing loans themselves can be caused by various factors, including:

1. Weakness factors from the internal debtor, include 1) There is bad faith from the debtor, 2) There is a decline in the economy of its business which results in a decrease in the debtor's ability to pay installments and 3) The debtor's inability to run his business.
2. Weakness factors from the internal side of the bank, namely 1) There is bad faith from bank employees, namely accept customers carelessly, 2) Bank employees are incompetent in managing lending and 3) Ineffective bank employees in managing banks so that debtors can abuse its weaknesses to commit an offense.
3. Factors from external banks, namely 1) Forced circumstances (*Overmacht*), which is the result of a natural or non-natural disaster that can harm the debtor, and 2) Due to shifts in the external environment, for example, the occurrence of a monetary crisis that causes inflation.

The agreement must fulfill the legal provisions of the relevant legal terms of the agreement regulated in Article 1320 of the Civil Code, that is, regardless of the name or form of the agreement, legal provisions must not be ignored. The agreement is reached only based on the principle of freedom of contract. This is not much different from the problem solving which can be handed back to the debtor and creditor to solve in accordance with the agreed agreement. In principle, the obligation to carry out the contents of the agreement, including the credit agreement, is absolute. The agreement to be reached between the two parties leads to the emergence of an engagement, which as a legal relationship of course also creates rights and obligations that must be carried out by the parties. The party who has a legal obligation is called the debtor, while the party who has the right to sue is called the creditor. If a debtor fails or does not carry out previously agreed-upon obligations, the law stipulates that the debtor is in wanprestasi .

In terms of fulfilling a prestasi, of course, the implementation date has been determined from the beginning. This is what is used as a reference to determine whether the debtor has wanprestasi or not, namely by seeing if the agreed date has passed and the debtor has not fulfilled its obligations, it can be declared in wanprestasi. However, in the context of the Covid-19 pandemic, parties who are hindered from fulfilling their prestasi can already be included in the category of being hindered due to *Overmacht*. This is based on the opinion of experts who declare the Covid-19 pandemic as a force majeure event (*Overmacht*). Therefore, many parties use this excuse to delay or not carry out their obligations in the agreement at all so that the consequences that will arise are expected to be endured jointly by all parties involved in the agreement.

After the Covid-19 pandemic, a credit agreement that was caused by the force majeure event (*Overmacht*), is a condition where the debtor is unable to carry out his prestasi due to unexpected circumstances or events at the



time the contract was made. This situation cannot be held accountable to the debtor, because the debtor is unable to pay off his debt due to the outbreak of the pandemic. In the absence of an epidemic, the condition of the debtor and the reasons for the force majeure event have been regulated in Articles 1244 and 1245 of the Civil Code.

The Covid-19 pandemic can indeed be used as an excuse for not fulfilling the agreement under the pretext of Overmacht. However, not all agreements that fail to be implemented during the pandemic can use the excuse of Overmacht. Because the Covid-19 pandemic cannot be used by everyone as an excuse for Overmacht, they must prove it on a case-by-case basis by the circumstances and facts of each experienced. To overcome the difficulty of implementing the agreement during the Covid-19 pandemic, the government as the agency responsible for disaster management issued a Financial Services Authority Regulation on National Economic Stimulus as a counter-cyclical policy No. 11/POJK.03/2020 to encourage the optimization of various banking intermediation functions, maintain the financial system stability and support economic growth amidst the impact of the Covid-19 virus pandemic.

After the issuance of Peraturan Otoritas Jasa Keuangan (POJK) or Financial Services Authority Regulations, it benefits the debtors that favor debtors in the form of credit relaxation. As we all know, the issue of credit relaxation means providing concessions regarding credit or debt payments. This provision can be seen in Article 2 of the POJK, where banks can implement policies that support economic growth stimulus for debtors who are affected by the spread of Covid-19, including UMKM debtors who face non-performing loans. Settlement of non-performing loans/financing can be done in two ways, namely, First, rescue non-performing loans through renegotiation between banks as creditors and customers as debtors. Second, the repayment of non-performing loans is carried out through legal institutions such as the Committee for State Receivable Affairs or Panitia Urusan Piutang Negara (PUPN), the Director-General of Receivables and Auctions, judicial institutions and can be through the realm of arbitration.

Credit rescue can be done in three ways, namely, First, rescheduling, by changing several clauses of the credit agreement relating to the repayment schedule or credit terms, including changes in the number of installment payments. Second, reconditioning (re-changing the terms) means changing some or all of the credit terms of the agreement without providing additional credit and non-conversion participation, and Third, Rearrangement (rearrangement), namely by changing the credit terms through additional credit or conversion. At the same time, the POJK 11/2020 policy used the rearrangement mechanism to save credit during the pandemic. However, this policy still creates problems for debtors because many customers complain to the bank because they are found to still have to pay monthly installments. After all, what they know is that there is a relief for late installment payments and there is a reduction in interest .

CONCLUSION

Covid-19 cannot directly be used as an excuse for Overmacht for all debtors. Only certain debtors belonging to the low economic group, namely casual daily laborers, street vendors, business groups relying on crowds of visitors, workers who have been laid off, farmers, the poor, and so on can use it as long as the debtor can prove it.



Meanwhile, debtors who receive fixed income, such as government employees or Pegawai Negeri Sipil (PNS), Indonesian State Army or Tentara Negara Indonesia (TNI), police, or debtors who have other fixed income, of course, cannot use the Covid-19 pandemic as an excuse for Overmacht when there are problems with fulfilling prestasi in the agreement.

The Covid-19 pandemic is an undeniable fact, even if it is based on the use of a fictional theory of law to enforce the law, everyone is presumed to have known about the Law. If they violate with the excuse of not knowing and understanding the rules, then they are still subject to sanctions. However, in terms of proving that the Covid-19 pandemic is an Overmacht, the notoir feiten adage does not apply where the debtor is obliged to prove directly and personally to the creditor that due to the Covid-19 PSBB policy, the debtor has experienced problems in fulfilling the agreement (prestasi) so he cannot be prosecuted for compensation and fulfillment of obligations.

To overcome the difficulty of implementing agreements in credit agreements amid the Covid-19 pandemic, the government issued a Financial Services Authority Regulation on National Economic Stimulus as a countercyclical policy No. 11/POJK.03/2020 in stimulating the optimal functioning of various banking intermediation functions as well as maintaining the stimulus for economic growth. After the issuance of this Financial Services Authority Regulation, debtors feel a little relieved and safe because they get relief in the form of credit relaxation for every debtor who has entered into a credit agreement.

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