




Force Majeure or Hardship Principle In Termination of Employment During The Covid-19 Pandemic

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Abstract

Introduction: The company often uses the spread of the Covid 19 virus in Indonesia in carrying out the Termination of Employment (PHK). Force Majeure is regulated by Article 164 of Law No. 13 of 2003 on Manpower but does not regulate epidemics or diseases as force majeure. Hardship itself is not regulated, and this doctrine is not yet known in Indonesia, as evidenced by the lack of contracts implementing the hardship clause.

Purposes of the Research: The purpose of this study is to provide legal protection for employees who have experienced termination of employment due to the Covid-19 pandemic based on the principle of hardship.

Methods of the Research: The research method used is normative juridical or doctrinal law research. It is research that uses the approach of legislation in the governance and legal values that live in society.

Results of the Research: The results of this study include two things, namely the principle of force majeure or hardship in termination of employment, Companies that terminate employment should renegotiate by delaying work or known as the hardship principle. Using the force majeure principle causes workers to be unable to carry out their obligations, namely doing work. Based on the freedom of contract, the hardship principle clause can continue to carry out the agreement for workers affected by Covid-19. While the second is the legal consequences of the Covid-19 pandemic on work agreements, basically, in resolving the legal consequences caused by the Covid-19 pandemic, honesty from the parties is needed. This principle is known as good faith. It greatly determines the condition of the Covid-19 pandemic in the termination of employment by the company so that the parties can renegotiate their work agreement.

1. INTRODUCTION

In early 2020, March 11, the World Health Organization has declared Covid-19 a global pandemic. In this regard, President Joko Widodo, with various considerations on April 13, 2020, issued Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease (Covid-19). The issuance of this Presidential Decree has caused an increase in the number of victims and property losses. The Indonesian Government, to overcome the impact of the Covid-19 pandemic, has made several breakthroughs, including:

- 1) Issuing Government Regulation Number 21 of 2020 concerning PSBB to suppress the spread of Covid-19, in Article 4 of this PSBB regulates teaching and learning activities,

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restrictions on religious activities in places of worship, activities at work, and activities in public places, such as markets. Malls and parks;¹

- 2) Income tax obtained by employees who have an income of 200 million in a year whose companies experience the impact of the Covid-19 pandemic are borne by the Government;²
- 3) The Financial Services Authority (OJK) provides relaxation of credit for Micro, Small, and Medium Enterprises (MSMEs) for credit values below Rp. 10 billion. This stimulus is stated in OJK Regulation No.11/POJK.03/2020 concerning National Economic Stimulus as Countercyclical Policy on the Impact of the Spread of Coronavirus Disease.³
- 4) Provision of electricity subsidies for people affected by the Covid Pandemic, based on the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 29.K/HK.02/MEM.L/2021 concerning the Provision of Stimulus for Consumer Electricity Tariffs of PT Perusahaan Listrik Negara (Persero) to deal with the impact of Corona Virus Disease 2019 (Covid-19).

As a result of the Covid-19 pandemic, it has had a detrimental impact on the country and society, especially in the economic and labor fields. Many companies in Indonesia implement Work From Home (WFH) to limit the spread of Covid-19.⁴ It has also led the company to unilaterally terminate employment on the grounds of force majeure due to the Covid-19 pandemic, so that the company suffered losses. The Covid-19 pandemic causing losses as force majeure cannot be an excuse, which deviates from the existing provisions.⁵

Covid-19 as the reason for force majeure is still being questioned as a natural disaster or not. Due to the force majeure reasons used by the company in terminating employment, it cannot be justified. Almost all companies in Indonesia use the Covid-19 pandemic to lay off their workers by not providing honoraria/wages, causing workers to suffer losses.⁶ Mahfud MD, Minister of Politics, Law, and Security, stated that Presidential Decree No. 12 of 2020 cannot be interpreted as force majeure, which is the basis for canceling the agreement even though the Presidential Decree stipulates the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster. The parties' agreement remains bound by Article 1338 of the Civil Code (KUHP).⁷ Constitutional Law expert Rafly Harun agrees with Mahfud.

¹ Aprista Ristyawati, "Efektifitas Kebijakan Pembatasan Sosial Berskala Besar Dalam Masa Pandemi Corona Virus 2019 Oleh Pemerintah Sesuai Amanat UUD NRI Tahun 1945," *Administrative Law & Governance Journal* 3, no. 2, (2020), 240-249. DOI : <https://doi.org/10.14710/alj.v3i2.240-249>

² See the Finance Minister's Regulation 23/PMK.03/2020 on Clarifying Business Fields and Ease of Import and Export.

³ <https://www.cnbcindonesia.com/market/20200324131204-17-147248/cicilan-sederet-kredit-ditanggguhkan-jokowi-ini-aturannya>, accessed on August 28, 2021.

⁴ Herman, *et.al*, "Tinjauan Yuridis Mengenai Dampak COVID-19 Terhadap Pemutusan Hubungan Kerja." *Journal Halu Oleo Law Review* 4, no. 2 (2020), 157-176. DOI : <http://dx.doi.org/10.33561/holrev.v4i2>.

⁵ Maharani Mega Febriyanti dan Husni Syawali, "Force Majeure dalam Pemutusan Hubungan Kerja terhadap Karyawan di Masa Pandemi Covid-19 ditinjau dari Buku III Kitab Undang Undang Hukum Perdata dihubungkan dengan Undang Undang Nomor 13 tahun 2003 Tentang Ketenagakerjaan". *Prosiding Ilmu Hukum Spesia Unisba* 7, no.1 (2021), 220-223. DOI : <http://dx.doi.org/10.29313/.v7i1.24997>

⁶ Sudibyo Aji Narendra Buwana, *et.al*, "Implementasi Pemutusan Hubungan Kerja (PHK) terhadap Pekerja Status Perjanjian Waktu Tertentu (PKWT) PT X Kota Malang." *Competence Journal Of Management Studies* 9, no. 2 (2015), 202-214. DOI : <https://doi.org/10.21107/kompetensi.v9i2.1628>

⁷ Junaidi, "Force Majeure Pandemi Covid-19 Landasan Perjanjian Kerja sebagai Perlindungan Pekerjaan". *Book Chapter Dinamika Perlindungan HAM bagi Kaum Marginal Pasca Pandemi Covid di Era Society 5.0*, Surabaya : UM Surabaya (2021), 105-112.

According to him, the issuance of this Presidential Decree does not necessarily become the basis for the legitimacy of Covid-19 as a force majeure condition, saying the Covid-19 pandemic is not included in the elements of force majeure, because Covid-19 does not come suddenly, like an earthquake. Tsunami or another natural disaster. Therefore, the Covid-19 pandemic cannot be used as a force majeure reason to cancel the contract.⁸

Termination of Employment (PHK) during the Covid-19 pandemic caused new problems. Is it permissible for a company that terminates employment for reasons of force majeure caused by the Covid-19 pandemic, due to the Manpower Act for a company that terminates employment for its workers if it suffers losses for two consecutive years. There is an error from the employees themselves. Termination of Employment (PHK) due to the Covid-19 pandemic cannot be said to be the workers' fault. Therefore, an alternative to the force majeure principle is the hardship principle known in international contracts, which translates the *rebus sic stantibus* principle as the arduous condition principle or *Hardship principle*.⁹

2. METHOD

In researching to be able to achieve the desired goals and uses, it must use methods that function as scientific methods to attain goals.¹⁰ The research method used is normative juridical or doctrinal law research. It is research that uses the approach of legislation in the governance and legal values that live in society.¹¹

3. RESULTS AND DISCUSSION

3.1 The Force Majeure or Hardship principle Principle in Termination of Employment

a. Force Majeure Principle

Termination of employment by the company due to an error made by the employee. During the Covid-19 pandemic, the company terminated the employment relationship, not because of the worker's fault. The company doing this is the company's policy in reducing losses. The company carries out this policy based on Presidential Decree No. 12 of 2020, which stipulates Covid-19 as a Non-Natural Disaster. Termination of Employment Relations during the pandemic carried out by the company is carried out for reasons of efficiency as regulated in Article 164 paragraph (3) of the Manpower Act. However, there are 2 (two) conditions in the termination of employment with efficiency:¹²

- 1) The company is closed due to loss or force majeure (Article 164 paragraph (1) of the Manpower Act); and
- 2) The company performs efficiently (Article 164 paragraph (3) of the Manpower Act.

⁸ *Ibid.*

⁹ Sheela Jayabalan, "The Legality of Doctrine of Frustration in the Realm of Covid-19 Pandemic," *Sociological Jurisprudence Journal* 3, no. 2 (2020), 84-90. DOI : <https://doi.org/10.22225/scj.3.2.1900.84-90>

¹⁰ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. (Bandung : Alfabeta, 2019), p. 2

¹¹ Jonaedi Efendi & Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, (Jakarta: Kencana, 2016), p. 295

¹² Nikodemus Maringan, "Tinjauan Yuridis Pelaksanaan Pemutusan Hubungan Kerja (PHK) Secara Sepihak oleh Perusahaan Menurut Undang-Undang Nomor 13 tahun 2003 tentang Ketenagakerjaan." *Jurnal Ilmu Hukum Legal Opinion* 3, no. 3 (2015), 1-10. DOI : <https://garuda.ristekbrin.go.id/documents/detail/404584>

Based on the provisions of Article 164 of the Manpower Act, it is required that companies must close and/or perform efficiently by implementing the rules stipulated in the Ministerial Circular Number SE-907/MEN/PHI-PPHI/X/2004 dated 28 October 2004 stating that:¹³ If the company is in a difficult situation and can affect employment, then termination of employment is the last resort by taking the following measures:

- 1) Reducing wages and facilities for top-level workers, for example, at the level of managers and directors;
- 2) Limiting/eliminating overtime work;
- 3) Reducing Working Hours;
- 4) Reducing Working Days;
- 5) To temporarily lay off or lay off workers/laborers;
- 6) Not or extending the contract for workers whose contract period has expired;
- 7) Providing pensions for those who have met the requirements.

The stipulation of Covid-19 by the Government as a national disaster based on Presidential Decree Number 12 of 2020 cannot be used for force majeure because force majeure is the inability to carry out achievements due to an obstacle forcing circumstances. Force majeure is an act of making achievements at all due to an actual obstruction in carrying out the agreement's obligations, not because of the national disaster emergency status determined by the Government. The termination of employment due to the Covid-19 pandemic in Indonesia was not caused by the company closing due to bankruptcy but by the Government's policy of implementing Work From Home (WFH). In this case, it is still possible to do achievements, but the time is not following the agreement. To protect workers against termination of employment, the Government under Circular (SE) of the Minister of Manpower Number M/3/HK-04/III/2020 concerning Protection of Workers and Business Continuity in the Context of Prevention and Control of Covid-19 determines that:

- 1) For workers/labor as Persons Under Supervision (ODP) Covid-19, which causes them to be unable to come to work for 14 days, they must be based on a doctor's certificate, and their wages are paid in full;
- 2) For workers/labor as victims of Covid-19 and undergoing quarantine or isolation based on a doctor's statement during that period, the wages are paid in full;
- 3) For workers/laborers who are unable to come to work due to Covid-19 illness and based on a doctor's statement, their wages are paid following applicable regulations; and
- 4) For entrepreneurs who implement restrictions on business activities to prevent the spread of Covid-19 or prevent their workers from coming to work, the payment of wages follows a mutual agreement.

The force majeure situation is defined by the Civil Code Procedure Article 1244 and 1245, where an unexpected event prevents the debtor from carrying out his obligations, as a result of which he cannot do anything at all following the event. -suddenly unpredictable in advance.¹⁴ The force majeure situation contained in the Manpower Act does not explain in detail the existence of such force majeure. In general, the state of coercion refers to natural

¹³ Mustakim dan Syafrida, "Pandemi Covid-19 Sebagai Alasan Force Majeure Dalam Melakukan Pemutusan Hubungan Kerja di Indonesia," *Salam : Jurnal Sosial dan Budaya Syar-i* 7, no. 8 (2020), 695-706. DOI : <https://doi.org/10.15408/sjsbs.v7i8.16552>

¹⁴ Rahmat S.S. Soemadipradja, *Penjelasan Hukum tentang Keadaan Memaksa (Syarat-syarat Pembatalan Perjanjian yang disebabkan Keadaan Memaksa/Force Majeure)*. (Jakarta : PT. Gramedia, 2010), p. 72

events or events, including floods, earthquakes, riots, landslides, volcanic eruptions, declarations of war.

Force majeure cannot be said directly as a reason for canceling the agreement or terminating the employment relationship (PHK). However, this situation can be used to renegotiate in improving the contents of the agreement. Based on Article 1338 of the Civil Code, it is stated that all agreements that have been mutually agreed upon and are validly valid constitute the law for the parties to the agreement. It demonstrates that as long as no amendments or changes are made, the agreement remains legally binding on both parties.

This Covid-19 Pandemic needs to be viewed differently by considering whether difficulties are caused by something emerging or problems being encountered because of financial problems, poverty, and severe illness due to Covid - this occurs widely. Hence, it is not feasible for parties to bear the burden of loss.¹⁵ Covid-19 is not included in force majeure based on Article 164 paragraph (1) of the Manpower Act. The article explains that force majeure includes wars, riots, revolutions, natural disasters, strikes, and fires, while Covid-19 is categorized as non-natural disasters that are not included in force majeure.

b. Hardship Principle Principle

The hardship principle principle is a theory developed by the *rebus sic stantibus* principle. It is an agreement that is agreed to be disturbed if there is a fundamental change in circumstances.¹⁶ The hardship principle principle comes from Roman philosophy, which is due to the principle of *pacta sunt servanda*. The hardship principle principle means that an agreement in determining an action to be carried out in the future must be interpreted as being obedient and obedient to the requirements that occur in the environment or conditions that will remain the same.¹⁷ This hardship principle principle is contained in the Unidroit Principal of International Commercial Contract contained in Section 2 Art. 6.2.1 (Contract to be observed), which says Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship principle.¹⁸

The hardship principle principle if one of the parties in carrying out the agreement becomes difficult for him, then he remains bound in the implementation of the agreement by continuing to follow the provisions regarding hardship principle. It is regulated in Article 6.2.1 of the UPICC, concerning Contracts that must be complied with, this provision explains the following:¹⁹

- 1) The binding character of the contract as a general rule (binding character of the contract the general rule).

¹⁵ Herman, *et.al.*, *Op.Cit*, p. 174

¹⁶ Agus Yudha Hernoko, "Force Majeure Clause atau Hardship Clause Problematika dalam Perancangan Kontrak Bisnis." *Jurnal Perspektif: Kajian Masalah Hukum dan Pembangunan* 11, no. 3 (2006), 203-225, DOI : <http://dx.doi.org/10.30742/perspektif.v11i3.276>

¹⁷ Dwi Primilono Adi, "Absorpsi Prinsip "Rebus Sic Stantibus" Dalam Kerangka Pembaharuan Hukum Perjanjian Nasional." *Jurnal Hukum Jatiswara* 30, no. 1 (2015), 71-91. <http://jatiswara.unram.ac.id/index.php/js/article/view/91/85>

¹⁸ Berger and Behn, "Force Majeure and Hardship in the Age of Corona: A Historical and Comparative Study". *McGill Journal of Dispute Resolution: Revue de règlement des différends de McGill* 6, no.4 (2019-2020), 79-129. <https://mjdr-rrdm.ca/articles/volume-6/force-majeure-and-hardship-in-the-age-of-corona/>

¹⁹ Herman, *et.al.* *Op,cit*, p. 162

- 2) It aims to emphasize that the contract remains binding and must be executed regardless of the conditions experienced by the parties.
- 3) Relevant changes in circumstances are only related to contracts (contracts whose implementation has not been carried out or are still valid and long-term).

In a situation where a fundamental change in the balance of the contract occurs, the principle of the contract's binding nature is not absolute. It is an exception situation. Based on this explanation, it can be concluded that there are 3 (three) things that must be observed in looking at the hardship principle principle, including:²⁰

- 1) There is a fundamental change in the balance in the agreement;
- 2) An increase in the value of a higher value is carried out by one of the parties;
- 3) A decrease in value is accepted by one of the parties.

The hardship principle principle in the positive legal order in Indonesia has not explicitly been regulated in-laws and regulations. Courts in Indonesia have applied the hardship principle principle, although the legal basis refers to force majeure with a change in circumstances. Besides that, the principle of good faith becomes the basis for agreements and dispute resolution, especially in applying the hardship principle principle. If one party refuses to renegotiate the agreement, which causes changes in the situation, and the balance of one of the parties is disturbed.

Clauses regarding the hardship principle principle must be contained in agreements, especially long-term ones with a very high value. It aims to overcome difficulties in applying the principle of failure to contract (frustration) and the force majeure principle. The hardship principle principle is one of the alternative methods in resolving disputes that have basic conditions affecting the balance of the agreement.²¹ The hardship principle principle is a condition that causes the performance of one of the parties in the implementation of the agreement to be heavy and complicated. In contrast, the parties remain bound by their rights and obligations in the agreement. The hardship elements in an agreement are:²²

- 1) The existence of an event that is beyond the control of the aggrieved party.
- 2) There is a risk of an event that the injured party does not expect.

In order to determine whether or not the hardship principle principle applies, 3 (three) elements need to be considered:²³

- 1) Fundamental alteration of equilibrium of the contract;
- 2) Increase in cost of performance;
- 3) Decrease in the value of the performance received by one party (decrease in value of the performance received by one party).

The difference between the hardship principle and force majeure principle is that hardship principle indicates an unstable situation or situation between the parties who have reached an agreement in the agreement. In contrast, force majeure signifies a more specific

²⁰ Agus Yudho Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*. (Jakarta: Prenadamedia Group, 2014). p. 283

²¹ Ifada Qurrata A`yun Amalia dan Endang Prasetyawati, "Karakteristik Asas Proporsionalitas dalam Pembentukan Klausul Perjanjian Waralaba". *Jurnal Hukum Bisnis Bonum Commune* 2, no. 2 (2019), 173-184. DOI : <https://doi.org/10.30996/jhbhc.v2i2i2513>

²² Herman, *et.al. Loc.cit*, p. 164

²³ Dwi Prilmilono Adi. *Op.cit*, p. 71-91.

situation if it occurs unexpectedly under the control of the power of the parties in the agreement.²⁴ The following table shows the similarities and differences between the Hardship principle Principle and the Force Majeure Principle:

Table 1.
Similarities and Differences Between The Hardship Principle Principle and The Force Majeure Principle

No	Similarities	<i>Hardship principle Principle</i>	<i>Force Majeure Principle</i>
1. There are circumstances that prevent the obligation to carry out obligations to one of the parties; 2. The situation was completely unexpected by the parties and occurred after the agreement was closed; 3. This situation is not the fault of either party.			
	Difference	<i>Hardship principle Principle</i>	<i>Force Majeure Principle</i>
1.	Legal Basis	It is not yet regulated in the Criminal Code. But it has been regulated in the Draft Bill on Contracts (ELIPS) and Article 6.2.2 of the UPICC.	Article 1244, 1245, 1444, 1445 of the Civil Code
2.	Cause	If the balance of the contract fundamentally changes either because the cost or value of its implementation has changed significantly, unreasonable losses can be caused to parties. It is meant to be a non-natural event, a disaster caused by a non-natural event, or a series of events, such as epidemics and disease outbreaks.	Occurs due to natural disasters, emergencies, and circumstances of force.
3.	Contract Negotiation	The parties can renegotiate the contract. The engagement is not deleted immediately.	The contract expires and cannot be renegotiated. Referring to 1381 of the Criminal Code, force majeure is one of the reasons for the annulment of an engagement.
4.	Systematics and substances placement	The systematic sequence is contained in chapter VI on implementation. The emphasis is still on the context of the implementation of achievements. Even though there are obstacles, achievements can be implemented based on considerations of the proportionality of rights and obligations.	The systematic order is in chapter VII on non-performance (non-performance). The emphasis on force majeure lies in non-performance or non-fulfillment of achievements due to contract termination.

²⁴ Herman, *et.al.* *Op.cit.*, p. 23

5.	Dispute Resolution	Alternative choice between out of court (renegotiation of the parties) and court	Generally comes down to court
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To be able to find out whether the government's relationship to the Covid-19 pandemic is included in force majeure or not, it is necessary to distinguish between the actions agreed in the agreement, can the work be done at home, for example, an agreement in making a design, or an agreement to build a house. Based on the first example, the government's policy of carrying out social restrictions outside the home to combat the Covid-19 pandemic cannot interfere with implementations in meeting objectives since the work can be done at home, and the results can be achieved sent via electronic media. There is force majeure. Whereas in the second example, government policies can hinder performance, proving that the debtor is in a temporary (temporary) force majeure position or in a problematic situation (hardship principle).²⁵

The hardship principle principle in Indonesia's positive legal order has not been regulated in a regulation. The hardship principle principle is practically applied in a clause agreement included in settlement of cases related to hardship principle, more equating it with the provisions applicable in the force majeure principle, whether intentional or unintentional. Suppose an imbalance in a contract is fundamentally detrimental to one of the parties required to pay for the performance. In the Court, in giving a decision based on the provisions of positive Indonesian law, basically still equating the hardship principle principle with force majeure, this is due to impracticability. In this condition, there is no fault from the parties due to the events that occurred. If the incident occurs theoretically, the debtor can still perform his obligations in the form of achievements. However, it will result in great sacrifices in terms of costs, time, and other sacrifices. It makes it possible for the agreement to be implemented. However, it becomes impractical if it is carried out by force.

An agreement that is legally based on Article 1388 of the Civil Code is a law for the parties who have jointly agreed to it. The agreement made cannot be withdrawn unless both parties have agreed to terminate it or have been determined in the legislation. The agreement that has been agreed must be based on the good faith of the parties. The hardship principle principle can be an alternative solution in overcoming legal problems that have implications for social, economic, and political problems as a domino effect resulting from government policies issued during the Covid-19 pandemic.

If we look at the differences and similarities between the principles of force majeure and hardship principle, from the perspective of a commercial contract, the hardship principle principle is more flexible and can accommodate solutions for resolving disputes that occur. It is indicated by the significant role of the parties in renegotiating the agreement to resolve problems outside the court to avoid a prolonged dispute. If this dispute resolution fails, the parties can ask the judge to reconsider the agreement's renegotiation and / or decide the end of the agreement. The purpose of this renegotiation is to regain the balanced

²⁵ Nugraha. R, *et.al.*, "Analisis Pandemi Corona Virus Disease 2019 sebagai Alasan Keadaan Memaksa (Force Majeure) Menurut Hukum Perdata di Indonesia," *Jurnal Lex Generalis* 2, no. 3 (2021), 917-930, DOI : <https://doi.org/10.52103/jlg.v2i3.382>

rights and obligations of the parties and the fulfillment of the principles of good faith and cooperation by the parties in the agreement.²⁶

Along with changes in conditions in the world, such as an economic crisis or a pandemic that causes fundamental changes in circumstances, we need laws that can adapt and are flexible in responding to these changes. The hardship principle principle can be used as an "escape clause" to solve these problem.²⁷

3.2 Legal Impact of the Covid-19 Pandemic on the Agreement.

The rapid spread of Covid-19 has resulted in people's daily activities being disrupted and hampered, especially business activities being delayed due to uncertain conditions. The delay in an operation impacts the economic and financial conditions of a company, resulting in difficulties in fulfilling the rights of workers or laborers. It raises the question, does Covid-19 qualify as a non-natural disaster? Referring to the World Health Organization (WHO), which has determined that Covid-19 is a pandemic. Likewise, through Presidential Decree Number 12 of 2020, the Government of Indonesia concerning the Designation of Covid-19 as a National Disaster.

Mahfud MD's statement, quoted by Mochamad Januar Rizki, stated that Covid-19 as a non-natural disaster could not be directly used as a justification for canceling the agreement on the grounds of force majeure. Presidential Decree 12 of 2020 as a basis for canceling civil contracts, especially business contracts, is a mistake. There is a provision that force majeure can be used as a reason to cancel a contract in the contract law.²⁸ A large amount of budget that has been spent to deal with the Covid-19 pandemic should be considered a special force majeure. Various regulations and contract standards have not included Covid-19 as a force majeure event in the clause.²⁹

The interpretation and application of force majeure clauses during a pandemic such as Covid-19 is up to the courts, and generally, courts examine the entire contract. The same is done to ascertain how the contract performance is deemed impossible. The fact that the obligations that a party should have incurred have become heavy or expensive will not only attract the application of the force majeure clause. Therefore, the party seeking remedies under this clause must demonstrate that the only reason why it failed to honor its obligations was due to the Covid-19 pandemic.³⁰

Some companies that cut off work relationships during the Covid-19 pandemic often use force majeure reasons, even though the company is still producing as usual. The important thing that is a condition for terminating the company's employment relationship

²⁶ Luh Nila Winarni, "Asas Itikad Baik sebagai Upaya Perlindungan Konsumen dalam Perjanjian Pembiayaan". *DiH : Jurnal Ilmu Hukum* 11, no. 21 (2015), 1-12, DOI : <https://doi.org/10.30996/dih.v11i21>.

²⁷ Agus Yudho Hernoko, *Op.cit*, p. 287

²⁸ Mahfud MD in Mochamad Januar Rizki, "Penjelasan Prof Mahfud Soal Force Majeure Akibat Pandemi Corona". <https://www.hukumonline.com/berita/baca/lt5ea11ca6a5956/penjelasan-profmahfud-soal-i-force-majeure-i-akibat-pandemi-corona?page=2>, accessed on August 28, 2021.

²⁹ Seng Hansen, "Does the COVID-19 Outbreak Constitute a Force Majeure Event ? A Pandemic Impact on Construction Contracts". *Journal of the Civil Engineering* 6, no. 2 (2020), 201-214. DOI : <https://doi.org/10.22146/jcef.54997>

³⁰ Saurabh Sood., "COVID-19 As a Force Majeure in Corporate Transactions," *Purakala (UGC Care Journal)* 31, no. 34 (2020), 17-26. DOI : <https://doi.org/10.2139/ssrn.3577701>.

to workers is that the company has experienced a decline or loss for 2 years. Meanwhile, the current Covid-19 pandemic has not reached or is considered 2 (two) years.³¹

Covid-19 can be interpreted as force majeure under the doctrine of "clause rebus sic stantibus (things thus standing)", which means the parties can terminate or cancel the contract if there is a fundamental change to the circumstances surrounding it. . Therefore, proving the Covid-19 disaster as a force majeure on a contract will depend on the disaster having a fundamental influence on the implementation of the contract and its clauses. However, due to the Covid-19 pandemic, some companies cannot operate optimally, so it should be forgiven if the party unable to carry out their obligations has evidence in court that Covid-19 is a force majeure. There is a direct causal relationship between Covid-19 and COVID-19 19 by non-fulfillment of these obligations. However, it is difficult to use Covid-19 as a pretext for a force majeure claim in the absence of government policies that create obstacles to business operations since it will be difficult to determine precisely what point Covid-19 can be categorized as force majeure.

It is important to view the statement of Covid-19 as the reason for using the force majeure clause in the context of the principle of justice for those involved in the contract. The termination of the obligation must be balanced with the fulfillment of the rights in the agreement. For example, the demand for construction services is slow but cannot demand the payment as stipulated in the previous agreement.

If Covid-19 is declared as force majeure, it has implications for the agreement made by the parties. Neither party is responsible for losses, fines, or interest due to obstructions, commonly known as default. Such default is when the parties fail to comply with obligations as specified by the contract between the creditor and the debtor.³² According to Refly Harun quoted by Setyo Aji Harjanto, the Covid-19 pandemic cannot be used to cancel the agreement because the pandemic can be anticipated for its spread and its arrival is not sudden. If an earthquake, tsunami, or another natural disaster cannot be anticipated, its arrival is due to natural events. Therefore, the Covid 19 pandemic cannot be interpreted as force majeure because companies are still operating.³³

Natural causes of force majeure are circumstances caused by natural events that cannot be predicted or avoided by anyone, such as floods, landslides, earthquakes, storms, volcanic eruptions, and so forth. Force majeure due to an emergency, which is a forced situation caused by an unnatural situation or condition, special circumstances that are immediate and short-lived, without being predictable in advance, such as war, blockade, strikes, epidemics, terrorism, explosions, mass riots, including the damage to an instrument that causes the non-fulfillment of an engagement.³⁴

³¹ Imas Novita Juaningsih, "Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia. *Adalah : Buletin Hukum dan Keadilan* 4, no. 1 (2020), 189-196. DOI : <https://doi.org/10.15408/adalah.v4i1.15764>

³² Refly Harun in Sri Mustikasari M Saleh, Abdul Qahar, and Zainuddin, "Wanprestasi in The Construction Service Agreement in The General Working and Spatial," *Meraja Journal* 3, no. 2 (2020), 207-218. DOI : <https://doi.org/10.33080/mrj.v3i2.113>

³³ Setyo Aji Harjanto, "Pandemi COVID-19 Bukan Force Majeure, Simak Penjelasan Pakar Hukum-Kabar24 Bisnis.Com," <https://kabar24.bisnis.com/read/20200415/15/1227419/pandemi-covid-19-bukan-force-majeure-simak-penjelasan-pakar-hukum>, accessed on August 28, 2021.

³⁴ Daryl John Rasuh, "Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 dan Pasal 1245 Kitab Undang-Undang Hukum Perdata," *Jurnal Lex Privatum* 4, no. 2 (2016), 173-180. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/issue/view/1266>

To determine Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19), followed by Minister of Health Regulation Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19) which includes school and office holidays, restrictions on religious activities, restrictions on public places or facilities, restrictions on socio-cultural activities, restrictions on transportation modes, and restrictions on other activities related to defense and security aspects including forced or not, then we must look at casuistically to the subjective condition of the debtor, and the object agreed in the contract.

Suppose it has been proven that the government's closure of areas, social restrictions, and restrictions on transportation routes directly prevents the debtor in question from fulfilling his achievements, either in an agreement whose object is to surrender something or do something. In that case, the debtor concerned can be declared to be in relative compulsion or a state of relative compulsion. Difficult (hardship principle) whose legal consequences do not cancel the agreement but only suspend the implementation of the fulfillment of achievements, provided that:

- a) The agreement is suspended;
- b) The debtor must again fulfill the accomplishments if the government regulation, in this case, has been revoked.
- c) The debtor must immediately apply for renegotiation to the creditor. If the debtor does not submit a request for renegotiation (keep silent), or the creditor has asked for clarification regarding the late fulfillment of achievements, but the debtor does not respond, then the debtor is considered capable of carrying out the fulfillment of achievements;
- d) If the renegotiation does not reach an agreement within a reasonable period, the parties can submit it to the Court;
- e) If it is proven that there is hardship principle, the Court may:
 - 1) Terminating the contract on a fixed date and time;
 - 2) Change the contract by restoring the balance of the contract.

In an agreement to do something, if the agreed action no longer has benefits for the creditor, then the debtor is in an absolute (permanent) state of coercion whose legal consequences are:

- a) The agreement is void;
- b) The debtor cannot be declared negligent so that compensation cannot be claimed;
- c) Creditors cannot demand fulfillment of achievements;
- d) The creditor cannot demand the cancellation of the agreement;
- e) The risk does not pass to the debtor.

In the author's opinion, with the rise of the Covid-19 debate whether it is the reason for force majeure or hardship principle, this cannot be separated from the theory that the Covid-19 situation can be a reason to reject the *pacta sunt servanda* principle, namely the validity of the agreement as law for the parties who made it. The reason for covid-19 as force majeure or hardship principle, theoretically in the laws and regulations in Indonesia, has never been defined explicitly, so this has become an endless debate and gives rise to different points of view. In the view of legal theory, the two principles can be an option and a means of reviewing the agreement to avoid more significant risks and losses.

According to the author, the essence of an agreement must begin on the principle of the parties' good faith, which is the essential factor in dispute resolution, especially in the conditions of the COVID-19 pandemic. The principle of good faith is regulated in Article 1320 paragraph (3) of the Civil Code, explaining that every agreement must be carried out in good faith. This principle of good faith must be applied during the implementation of the contract (contractuele phase) but also at the pre-contract (pre-contractuele), contract-making, and post-contract (post-contractuele) stages. The application of the good faith principle must be applied at every stage of the contract. It is what causes the principle of good faith to be very important in contract law.

In the principle of good faith, there are differences of opinion among legal experts. According to Subekti³⁵ and Ismijati Jenie³⁶ said that good faith is a value of honesty and being careful, while Agus Yudha Hernoko³⁷ says good faith is a psychological and ethical element. The psychological element is an action by the law, and the ethical element is related to the value of honesty and respect for promises.

The existence of different interpretations and opinions regarding the principle of good faith on having one thing in common is an attitude of honesty from the parties who make the contract. This honest attitude is a major factor in renegotiating an agreement. As a result, the problem caused by the agreement is determined, so we can see that performance has not been achieved because the party who should perform his obligations has been unwilling or unable to do so.

4. CONCLUSION

Companies that terminate employment should renegotiate by delaying work or known as the hardship principle. In principle, Indonesia adheres to a positivist legal system influenced by civil law, which does not recognize the hardship principle principle in the agreement. The occurrence of a change in circumstances is always resolved using the force majeure principle. Using the force majeure principle causes workers to be unable to carry out their obligations, namely doing work. Based on the freedom of contract, the hardship principle principle clause can continue to carry out the agreement for workers affected by COVID-19. Basically, in resolving the legal consequences caused by the Covid-19 pandemic, honesty from the parties is needed. This principle is known as good faith. It greatly determines the condition of the Covid-19 pandemic in the termination of employment by the company so that the parties can renegotiate their work agreement.

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