

Implications of the Covid-19 Pandemi as Forcing Circumstances (Overmacht) in Credit Agreements

Haadii Arrosyiid*¹, Ferry Irawan Febriansyah²

¹(Universitas Muhammadiyah Ponorogo, Jl. Budi Utomo No.10, East Java, Indonesia)

*hadiarosyiid@gmail.com

Received: 2022-October-15

Rev. Req: 2022-November-29

Accepted: 2022-December-14



xx.xxxx/ijls.2022.13

How to cite this paper: Arrosyiid, H. & Febriansyah, F. I. (2022). Implications of the Covid-19 Pandemi as Forcing Circumstances (Overmacht) in Credit Agreements. *International Journal of Law and Society (IJLS)*, 1(3), 152-165. <https://doi.org/xx.xxxx/ijls.2022.13>

This is an Open Access article distributed under the terms of the Creative Commons Attribution 4.0 International license (<https://creativecommons.org/licenses/by/4.0/>)

ABSTRACT: *This study discusses whether the Covid-19 pandemic can be classified as a force majeure (overmatch) in a credit agreement. This study uses a normative juridical method by conducting a literature study on legal materials obtained from laws, literature, and other books related to this writing. From the results of the research that has been done, the policies implemented during the Covid-19 pandemic could have gone better. This is marked by the continued decline in the community's economy, so the achievements in the agreements still need to be fulfilled. Many parties, one of which is a debtor in a credit agreement, have failed to pay by using force majeure (overmatch) to avoid responsibility for compensation. The Covid-19 pandemic can indeed be classified as a force majeure (overmacht) as long as the debtor can prove the reasons he stated to the creditor in several ways, namely 1) An unexpected event occurred, 2) An event that occurred beyond his control/fault, and 3) some events prevent the debtor from fulfilling his achievements.*

Penelitian ini mempunyai tujuan untuk membahas apakah pandemi Covid-19 dapat digolongkan kedalam keadaan memaksa (Overmacht) dalam perjanjian kredit. Penelitian ini menggunakan metode yuridis normatif, yaitu dengan melakukan studi pustaka terhadap bahan-bahan hukum yang didapat dari Undang-Undang, literatur, serta buku-buku lainnya yang berkaitan dengan penulisan ini. Dari hasil penelitian yang telah dilakukan, bahwa kebijakan-kebijakan yang diberlakukan selama pandemi Covid-19 ini belum berjalan dengan baik. Hal ini ditandai dengan masih menurunnya perekonomian masyarakat sehingga prestasi-prestasi dalam perjanjian yang dilakukann menjadi tidak terpenuhi. Banyak pihak salah satunya adalah debitur dalam perjanjiann kredit yang mengalami kegagalan bayar dengan menggukan alasan keadaan memaksa (Overmacht) agar terhindar dari tanggung jawab untuk ganti rugi. Pandemi Covid-19 ini memang dapat digolongkan sebagai keadaan memaksa

(Overmacht) asalkan debitur mampu membuktikan alasan yang dinyatakannya kepada kreditur melalui beberapa hal, yaitu 1) Terjadi suatu peristiwa yang tidak disangka-sangka akan terjadi, 2) Peristiwa yang terjadi diluar kuasanya/kesalahannya, dan 3) Terdapat peristiwa yang menghalangi debitur untuk memenuhi prestasinya.

Keywords: *Covid-19 Pandemic, Force Majeure, Credit Agreement.*

I. INTRODUCTION

In December 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 inflammation of the lungs in humans. This event was first known to originate from Wuhan, China. To be precise, it was successfully identified in early January 2020 and designated as a new species of the Coronavirus disease family (Yamali & Putri, 2020). This new disease from the Coronavirus species is called SARS-COV2, where this virus can cause Coronavirus disease 2019 (Covid-19). This virus can spread through liquid splashes due to coughing or sneezing, which can result in death for infected people. Furthermore, on March 11 2020, the World Health Organization/WHO determined the spread of Covid-19 to become a global pandemic because its space had penetrated various countries in the world (Pinasti, 2020).

The Covid-19 virus spread quickly, causing many new problems in all fields in every country, including Indonesia. The Indonesian government, in fighting the Covid-19 outbreak, which has been endemic for more than a year, has established various regulations. In selecting this regulation, policies are chosen through two channels: prevention policies and policies that regulate the economy. However, when these two policies are carried out together, the policies' results could be more effective. In addition, this policy also resulted in poor communication between central and regional governments, so the approach needed to be implemented correctly because they could not understand each other, and coordination between governments in implementing procedures did not go well. As a result, the goals of the policy that have been envisioned, namely breaking the chain of transmission of Covid-19 as well as in terms improving the economy, are not achieved, even the chaos that occurs due to the Covid-19 pandemic tends to get worse (Kurniawansyah, Amrullah, Salahuddin, Muslim, & Nurhidayati, 2020).

The crisis due to the Covid-19 pandemic co-occurred in various sectors, especially in the economic sector, so the impact was felt for low-income groups prone to problems. This low financial group is workers/temporary daily labourers, street vendors, business groups that rely on crowds of visitors, workers who have been laid off, farmers, the poor, and so on. To overcome the economic crisis they are experiencing, it is common for these vulnerable economic groups to borrow funds from banks to restore their economies based on credit agreements (Amajihono, 2020).

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 exceeding it, thereby forming rights and obligations between the two parties. At the same

time, credit comes from the Roman term "Credere", which means trust. In short, credit is defined as a monetary instrument that allows individuals and industry bodies to get money and repay interest at a certain maturity (What is Credit and Financing?, SIKAPI, n.t.). Based on the understanding of the agreement and credit, it can be concluded that the credit agreement/contract is a contract of borrowing money by the debtor (customer) from the creditor (bank) and requires the customer to settle the debt within the maturity date accompanied by an additional payment of money (interest) as a profit from a bank (Pitaloka & Taupiqqurrahman, 2021).

In the process, credit agreements do not always run as smoothly as expected based on what has been agreed in the contract (Adam & Anwar, 2021). Sometimes one of the parties who agreed can also not fulfil 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 why debtors were unable to pay their loans promptly due to delays in their economic (business) movements, resulting in the debtor being considered in default. According to Abdulkadir Muhammad, the origin of the term Default comes from the Dutch language "Wanprestatie", which means a reluctance to carry out commitments regulated by the agreement he made as a form of participation that arises due to law. Refrain from making payments by not making payments or not wanting to pay and paying but not on time so that it can be classified as default.

In connection with the Covid-19 pandemic, the government stipulated Presidential Decree No. 12 of 2020 as a national non-natural disaster. Then, the Presidential Decree caused public speculation, especially for some debtors who gave 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 for an Overmacht as a pretext for committing default. This public speculation is based on the thoughts of the debtors regarding Covid-19, which is considered an extraordinary event that makes the debtor unable to fulfil his achievements. Then this resulted in many achievements from civil agreements needing to be fulfilled. In line with the status of the Covid-19 outbreak, which was determined to be a non-natural disaster, it was not immediately used as an excuse for overmatching in committing a default (Pemayun & Sudibya, 2018). This was confirmed by the Minister of the Coordinating Ministry for Politics, Law and Security 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 could not be used as a kind of Overmacht legitimacy in the reasons for not fulfilling the performance in all types of agreements including credit agreements.

Forced circumstances (overmacht) can be translated as forced circumstances resulting from unexpected events that result in the debtor being unable to carry out his achievements and the debtor being unable to account for them. In contrast, the debtor's condition is in good faith when an agreement is made. An event that causes Overmacht has legal consequences for all parties involved in the agreement, especially the debtor who defaults, and they are not required to pay compensation to the creditor if the default can be proven as a result of Overmacht. This provision has been explained by articles 1244, 1245, 1444 and 1445 of the Civil Code, although several of these articles it does not explicitly explain overmatch (Aji, Warka, & Kongres, 2021).

In connection with government policy through PP No. 21 of 2020 concerning PSBB, which aims to ask people to stay at home and work from home, of course, dramatically hinders the implementation of achievement in the agreement so that the current condition of the Covid-19 pandemic can be classified into Overmacht. Based on the description described above, the author feels the need to examine more deeply about What are the implications of the Covid-19 pandemic related to the emergence of a force majeure status (Overnacht) and What the Implications of a force majeure (overmatch) for debtors who default on their credit agreements due to the Covid-19 pandemic.

II. METHOD

In this writing, according to the title and issues discussed to obtain results that provide benefits, the type of research used is normative juridical law research. This type of research is legal research through a literature study of legal materials obtained from laws, literature, and other books related to this writing (Achmad & Dewata, 2017). This legal material is broken down into several types, namely, 1) Primary legal material, namely legal material consisting of laws and regulations, official treatises, court decisions, and official state documents. 2) Secondary legal material, namely legal material consisting of legal books or journals which contain basic principles (legal principles), views of legal experts, results of legal research, legal dictionaries and legal encyclopedias, and 3) Non-legal materials, namely research materials consisting of non-legal textbooks related to research to become supporters and legal supplementary materials (Marzuki, 2010);(Ikhwan, 2021).

III. RESULT AND DISCUSSION

Implications of the Covid-19 Pandemic Regarding the Emergence of Force Majeure Status (Overmacht)

The pandemic due to the Covid-19 virus in Indonesia has resulted in widespread violations of contracts, especially in the credit sector. Many customers who have entered into credit agreements for their business activities have suffered losses due to this pandemic, so they have been unable to realize their achievements, namely in paying their debts to the bank. Failure to achieve this could result from default or the development of an overmatch that he experienced. The two conditions that lead to the inability to fulfil these achievements have in common that they cannot carry out the achievements (contents of the agreement) that have been made. Meanwhile, the difference lies in the element of the cause, where in default, it is caused by negligence which is purely the fault of the defaulting party. In contrast, the Overmacht itself is caused by negligence resulting from an unexpected event and is not a bad faith of one of the parties to the agreement.

The Covid-19 pandemic has confronted various parties with increasingly complicated problems in the economic sector, where many people have hampered their business activities due to government policies implementing Large-Scale Social Restrictions (PSBB) to stop the Covid-19 pandemic. , this is based on Presidential Decree Number 11 of 2020 concerning establishing a health emergency. 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 the handling of 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 Large-Scale Social Restrictions (abbreviated as PSBB), which concerns the acceleration of processing control of Covid-19 to regulate areas that PSBB will implement, will temporarily close public/public places such as shopping centres, companies, schools and religious sites (Mardhia, Kautsari, Syaputra, Ramdhani, & Rasiardhi, 2020).

From the implementation of this PSBB, the economic sector will be most affected. This is indicated by the sudden stop of many business activities because the sellers are no longer busy with buyers. Business activities that are managed primarily individually experience disruption to their daily operational activities so that they become abnormal. As a result of debtors who can no longer carry out their everyday business activities, the economics of their business has decreased, so their income has also reduced. There is a very high possibility that business actors (debtors) who, when the implementation of the PSBB, experience obstacles in their income have a legal obligation in the form of paying a certain amount of money to creditors as the fulfilment of credit agreement achievements promptly before the implementation of the PSBB.

However, it should be for those whose economic income conditions are disrupted by the existence of the PSBB situation, which makes debtors suddenly become hindered from fulfilling their obligations promptly to creditors. This is because debtors who have already entered into credit agreements but, along with the outbreak of Covid-19 outbreak have become unable to pay off their credit debts due to the economic downturn. The inability to fulfil credit agreements during this pandemic is often based on the Overmacht clause. However, debtors who are affected but are still able to carry out their achievements must continue to carry out their obligations, namely paying their debts by adjusting to the formulation of the Covid-19 PSBB policies.

In the journal written by Sufiarina and Sri Wahyuni in 2020, the definition of overmatch, according to Salim HS, is a condition in which the debtor is unable to carry out his achievements to the creditor due to events that are beyond his control, for example, due to earthquakes, floods, lava and so on. Meanwhile, according to R. Setiawan, overmatch is a condition that occurs after the entry into force of an agreement, which becomes an obstacle for the debtor to fulfil his achievements, where the debtor cannot be blamed and is not obliged to bear the risk and cannot predict at the time the agreement was made (Sufiarina & Wahyuni, 2020).

An event that causes Overmacht has legal consequences for all parties involved in the agreement, especially the debtor who defaults, and they are not required to pay compensation to the creditor if the default can be proven as 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 explicitly explain overmatch. Article 1244 and Article 1245 both clarify that if the debtor cannot prove the non-fulfilment of performance (debt) due to

unforeseen circumstances, cannot be accounted for by him or the result of an improper time of execution of the agreement, and then he must be punished by reimbursing costs, losses and interest.

Apart from these two articles, the concept of overmatch is also contained in articles 1444 and 1445 of the Civil Code. Article 1444 states if the goods/items that are the subject of the agreement are destroyed so they cannot be used because they are lost beyond the fault of the debtor and before he neglects to deliver them until they are entirely untraceable whether the goods/items are still there or not, then even if the debtor is negligent does not offer goods/items that are not covered by unexpected events that have never happened before. The agreement will still be terminated when the goods/items have been destroyed in the hands of the creditor in the same way as if the thing had been handed over to him. On the other hand, the debtor must prove the unexpected event he conveyed, no matter how the goods/items were lost or destroyed. Whereas Article 1445 explains that if the goods/items owed are damaged and can no longer be traded or lost due to the fault of the debtor, then the debtor must give the rights and demands mentioned above to the creditor if he has the rights to the goods or the right to claim compensation.

According to M. Isnaeni in an online seminar organized by the Civil Law Teaching Association in collaboration with the Narotama University Surabaya on Wednesday, April 22, 2020, to find out a condition that is indeed considered as Overmacht, the debtor must prove his reasons for declaring Overmacht to the creditor through several things, namely, 1) An unexpected event will occur, 2) Events that occur beyond their control/error, and 3) some events prevent the debtor from fulfilling his achievements. These three provisions must be proven simultaneously/concurrently to fulfil the conditions for a situation declared as an Overmacht. Therefore, if the debtor can provide proof of these three conditions, he does not have to be responsible for taking risks.

In addition, one critical condition can be used to state the condition of an overmatch, namely when the event that orchestrates the overmatch has occurred before the debtor is declared negligent (default) to perform first. In the case of the Covid-19 pandemic, if before the enactment of the PSBB policy, the debtor had defaulted and continued, then the PSBB policy cannot be used as an excuse for overmatch for the inability to fulfil his achievements. The debtor remains in a state of default, and the debtor bears the risk of compensation due to an error or negligence on the part of the debtor himself.

Furthermore, if the failed agreement is due to an overmatch so that both parties have not fulfilled their obligations, then the settlement is simple. Each party can avoid accusations of breach of contract (default) by filing a countermeasure through an Exceptio Non-Adempti Contractus, meaning that if one party does not excel, then the other party also does not need to excel. This is what was conveyed by Riduan Syahrini. Namely, Exceptio Non-Adempti Contractus is a disclaimer stating that the debtor is not performing because the creditor himself is not functioning. Therefore, it is very unreasonable for one of the parties to claim that the other party did not achieve while he also did not carry out his achievements (Muslim & Hadiwinata, 2020).

In connection with the Covid-19 pandemic, the government determined Presidential Decree No. 12 of 2020 as a national non-natural disaster. Responding to the policy that stipulates 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 casualties, 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 description 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 non-natural (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 caused a lot of public speculation, especially for some debtors who gave 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 legal basis for Overmacht. This speculation is based on the thoughts of the debtors regarding Covid-19, which is considered an extraordinary event (overmatch) which makes the debtor unable to achieve his achievements. Then this resulted in many achievements from civil agreements needing to be fulfilled. In line with the status of the Covid-19 outbreak, which was determined to be a non-natural disaster, it was not immediately used as an excuse for overmatching in committing a default. This was confirmed by the Minister of the Coordinating Ministry for Politics, Law and Security 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 Overmacht legitimacy on the grounds does not fulfil the performance in the credit agreement.

Proof of overmatch by the debtor, based on the enactment of the PSBB policy during the Covid-19 pandemic, is more appropriate to do when a dispute has occurred. This is because it involves various problems that both parties must resolve. The reasons for overmatch must be proven by the debtor who stated it and must be able to convince creditors that their economy is really in trouble due to the Covid-19 pandemic, mainly due to the implementation of the PSBB. Bearing in mind, in the case of proving at court, there is the term *Notoire Feiten*, which is a term to state that a fact does not need to be verified again because the reality is generally known. Based on this, the Covid-19 pandemic and the PSBB policy are based on PP No. 21 of 2021 concerning Large-Scale Social Restrictions. They can already be classified as a *Notoire Feiten* situation because it occurs worldwide and is known by all parties.

Based on *Notoire Feiten*'s theory, PSBB due to Covid-19 can be classified as it because many people worldwide already know about it. However, suppose the debtor convinces the creditor that he is affected so that he can no longer fulfil his achievements. In that case, he must prove it personally in more detail and depth the conditions of the PSBB for his economy. The existence of *Notoire Feiten* caused by PSBB does not automatically apply to all debtors. Still, it only applies to specific debtors who experience personal problems and must prove these obstacles to be freed from default.

To be able to use the Covid-19 PSBB as an Overmacht, debtors must prove and convince creditors that the Covid-19 PSBB places them in a state of being unable to achieve their achievements. The debtor needs to prove Overmacht for him to be able to avoid obstacles in fulfilling his obligations and persuade creditors with evidence acceptable to creditors. In this case, Notoire Feiten only applies if something known to the public needs to be proven again. In this case, even though the people know the PSBB Covid-19 policy, debtors who have problems fulfilling their obligations due to enacting this policy must again prove it to the debtor. In the context of the implementation 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 condition that the debtor can provide evidence that there is indeed a force majeure. This means that the PSBB Covid-19 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 (achievement) (Robed & Priyanto, 2021).

Implications of Force Majeure (Overmacht) Due to the Covid-19 Pandemic for Debtors who default on their credit agreements

The credit agreement was initially developed to provide function of helping each other between the customer and the bank to achieve the goal of meeting economic needs both in the customer's business activities and in 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 Amendment to Law Number 7 of 1992 concerning Banking is an activity of providing money or bills based on a lending and borrowing agreement between a bank and another party which provides an obligation for the borrower to repay the debt after a certain period accompanied by interest.

Based on the understanding of credit in the Banking Law above, credit has a principle in which credit is an agreement (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 Indonesian Laws and Regulations. However, in a letter issued by Bank Indonesia No.03/1093/UPK/KPD on December 29, 1970, addressed to all foreign exchange banks at that time, in terms of granting credit, it had to be made through an agreement letter, so that over time the term agreement appeared. Credit and remains valid today.

In the credit agreement, the creditor may not ask for the money lent back before the expiration of the time limit specified in the contract (Article 1759 of the Civil Code). Conversely, a debtor who has received a loan must repay the loan with the same amount and terms within a predetermined time (Article 1763 of the Civil Code). However, even though the Civil Code does not explicitly regulate credit agreements, the elements of a credit agreement may not conflict with the principles set out in the Civil Code. This is also confirmed through Article 1319 of the Civil Code, which stipulates that all agreements, both agreements with a unique name and agreements without a particular word, must comply with 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, and this is as contained in Article 1338 paragraph (3) of the Civil Code, where an agreement must be carried out in good faith. This is intended to anticipate that if the deal is not carried out in good faith, which will result in default, it can result in legal issues between the two parties bound by the credit agreement. The emergence of a matter can be said as a default if it is necessary to understand that not all circumstances can be qualified into it. Under certain conditions, qualifications for states that do not fall into the scope of default are divided into the following, namely, 1) Overmacht (Forcing Circumstances), 2) Rechtsverwerking (apart from certain obligations as a result of one party freeing the other party from the said obligation) and 3) Non-Adimpleti Contractus (non-fulfilment of obligations because one of the parties also does not carry out the obligations that have been mutually agreed upon) (Asnawi, 2017).

Before starting credit agreement activities, both parties require thorough analysis in all aspects to prevent credit risk from arising. Providing credit is very helpful for the community to meet their needs. It's just that in providing credit, banks, as financial institutions, must be extra careful. Giving credit will have several relatively significant risks. For example, credit funds and lent interest cannot be returned. The credit agreement begins with an agreement between the beneficiary of the credit (the debtor) and the lender (the creditor) through an agreement form. The contract can be in the form of an oral agreement or a written agreement. The agreed credit agreement is, of course, a debt agreement involving various rights and obligations between the two parties that must be adequately fulfilled. However, in credit agreements, sometimes one of the parties has differing views as agreed upon at the beginning, one of which is due to compelling circumstances such as disease outbreaks and natural disasters.

Due to the spread of the Covid-19 virus, the Indonesian government has declared it a non-natural national disaster that causes a health emergency. Through Presidential Decree No. 11 of 2020 concerning the Establishment of a Health Emergency, the government has issued a stipulation on two matters: first, a public health emergency caused by the type of Covid-19 disease. Second, this condition creates an obligation to take steps in prevention efforts through regulations and legislation. By regulating the state of public emergency, the government then stipulated 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 procedures, including imposing Lockdown, Social Distancing, limiting the intensity of residents going in and out between regions, and the government asking people to stay at home even to work they are also encouraged to be from home. This was done by the government solely as a measure to deal with the Covid-19 outbreak so that its spread quickly subsided (Farokhah, Ubaidillah, & Yulianti, 2021).

According to Government Regulation no. 21 of 2020, PSBB is defined as the limit of activities of residents of areas where the area is suspected of being infected with a disease to prevent the possibility of disease transmission. This PSBB will be implemented during the most extended incubation period, 14 days. However, this also does not rule out the possibility that various legal products will be extended if there is still evidence of

the spread of Covid-19. In line with the designation of Covid-19 as a national disaster, many people have experienced a decrease in income, which has affected their businesses and then impacted the national economy.

Article 1 of the Minister of Health No. 9 of 2020 concerning PSBB is a prevention 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 (Hairi, 2020). Implementing the PSBB has also added to the difficulties for the business world. One of the difficulties experienced by the business world is the impact on the banking world, where many debtors experience financial difficulties as a result of which they cannot pay their credit. Inability or failure to pay will result in bad credit, which will have dire consequences for banks. The credit score in which congestion occurs will affect the condition or level of the soundness of the bank that handles it. A situation where a bank has experienced a problem in implementing its credit program. Namely, there are obstacles in lending in the form of a debtor's inability to pay his credit according to the maturity date, which includes the principal credit and the agreed interest, which can cause credit to be classified as a Non-Performing Loan (NPL).) or commonly referred to as problem loans.

The emergence of loan problems will later lead the bank to face the risk of a significant credit agreement due to the inability of the debtor to repay the credit. Problem loans themselves can be caused by various factors, including:

1. Internal weaknesses of the debtor, which include 1) There is bad faith on the part of the debtor, 2) There is a decline in the economy of the business, which results in a decrease in the debtor's ability to pay instalments and 3) The debtor's incompetence in running his business.
2. Weaknesses from the bank's internal factors, namely 1) There is bad faith on the part of bank employees, namely casually accepting credit from customers, 2) Incompetence of bank employees in managing to lend, and 3) Ineffectiveness of bank employees in managing the bank so that debtors have loopholes to commit an offence.
3. Factors from external banks, namely 1) 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 does not only arise from a contract. Still, it must also comply with the legal provisions of the relevant legal requirements of the agreement stipulated in Article 1320 of the Civil Code. Legal conditions must be addressed regardless of the deal's name or form. , where the agreement is reached only based on the principle of freedom of contract. Not much different from solving problems, it can be handed back to the debtor and creditor to solve it by the agreement that has been agreed upon. In principle, the obligation to carry out the deal's contents, including the credit agreement, is absolute. The agreement to be reached between the two parties leads to the emergence of a contract, which, as a legal relationship, also creates rights and obligations that the parties must carry out. Parties with legal obligations are called debtors, while parties with the right to sue are called creditors. If a debtor fails or does not carry out the duties previously agreed upon, the law stipulates that the debtor is in default.

In terms of fulfilling an achievement, of course, the implementation date has been determined from the start. This is what is used as a reference to determine whether the debtor has defaulted or not. If the agreed date has passed and the debtor has not fulfilled his obligations, it can be declared defaulted. However, in the context of the Covid-19 pandemic, those hindered from fulfilling their achievements can already be included in the delayed category due to Overmacht. This is based on experts' opinions who state the Covid-19 pandemic as a force majeure (Overmacht). Therefore, many parties use this pretext to delay or not carry out their obligations in the agreement so that the consequences that arise are expected to be borne jointly by all parties involved (Rasuh, 2016).

After the Covid-19 pandemic occurred, a credit agreement was caused by an overmatch, namely a situation where the debtor could not carry out his achievements due to unforeseen circumstances or events at the time the contract was made. This condition cannot be held accountable to the debtor because the debtor becomes unable to pay off his debt due to the pandemic outbreak. It becomes a pushover, and under normal circumstances, maybe not. In the absence of an epidemic, the events of the debtor and the reasons for force majeure have been regulated in Articles 1244 and 1245 of the Civil Code (Permatasari, 2021).

The Covid-19 pandemic can be used as an excuse for not fulfilling the agreement under the pretext of Overmacht. Still, not all deals that failed to be implemented during the pandemic can use the guise of Overmacht because the Covid-19 pandemic cannot be used for everyone as an excuse for Overmacht. Still, 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 concerning National Economic Stimulus as a countercyclical policy No. 11/POJK.03/2020 to encourage optimization of various banking intermediary functions, maintain the financial system stability and support economic growth amid the impact of the Covid-19 virus pandemic.

After the issuance of the POJK, debtors felt a little relieved and safe because there were benefits in favour of the debtors in the form of credit relaxation. As we all know, the issue of credit relaxation means providing concessions regarding credit/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 affected by the spread of Covid-19, including MSME debtors facing problem credit problems (bad debts). Settlement of problem loans/financing can be done in two ways: First, the rescue of problem loans through renegotiation between the bank as the creditor and the customer as the debtor. Second, repayment of non-performing loans is carried out through legal institutions such as the State Receivables Affairs Committee (PUPN) and the Director General of Receivables and Auctions and courts and can be through arbitration.

Credit rescue can be done in three ways. Namely, rescheduling, namely by changing several credit agreement clauses relating to the repayment schedule or credit terms, including changing the number of instalment payments. Second, reconditioning (changing

the terms) means changing some or all the agreement times without providing additional credit and non-conversion participation, and Third,, Rearrangement, namely by changing credit terms through extra credit or conversion. At the same time, the POJK 11/2020 policy emerged, which uses a rearrangement mechanism to save credit during a pandemic. However, this policy still creates problems for debtors because many customers complain to the bank because they are found to have still to pay monthly instalments. After all, they know there is relief from late instalment payments and a reduction in interest (Tjoanda, Hetharie, Pariela, & Sopamena, 2021).

IV. CONCLUSION

Covid-19 cannot be used as an excuse for overmatching for all debtors. Only specific debtors belonging to the low economic group, namely workers/temporary daily labourers, street vendors, business groups that rely 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 a fixed and fixed income, such as state civil institutions, members of the TNI, members of the police, or other debtors who have a fixed (capable) income, of course, cannot use the Covid-19 pandemic as an excuse for overmatch when problems occur in fulfilling achievements in the agreement.

The Covid-19 pandemic is an undeniable fact. Even if it is based on using a fictitious legal theory to enforce the law, everyone is assumed to know about it. They will still be subject to sanctions if they violate it by pretending they don't know and understand the rules. 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 debtor that due to the Covid-19 PSBB policy, he is experiencing problems in fulfilling the agreement (achievement) so that he cannot be prosecuted for compensation and fulfilment of its obligations.

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

V. REFERENCES

- [1] Achmad, Y., & Dewata, M. F. N. (2017). *Dualisme Penelitian Hukum Normatif & Empiris (Cetakan IV: Mei 2017)*. Yogyakarta: Pustaka Pelajar.
- [2] Adam, R., & Anwar, S. (2021). Kedudukan Tertanggung dalam Asuransi Jiwa Kredit.

Legal Standing: Jurnal Ilmu Hukum, 5(1), 84–94.

- [3] Aji, B. S., Warka, M., & Kongres, E. (2021). Penerapan Klausula Force Majeure Dalam Perjanjian Kredit Di Masa Pandemi Covid 19. *Jurnal Akrib Juara*, 6(1), 1–18.
- [4] Amajihono, K. D. (2020). Penundaan Pembayaran Angsuran Kredit Dampak Covid-2019 Di Indonesia. *Jurnal Education And Development*, 8(3), 144–144.
- [5] Asnawi, M. N. (2017). Perlindungan Hukum Kontrak Dalam Perspektif Hukum Kontrak Kontemporer. *Masalah-Masalah Hukum*, 46(1), 55–68.
- [6] Farokhah, L., Ubaidillah, Y., & Yulianti, R. A. (2021). Penyuluhan Disiplin Protokol Kesehatan Covid-19 Di Kelurahan Gandul Kecamatan Cinere Kota Depok. *Prosiding Seminar Nasional Pengabdian Masyarakat LPPM UMJ*, 1(1). <https://doi.org/https://jurnal.umj.ac.id/index.php/semnaskat/article/view/7970>
- [7] Hairi, P. J. (2020). Implikasi Hukum Pembatasan Sosial Berskala Besar Terkait Pencegahan Covid-19. *Info Singkat*, XI(7/I/Puslit/April/2020).
- [8] Ikhwan, A. (2021). *Metode Penelitian Dasar (Menenal Model Penelitian dan Sistematikanya)*. Tulungagung: STAI Muhammadiyah Tulungagung.
- [9] Kurniawansyah, H., Amrullah, A., Salahuddin, M., Muslim, M., & Nurhidayati, S. (2020). Konsep Kebijakan Strategis Dalam Menangani Eksternalitas Ekonomi dari Covid—19 Pada Masyarakat Rentan di Indonesia. *Indonesian Journal of Social Sciences and Humanities*, 1(2), 130–139.
- [10] Mardhia, D., Kautsari, N., Syaputra, L. I., Ramdhani, W., & Rasiardhi, C. O. (2020). Penerapan Protokol Kesehatan dan Dampak Covid-19 Terhadap Harga Komoditas Perikanan dan Aktivitas Penangkapan. *Indonesian Journal of Applied Science and Technology*, 1(2), 80–87.
- [11] Marzuki, P. M. (2010). *Penelitian Hukum*. Jakarta: Kencana Prenada.
- [12] Muslim, S., & Hadiwinata, K. (2020). Pandemic Covid-19 Dan Kontrak Bisnis Ditinjau Dari Perspektif Hukum Bisnis. *SENABISMA: Prosiding Seminar Nasional Bisnis Dan Manajemen*, 5(1), 69–78.
- [13] Pemayun, C. I. R. D., & Sudibya, K. P. (2018). Tanggung Jawab Penjamin Terhadap Debitur Yang Tidak Dapat Memenuhi Prestasi Kepada Kreditur. *Kertha Semaya : Journal Ilmu Hukum*, 1–14.
- [14] Permatasari, P. (2021). Klausul Force Majeure Akibat Covid-19 Dalam Perjanjian Kredit Bank. *Iblam Law Review*, 1(1), 18–38. <https://doi.org/https://doi.org/10.52249/ilr.v1i1.4>
- [15] Pinasti, F. D. A. (2020). Analisis Dampak Pandemi Corona Virus Terhadap Tingkat Kesadaran Masyarakat dalam Penerapan Protokol Kesehatan. *Wellness And Healthy Magazine*, 2(2), 237–249. <https://doi.org/https://doi.org/10.30604/well.022.82000107>
- [16] Pitaloka, R. D., & Taupiqqurrahman, T. (2021). Penundaan Pemenuhan Prestasi Pada Kontrak Bisnis Di Masa Pandemi Covid-19. *Kertha Semaya : Journal Ilmu Hukum*, 9(3),

458–469. <https://doi.org/https://doi.org/10.24843/KS.2021.v09.i03.p08>

- [17] Rasuh, D. J. (2016). Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 Dan Pasal 1245 Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, 4(2), 2. <https://doi.org/https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/11366>
- [18] Robed, G. O. S., & Priyanto, I. M. D. (2021). Covid-19 Sebagai Keadaan Memaksa (Force Majeure) Dalam Pemutusan Hubungan Kerja. *Kertha Wicara : Journal Ilmu Hukum*, 10(3), 230–240. <https://doi.org/https://doi.org/10.24843/KW.2021.v10.i03.p04>
- [19] Sufiarina, & Wahyuni, S. (2020). Force Majeure Dan Notoir Feiten Atas Kebijakan Psbb Covid-19. *Jurnal Hukum Sasana*, 6(1), 1–15. <https://doi.org/https://doi.org/10.31599/sasana.v6i1.209>
- [20] Tjoanda, M., Hetharie, Y., Pariela, M. V. G., & Sopamena, R. F. (2021). Covid-19 sebagai Bentuk Overmacht dan Akibat Hukumnya Terhadap Pelaksanaan Perjanjian Kredit. *SASI*, 27(1), 9.
- [21] Yamali, F. R., & Putri, R. N. (2020). Dampak Covid-19 Terhadap Ekonomi Indonesia. *Ekonomis: Journal of Economics and Business*, 4(2), 384–388. <https://doi.org/https://doi.org/10.33087/ekonomis.v4i2.179>