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## LAW & SOCIAL POLICY | RESEARCH ARTICLE

# Juridical Analysis of the Corona Outbreak as a Reason for Force Majeure in Leasing

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**Abstract:** Currently the world is shocked by an outbreak of a disease or virus that is very dangerous to humans and is a threat to global health. The name of the virus is Severe Acute Respiratory Syndrome Coronavirus 2 know as SARS-COV2 with the name Coronavirus Disease-2019 or COVID-19 or in Indonesia better known as Coronavirus. Coronavirus or corona virus was first discovered in China, to be precise in Hubei province, Wuhan city on December 8, 2019. Then on March 11, 2020 the World Health Organization declared COVID-19 a global pandemic after the virus began to spread to 114 countries. The spread of Covid-19 initially only exacerbated human health problems, but over time it cannot be denied that Covid-19 has also begun to affect the economic problems of a country. One of them is in the business world, in times like today the continuity of contracts and agreements has experienced some bottlenecks due to the pandemic. The existence of this condition can be used by the debtor as an excuse for renouncing a contract agreement that has been agreed upon with the creditor on the grounds of force or force majeure. Financial institutions engaged in the business world affected by the covid-19 outbreak are ADIRA Finance and BFI Finance.

**Keywords:** Covid-19; Force Majaure; Agreement;

## 1. INTRODUCTION

Currently the world is shocked by an outbreak of a disease or virus that is very dangerous for humans and is a threat to global health. The name of the virus is Coronavirus Disease-19 (COVID-19). (Hulzannah et al., 2021) Covid-19 was first discovered in China, precisely in Hubei province, Wuhan city on December 8 2019. Then on March 11 2020 the World Health Organization (WHO) declared Covid-19 a global pandemic after the virus began to spread to 114 countries. (Hadumaon Siagian, 2020)

In Indonesia itself, it was first known that there were positive patients affected by the corona virus on March 2, 2020, which was announced directly by the President of the Republic of Indonesia, Joko Widodo at the Jakarta Presidential Palace. Then on April 13, 2020, Presidential Decree of the Republic of Indonesia Number 12 of 2020 was issued concerning the Determination of the Non-Natural Disaster of the Spread of Coronavirus Disease-19 (COVID-19) as a National Disaster, hereinafter referred to as Keppres 12/2020. (Radjab & Fuady, 2021)

The spread of Covid-19 initially only worsened human health problems, but over time it cannot be denied that Covid-19 has also begun to affect the economic problems of a country. One of them is financing institutions engaged in the business world, at a time like now the continuity of contracts and agreements has experienced several bottlenecks due to the pandemic. Coupled with the government implementing Physical Distancing rules and PSBB (Large-Scale Social Restrictions), to reduce the rate of spread of Covid-19. (Anugrah et al., 2021; Wirawan et al., 2022) With this condition, it can be used by the debtor as an excuse to renege on a contract or agreement that has been mutually agreed upon with the creditor on the grounds of force or Rorce Majaure. (Riana Sari et al., 2020; Samudra & Mulada, 2022)

Force Majaure can be seen in Book III BW which is regulated in Article 1244 and Article 1245. The articles do not clearly regulate the definition of Rorce Majaure, (Risma & Zainuddin, 2021) but through the articles we can identify the elements of a situation when it can be categorized as Rorce Majaure (force majeure). Thus, with this outbreak, there are many agreements that are not implemented during a pandemic like today and many debtors who default or do not fulfill their obligations due to the impact of the Covid-19 outbreak.

## 2. Method

The research method used in this research is a type of qualitative research with an empirical method approach. Empirical method is research conducted by collecting field data as the main data source such as interviews and questionnaires. The population in this study is aimed at Leasing companies in Makassar, especially at BFI Finance Makassar branch and ADIRA Finance Makassar branch. Sampling is done by Purposive Sampling form, meaning that the sample is deliberately in accordance with the necessary sample requirements using primary data and secondary data, with field research techniques, then will be processed and analyzed to produce conclusions and then presented descriptively, in order to provide a clear understanding of the results of the research conducted by the author.

## 3. Research and Method

### 3.1. COVID-19 is a Condition Qualified as Force Majeure in Leasing

PT Adira Finance Makassar and PT BFI Finance Makassar, is one of the representative branch offices of PT Adira Finance and PT BFI Finance which has its head office in South Jakarta. PT Adira Finance and PT BFI Finance both carry out financing activities such as motorized vehicles and cars, both new and used. By means of consumers making payments on credit with the leasing company, (Hassan et al., 2021) in accordance with the agreed period at the time an agreement was made between the creditor and the debtor.

Coronavirus Disease 2019 has a huge impact on the Indonesian economy, so the government or the Financial Services Authority issued OJK Regulation (POJK) as a follow-up to OJK's authority in the implementation of Perppu No.1 of 2020 concerning State financial policy and Financial System Stability for Handling the Coronavirus Disease 2019 (COVID-19) Pandemic and/or in order to deal with threats that endanger the National Economy and/or Financial System Stability. (Das et al., 2022)

The rules made by POJK are Regulation of the Financial Services Authority of the Republic of Indonesia Number 48/POJK.03/2020 concerning Amendments to Regulation of the Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019, and Regulation of the Financial Services Authority of the Republic of Indonesia Number 14/POJK.05/2020 concerning Countercyclical Policies on the Impact of the Spread of Coronavirus Disease 2019 for Nonbank Financial Services Institutions.

Regulation of the Financial Services Authority of the Republic of Indonesia Number 14/POJK.05/2020 concerning Countercyclical Policies on the Impact of the Spread of Coronavirus Disease 2019 for Nonbank Financial Services Institutions, is a further provision for the nonbank financial industry in carrying out relaxation policies that were previously conveyed through a letter from the chief executive of the supervision of the nonbank financial industry to nonbank financial industry business actors. (Buana et al., 2020) The regulation contains provisions regarding the provision of financing restructuring for debtors affected by covid-19 with the following provisions:

1. Periodic submission time
2. Implementation of fit and proper assessment
3. Determination of asset quality in the form of financing and financing reconstruction.
4. Calculation of the solvency level of insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies.
5. Calculation of funding quality of pension funds that organize defined benefit pension programs.
6. Implementation of asset management provisions according to the age of the participant group for pension funds that organize defined benefit pension programs.

This regulation provides relief to debtors who experience default, as for companies that apply the rules issued by the Government of the Financial Services Authority No.14 / POJK.05 / 2020 are PT Adira Finance Makassar and PT BFI Finance Makassar. In the implementation of the agreement between the lessee and the lessor, it does not always go as desired, due to force majeure. Force Majeure

Regulated in Articles 1244 and 1245. The article does not clearly regulate what is meant by Force Majeure or force majeure but from the article we can draw the elements of what and when the event is said to be Force Majeure or Overmacht or force majeure. The elements are:

1. The event causing the Force Majeure must be "unexpected" by the parties.

2. The event cannot be accounted for by the party who must carry out the performance (debtor).
3. The event that causes the Force Majeure is beyond the fault of the debtor.
4. The event that causes the Force Majeure is beyond the fault of the parties.
5. There is no bad faith on the part of the debtor.

Based on the results of an interview with Romi as corporate manager of BFI Finance Makassar branch on Monday, February 22, 2020, he stated that "it can be qualified as Force Majeure or force majeure, where the covid-19 outbreak entered Indonesia without anyone knowing like a natural disaster and this outbreak is also an unexpected situation. However, in this case it cannot be used as a basis that one of the parties to the agreement does not carry out its obligations, especially to the debtor. (Younes et al., 2022)

Therefore, it is necessary for the debtor to prove that there is a direct causal relationship between the Covid-19 outbreak and the policies made by the government to tackle the covid-19 outbreak in Indonesia which results in or has an impact on the debtor's work so that the debtor cannot carry out his obligations in an agreement ". This statement is also in line with the opinions of MUH. Faizal Rulsi and Andi Ardiansyah as Collection staff at Adira Finance Makassar. MUH. Faizal Rulsi also stated that "covid-19 has a huge impact on the company. (Thato, 2020) The impact felt by the company is that consumers have many obstacles in terms of paying installments".

As for the handling of consumers, BFI Finance company refers to the government through the Financial Services Authority by making relief to consumers in the form of restructuring. As for the restructuring applied in the BFI Finance company to consumers, namely consumers are given relief for 6 months by restructuring, some without paying installments at all or some are combined. Meanwhile, Adira Finance provides leeway for the implementation of restructuring but still under the monitoring of the RCH supervisor and Head of Collection, as for the restructuring given, namely in the form of an extension of the suspension but those who receive the suspension are selected customers. The selected customers here are customers who are in arrears for 2 months due to the impact of covid-19. (Denison, 2021)

In terms of monitoring consumers affected by the covid-19 outbreak, BFI Finance does not monitor directly but the company monitors using data such as savings accounts, financial data and others. Meanwhile, Adira Finance directly monitors the consumer that whether it is true that the consumer is experiencing the impact of the covid-19 outbreak.

Based on news reported by the Ministry of Finance of the Republic of Indonesia on Wednesday, April 15, 2020, legal practitioner Ricardo Simajuntak argues that regardless of whether the parties to an agreement regulate the pandemic as Force Majeure, the provisions of Article 1245 KuHPerdata still apply and must be obeyed. Ricardo Simajuntak argues that in the context of the covid-19 pandemic, Force Majeure can be claimed because the parties cannot predict the pandemic and do not have the Contributory effect of this pandemic being an obstacle that occurs in general.

Another opinion, namely, Rahayu Ningsih Hoed argues that the Covid-19 pandemic is included as a force majeure depending on the definition of force majeure in the agreement. According to Rahayu Ningsih Hoed, the type of force majeure clause consists of 2 clauses, namely a non-exclusive clause where one party can claim force majeure as long as there are agreed conditions for the force majeure to take effect and an exclusive clause where force majeure is limited to the circumstances mentioned in the agreement. (Thato, 2020)

Mahfud MD also stated that Covid-19 has clearly become a non-natural disaster in Indonesia and the government has also issued Presidential Decree No.12 of 2020 which intends not to make Covid-19 a direct reason to cancel the contract. (Radjab & Fuady, 2021) However, renegotiation on the grounds of Force Majeure can be based on Article 1244 and Article 1245. (Kunarso & Sumaryanto, 2020) This opinion is also in line with Eddy OS who stated that the wisest step in dealing with Covid-19 related to the agreement is to renegotiate between the two parties so that there is no loss to only one party.

### **3.2. Legal Protection for Lessors for Non-Execution of Agreements Due to the Corona Outbreak**

In agreements, defaults often occur which are generally carried out by the lessee such as delaying rental payments, not paying fines for late rental payments, being unable to intentionally or unintentionally not pay overdue rent, losing goods and so on.

Before an agreement between the lessor, lessee and supplier has been reached, the parties have their respective rights and obligations. The lessor's obligation is to hand over money as the cost of goods purchased at the supplier, then for the lessor has the right to get a refund of the costs he has incurred and get a bunnga for his services from the costs he has incurred. And if the lessee cannot

pay the costs to the lessor, then the lessor can demand back the goods that have not been paid for by the lessee within the agreed time frame.

Article 1513 of the *Burgerlijk Wetboek* stipulates that the main obligation of the buyer is the payment of the purchase price at the time and place stipulated in the agreement. In terms of legal protection for the Lessor for the non-execution of the Agreement due to the Corona Outbreak based on the results of interviews with romi as Corporet Manager at the leasing company, namely BFI Finance and Muh. Faizal Rusli and Andi Ardiansyah as Collection Staff Adira Finance they said that "we use insurance". Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance, stipulates that, Insurance is an agreement between an insurance company and a policy holder which is the basis for the receipt of premiums by insurance companies in return for provide compensation to the insured or policy holder for loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event. Providing payments based on the death or life of the insured with benefits that have been determined and / or based on the results of fund management. The insurance business is carried out by:

- a. General Insurance Company, which is a company that provides risk coverage services that provide compensation for loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policy holder due to the occurrence of an uncertain event.
- b. Life Insurance Company, which is a company that provides services in risk management that provides payments to policyholders, insured, or other entitled parties in the event that the insured dies or remains alive, or other payments to policyholders, insured, or other entitled parties at a certain time stipulated in the agreement, the amount of which has been determined and / or based on the results of fund management.
- c. Reinsurance Company, a company that provides reinsurance services for risks faced by loss insurance companies, life insurance companies, guarantee companies, or other reinsurance companies.

Insurance Business, divided into three namely:

- a. Insurance Brokerage Company, which is a company that provides brokerage services in the closing of insurance or sharia insurance and handling the settlement of insurance compensation by acting for the interests of the insured.
- b. Reinsurance Brokerage Company, which is a company that provides brokerage services in the placement of reinsurance and handling of reinsurance compensation settlements by acting for the benefit of insurance companies, insurance companies and reinsurance companies.
- c. Insurance Loss Appraisal Company, which is a company that provides valuation services to the client and/or consulting services on the insured insurance object. (ojk.go.id).

In an interview conducted with Romi as Corporate Manager at BFI Finance Makassar branch, it was stated that legal protection for the company is that we use insurance, while the types of insurance we use are ALL RISK type insurance and TLO insurance. Meanwhile, interviews conducted with Muh. Faizal Rusli and Andi Ardiansyah as Collection staff at Adira Finance Makassar 2 stated that there are 3 types of insurance that we apply, namely TLO insurance, All Risk insurance and Combination insurance TLO (Total Loss Only).

TLO is an insurance that provides protection to cars from the risk of loss. TLO covers the risk of theft and damage if the estimated repair cost is equal to or exceeds 75% of the price of the vehicle shortly before the loss. All Risk Insurance, this type of insurance protects more thoroughly from various damages. This type of insurance also extends more comprehensive protection, the extension includes the possibility of natural disasters, car damage caused by riots or riots, to third party liability if the cause of the accident results in other drivers being injured. (Ramli et al., 2022)

Combination insurance is a combination of TLO insurance and All Risk insurance.

Covid-19 not only has an impact on the company but also has an impact on debtors or customers. Therefore, the researcher conducted a questionnaire to the debtor regarding the impact of covid-19 on his work.

**Tabel 1.** Data on debtors who are in arrears due to Covid-19

No	Jenis Pekerjaan	Presentasi	Frekuensi
1	Driver Online	33.33%	5
2	Local Driver	66.67%	10
Jumlah		100%	15

*Source: Primary data processed 2021*

Based on table.1 above shows that there are 15 respondents where there are 5 people or 33.33% Online Drivers and 10 people or 66.67% Regional Drivers.

**Tabel 2.** Data on debtors who are in arrears due to Covid-19

No	Kategori Jawaban	Presentasi	Frekuensi
1	January-July	26.67%	4
2	Juni-December	73.33%	11
Jumlah		100%	15

*Source: Primary data processed 2021*

Based on table.2, it shows that in 2020, to be precise, from January to July there were 4 or 26.67% of debtors who experienced arrears due to the Covid-19 outbreak and from June to December there were 11 or 73.33% of debtors who also experienced arrears due to the Covid-19 outbreak.

#### 4. Conclusions And Suggestions

Based on the results of the study, it can be concluded as follows; first, Covid-19 or Coronavirus Disease-19 can be qualified into Force Majeure, as for the relief given by the Lessor to the Lessee, namely BFI Finance Makassar branch, consumers are given relief for 6 months by restructuring, some without installment payments at all or some are combined, while Adira Finance provides leeway for restructuring implementers but still under the monitoring of RCH superiors and Head of Collection, as for the restructuring given in the form of extending the suspension to selected customers. The selected customers are customers who are delinquent for 2 months due to the impact of Covid-19. Second, in terms of protection for the Lessor for the non-execution of the agreement due to the Corona outbreak, based on the results of the interview, the leasing company uses what is called insurance. To all Leasing companies to provide information to all debtors or Lessees that the company applies what is called restructuring or policies provided by the company to debtors in accordance with the rules issued by the Financial Services Authority. And to Lessor and Lessee, the Covid-19 pandemic can be used as a way of negotiation between the two parties, so that there is no cancellation of the contract that has been made and agreed upon by the Lessee and Lessor.

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