

Implications of Force Majeure Conditions in the Power Purchase Agreement Carried out by PT PLN Persero in Connection with the Covid-19 Pandemic

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Abstract. Provisions for the establishment of a national disaster due to Covid-19 require residents to limit business activities and daily activities. Communities are required to carry out independent isolation and keep their distance to prevent the transmission of Covid-19. These activity restrictions are referred to as Large-Scale Social Restrictions (PSBB). This situation creates difficult economic conditions for PT PLN Persero as a state company so that it can cause PT PLN Persero to be unable to fulfill its rights and obligations regarding the electricity purchase agreement entered into between PT PLN Persero and private companies. The type of research used is sociological juridical research. The methodology used in this research is descriptive analytical method with an interdisciplinary approach. The results of the study show that difficult conditions due to Covid-19 can be categorized as a Force Majeure situation as stated in the electricity sale and purchase agreement between PT PLN Persero and a private company. Force Majeure or Force Majeure Conditions are interpreted in several articles in the Civil Code, where the concept of force majeure, Force Majeure KAHAR or Force Majeure (in this case called the Force Majeure Condition) is found in several articles, namely Article 1244 of the Civil Code.

Keywords: Agreement; Buy; Covid-19; Electricity; Sell.

1. Introduction

The spread of the Covid-19 disease outbreak has had an impact on all legal aspects, giving rise to implications in the form of causation in a legal action including agreements. The spread of the epidemic was controlled by regulations

made by the government so that in order to overcome the development of Covid-19 in Indonesia, the Government issued Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Determining the Handling of Corona Virus Disease 2019 (Covid-19) and Decisions President of the Republic of Indonesia Number 11 of 2020 concerning Stipulation of a Public Health Emergency for Corona Virus Disease 2019 (Covid-19).

This policy certainly raises several problems such as Large-Scale Social Restrictions and the Establishment of a Health Emergency which will have an impact on the cessation of all social life activities in society, including business activities. Moreover, with the issuance of Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning the Stipulation of Non-Natural Disaster of the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster, contract-based business activities have been hampered because some officials, business actors and experts stated that the determination Covid-19 as a national disaster is a Force Majeure.

The Force Majeure situation is a condition that cannot be predicted, thereby limiting the debtor in carrying out the achievements given. These events can be in the form of things that happen to the debtor himself (too subjective), for example he is seriously ill and is no longer able to do his job. Or the contract object is damaged or destroyed. In this case the debtor cannot be considered in a state of default and therefore cannot be sued to pay compensation, as long as the debtor is not in a state of bad faith. More specifically, in the Civil Code Articles 1244, 1245 and 1545 it is stated about Force Majeure.

After the outbreak of the pandemic, the loan agreement was associated with "forced circumstances", that is, with the condition that the debtor cannot fulfill his obligations due to unforeseen circumstances or events during the expiration of the contract, this situation cannot be responsible to the debtor, while the debtor is unable to pay his debts. If you are compliant and avoid contact with people during a pandemic, you may have a better chance of avoiding the effects of the outbreak. In the event that no disease outbreak occurs, the circumstances of the debtor and reasons for Force Majeure or force majeure have been regulated in Article 1244 and Article 1245 of the Civil Code.

A situation in which one of the parties to an agreement is unable to fulfill its commitments due to a wider imbalance of power. The term used to refer to Force Majeure/State of FORCE MAJEURE is state of coercion, although legal experts have translated this term to become state of coercion and also still use the terminology of Force Majeure.

The formulation of the problem in this study is about the juridical implications

of Force Majeure in the power purchase agreement by PT. PLN Persero during the Covid-19 pandemic? and how to resolve the occurrence of Force Majeure in the power purchase agreement by PT. PLN Persero during the Covid-19 pandemic? Based on the background and formulation of the problem above, research and studies were carried out, the results of which were set forth in the form of a thesis with the title "Implications of Force Majeure in the Power Purchase Agreement Carried out by PT PLN Persero in Connection with the Covid-19 Pandemic".

2. Research Methods

The type of research used is sociological juridical research. The methodology used in this research is descriptive analytical method with an interdisciplinary approach.

3. Results and Discussion

3.1. The juridical implications of Force Majeure in the power purchase agreement by PT. PLN Persero during the Covid-19 pandemic

Until now, Indonesian contract law still adheres to a civil law system based on rules inherited from the Dutch East Indies colonial government, behind which the very strong Dutch influence on Indonesian law can be seen in the strength of the inner pillars in relation to binding regulations between the municipality and the municipality. Rulers and their communities have their own separate communities. In addition, there is evidence that the relationship between Dutch and Indonesian law is a civil law book known as the *Burgerlijk Wetboek*, especially in Book II concerning engagements and more specifically regulated in Chapter II concerning agreements arising from agreements.

A contract establishes a private entity between the parties in which each party has the legal right to demand the implementation and compliance with the restrictions agreed upon by the other party voluntarily. Legal relations that are born through contact do not always carry out the aims and objectives, these conditions can occur as a result of default whether committed by creditors or debtors, coercion, mistakes, fraudulent acts, or coercive circumstances known as Force Majeure or known in Indonesian law as Force Majeure. The consequences that arise from this situation state that an agreement can be canceled and which is null and void.

Therefore, it is important to understand that the Force Majeure Event is a coercive situation, which allows the debtor to escape without paying his debts. The event of the Force Majeure event prevents the debtor from bearing the consequences and risks of the agreement, therefore the Force Majeure Event is

a deviation from the principle of law. According to the general principle, every negligence and negligence results in the perpetrator being obliged to compensate for losses and bear all risks due to negligence and negligence. However, if the implementation of the fulfillment of the agreement that causes losses occurs due to a Force Majeure Event, the debtor is released from bearing the losses that occur. This means that if the debtor does not carry out the agreement that causes losses from the creditor. Losses occur solely by circumstances or events beyond the ability of the debtor's calculations, then the said situation or event becomes a legal basis that releases the debtor from the obligation to compensate for losses. In other words, the debtor is free and free from the obligation to pay compensation, if he is in a state of FORCE MAJEURE which prevents the debtor from fulfilling his achievements. Conclusion

Force Majeure is a principle that is accepted in civil law. This means that a person or entity has too much power and control over another person or entity. Mochtar Kusumaatmadja is of the opinion that under certain circumstances, a party may sue for Force Majeure or Force Majeure as a reason for not fulfilling its contractual obligations due to the loss of the object or purpose of the agreement. This situation is aimed at physical and legal implementation, not just due to difficulties in carrying out obligations. In the event of a Force Majeure event, an indicator is needed as a benchmark to determine the force majeure so that the debtor's inability to carry out performance can be determined in a measurable manner.

- a. The change in a condition was not present at the time the agreement was formed;
- b. The change concerns a condition that is fundamental to the agreement;
- c. Such changes cannot be predicted in advance by the parties;
- d. The consequence of the change must be radical, thus changing the scope of the obligations that must be carried out according to the agreement;
- e. The use of this principle cannot be applied to restrictive agreements and also changes in circumstances due to violations committed by the party filing the claim.

Force Majeure or Force Majeure Conditions are interpreted in several Articles in the Criminal Code, where the concept of Force Majeure Conditions, or Force Majeure Conditions (in this case it is called the Force Majeure Condition) is found in several Articles namely Article 1244 of the Civil Code "If there is a reason for this, the debtor must be punished to replace costs, losses, interest, if he cannot prove that the matter was not carried out or the agreement was not

carried out at the right time, due to something unexpected, even if he cannot be accounted for, all of that even if there is no bad will on the part of the debtor". Article 1245 of the Criminal Code, "No costs, losses and interest must be reimbursed if due to coercive circumstances or due to an unintentional circumstance, the debtor is unable to provide or do something that is required,

3.2. Settlement attempt the occurrence of Force Majeure in the power purchase agreement by PT. PLN Persero during the Covid-19 pandemic

a. Verses About Akad / agreement

"O you who believe, fulfill the aqad-aqad. Cattle are lawful for you, except for those that will be recited to you. (That is so) by not making hunting lawful while you are performing Hajj. Verily, Allah sets laws according to what He wills." (qs: Al – Maidah verse 1)

b. Hadith About Akad

"There are three, if one of them is in a person, he is a hypocrite, even if he fasts and prays and claims to be a Muslim; when he says he lies, if he makes a promise he breaks it and when he is given a mandate he betrays" (Bukhari Hadith in the Book of Fiqh Sunah Sayyid Sabiq)

Efforts to resolve disputes over the occurrence of the KAHAR Situation are listed in the draft Power Purchase Agreement between PT PLN Persero and Private Companies. This is stated in article 19 concerning settlement of disputes while the situation of FORCE MAJEURE is stated in article 20 concerning Force Majeure Conditions.

c. Dispute Resolution Forum

Disputes that arise between the PARTIES in connection with this AGREEMENT, whether regarding the contents, interpretation, validity, implementation, or termination of this AGREEMENT, including disputes related to the calculation of the amount of payment, the occurrence of Force Majeure and other matters related to the implementation of the AGREEMENT that cannot be resolved by deliberation and consensus or amicably by the PARTIES, then the following will be resolved through a mutually agreed EXPERT. Expert fees are borne by the claimant PARTY. If the EXPERT decision cannot be accepted by both parties,

d. Dispute Resolution Procedure

A dispute is considered to have arisen, if one PARTY notifies the other PARTY in

writing regarding the matter in dispute. If within thirty (30) DAYS (or a longer period agreed by THE PARTIES) after the notification the PARTIES cannot reach an agreement to resolve the dispute by means of deliberation and consensus, then one of the PARTIES may submit the dispute to the Expert who agreed together. Expert fees are borne by the claimant PARTY. If the Expert's decision cannot be accepted by both parties, the PARTY,

e. Definition of Force Majeure

What is meant by "Force Majeure" in this AGREEMENT is a situation which is a direct result of an event that occurs beyond the control and/or ability of the PARTIES affected by the Force Majeure and not due to the negligence or fault of the PARTIES affected by the Force Majeure, which unexpected, irresponsible and coercive in nature and which results in the non-operation of part or all of the affected PARTY's facilities and/or which causes the affected PARTIES to fail or be late in carrying out their duties and obligations according to this AGREEMENT, including in it, but not limited to riots, riots, rebellions, explosions, strikes, wars declared or not, embargoes, blockades, lightning, floods, fires, earthquakes, natural disasters, Government actions in terms of Tax and Environment (related to granting permits, approvals, enactment of new laws and regulations, new interpretations or amendments to existing laws and regulations) which directly result in delays in implementation or non-implementation of part or all of the tasks or the obligations of the affected PARTY according to this AGREEMENT.

f. Procedure for Obtaining Recognition of Force Majeure.

When an event occurs categorized as a Force Majeure, then the PARTIES experiencing and/or affected by the Force Majeure must notify the other PARTIES verbally within 48 (forty eight) hours or at the first possible opportunity, and followed up in writing no later than 14 (fourteen) DAYS after the occurrence of the Force Majeure event or after it is known that the Force Majeure event occurred, accompanied by details of the incident, the estimated length of the Force Majeure Period and the consequences that have been and will be caused by providing follow-up/additional data as supporting evidence in the form of information from the competent authority and estimates or efforts that will be or have been made in order to resolve the Force Majeure.

g. Follow-up as a result of Force Majeure

After the Force Majeure Period ends, THE PARTIES are required to renegotiate the continuation of the AGREEMENT implementation, including, among others, redefining the schedule for the distribution and reception of ELECTRICITY, TOP calculations that occurred before the Force Majeure, as well as other important

and necessary matters for further implementation of the AGREEMENT.

4. Conclusion

Provisions for the establishment of a national disaster due to Covid-19 require residents to limit business activities and daily activities. Communities are required to carry out independent isolation and keep their distance to prevent the transmission of Covid-19. These activity restrictions are referred to as Large-Scale Social Restrictions (PSBB). This situation creates difficult economic conditions for PT PLN Persero as a state company so that it can cause PT PLN Persero to be unable to fulfill its rights and obligations regarding the electricity purchase agreement carried out between PT PLN Persero and private companies. Force Majeure or Force Majeure is interpreted in several articles in the Criminal Code, where the concept of force majeure, Force Majeure (in this case referred to as the Force Majeure Condition) is found in several articles, namely Article 1244 of the Civil Code.

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