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Implementation of Investment Agreements in Force Majeure Conditions Outside Natural Disaster Based on Private Regulation Books

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Abstract

The definition of *force majeure* as a situation that occurs beyond the control of the parties. However, there is a difference, namely in the first definition it is clearly stated that the failure to perform the agreement must cause a loss as a consequence of the failure to perform the agreement. The parties want to carry out the performance according to the contents of the agreement, but there are certain circumstances that make an agreement potentially unenforceable. These circumstances are commonly referred to as *force majeure* or *force majeure*. Circumstances where the parties or one of the parties cannot fulfill the performance not because of personal fault, but because of the nature that arises as a barrier to the fulfillment of achievements that result in certain sectors, especially the economy. Achievement can be interpreted as a debt that is an obligation that must be fulfilled by the debtor. Where the debtor is the one who performs an achievement in an engagement. Based on that, it can be understood that achievement is an obligation that must be carried out by a debtor arising from an engagement. Achievement can also be related to the fulfillment of obligations due to the consequences of the contract (contractual obligations). Thus, achievement can be interpreted to include contractual obligations and the fulfillment of legal obligations in general in the context of binding law. Achievement also not only includes obligations born due to contractual but also obligations born due to legislation. The interpretation of achievements like this is closely related to the legal system of ties that exist in the *Civil Law* legal system where ties are born and sourced from ties and legislation. The parties want to carry out the performance according to the contents of the agreement, but there are certain circumstances that make an agreement potentially unenforceable. These circumstances are commonly referred to as *force majeure* or *force majeure*. A situation where the parties or one of the parties cannot fulfill the performance not because of personal fault, but because of the nature that arises as a barrier to the fulfillment of achievements that result in certain sectors, especially the economy. So that this situation raises a situation for both parties, both the state of not being able to carry out the achievement and the state of not accepting the obligation of achievement from the other party which can make a loss for the party who will accept the obligation of the achievement, as long as these things for obstacles to carrying out achievements are true also have a legal basis and can be proven in reality, then there are no things that can make someone held accountable, but after the situation is gone, the party who is obliged to excel must carry out his performance, because in fact the achievement is a debt that must be settled with the obligations agreed upon by the parties.

Keywords: Force Majeure, Private Regulations, Agreements

1. Introduction

The definition of force majeure in the Civil Code states that force majeure is "a situation where the debtor is prevented from giving something or doing something or doing something that is prohibited in the agreement". This understanding is then adapted to the terminology used, namely forced circumstances. Forced circumstances are defined as "events beyond the control of one party". According to Panggabean (2008) Effect where delaying or causing the implementation of a party's obligations in the agreement is impossible and after it arises, the party cannot avoid or overcome the incident.

Based on Article 1338 of the Civil Code, every agreement must comply with the principle of good faith in its implementation, because it is binding in nature as a law. Exceptions to this provision are found in the provisions governing force majeure, namely in Article 1244 and Article 1245 of the Civil Code. The Civil Code legal system does not introduce the principle of *rebus sic stantibus* in the realm of contract law but rather emphasizes the aspect of force majeure (Panggabean, 2008).

Even though the parties want to carry out the achievements by the contents of the agreement, certain circumstances make an agreement potentially impossible to carry out. These circumstances are commonly referred to as force majeure or coercive circumstances. Circumstances in which the parties or one of the parties are unable to fulfill their achievements are not due to personal mistakes, but because of the nature that arises as a barrier to the fulfillment of achievements which results in certain sectors, especially the economy (Rasuh and John, 2016).

According to Wulandari and Ajeng (2016), Force Majeure is a condition or event that occurs beyond human capabilities and cannot be avoided by the majority of the affected areas, so an activity or agreement that is carried out cannot run according to the contents of the agreement agreed upon by the parties. Force majeure usually refers to natural conditions, such as natural disasters, epidemics, wars, and so on.

Achievements must be achieved in the agreement according to this principle, but some circumstances make the agreement unenforceable. Therefore, it is necessary to have legal provisions that require that this matter be resolved based on the existing elements to reach a force majeure situation which results in the agreement not being carried out properly, because there are reasons that cannot be controlled by humans or beyond the capabilities of man. Determination of certain circumstances, such as the determination of national disasters, both natural and non-natural, can be used as a basis for determining force majeure in an agreement. The good faith of one of the parties is fundamental to the agreement. (Kaya and Aris, 2020) The impact of a force majeure determination will result in a new law for the parties, and cannot be said to be a default in the agreement previously agreed upon by the parties.

Various findings were generated from other research that discussed related issues such as Andi Risma's research, Zainuddin (2021) with the research title "Interpretation of the Covid-19 Pandemic as a Reason for Force Majeure which Resulted in the Cancellation of the Agreement" in this study it was explained that the Covid-19 Pandemic that occurred had a very broad impact in various aspects such as social, political, economic, and so on. The economic impact that has occurred is felt by all groups of people ranging from large companies to micro, small, and medium enterprises (MSMEs). In this study, it was also said that the Covid-19 pandemic was designated as a non-natural national disaster as the basis for a Force Majeure which had implications for the cancellation of the agreement that occurred.

Furthermore, research from Bambang Eko Muljono (2020) entitled "The Legitimacy of Force Majeure in Agreements in the Era of the Covid-19 Pandemic" the findings of this study are that force majeure situation that occurs to debtors who are truly in a state of coercion, do not apply to all debtor. Where the impact that is visible from the existence of force majeure can be the reason for the release of the debtor's obligations. From what has been described above, of course, this is the background for the author to discuss further in his dissertation by choosing the title: "Implementation of Investment Agreements Under Conditions. **Force Majeure Outside of Natural Disasters Based on the Civil Code**".

2. Research Method

The research method used in this research is qualitative with a descriptive approach. According to Ari Kunto (2006), qualitative research has clear and detailed elements from the start, systematic research steps using samples whose research results are applied to the population, having hypotheses if needed, having a clear design with research steps and the expected results require the collection of data that can be represented and the existence of data analysis that is carried out after all the data has been collected.

Sources of data used in this research come from literature studies in the form of a number of facts obtained by studying books, articles, documents, laws and regulations, reports, etc., which are related to the problem under study.

3. Results and Discussion

3.1. *How is the Implementation of Investment Agreements in Force Majeure Conditions Outside of Natural Disasters Based on the Civil Code*

Based on Syafrinaldi, Talib, and Admiral (2014), In general, public awareness of the law is something that cannot be separated from the Government's efforts to uphold the law (law enforcement). To realize the growth and development of public awareness of the law, it is necessary to make positive and proactive efforts. The agreement that has been born between the parties requires the fulfillment of achievements by each party, the achievement is something that must be carried out with the obligatory category, this obligation can give something, and not do or carry out something.

If an agreement cannot or is not fulfilled by one of the parties due to the negligence of one of the parties, it obliges one of the parties to compensate for losses arising from the negligence that has been committed by one of the negligent parties. Wan achievement is a condition where the debtor does not fulfill his promise or does not fulfill it as he should and all of that can be blamed on him. Default is the implementation of obligations that are not timely or done improperly. So that it creates a necessity for the debtor to provide or pay compensation (*schadevergoeding*), or with a default by one party, the other party can demand cancellation of the agreement.

Force majeure is a situation that occurs after an agreement is made that prevents the debtor from fulfilling his performance. In this case, the debtor cannot be blamed and does not have to bear the risk, and cannot suspect the occurrence of something like that at the time the agreement was made. Force majeure due to these unexpected events can be due to the occurrence of something beyond the debtor's control, in which case this condition can be used as an excuse to be released from the obligation to pay compensation (Suadi, 2018).

There are also expert opinions regarding force majeure, including the following:

- a. According to Subekti, force majeure is an excuse to be released from the obligation to pay compensation.
- b. According to Abdulkadir Muhammad, force majeure is a condition where the debtor cannot fulfill his achievements due to an unexpected event that the debtor cannot predict will occur. when making speeches.
- c. According to Setiawan, force majeure is a condition that occurs after an agreement is made which prevents the debtor from fulfilling his achievements, in which the debtor cannot be blamed and does not have to bear the risk, and cannot predict when the agreement is made. Because of all of that before the debtor was negligent to fulfill his achievements when these circumstances arise (Simanjuntak, 2017).

The existence of a force majeure does not necessarily serve as an excuse for the debtor to protect himself from reasons of force majeure because he just wants to run away from their responsibilities, then there must be several conditions so that this does not happen. Purwahid Patrik stated that there were 3 conditions for the situation to take effect *force majeure*, that is:

- 1) There must be obstacles to fulfilling its obligations;
- 2) This obstacle occurred not because of the debtor's fault;
- 3) Not caused by circumstances that are at risk to the debtor.

Meanwhile, according to R. Subekti, the conditions for a situation called force majeure are as follows:

- 1) The situation itself is beyond the control of the debtor and forces;

The situation must be a condition that cannot be known at the time the agreement is made, at least the risk is not borne by the debtor.

In the Civil Code, the term force majeure is not found, it does not even explain what is called a force majeure or unexpected event, but the term is withdrawn from the provisions in the Civil Code which regulate compensation, risks for unilateral contracts in forced circumstances or part of special contracts and of course drawn from the conclusions of legal theories regarding force majeure, doctrine and jurisprudence (Suadi, 2018).

Regarding the matters referred to by the experts above, the authors do not agree, because what the legal experts said above is only related to circumstances that make debtors escape from the trap of default, so debtors are not eligible to be held accountable in the legal realm through lawsuits against the debtor himself has committed an act of default.

These circumstances can be misused by a delinquent debtor who from the beginning has no good faith in him to carry out an agreement so that the delinquent debtor freely uses a related condition beyond his ability to impose on him in a condition force majeure.

Based on the matters above, the author has a very different opinion from the legal experts above, where the conditions are *majeure* inherent and can immediately protect the debtor from not being able to be held accountable for achievement and obligations to pay interest for non-performance as follows:

1. A force majeure situation attaches to the debtor in a real way (provable and legally enforceable)
2. Force majeure circumstances regarding the implementation of achievements by the debtor have legal certainty ending
3. Legal certainty for creditors to receive back performance obligations from actual debtors under force majeure conditions

The author's opinion above is to provide legal certainty for both parties who are bound in an agreement that raises the implementation of achievements as an obligation.

1. A force majeure situation attaches to the debtor in a real way (provable and legally enforceable)

In a state of force *Majeure-natural* disasters, debtors cannot carry out their achievements or there are obstacles beyond their ability to carry out performance obligations. These obstacles can be recognized by the public with the existence of regulations issued by the government in the presence of a pandemic that endangers the health of the wider community, with the existence of government regulations that have legal force and legal consequences, so that every community must comply with the conditions that have been enforced by pandemic conditions as a non-natural disaster category.

About this government decree, a pandemic situation shall apply as a non-natural disaster category, the legal consequences of the government's determination whether, indeed, a situation has automatically occurred force majeure for debtor parties who wish to carry out achievements hindered by this situation. Can this situation immediately be used as a justification or is there a follow-up legal effort to declare this situation force majeure for all debtors?

Why is this situation not immediately used by debtors as a justification for not carrying out achievements by debtors as a condition of force majeure? The debtors must prove clearly in advance and have legal force, that it is true that in a non-natural disaster force majeure condition, is it sufficient only for non-natural disaster events that are experienced and known by the wider community? Of course, this is very contrary to legal certainty and good faith if only immediately. The life of the nation in the Republic of Indonesia has firmly adopted and acknowledged its existencetrias politics where it is well understood that there is a division of power and/or authority within the state in Indonesia. These powers are related to one another. Where the tritrialitics consists of three divisions of power, where there are executive powers, legislative powers, and judicial powers. The

judiciary has an important role in supervising the implementation of the Constitution, laws, and laws in force in the Republic of Indonesia, regarding all legal issues that place legal certainty and legal determination of a person and/or legal entity that is equated with an insider. The legal position is the authority of the judiciary.

There is a situation where a person and/or debtor is unable to carry out the performance as an obligation in an agreement under circumstances forcing *Majeure* to have legal certainty regarding the situation, it is mandatory for the person and/or the debtor to take legal steps to obtain legal certainty that has the permanent force and has the power of proof before the law by submitting an application that is true in a force majeure situation due to a non-natural disaster so that due to an application that gives birth to a legal product from a judicial institution in the form of a stipulation on the said application has legal certainty for the creditor.

This situation has dispelled doubts from creditors regarding the debtor's acknowledgment under the circumstances of forced *Majeure-natural* disaster. So that the creditor has been able to judge clearly by the existence of the determination of a debtor in a force majeure situation from the district court has had good faith in carrying out what was agreed upon, and does not necessarily declare himself in a force majeure situation without legal certainty.

So that with this stipulation the debtor has given legal certainty to the creditor not to take legal action against a default lawsuit which makes the creditor have to spend money to find the correct circumstances in an event and the legal situation of the debtor. So that it is proper and proper for the debtor to be said to have good faith in the existence of further legal remedies by the debtor for non-natural disaster situations. Then what about the application submitted by the debtor for a pandemic situation which is categorized as a non-natural disaster in the district court, in examining the evidence carried out by the judge on the application it is not proven that the debtor is not in a bad condition. *force majeure* non-natural disasters due to a pandemic, so that judicial products through district courts in the form of self-determination by the debtor cannot declare and give legal force over the circumstances declared to the creditor in a force majeure situation.

Against the rejection by the district court at the request of the debtor to determine his condition *force majeure*, and there is concern that in this condition the creditor will take advantage of efforts to sue for default so that the debtor's good name is tarnished, which so far has been a debtor in good faith, the legal steps that can be taken by the debtor are by filing legal remedies in the form of a request for postponement of debt payment obligations to the commercial court which is in state court. So that even if there are circumstances that make the debtor unable to carry out the performance as it should and on time to the creditor, the postponement of debt payment obligations that have been determined by the commercial court has provided legal certainty and legal force both to the creditor and to the debtor who is in a state of good faith in carrying out what contracted in an agreement.

2. Force majeure circumstances regarding the implementation of achievements by the debtor have legal certainty ending

The aim is to carry out further legal efforts for non-natural disaster situations by the government which is categories *force majeure* for debtors who are affected by this situation through a district court decision on a request from the debtor, it is legal certainty for creditors when a debtor is said to be still in a force majeure situation. Of course, the certainty of when the force majeure condition will end is attached to the debtor based on what has been determined by the judge through his decision.

So that the creditor does not wonder when the debtor can be held accountable for the implementation of an agreement, and when the creditor can receive achievements from the debtor what has been promised by the debtor in an agreement. Determination of conditions forces *Majeure from* the district court is the benchmark and benchmark for creditors until when they cannot take achievements and/or interest from the implementation of an agreement.

The determination that has been given by the district court to the debtor that it is true under the circumstances of *force majeure* every beneficial to the debtor, where the debtor has attached a condition as a debtor with good

intentions and avoids the debtor from paying interest that must be obtained by the creditor for his delay in carrying out achievements.

Likewise, if the debtor takes legal action to postpone the obligation to pay debts in a commercial court, and the debtor has determined that there is a legal delay in the eyes of the law and has legal force, the debtor cannot carry out the performance and delays it based on a decision from the commercial court which is a legal certainty for the debtor, he is not in a state of default.

This situation prevents the debtor from being sued through a district court by the creditor in a state of default, and this situation also states firmly to the creditor that he is a debtor with good intentions in a non-natural disaster.

3. Legal certainty for creditors to receive back performance obligations from actual debtors under force majeure conditions

Regarding the determination that the debtor has against himself based on the application of the determination of force majeure to the district court which has been determined by the judge through a decision that has permanent legal force, that he is stated in a force majeure condition provides legal certainty when the creditor can again accept the obligations of the debtor in carrying out the achievements based on what was agreed.

This is based on the determination that the debtor has, this determination proves that there is nothing else that is an obstacle to the debtor from carrying out achievements other than circumstances beyond his capabilities which become an obstacle in carrying out achievements based on an agreement, and this proves that the debtor has good intentions in carrying out achievements. And can properly complete what has been agreed in an agreement between the creditor and the debtor, so that what was promised by the debtor becomes an achievement for the debtor and is a possible thing to carry out.

3.2. What are the Legal Consequences of Implementing Investment Agreements in Force Majeure Conditions Outside of Natural Disasters Based on the Civil Code

Agreement in Article 1313 of the Indonesian Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. An agreement is 1. An act, 2. Between at least two people (so it can be more than two people), the act creates an agreement between the two parties who promise. The term agreement is a translation of the word *overeenkomst* (Dutch) or *Contract* (English). The findings from Salim's research (2013) Agreement is one of the sources of engagement, in which the agreement will be said to be valid if it fulfills the conditions as stipulated in Article 1320 of the Civil Code.

According to civil law science, the notion of an engagement is a relationship in the field of assets between two or more people where one party is entitled to something and the other party is obliged to something. So it can be concluded that the engagement is a legal relationship, a legal relationship arises because of a legal event which can be in the form of an act, event, or situation (Adonara, 2014).

Legally in Article 1321 of the Civil Code, it is determined that "There is no valid agreement if the agreement was given due to an oversight (*dwelling*), or obtained by coercion (*dwang*) or fraud (*bedrog*)". Article 1325 of the Civil Code, it is clearly stated that coercion results in the cancellation of an agreement. So, in addition to having an agreement as one of the terms of the agreement according to Article 1320 of the Civil Code, the reasons for the agreement must also be according to law. This is based on the thought that when agreeing, both parties to the agreement should have free will to bind themselves. The free will of the parties is usually reflected in the agreement. Usually, this statement is stated in the premise of the agreement which contains that each party mutually agrees on the articles written in the agreement (Adonara, 2014).

So a contract is an agreement between two or more people that creates an obligation to do certain things. A contract thus has the following elements: competent parties, subject matter agreed upon, and reciprocal obligations. According to Meliala (2011: 92), The main feature of the contract is that it is a writing that contains the agreement

of the parties, complete with terms and conditions, and functions as evidence regarding the existence of a set of obligations. The application of the principle of consensual according to Indonesian contract law confirms the existence of the principle of freedom of contract. Without the agreement of one of the parties agreeing, without agreeing, the agreement made can be canceled. People cannot be forced to agree. An agreement given by force is a contradiction in terminus. The existence of coercion indicates that there is no agreement that the other party may do is to give him a choice, namely to agree to be bound by the agreement in question,

Freedom of contract, until now, remains an important principle in various legal systems. The principle of freedom of contract in the system of civil *law and* common law was born and developed in line with the growth of philosophical schools which emphasize the spirit of individualism and free markets. In the nineteenth century, freedom of contract was highly valued by philosophers, economists, legal scholars, and courts. Freedom of contract dominates the theory of contract law (Khairandy, 2011).

The essence of contract law issues is more focused on the realization of freedom of contract. The court also prioritizes freedom of contract rather than the values of justice in its decisions. the natural nature of individuals and social beings aims to realize social justice, meaning that justice belongs to every individual in society. Social justice is comprehensive justice that applies to all Indonesian people. According to Thamrin, there is no discrimination or harm to one of the many parties involved. And it does not involve social status, religion, race, custom, skin color or the diversity that exists in Indonesia, which means black is still black and white is still white, right is still right, and wrong is still wrong. Arrangements through legislation also have a tendency towards freedom of contract which tends to be unlimited freedom of contract. The existence of the principle of freedom of contract cannot be separated from the influence of various schools of liberal philosophy, politics, and economics that developed in the nineteenth century. In the field of developing economies, the Laissez fair school pioneered by Adam Smith emphasizes the principle of non-intervention by the government in economic activities and the operation of markets (Khairandy, 2009: 234).

According to Adonara (2014: 4) Engagement is a legal relationship in the field of assets between two or more people where one party is entitled to something and the other party is obliged to something. The legal relationship in these assets is a legal consequence, a legal consequence of an agreement, or another legal event that gives rise to an agreement.

From this formulation, it can be seen that the engagement is in the field of the law of property, also in the field of family law, in the field of inheritance law, and the field of personal law. According to civil law science, the notion of an engagement is a relationship in the field of assets between two or more people where one party is entitled to something and the other party is obliged to something. So it can be concluded that the engagement is a legal relationship, a legal relationship arises because of a legal event which can be in the form of an act, event, or situation.

Law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects, by including some rules about what to do. Norms are deliberative human products and actions. Laws containing general rules serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and in relations with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules creates legal certainty (Marzuki, 2008).

Legal goals that are close to reareality legal and legal benefits. It can be stated that "*summum ius, summa injuria, summa lex, summa crux*" which means that harsh laws can injure unless justice can help them, thus even though justice is not the sole purpose of the law, the most substantive purpose of the law is justice. Certainty contains two meanings, namely, first, the existence of general rules makes individuals know what actions may or may not be carried out, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what is permissible. charged or carried out by the State against individuals (Syahrani, 1999).

Legal certainty is embodied by law with its nature which only makes a general rule of law. Quoting Ali (2002: 82-83) The general nature of legal rules proves that law does not aim to bring about justice or benefit, but solely for certainty. Certainty is a matter (state) that is certain, conditions or provisions (Kansil, Palandeng, et al, 2009: 385). The law must be certain and fair. Certainly, as a guideline for behavior and justice because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. According to him, certainty and justice are not just moral demands but factually characterize law. A law that is uncertain and does not want to be just is not just a bad law but is not a law at all. Law without certainty value will lose meaning because it can no longer be used as a guideline for behavior for everyone. *Ibi jus incertum, ibi jus nullum*(where no legal certainty law is upheld by law enforcement agencies entrusted with the task of this must guarantee "legal certainty" for the sake of upholding order and justice in people's lives. legal uncertainty will cause chaos in people's lives and will do as they please and take the law into their own hands. Such circumstances make life in an atmosphere of social disorganization or social chaos (Harahap, 2002). The problem of legal certainty about the implementation of the law cannot be completely separated from human behavior.

Legal certainty does not follow the principle of "pushing a button" (automatic subsumption), but something quite complicated, which has a lot to do with factors outside the law itself. Certainty from the existence of the regulation itself or the certainty of the regulation (*Sicherheit des Rechts*). A conception of social justice must be seen as the first instance, the standard by which the distributive aspects of the basic structure of society are judged. Such a conception must determine how to place rights and obligations within the basic institutions of society, and how to determine the appropriate distribution of the various benefits and burdens of social cooperation.

For this reason, it can be said emphatically that the parties have rights in an agreement made in a cooperation contract that requires each party to carry out achievements, this is bound in an agreement referred to in the agreement itself. against conditions force *majeure*determined by the government in conditions of non-natural disasters as referred to in the COVID-19 Pandemic. The Government of Indonesia has declared the Covid-19 pandemic a national disaster through Presidential Decree No. 12 of 2020 concerning the Stipulation of Non-natural Disasters of the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster.

In determining by the government that the non-natural disaster Covid-19 is a non-natural disaster this does not necessarily apply automatically to the parties bound in an agreement releasing their obligations in carrying out achievements, as a form of good faith the party that has the obligation to carry out achievement to the other party proves himself right in the situation *force majeure* by submitting an application to the District Court so that he is declared in a force majeure situation by providing evidence of his condition that he cannot carry out his performance obligations in the non-natural disaster condition Covid-19 with evidence that can support that the condition is true, that the government's determination through Presidential Decree No. 12 of 2020 concerning Stipulation of Non-natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster is not an excuse that can justify the debtor being able to relinquish his obligations in carrying out achievements, but only confirms that the debtor is currently in a non-disaster situation. -natural.

Whether this non-natural disaster makes the debtor unable to perform is what the debtor must prove through a request for conditions force *Majeure in* the District Court so that the panel of judges can assess the evidence submitted by the debtor regarding matters related to his obligations so that the District Court can issue a Force Majeure Stipulation on the debtor in a state of non-natural disaster conditions that have been determined by the government for the covid pandemic -19.

In addition, the debtor can also submit a Postponement of Debt Payment Obligations (PKPU), so the debtor can still manage his assets and continue his business to be able to make efforts to repay his creditors. (Sanjaya, 2014). Provisions regarding Suspension of Debt Payment Obligations (PKPU) are regulated in Chapter Three Article 222 to Article 294. These provisions explain that the existence of PKPU is an offer of debt payment for debtors to creditors to either pay part or all of their debts. Therefore PKPU has a different purpose than bankruptcy. Before being regulated in Law no. 37 of 2004, PKPU is called Deferred Payment.

This is as stipulated in title 2 Article 212 to Article 279 of the Bankruptcy Regulations (Faillissementsverordening Staatsblad of 1905 Number 217 junction Staatsblad. 1906 Number 348. Then a Government Regulation was issued instead of Law No. 1 of 1998 Concerning Amendments to the Bankruptcy Law, which was later stipulated to become Law No. 4 of 1998. The delay in payment is intended to enable a debtor to continue as a going concern of his company, even though there are payment difficulties, and to avoid bankruptcy (Sanjaya, 2014: 58).

By continuing the continuity of the company's business, the debtor can be expected to be able to continue his business so that he can pay off his obligations to creditors after some time. PKPU can also be interpreted as a relief given to debtors so they can delay payment of their debts. With the intention that the debtor can have the hope that in a relatively short time, he will earn and earn income to be able to pay off his debts. According to Kartini Mulyadi, the meaning of PKPU is allowing debtors to restructure their debts, which includes paying all debts or part of their debts to concurrent creditors.

If PKPU is implemented properly, the debtor will be able to continue his business and avoid bankruptcy. The payment plan (composition plan) can then be implemented, including in the event of a restructuring. So PKPU in question is a kind of moratorium. Providing opportunities for debtors to restructure their debts, which may include paying all or part of the debt to concurrent creditors. Giving this opportunity is a right that belongs to the debtor and his submission can be accompanied by a peace plan for paying off his debts. Regarding the implementation that has been carried out by the debtor, it is appropriate for the debtor to be said to have good faith in the force majeure conditions that occurred in the non-natural disaster conditions of the Covid-19 pandemic to carry out all his achievements to creditors.

4. Conclusion

Against force majeure conditions, both natural disasters and non-natural disasters in the agreement, it should be carried out in good faith, so that each party has legal certainty for what has been agreed in the agreement. Proof of good faith can be made by applying a force majeure determination through the District Court and/or an application for Suspension of Debt Payment Obligations through the Commercial Court.

1. One of the principles in carrying out the agreement is good faith, good faith is proven by the parties by following existing laws and regulations in proving the party that achieves to the other party as a form of good faith in the implementation of achievements in force majeure conditions due to non-nature by applying a force majeure determination by a party that is unable to carry out the achievement, or by submitting a Suspension of Debt Payment Obligations if the force majeure condition does not significantly affect the party obligated to carry out the performance, this is a must so that the parties have legal certainty in acting and/or an implementation that obliges one party to perform an achievement to another party, thus avoiding the parties who are obliged to carry out achievements with suspicion of bad faith in carrying out achievements by delaying and/or not carrying out achievements.
2. The legal consequences of implementing the performance obligations of the parties in good faith in an agreement with force majeure conditions provide legal certainty to both creditors and debtors, where this good faith proves that the party obliged to carry out the performance is correct in conditions that are unable to carry out achievements and/or conditions force majeure evidenced by the existence of a decision to determine force majeure from the application of the party obliged to carry out the performance to another party and/or the existence of a decision to postpone the obligation to pay debts which has permanent legal force, thereby proving that the party who is obliged to carry out the performance is correct in force majeure conditions.

5. Suggestion

1. Implementation of achievements in an agreement should be carried out in good faith, not based on the existence of an opportunity in a certain situation and/or in a force majeure situation that has been determined by the government in a statutory determination, this has violated the agreement agreed upon by the parties. The party who is obliged to carry out the achievement should not immediately and immediately declare himself that he is in a force majeure condition only based on a determination from

the government as a result of a non-natural disaster without the party who is obliged to be able to prove it legally and concretely.

2. The parties who declare themselves in a force majeure condition due to a non-natural disaster must prove by obtaining a decision from the court at their application that it is true that in a force majeure condition and/or through a decision to postpone debt payment obligations, this is very important to emphasize that the parties obliged to carry out achievements in conditions of non-natural disasters that have been determined by the government to be unable to carry out their achievements and provide legal certainty to the parties as to whether the party having the obligation for achievement is unable to carry out their achievements in non-natural disasters in good faith, as evidenced by a Court Decision which has permanent legal force.

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