



Proceeding of 2nd Malikussaleh Internasional
Conference on Law, Legal Studies and Social Science
(MICoLLS) 2022

Coffee Export Sales Contract Postponement Due To Covid-19
Pandemic In Indonesia As A Force Majeure (Research Study On
The Ketiara Coffee Traders Cooperative, Central Aceh Regency)

Yuni Mahbengi, Sulaiman, Nasrianti

Coffee Export Sales Contract Postponement Due To Covid-19 Pandemic In Indonesia As A Force Majeure (Research Study On The Ketiara Coffee Traders Cooperative, Central Aceh Regency)

Yuni Mahbengi¹, Sulaiman², Nasrianti³

^{1,2,3}Faculty of Law, Universitas Malikussaleh

*Correspondent Author, e-mail: Yuni.170510014@mhs.unimal.ac.id

Abstract

This study aims to find out and explain how the legal arrangements for the Covid-19 pandemic can be called Force Majeur, explain who is the party responsible for the risks due to contract delay during the Covid-19 pandemic, and to find out how the legal efforts of the parties against delays coffee export sales contracts due to the Covid-19 pandemic. In response to the emergence of the Covid-19 disease outbreak in Indonesia, the government issued a legal policy, namely the issuance of Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for Covid-19 as a National Disaster, as a legal basis for the business world to be maintained, because in the midst of the spreading Covid-19 disease, the effect appears in entering into a civil agreement contract, where automatically the contract agreement can be changed or canceled because the work was not completed or late. This also happened to one of the coffee factories in Central Aceh Regency, namely the Ketiara Coffee Traders Cooperative (KOPEPI), which was unable to fulfill its achievements due to events beyond its capabilities in the gayo coffee export sales agreement with Royal Coffee. This research uses empirical juridical research, normative juridical approach, and is descriptive. The results of the study show that: this Covid-19 pandemic is a relative or temporary force majeure, because this Covid-19 pandemic only occurs temporarily or only for a certain period. In this case the Covid-19 pandemic cannot be directly used as a reason for the cancellation of an agreement/contract that has been agreed upon by reason of a force majeure event. In order to protect the interests of the parties and ensure that KOPEPI Ketiara continues to fulfill its obligations, renegotiation of the agreement is carried out and while still observing the principle of consensualism, the principle of freedom of contract, the principle of good faith and the principle of proportionality in renegotiation as an effort as well as the best middle way for the parties.

Keywords

Delays, Sales Contracts, Covid-19.

DOI : 10.29103/micolls.v2i.75

1. Introduction

Indonesia is a state of law, this is explicitly stated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) which states, "The State of Indonesia is a State of Law". As a state of law, of course, all actions in the life of the nation and state must be regulated by law. Law as a social institution has an important role in society to create peace, justice and security as well as regulate all human actions that are prohibited or ordered. Thus, every act that is done by each individual regarding the rights and obligations in general or privately gets legal protection. One of the laws that apply in Indonesia is civil law. One

example of a legal act regulated under civil law is an agreement. In order to meet their needs and improve their welfare, humans often take legal actions between one individual and another.¹ In Indonesia and even throughout the world, the economy has experienced a decline in the level of the economy due to the spread of the Covid-19 disease outbreak that suddenly appeared in early 2020 whose appearance hampered all human activities to carry out activities outside the home (work).

The Large-Scale Social Restrictions (PSBB) policy has disrupted business activities. It is estimated that many companies or people cannot keep their promises. For example, sending goods to a country that is implementing a lockdown. In other words, it is likely that many contracts, agreements, business transactions or activities have been delayed due to the spread of the Covid-19 outbreak. One of the coffee-producing areas in Indonesia is Central Aceh Regency which is one of the largest coffee-producing areas in Indonesia. Along with the increase in coffee production in Central Aceh, the export and import of coffee is growing. The number of coffee traders selling coffee abroad is increasing. The problem that arises is when a company is bound by an agreement with another party. A company has the potential to violate the contract, because the work is not completed or late. In the business environment, this can also happen to one of the coffee factories in Central Aceh Regency, namely the Ketiara Coffee Traders Cooperative (KOPEPI). This coffee factory markets the coffee produced to meet the export and domestic market and also helps direct farmers to get good quality coffee.² The Ketiara Coffee Traders Cooperative (KOPEPI) is one of the coffee exporters operating in Bebesen District, Kab. Central Aceh, which entered into a coffee export sales contract with a coffee company from the United States, namely Royal Coffee.

The reason a disaster is a force majeure, an extraordinary event that causes people to be unable to fulfill their achievements due to events that are beyond their capabilities. Thus, civil agreements or contracts can automatically be changed or canceled. Force Majeure is generally regulated in Article 1244 and Article 1245 of the Civil Code.

It is quite difficult to talk about the Covid-19 pandemic being able to qualify as force majeure without government policy. This speculation certainly raises public questions because the effects of the Covid-19 pandemic disrupt community activities, including the legal and contract business sectors, so that they are more flexible, and can even be canceled without fines. However, this was immediately denied by several legal experts that Presidential Decree No. 12/2020 could not be a force majeure legitimacy to cancel legal agreements or contracts. Until finally President Joko Widodo some time ago issued Presidential Decree no. 12 of 2020 concerning the Determination of Non- Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as National Disasters.³ This presidential decree also caused a polemic related to the legitimacy of force majeure. A number of parties have called this

¹ M. Zen Abdullah, *Abstract Material Civil Law*, Hasta Cipta Mandiri, Yogyakarta, 2009, p. 3.

² Firmansyah and Gustina, *Kopepi Ketiara Coffee Bean Production System*, Central Aceh Regency, National Journal, Vol. 9 No. 18, June 2020, p. 1.

³ Republic of Indonesia, *Presidential Decree regarding the Determination of Non- Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters*, Presidential Decree No. 12 Year 2020.

Presidential Decree a legitimacy that the COVID-19 pandemic is a force majeure, thus making legal agreements and contracts more flexible, and can even be canceled without fines.

This study contains three problem formulations, namely how the legal arrangements for the Covid-19 pandemic can be said to be force majeure, who is the party responsible for the risks due to contract delays during the Covid-19 pandemic, and what are the legal efforts of the parties to delay export sales contracts? coffee due to the Covid-19 pandemic.

This type of research is empirical juridical, which is a problem approach through legal research by looking at applicable legal norms and connecting with facts that exist in society in connection with the problems encountered in the research. The approach method used in this study is a normative juridical approach. The normative juridical approach is an approach that refers to the applicable laws and regulations. This research is descriptive in nature, that is, it describes, examines, explains precisely or analyzes a law that is in force and then relates it to legal theories and the practice of implementing positive law with the problem being studied. There are two sources of data in this study, namely primary data and secondary data. Primary data is data obtained from the community as the main source through field activities. The field research was carried out to obtain information, accurate and objective data to develop conditions that occurred regarding the postponement of coffee export sales contracts due to the Covid-19 pandemic in Indonesia as a force majeure.

2. Discussion

A. Legal Arrangements Against The Covid-19 Pandemic Qualifies As Force Majeure

Prof. Mahfud MD has given a statement that Presidential Decree No. 12 of 2020 cannot be automatically used as a basis for canceling contracts, especially business contracts with the argument of Force Majeure. However, the issuance of this policy can be an entry point for renegotiating related matters regulated in the contract, where the government's goal is to maintain conduciveness in the business world.⁴

It is important to first examine the things that become important when you want to use the reasons for the Covid-19 pandemic as force majeure, including:⁵

- a. Does the force majeure clause contained in the contract already regulate the Covid-19 pandemic.
- b. How are the definitions and limitations related to force majeure that have been regulated by the parties in the contract.
- c. How is the causal relationship between the implementation of achievements and the determination of Covid-19 as a non-natural national disaster.

⁴ Online Law, Mochamad Januar Rizki, "Prof. Mahfud Regarding Force Majeure Due to the Corona Pandemic", (<https://www.Hukumonline.com/berita/baca/lt5ea11ca6a5956/pencepatan-profmahfud-jual-i-force-majeure-i-due-pandemi-corona?page=2>), 2020, accessed on March 14, 2022.

⁵ Pratama, Jodi and Atik Winanti. Force Majeure in Business Contracts Due to the Corona Pandemic. Nusantara, Journal of Social Sciences. 2021, Vol. 8 No. 2.

- d. Has the debtor had good intentions in trying to fulfill the achievement that was hindered by the force majeure.

Then if it turns out that there is no special clause regarding the Covid-19 pandemic as Force Majeure in the agreement, then it will be examined whether this Covid-19 pandemic has fulfilled the elements of the Force Majeure arrangement in the Civil Code, namely Articles 1244 and 1245. Force majeure has been regulated by Article 1244 and Article 1245 of the Civil Code. Although, force majeure has been regulated in the Civil Code, it does not provide the meaning of force majeure itself. Article 1244 stipulates that if there is a reason for that, the debtor must be punished to compensate for costs, losses, and interest if he cannot prove that it was not or not at the right time to carry out the engagement, due to an unforeseen event that cannot be accounted for. to him, all of that even if bad faith is not on his part. Then, Article 1245 stipulates that it is not necessary to replace the loss and interest costs, if due to compelling circumstances or due to an accidental event the debtor is unable to give or do something that is required, or because of the same things he has committed a prohibited act.

Although the Civil Code does not provide the meaning of force majeure, the author defines force majeure as a condition that makes the debtor unable to carry out his achievements or obligations to creditors, due to events that are beyond his will. Example: Covid-19, earthquake, fire, flood, and others.

Based on its nature, force majeure has 2 types, namely absolute force majeure and relative force majeure. Absolute force majeure is a condition where the debtor is completely unable to carry out his achievements to the creditor, due to earthquakes, floods, and lahars.⁶ Example: company R buys coffee beans weighing 55 tons from a coffee bean company in Takengon. In the process of shipping, the ship carrying the coffee beans caught fire, so the coffee beans caught fire as well. Relative force majeure is a condition that causes the debtor to fulfill its performance. However, the fulfillment of these achievements must be done by giving large casualties that are not balanced or using soul power that is beyond human ability or the possibility of being inflicted with such a great danger of loss. Example: Covid-19. If Covid-19 ends, the creditor can demand the fulfillment of the debtor's achievements again, ask for compensation, ask for the implementation of the agreement as well as ask for compensation, cancel the agreement, or in a reciprocal agreement, request the cancellation of the agreement as well as ask for compensation.

From the Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as a National Disaster above, Covid-19 can be declared as force majeure. However, with the Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster, the debtor cannot postpone or cancel the agreement.

In the discipline of contract law, one of the most important principles is known. The principle in question is the principle of the binding power of the agreement (Pacta Sunt

⁶ Salim H.S., *Contract Law Theory & Techniques for Drafting Contracts*, Sinar Graphic, Jakarta, 2019, p. 102.

Servanda). This principle means that the parties to the agreement must implement the agreement. In this principle, the agreement of the parties is binding as is law for the parties who made it.⁷

The principle of Pacta Sunt Servanda can be found in Article 1338 of the Civil Code. Where, Article 1338 of the Civil Code stipulates that every agreement made legally applies as law for those who make it. Acting as law to those who make it means that the law recognizes and positions both parties on an equal footing with the legislator.⁸ From the explanation of the Pacta Sunt Servanda principle above, both parties only carry out the agreement according to the agreement clause. The parties may not carry out the agreement outside the agreement clause.

In general, the provisions of force majeure are stated in the agreement clause by describing what events are included in force majeure. By explaining what events are included in the force majeure clause of the agreement, the parties can postpone or cancel the agreement. Thus, if the parties categorize Covid-19 as force majeure in the agreement clause, then one of the parties can postpone or cancel the agreement.

B. The Party Responsible for the Risk of Contract Suspension During the Covid-19 Pandemic

At the beginning of the Covid-19 pandemic, the American (US) market was very limited due to the increasing number of positive cases of Covid-19 so that many Gayo coffees were delayed in delivery.

According to Mrs. Rahmah, Head of Kopepi Ketiara, in around June-July 2020, her party exported Arabica coffee from the Gayo Highlands (DTG) to American and European destination countries around 20 containers (volume 18-19.2 tons per container) with an estimated value of exports around Rp 1.5 billion - 1.6 billion per container. However, several countries in the Americas and Europe still have not opened the faucet for gayo coffee imports because at that time these countries were implementing a lockdown. This led to the emergence of delayed business transactions or goods delivery activities due to the spread of the Covid 19 outbreak at that time.

As a result of the emergence of this epidemic, several cooperation contracts with several companies, especially with Royal Coffee, were delayed due to the inability to carry out the delivery of Gayo coffee which had been agreed in the contract agreement.

In legal theory, there is a teaching called *resicoleer* (teaching about risk). *Resicoleer* is a teaching, namely a person is obliged to bear the loss, if there is something outside the fault of one of the parties that befalls the object that is the object of the agreement. This teaching arises when there is a state of coercion (*overmacht*). This teaching can be applied to unilateral agreements and reciprocal agreements. A unilateral agreement is an agreement in which one

⁷ Ridwan Khairandy, *Good Faith in Freedom of Contract*, UI Press, Jakarta, 2004, p. 28.

⁸ Agus Yudha Hernoko, *Contract Law: The Principle of Proportionality in Commercial Contracts*, Kencana Prenada Media Group, Jakarta, 2014, p. 127.

of the parties actively performs an achievement while the other party is passive. A reciprocal agreement is an agreement in which both parties are required to perform achievements, in accordance with the agreement made by both parties.⁹

The risks that arise during contract delays in delaying the delivery of goods during the Covid-19 pandemic for each party, the risks are:

a. Risks for Coffee Exporters (KOPEPI Ketiara) 1)

1) Coffee exporters don't get paid

Using this open account payment method carries a very high risk, moreover this is an international trade, not only a few goods are exported abroad, usually exporters export coffee to several countries including: the United States, Portugal, Japan and other European countries. One of them is Royal Coffee, which is an importer from the United States, due to the Covid-19 pandemic which causes delays in the delivery of goods, it is the same as not being able to sell goods or failing to sell merchandise.

2) Exporters reduce the number of purchases of new supplies

Exporters experience other losses, namely the obstruction of exporters from supplying new goods from farmers, because the money that should be used to supply new coffee is hampered due to the fact that old goods cannot be delivered.

3) Exporters are forced to sell goods at low prices

Exporters were forced to sell several tons of goods to Medan at a lower price than the capital that had been spent, in order to be used as capital by Kopepi to continue to produce new goods from farmers.

b. Risks for coffee importers (Royal Coffee)

In addition to coffee exporters, coffee importers also have a risk in the coffee sale and purchase agreement being delayed due to the Covid-19 pandemic, namely where Royal Coffee coffee cannot get a supply of new goods.

C. Legal Efforts from the Parties Against the Suspension of the Coffee Export Sales Contract Due to the Covid-19 Pandemic

Settlement of disputes or conflicts has begun to shift to non-litigation settlements known as Alternative Dispute Resolution (ADR). In America and in Australia, almost 90 percent of disputes are resolved through non-litigation, especially among entrepreneurs. Likewise, in Indonesia, dispute resolution through this institution has begun to appear, especially among entrepreneurs, although the frequency is still very small.

In resolving the problem of the coffee delivery agreement which was hampered due to the Covid-19 pandemic that occurred between KOPEPI Ketiara and Royal Coffee, they held a virtual meeting (online/zoom) to discuss solving the problem by renegotiating the agreement.

This Covid-19 pandemic is a relative or temporary force majeure, because this Covid-19 pandemic only occurs temporarily or only for a certain period. Because Covid-19 is a relative

⁹ H.S, Salim, op.cit, p. 103.

or temporary force majeure, in this case the Covid-19 pandemic cannot immediately be used as a reason for canceling an agreement/contract that has been agreed upon by reason of a force majeure event.

In order to protect the interests of the parties and ensure that KOPEPI Ketiara continues to fulfill its obligations, a renegotiation of the agreement can be carried out. And by continuing to heed the principle of consensualism, the principle of freedom of contract, the principle of good faith and the principle of proportionality in renegotiations so that a new agreement will be born as an effort as well as the best middle way for the parties.

Likewise, if there is a difference of opinion that occurs between them, they should also renegotiate to bring together the things they want together again. Negotiation is the interaction of the parties involved in a different goal or opinion to try to resolve each other in order to find a common goal and mutually beneficial for all parties. In short, negotiation is a bargaining process through discussion or negotiation to resolve disputes.

In carrying out negotiations, there are also several types of methods that generally occur between the parties during negotiations, including:¹⁰

- a. Competitive negotiation, which is a form of negotiation that is carried out on complex issues and tends to be difficult to find a point of agreement.
- b. Cooperative negotiation, namely a form of negotiation that does not consider the opposing negotiator as an enemy in a dispute but still considers it as a partner in cooperation to reach an agreement that benefits all parties. This form of negotiation pays great attention to the importance of good relations between the parties.
- c. Soft and hard negotiations, namely a form of negotiation that will result in a pseudo agreement where there is a winning party and a losing party. This will benefit the tough side because they are prone to creating threats while the soft side chooses to give in just to prevent hostility or confrontation.
- d. Negotiation based on interests, namely a form of negotiation that chooses a middle ground between existing contradictions. This form of negotiation is an effort when negotiators are met who both have a tough nature so as to avoid deadlock in the implementation of negotiations.

The renegotiation carried out on the implementation of business agreements during the Covid-19 pandemic is aimed at redressing the imbalance that occurs in the implementation of achievements so that reasonable rights and obligations for both parties are obtained in good faith and cooperatively, so that good relations with business partners are maintained. and mutually beneficial and can support each other. It takes good faith from both parties, both debtors and creditors, to make every effort to come up with a good solution so that renegotiation is a good effort to jointly bear the risk so that no party is harmed or biased.

The truth of the existence of good faith is what will be judged if this business agreement case goes to court, because there are debtors who really cannot pay their obligations during

¹⁰ Ramziati, Sulaiman, and Jumadiah, *Business Contracts in Theoretical and Practical Dynamics*, Unimal Press, Lhokseumawe, 2019, p. 146.

this Covid19 pandemic, but not a few debtors are actually still able to pay their obligations but are not willing to pay.

Royal Coffee also openly agreed with the renegotiation of the agreement with the Ketiara Coffee Merchant Cooperative because considering the Covid-19 outbreak has indeed spread to various countries, especially the United States, which has hampered various business and trade sectors, and it would be wise if both parties looking for a way out to solve the problem by looking for a good solution without having to cancel the work contract, considering the best quality and very consistent taste of gayo coffee beans from Ketiara which is a pity to miss and Royal Coffee does not want their cooperative relationship with Ketiara broke up only because the coffee delivery was hampered due to the Covid-19 pandemic.

The renegotiation effort between KOPEPI Ketiara and Royal Coffee resulted in the decision to temporarily delay the delivery of Gayo coffee until normal conditions returned. However, the delay in fulfilling the obligations must also be balanced with the fulfillment of the rights in the agreement, so that both parties delay both giving obligations and receiving their rights contained in the agreement.

The relative force majeure only delays or suspends the fulfillment of the obligations of the KOPEPI Ketiara party for a while not to cancel the agreement/contract, the agreement remains valid and binding on the parties. The occurrence of this Covid-19 pandemic only delays the fulfillment of KOPEPI Ketiara's obligations to Royal Coffee and does not completely eliminate KOPEPI KETIARA's obligations to Royal Coffee.

3. Conclusion

A. Conclusion

Based on the results of the discussion of writing this thesis, the authors draw several conclusions, including:

1. Legal arrangements regarding Force Majeure in agreements in Indonesia are regulated in Article 1244 and Article 1245 of the Civil Code which at the same time provides an understanding of what Force Majeure is and there are also several provisions in the Civil Code that specifically regulate risk responsibility for the occurrence of Force Majeure in the implementation of the agreement. named, such as the sale and purchase agreement in Article 1460 of the Civil Code. In this case, the Covid-19 pandemic can be categorized as a relative Force Majeure, where in fact the fulfillment of achievements is not impossible for the debtor to do, but rather a delay can be made for the fulfillment of achievements until normal conditions return.
2. The renegotiation carried out on the implementation of business agreements during the Covid-19 pandemic is aimed at redressing the imbalances that occur in the implementation of achievements so that reasonable rights and obligations for both parties are obtained in good faith and cooperatively, so that good relations between the parties are maintained. business partners and mutually beneficial and can support each other, which means that the occurrence of the Covid-19 pandemic is only delaying the fulfillment of KOPEPI Ketiara's obligations to Royal Coffee.

3. In the implementation of renegotiations, the parties should also be serious about following up on the results of the negotiations because they have been mutually agreed upon so that each party should implement and implement it like an agreement. The matters stipulated in the agreement can still be renegotiated, either in the form of rescheduling (rescheduling), restructuring (rearrangement) or reconditioning (reconditioning) which is carried out in good faith by both parties because the contract law in Indonesia adheres to an open system where all will return to the agreement of the parties to the agreement.

B. Suggestion

The suggestions that the author can give related to the formulation of the problem in this thesis, among others:

1. It is necessary to develop and establish regulations that specifically regulate what things can be categorized as a state of coercion or Force Majeure, so that the Force Majeure clause to be contained in the agreement can be described in harmony and avoid multiple interpretations. This is expected to provide justice, benefit and legal certainty for the parties to the agreement.
2. The parties must be able to understand each other the situation and conditions during the Covid-19 pandemic. In particular, KOPEPI Ketiara and Royal Coffee, should prioritize renegotiation efforts to discuss solutions to overcome the effects of the Covid-19 pandemic on the implementation of business agreements. The renegotiation efforts carried out can be in the form of rescheduling (re-scheduling), restructuring (rearrangement) or reconditioning (reconditioning), in the hope of restoring the balance of rights and obligations in the business agreement and can complete matters that have not been regulated in order to adapt to the Covid-19 pandemic. 19.
3. Although this Force Majeure provision can still be submitted to an agreement that does not include a Force Majeure clause, the debtor who wants to postulate the occurrence of Force Majeure against himself should continue to prioritize the principle of good faith to resolve a business problem. Also, don't make this Covid- 19 pandemic a gap for bad intentions to be free from fulfilling achievements and only getting temporary benefits. The parties must be able to see each other's interests, not just their own interests.

4. References

- Agus Yudha Hernoko, 2014, Contract Law: The Principle of Proportionality in Commercial Contracts, Kencana Prenada Media Group, Jakarta.
- Firmansyah and Gustina, 2020, Kopepi Ketiara Coffee Bean Production System, Central Aceh Regency, National Journal, Vol. 9 No. 18.
- Online Law, Mochamad Januar Rizki, "Prof. Mahfud About Force Majeure Due to the CoronaPandemic", (<https://www.Hukumonline.com/berita/baca/lt5ea11ca6a56/pen>)

cepatn- profmahfud-jual-i-force-majeure-i- due- pandemicorona?page=2),2020
accessed on March 14, 2022.

Pratama, Jodi and Atik Winanti. 2021. Force Majeure in Business Contracts Due to the Corona Pandemic. *Nusantara: Journal of Social Sciences*. Vol. 8 No. 2.

Ramziati, Sulaiman, and Jumadiyah, 2019, *Business Contracts in Theoretical and Practical Dynamics*, Unimal Press, Lhokseumawe.

Ridwan Khairandy, 2004, *Good Faith in Freedom of Contract*, UI Press, Jakarta.

Republic of Indonesia, Presidential Decree on the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters, Presidential Decree No. 12 Year 2020.

Salim H.S, 2010, *Contract Law Theory and Techniques for Drafting Contracts*, Sinar Graphic, Jakarta.