International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 07-01-2021; Accepted: 22-01-2021; Published: 25-02-2021
www.lawjournals.org
Volume 7; Issue 1; 2021; Page No. 197-201

Default in business law in Covid-19 pandemic in Indonesia

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Abstract
Agreement/contract are a legal relationship that is often carried out in the business world/community in Indonesia. With the Covid-19 pandemic, the Indonesian government through Presidential Decree No. 12 of 2020 determined the Corona Virus (COVID19) as a National Disaster. The purpose of this paper is to determine the efforts to solve problems due to default in the implementation of business contracts. Regarding the Covid-19 outbreak, can legally this global pandemic be used as an excuse as a force majeure for not carrying out the agreement? Should there be a determination of a national disaster so that the Covid-19 incident can be called a force majeure or force majeure? Article 1245 is included in Book III of Indonesian Civil Code, Which complements the agreement. This means that as long as the parties do not regulate otherwise, the provisions of Book III, particularly regarding force majeure, will apply. Force majeure or state of force has two characteristics, namely general and special. The general force majeure is related to the act of god, while the force majeure which is specific is related to the act of human. Since in the case of the corona pandemic the Indonesian government issued a regulation, the force majeure in the corona context was a special category (act of human). When viewed from the point of view of case position, there is also a relative force majeure with an element of difficulty, and absolute force majeure which has an impossibility factor.

Keywords: contract law, force majeure, default, business law, covid-19, Indonesia

Introduction

Business is a part or domain of civil law that was born because of an agreement. Etymologically, default in business law means that the achievement or obligation that has been set for certain parties in an engagement is not fulfilled, whether it is an agreement born from an agreement or an agreement that arises because of law. Default is contained in article 1243 of the Civil Code, which states that "compensation for costs, losses and interest due to non-fulfillment of an engagement will then begin to be obliged, if the person in debt, after being declared negligent in fulfilling the contract, continues to neglect it, or if something must be given or made, can only be given or made, can only be given or made within a grace period that has been exceeded".

According to Harahap (1986) [7], default is the implementation of an obligation that is not done on time or is carried out inappropriately. So that it creates an obligation for the debtor to provide or pay compensation (*schadevergoeding*), or with a default by one party, the other party can demand the cancellation of the agreement. According to Muhammad (1982) [12], default is not fulfilling the obligations that must be stipulated in the engagement, whether it is an agreement arising from an agreement or an agreement arising from the law. According to Prodjodikoro (2000) [13], default is the absence of an achievement in the law of an agreement, which means something that must be carried out as the content of an agreement. According to Erawaty & Badudu (1996) [5], default is the denial of an obligation that arises from an agreement made by one of the parties to the agreement.

Default of unfulfilled achievements are caused by errors or wrongdoing not carrying out the achievements as stated in the agreement. The manifestations of these mistakes include: not fulfilling any achievements at all, fulfilling achievements but not on time, fulfilling achievements but not in accordance with the contents of the agreement. Recent studies have widely examined the force majeure applicability in various industries due to the rapid spread of COVID-19 (Casady & Baxter, 2020; COVID-19-Consumer Law Research Group, 2020; Hansen, 2020; Januarita & Sumiyati 2020; Chintala, 2020; Jennejohn. *et al*., 2020; Kabiru & Yahaya, 2020) [2, 4, 6, 8, 3, 9, 10]. The purpose of this paper is to determine the efforts to solve problems due to default in the implementation of business contracts.

Results and Discussion

Due to Default Law

Fraud is an act as regulated in the provisions of Article 378 of the Criminal Code in Chapter XXV concerning Fraudulent Acts (bedrog). The full text of Article 378 of the Criminal Code is that *"anyone with the intention of unlawfully benefiting himself or another person, using a false name or false dignity, by deception, or a series of lies, moves another person to give something to him, or to give a debt or write off a debt, is threatened because fraud with a maximum imprisonment of four years".* The elements in the act of fraud are (1) with the intention of benefiting themselves by breaking the law; (2) moving people to hand over something or to give a debt or write off receivables; (3) by using any of the attempts or means of deception (using fake names, false dignity, tricks, sets of lies).

The element of point c above, namely regarding the method is the main element of the offense that must be met to categorize an act as fraud. Such is the rule in Supreme Court Jurisprudence No. 1601.K/Pid/1990 dated 26 July 1990 which stated that *"the main element of the offense of fraud (ex-article 378 of the Criminal Code) lies in the methods/efforts that have been used by the offender to move other people to hand over something".*

Therefore, the elements that must be fulfilled if a civil case in the form of default can be reported as a criminal if the agreement has been made using a false name, false dignity, trickery or a series of lies. Here, default is the act of the debtor (that is, the party who promises to do something) does not fulfill the achievements agreed in the agreement. The achievement referred to in this case is something that must be fulfilled by the debtor. In other words, the debtor is considered to have defaulted when the debtor does not fulfill the obligations agreed upon in an agreement, either on purpose or due to the debtor's negligence. However, determining when someone does this default also needs to be seen from each case. For example, in a credit agreement where the debtor is required to pay the debt at the agreed time, if the debtor pays the debt earlier or later than the agreed period, the debtor can be said to be in default and the consequences depend on the provisions in the agreement.

According to Subekti (2008), a civil law expert in his book entitled Agreement Law, there are four types of default, namely (1) not carrying out what was agreed in the agreement, (2) carry out what was promised but not as it should be; (3) carry out what was promised but it is too late or has passed the timeframe, (4) doing something according to the agreement should not be done. When the contracts are bound by an agreement with a party and that party does not carry out its obligations as stated in the agreement, then the company needs to look back at the agreement that the company entered into with that party. If the obligation is not carried out, then the party is automatically deemed to be in default and what are the consequences? One of the efforts that can be made when this happens is to provide a summons so that the party carries out its obligations. If after being given a summons, the party still does not carry out its obligations, then the company as the aggrieved party can terminate the agreement without eliminating the party's obligations which must still be fulfilled. This can be done as long as the agreement regulates conditions that can terminate the agreement, one of which is default by either party. The legal consequences that occur due to default are as follows:

Compensation

Compensation is to pay any losses due to mistakes of one party which causes the other party to suffer losses. Usually before filing a suit for default to the Court, the company must first send a warning letter or summons. Provisions regarding compensation are regulated in article 1246 of the Civil Code, which consists of three types, namely: costs, losses and interest. The compensation must be calculated based on the value of money and must be in the form of money. So the compensation arising from the default may only be calculated based on an amount of money. This is intended to avoid difficulties in the assessment if it has to be replaced by other means.

Cancellation of Agreement

According to Article 1266 of the Civil Code, the condition for annulment is considered to be always included in reciprocal agreements, when one of the parties does not fulfill its obligations. In such a case the agreement is not null and void, but the cancellation must be requested from the judge. This request must also be made even though the cancellation conditions regarding non-fulfillment of obligations are stated in the agreement. Then how can we get back the rights that have been denied. For this, I want to explain the steps that must be taken by parties or those who have been denied their rights because the other party has not carried out the achievements as stated in the agreement. Basically, a claim for default can be submitted to the Court where the Defendant resides or known as Actor Sequitur Forum Rei. This principle is regulated in Article 118 paragraph (1) *Herzien Inlandsch Reglement* ("HIR") which stipulates that the authority to hear a case is the District Court where the Defendant resides.

A claim for default may only be submitted to the District Court all over Indonesia, if it has submitted a subpoena or a warning letter so that those who do not perform according to the contents of the achievement can immediately fulfill it. However, if the summons given is not responded to and have good intentions to fulfill their achievements, then submitting a lawsuit to the Court is the next way to go. The things that need to be considered and prepared before filing a claim for default in business law are to prepare documents that are relevant to the lawsuit being filed and to prepare witnesses who are directly involved when the agreement is made and signed.

Both of these things are important to do because it is the proof that will determine which way the judge's decision is passed. The principle of formal truth adopted in civil law has implications for the extent to which we are able to prove in front of a court to reveal the truth, because judges are bound by the evidence presented by the parties. The plaintiff must prove his claim, "whoever sues he must prove". In the event of a breach of contract or default, the company can take legal action, register the lawsuit and please pay the court fee or court fee, after the lawsuit is registered the parties will be notified of the case number and then the parties will be summoned to attend the initial hearing.

Basically, when a party involved in the agreement does not carry out the obligations as agreed upon, it can be considered as default. However, Article 1244 and Article 1245 of the Civil Code provide exceptions that the party who defaults is not obliged to provide compensation to other parties who are harmed if the default is caused by an unexpected situation. This unexpected thing is commonly known as force majeure. In essence, force majeure is an action that occurs beyond the control or prediction of the parties involved, for example, natural disasters such as floods, earthquakes, landslides, or other unexpected events that cause one party to fail to carry out its obligations. If this happens, the party experiencing force majeure cannot be subject to the obligation to compensate the other party.

Those are some things about default that the company should know. To reduce the risk of default, it is recommended that you, the party who is signing the agreement, make an agreement regarding the rights and obligations according to the capabilities of each party. In addition, it is important to include provisions regarding the consequences for parties who violate the agreement or do not fulfill their agreed obligations so that when the default occurs, the settlement can be immediately handled and does not cause disputes between the parties.

Basically, the contracts used for business transactions are known as business contracts. If a business contract has been made, then the contract will act as a "law" for the parties involved, where the contract contains matters that regulate the rights and obligations of the parties, and can be used as valid evidence when a dispute occurs at a later date.

However, making a business contract should not be arbitrary, there are many details that must be considered. If the company let the guard down and ignore the matter, the company will not have a chance to defend theself in the event of a dispute at a later date. Despite this fact, Eldonna Lewis-Fernandez (2015) [11], a negotiation expert, found that there are still many entrepreneurs who do not fully read and understand the contents of business contracts. So before the company make or draft a business contract, pay attention to the following important things. First, do research regarding business partners. Before agreeing on the contents of a contract, the company must first know who the company is doing business cooperation with, what the business is doing, how their previous performance was, what the company's reputation is like, and much more. To find out about these things, the company can find out directly through the Internet media, look at the company's social media, or ask the other business partners who might be more familiar with the company. the company needs to ensure that the prospective business partner does have the ability to carry out the obligations that the company and the business partner will agree on (Setiadi, 2019) [14].

Second, ensure the identity of the parties. After the company understand well about the company or business partner, the next thing to pay attention to is the identity or profile of the parties related to contract preparation. Make sure the identities of the parties are correct, such as the identification numbers of the parties, addresses of the parties, office domicile, and so on. If one of the parties is a LLC, then what needs to be considered is that the person signing the agreement must be a director as a representative of LLC. If the signatory is not a director, make sure that the person is indeed authorized by the director to sign the agreement. This is necessary to ensure that the legal subject in the agreement or business contract is a legal party and has the authority to sign the contract. Because if the person who signs the agreement is not an authorized person, then the impact is that the agreement will not bind LLC, but only bind the person personally. This of course can harm the company if later there is a violation of the agreement, so the company can only ask for compensation from that person, not from LLC (Adjie, 2018) [1].

Third, include clear achievements and counterparts. Performance in the contract is intended as an implementation of things written in a contract by the party that has committed itself to it. According to Article 1234 of the Civil Code, each engagement is in the form of giving something, doing something, or not doing something. This is what is commonly referred to as achievement, whereas counter-achievement is reciprocation from one party for the achievement that has been given by the other party. These achievements and counterparts are the obligations of the parties to be fulfilled. So, make sure that there are rights and obligations of each party that the company state in detail and clearly in the agreement. If there are rights and obligations that explain technical work procedures, the company can state and explain them in the attachment to the agreement.

Fourth, use clear contract language. The language of a business contract is of course very specific, so before the company make or agree to a contract, make sure the company understand the language and terms used. Include a clause regarding the definition of the terms used in the agreement. For example, the definition of confidential information, so that it is clear what information is classified as confidential and may not be shared with other parties. In addition, also make sure that the agreement the company make uses clear sentences and does not contain multiple interpretations. Because this can certainly create misunderstandings and risk causing disputes in the future.

Fifth, write down the validity period & the terms of contract termination. In making a business contract, what the company should not forget is to write down the validity period and terms of contract expiration. Generally, a contract is valid from the time the contract is signed by the parties for a certain period. In addition, it needs to be emphasized that even though the contract validity period has ended, this does not cause the parties to be absent from carrying out their obligations if there are obligations that have not yet been fulfilled. If the company want the contract to be carried out for a long period of time and will be valid for a further period, the company can include an automatic renewal clause.

The company also needs to include the procedure for terminating the agreement if one party wants to terminate the agreement before the agreed period ends. In addition, it is necessary to include several conditions or conditions that cause a party to have the right to terminate the agreement before the validity period ends. For example, if one of the parties violates the agreement and there is no good faith to correct his mistake, then the aggrieved party can terminate the agreement.

First, count losses clearly. In a business contract, the company also have to determine the amount of losses that may be incurred. So before drafting a contract, make sure the company has done a clear calculation, even though it will not be written in detail. the company can include a provision that the company is willing to provide compensation to the party who was injured but limited to certain conditions.

Second, determine the dispute resolution method. The last thing the company should pay attention to when drafting a contract is how to resolve disputes at a later date. Usually this clause the company can find at the end of a business contract. In this case, the company must ensure the right choice of dispute resolution, for example, first negotiating with the other party. If this has been done and the dispute cannot be resolved, the company can resolve the dispute through court or arbitration channels, depending on the agreement of the parties.

Third, never start without a contract. Many people forget the importance of contracts when conducting business cooperation, especially if the business partner is friends or family. In fact, a contract is a business protection that the company must have before starting a partnership, because this agreement serves as the basis for the parties when carrying out business cooperation. In general, contracts contain several things such as contract title; comparisons containing information about the parties or upon whose request the agreement was made, introduction which contains a description of the parties' intentions to cooperate and the contents of the contract are the terms and conditions of the agreement agreed by all parties.

After the company agree on the contents of the contract and sign it, make sure the company keep a copy of the contract. Because the contract can be used as evidence that the party who signed the contract has agreed on the matters stipulated in the contract and has legal force.

Legal Settlement Methods, if Disputes Occur with Business Partners

A business can develop well if there is a healthy working relationship between the business owner and other business partners, whether suppliers, clients or investors. Good cooperation can only be established when the company and the business partners have a professional attitude and responsibility to achieve each other's business goals. For example, the company needs a supplier to help the company supply stock or company needs, and a supplier also needs the company to get business income. Although initially all the provisions had been agreed by the parties, it did not rule out the possibility of a dispute in the middle of the road. For example, a supplier is late in delivering goods ordered by the company and there is no effort from the supplier to correct his mistakes so that it hinders the business. Of course, this must be addressed immediately, because if the company leave it for too long, the problem will greatly affect the sustainability of the business. Below Libera will explain some tips and how to solve problems with the business partners.

Negotiation

Negotiating is the first way the company can do it when there are conflicts and disputes with the business partners. Try to invite the business partners to sit together, discuss, and find joint solutions that can benefit all parties, without any objections or burdens. The negotiation process does not require a third party to mediate, so there is no standard procedure that the company must follow. Before negotiating, try to discuss well what the company want, and then listen to what concerns the business partner. After the agreement has been obtained, don't forget to document the agreement in an agreement. If the company previously had an agreement, there is no need to make a new agreement, but only need to make an amendment to the agreement which contains a new agreement between the company and the business partner. With a written agreement, the company can refer to the contents of the agreement or contract that was made when a dispute occurs in the future.

Mediation

Mediation is a method of resolving disputes through the negotiation process with the aim of obtaining agreement between the parties, assisted by a mediator or mediator. The mediator's role in the mediation process is as a neutral party and is tasked with assisting the disputing parties in the negotiation process to find solutions in resolving disputes without forcing the solution to be implemented. Mediation can be carried out inside or outside the court. If the dispute is brought to court, then the company is still required to go through a mediation process first, in accordance with the mandate of Article 3 paragraph (1) of the Supreme Court Regulation No. 1/2016 concerning Mediation Process in Courts. In the mediation process, the solution or solution suggested by the mediator does not have any legal force and the mediator does not have the authority to determine which party is wrong and right.

Litigation

In the litigation process, the two disputing parties are placed opposite each other. Litigation itself is an *ultimum remidium* or a last resort if the dispute cannot be resolved with other alternatives. The litigation process itself is carried out in court by presenting all disputing parties to face each other and defend their rights before the Judge. The final result obtained with this method is a decision stating a win-lose solution. Where, the winning party gets what he asks for, while the losing party is obliged to fulfill its obligations to the winning party. However, settlement of disputes in this way is not recommended because it is a long process, and requires significant costs if the dispute is allowed to drag on in court.

Arbitration

Arbitration is a way of resolving civil disputes outside the general court based on an arbitration agreement made by the disputing parties. A dispute can be resolved through arbitration if the parties have entered into a written agreement which agrees that if a dispute occurs, the dispute will be resolved through arbitration. This written agreement is a requirement required under Law No. 30/1999.

In arbitration, the company and the business partner can appoint the arbitrator as the party who gives an award in connection with the dispute. Unlike the mediator in the mediation process, the arbitrator has the authority to make decisions on disputes that occur. As for based on Article 60 of Law no. 30/1999, the decision issued by the arbitrator is final and binding on the parties so that the dispute does not drag on and can be implemented immediately. However, before being implemented, an arbitration award must be registered with the District Court Clerk so that the execution can be carried out by the District Court if the losing party does not carry out its obligations based on the voluntary arbitration award.

Conclusion

Agreement/contract are a legal relationship that is often carried out in the business world/community in Indonesia. With the Covid-19 pandemic, the Indonesian government through Presidential Decree No. 12 of 2020 determined the Corona Virus (COVID19) as a National Disaster. As a national disaster, it has had an impact on all aspects of community life (business/individuals). One of them has an impact on decreasing the economic capacity of the community which in turn can result in the community not being able to fulfill the achievements in the agreement/not being able to carry out the agreement. In a business environment, failure to comply with covenants, default is often justified by law if a non-performance person can prove that there are obstacles that cannot be avoided, natural disasters, for example. Regarding the Covid-19 outbreak, can legally this global pandemic be used as an excuse as a force majeure for not carrying out the agreement? Should there be a determination of a national disaster so that the Covid-19 incident can be called a force majeure or force majeure? Article 1245 is included in Book III of the Civil Code, which complements the agreement. This means that as long as the parties do not regulate otherwise, the provisions of Book III, particularly regarding force majeure, will apply. If an agreement, for example regulating a pandemic, is not part of the force majeure, this must apply. Force majeure or state of force has two characteristics, namely general and special. The general force majeure is related to the act of god, while the force majeure which is specific is related to the act of human. Since in the case of the corona pandemic the Indonesian government issued a regulation, the force majeure in the corona context was a

special category (act of human). When viewed from the point of view of case position, there is also a relative force majeure with an element of difficulty, and absolute force majeure which has an impossibility factor. So, the parties involved in the business contract resolve any legal problems that arise in the implementation of the contract and are resolved by means of familial efforts that are taken by negotiating to get the best solution (win-win solution).

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