

Renegotiation in Business Contracts Due to the Covid-19 Pandemic

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ABSTRACT

Government policies due to the spread of Covid-19 have had a weakening economic impact due to restrictions on community activities which also had an impact on business activities, including the implementation of business contracts. The implementation of the rights and obligations of business contracts is hampered and there is even a possibility that it will not be carried out which results in default. The research method used is normative legal research with a statutory approach and a conceptual approach. The technique of collecting legal materials applied in this research is a literature study in the form of literature, journals and the results of previous research and document studies. in the form of a collection of official documents with interpretation and assessment through statutory regulations based on primary and secondary legal sources. This study aims to determine the legal consequences of renegotiation on the implementation of business contracts and the role of the government in efforts to resolve business contract defaults during the pandemic. The results of the study indicate that the legal consequences of renegotiation on the implementation of business contracts during the Covid-19 pandemic caused goodwill from the parties to the contract where both parties act by considering the interests of the other party as well as during the current pandemic where creditors must pay attention to the interests of the debtor and the role of the debtor. The government in an effort to resolve business contract defaults during the pandemic is to implement countercyclical policies.

Keywords: *Renegotiation; Business Contracts; Default.*

A. Introduction

At the end of 2019 the Covid-19 pandemic became a hot issue discussed in the implementation of business contracts. The government in its role in handling this outbreak, issued legal regulations that limit the space for movement and human activities that have an impact on all sectors of activity, including the business sector in Indonesia and even the world. The impact of this has resulted in the limited ability of business actors to carry out the contracts that have been made. The Covid-19 pandemic has lasted more than a year, namely since the end of 2019. Covid-19 or what is known as the corona virus has hit all over the world. Each country has taken various ways, such as seeking a vaccine for the virus and also issuing certain policies to protect its citizens.

In Indonesia itself, after it was announced that a Covid-19 case was found, in April 2020, the government issued Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease (Covid-19) as a National Disaster (hereinafter referred to as Presidential Decree No. 12 of 2020) which is a form of response to the spread of this corona virus. On April 13, 2020, the President of the Republic of Indonesia issued Presidential Decree Number 12 of 2020 which stipulates the spread of a Corona Virus Disease 2019 virus to be a Non-Natural National Disaster. In its policies, the government imposes restrictions on community activities

such as work from home, school from home, Large-Scale Social Restrictions (PSBB), and the Enforcement of Restrictions on Community Activities (PPKM). The domestic economy, imports and exports weakened due to restrictions on activities in the business space which resulted in the implementation of the rights and obligations of the parties in business contract agreements being hampered or even not being implemented at all.

The spread of the corona virus disease (covid 19) in Indonesia has continued to show its existence since early 2020. The virus which was first detected appeared in Wuhan, China in December 2019 and continues to increase where in just three months, the virus has infected more than 118,000 cases and caused 4291 cases of death.¹ The number continues to increase from day to day. The increasing spread of the COVID-19 virus in the global world is not only included in the criteria for a global epidemic, but more than that, the World Health Organization (WHO) categorizes it as a pandemic where the spread is evenly distributed in almost all countries in the world with a very high level of spread..²

The spread of the virus that continues to increase, in the end not only paralyzes the health side, but also combs other aspects such as economics, social politics, law, education and so on. This condition will certainly have an impact on the pattern of life and the structure of society which is economically starting to experience a lot of financial turbulence. As a result, several businesses and businesses were also affected which resulted in many cases of default/broken promises to agreements made previously between business actors and consumers.

In civil law, agreement and contract are two terms that have the same meaning, namely a legal relationship between two or more parties that bind themselves together and cause legal consequences. Agreements and contracts are the same, this can be seen in Chapter II Book III of the Civil Code (KUHPerdara) which equates the term contract with an agreement. This can be seen from the title of Chapter II Book III of the Civil Code, namely "Agreements born from contracts or agreements." According to Ricardo Simanjuntak, an agreement as a legal relationship has the same meaning as an engagement or contract. As a legal relationship in the field of property, the meaning of an agreement can be interpreted as a contract or engagement.³

If an agreement or contract or agreement has fulfilled the legal requirements of the agreement in accordance with Article 1320 of the Civil Code, then based on Article 1338 of the Civil Code the agreement or contract or agreement applies as law for the parties bound in it. However, in its implementation an agreement or contract is not always carried out

¹ Jay J. Van Bavel et al., "Using Social and Behavioural Science to Support COVID-19 Pandemic Response," *Nature Human Behaviour* 4, no. 5 (2020): 460–471

² A. Spinelli and G. Pellino, "COVID-19 Pandemic: Perspectives on an Unfolding Crisis," *British Journal of Surgery* 107, no. 7 (2020): 785–787.

³ Ricardo Simanjuntak, *Teknik Perancangan Kontrak Bisnis*, Edisi Ketiga, (Jakarta: Kontan Publishing, 2018), h. 56.

properly. There will be circumstances where obligations or achievements are not fulfilled which is called breaking a promise or default.

The government imposes restrictions on social activities or restrictions on community activities as an effort to control and break the chain of the spread of the Covid-19 virus, these restrictions cause community activities such as economics, education and others to be carried out in their respective homes, and if it is very urgent and cannot done at home can be done outside the home with health protocols.

Restrictions on community activities greatly affect business economic activities, including a person's economic ability to decrease and also cause everyone to be unable to travel freely to carry out their business activities. The existence of restrictions on community activities is also an obstacle in making and signing a contract so that it cannot be done at the same time and place.

In order to stabilize the economic sector, in this condition the role of the government is very necessary in the form of providing stimuli through POJK policy Number 11/POJK.03/2020 concerning National Economic Stimulus. The policy is related to requests for relaxation for financial institutions as a result of the COVID-19 pandemic. This can be seen in the form of requests for relief from credit payments, both affected and unaffected, with time extension models and other types.

In financial institutions, of course, all banking institutions, both conventional and Islamic banking. Regarding this matter, the Islamic financial banking company is improving, making efforts to improve financing in contract renegotiation activities for debtors who have difficulty fulfilling their obligations. Is there an element of overmatch (force majeure) by the Islamic banking so that it makes debtors feel or experience difficulties (hardship) in paying off their debts. So, the Islamic banking party makes efforts to renegotiate the contract to the debtor so that there is clarity in repayment, of course it is comfortable for the bank in the sense of not being harmed and comfortable on the debtor's side having no difficulty in paying off the debt.

There are many principles in contract law, four of which are widely discussed: ⁴

- a. Consensual principle;
- b. The principle of freedom of contract;
- c. The principle of binding the contract (pacta sunt servanda);
- d. Good faith principle

Contract law in Indonesia adheres to the principle of freedom of contract where the parties have the freedom to make agreements according to the agreement of the parties. The

⁴ Ahmadi Miru, *Hukum Kontrak Bernuansa Islam*, (Jakarta: PT. RajaGrafindo Persada, 2013), h. 8.

principle of freedom of contract according to Indonesian contract law covers the following scope:⁵

- a. Freedom to make or not make a contract.
- b. Freedom to choose the party with whom he wants to enter into an agreement.
- c. Freedom to determine the object of the agreement.
- d. Freedom to determine the form of an agreement.
- e. Freedom to accept or deviate from optional provisions of the Act

The contract must always include the date, the date of signing the contract is very important to ensure in designing a business contract. This date will determine when the contract is agreed upon by the parties and when it will become applicable law to regulate the rights and obligations of both parties.⁶ In business practice, there has been a growing understanding that business cooperation must be in written form. A written contract or agreement is the basis for the parties (business actors) to prosecute if one party does not carry out what was promised in the contract or agreement..⁷ In principle, a contract or agreement does not have to be in written form. The form of an oral agreement or written agreement from a contract is more for the purposes of proof. Contracts or agreements in oral form have weak evidentiary power compared to contracts or agreements in written form

In business transactions, defaults often occur which have a broad impact on business planning so that it can harm financial and non-financial aspects such as goodwill and business trust. The legal consequence of default is that the party who cannot carry out the agreement must be responsible for compensating for the loss of the object that was agreed upon at the beginning. However, renegotiation can be carried out with the aim of canceling or changing the contents of the previously agreed contract and of course it is hoped that there will be good faith. A contract must continue to be carried out in accordance with its contents in accordance with the provisions of Article 1338 of the Civil Code which states that every agreement made legally applies as law for those who make it.

B. Focus of Problem

From the description in the background above, the problem is formulated as follows::

1. How to renegotiate business contracts due to the covid-19 pandemic?

⁵ Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktek*, (Bandung: PT. Citra Aditya Bakti, 2002), h. 10.

⁶ Ricardo Simanjuntak, *Op. Cit.*, h. 463.

⁷ Annalisa Yahanan, Muhammad Syafiuddin, dan Yunial Laili Mutiari, *Perjanjian Jual beli Berklausula Perlindungan Hukum Paten*, (Malang: Tunggul Mandiri Publishing, 2009), h. 1.

2. What are the obstacles in re-negotiating business contracts due to the COVID-19 pandemic?

C. Research Methodology

This research is a normative legal research, namely research based on library data as the main data which is secondary data and is in the form of legal materials, with a conceptual approach. Primary legal materials, using statutory regulations, especially the Civil Code. Secondary legal materials, consisting of books, journals, research reports, and scientific articles. Collecting data by means of library research and using qualitative descriptive analysis methods to analyze in this study.

D. Finding & Discussion.

1. Default in Business Contract Renegotiation

Every engagement that is born out of an agreement contains a set of rights and obligations that must be carried out or fulfilled by the parties, which is called an achievement. Keeping (nakoming) means fulfilling the contents of the agreement, or in a broader sense "paying off" (betaling) the implementation of the agreement, which is to perfectly fulfill all the contents, the purpose of the provisions in accordance with the will that has been agreed upon by the parties..⁸ If you pay close attention to the formulation given in Article 1234 BW, it is stated that "Each engagement is to give something, to do something or not to do something," it can be seen that BW places great emphasis on the obligation to fulfill the engagement, which are grouped into 3 (three) kinds, namely in the form of an obligation to give something, to do something and or not to do something.

The importance of determining the obligations that must be fulfilled by the party who is obligated. The obligation to give something, to do something and or not to do something is called achievement. Achievement to carry out the obligations mentioned above has 2 (two) important elements. First, it relates to the issue of legal responsibility for the implementation of the achievement by the party who is obliged to do so, regardless of who is obliged to fulfill the obligation. On the other hand, if the debtor does not fulfill the performance, it is known as a default.

According to Subekti, a breach of contract is "if the debtor (the debtor) does not do what he promised, it is said that he is in "default", meaning that the debtor is negligent

⁸ M. Yahya Harahap, *Segi-segi Hukum Perjanjian*, (Bandung: Alumni, 1986), h. 56.

or negligent in doing or doing something that he is not allowed to do..⁹ Yahya Harahap stated that a default is “the implementation of obligations that are not carried out in a timely manner or carried out inappropriately. A debtor is mentioned and is in a state of default, if he is negligent in carrying out the agreement so that it is "late" from the specified time schedule or in carrying out the performance it is not appropriate.”¹⁰

The form of default committed by the debtor can be in the form of 4 (four) kinds, namely: not doing what he is promised to do; carry out what he promised, but not as promised; did what was promised but was too late; do something that according to the agreement is not allowed to do.³¹ Or does not fulfill the achievement at all; not cash to meet achievements; late in fulfilling achievements; wrongly meet performance.¹¹

According to Abdulkadir Muhammad, default or not fulfilling the obligations that have been set contains two possible reasons, namely:

- a. Due to the tenant's fault, either intentionally or by negligence.
- b. Due to force majeure, it is beyond the ability of the tenant, the tenant is not at fault

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Default that occurs because the debtor does not default as agreed upon due to intentional and/or negligent failure to carry out the default according to the Civil Code, the debtor is obliged to pay compensation costs and interest as regulated in Article 1239 to Article 1242 of the Civil Code. However, with unexpected situations such as the current spread of the Corona Virus, it is a causative factor that cannot be predicted and is beyond the fault of the debtor so that it cannot be accounted for to the debtor.

In the settlement of defaults by debtors during a pandemic, creditors can provide an opportunity for the debtor to make a settlement by renegotiating (reviewing) the contract in order to reach negotiations to extend the concession period for the debtor to payment of the principal debt by giving longer time for the maturity of the installments. principal debt or by providing an opportunity for the debtor to pay the debt in installments. Re-negotiating the contents of the contract is a better effort than contract restrictions.

Contract renegotiation between creditors and debtors who are bound in credit contracts is an effort that cannot be separated during this pandemic. To avoid a situation where the debtor does not fulfill his performance or is in default on the grounds of covid-

⁹ R. Subekti, *Hukum Perjanjian*, (Jakarta: Intermedia, 1984), h. 1.

¹⁰ M. Yahya Harahap, *Op Cit.*, h. 60.

¹¹ R. Subekti, *Op. Cit.*, h. 45.

¹² Abdulkadir Muhammad, *Hukum Perikatan*, (Bandung: Citra Aditya Bakti, 1982), h. 14.

19, it is necessary to pay attention to renegotiating the contents of the credit contract in the form of credit restructuring based on Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic. 19 as well as OJK Regulation Number 11/POJK.03/2020 regarding policies for banks that support economic growth stimulus for debtors affected by the spread of Covid-19, including MSME debtors. By renegotiating or renegotiating the contents of the contract, the debtor will apply for debt restructuring. Debt restructuring can be carried out as an effort to overcome bad loans due to the decline in debtor income due to Covid-19.

2. Force Majuer Pada Masa Pandemi Covid 19

Disputing contracts can have juridical consequences, namely the existence of settlement efforts. Theoretically, dispute resolution efforts can be pursued through litigation with formal procedures and court intermediaries. During the pandemic, disputes that occurred were defaults by debtors who were micro, small and medium entrepreneurs who had made credit loans at banks long before the onset of Covid-19. Based on good faith it is deemed inappropriate if the contract is still required to be implemented in the Covid-19 situation and conditions which is supported by the government's statement that Covid-19 is a non-natural national disaster. the contents of the contract with the new conditions. If there are differences of opinion between the parties, the dispute resolution efforts in order to prioritize deliberation so that dispute resolution can be resolved with low time and cost can also produce a win-win solution..

Through the Regulation of the Financial Services Authority of the Republic of Indonesia number 11/POJ K.03/2020 a countercyclical policy is implemented by giving special treatment to bank loans of a certain amount or by providing restructuring or relaxation for credit payments by debtors affected by the spread of Covid- in the economic sector.

Further policies regarding business contracts between debtors and creditors who are bound by debts, the Indonesian government has established policies in the economic sector through the Regulation of the Coordinating Minister for the Economy of the Republic of Indonesia Number 8 of 2020 concerning Amendments to the Regulation of the Coordinating Minister for the Economy Number 6 of 2020 concerning Special Treatment for People's Business Credit Recipients Affected by Pandemi Coronavirus Disease 2019, Article 6 Paragraph (I) states that KUR recipients affected by the Covid-19 pandemic can receive special provisions for KUR in the form of : Provision of postponement of KUR principal installments for a maximum of 6 (six) months in

accordance with the assessment of KUR distributors, namely starting from April 1 2020 and not later than December 31, 2020; and/or

Relaxation of provisions in the form of granting KUR restructuring in the form of:

1. Extension of the term of KUR
2. Adding the KUR ceiling limit
3. Delay in fulfilling credit payments

3. Good Faith in Renegotiating Business Contracts

The principle of good faith requires that in every agreement made, the parties basically have the freedom to determine the contents of the agreement, with whom he makes the agreement, however, every agreement should always be based on the principle of good faith, does not violate the laws and regulations, and does not violate community interests. This requirement is intended to achieve justice for the parties in the agreement, so that there is no exploitation of the strong against the weak.

One application of the principle of good faith can be found in the wishes of business actors and consumers in the form of renegotiating business contracts in a pandemic situation. The review (renegotiation) of business contracts is very important at this time, especially for the parties involved in a contract. As a repetition of the negotiation process carried out by the parties to an agreement, renegotiation has an important role in a process of re-negotiating a contract. Renegotiation comes from the word negotiation which according to Jackman negotiation is a process that occurs between two or more parties who initially have different thoughts, until they finally reach an agreement. Oliver added that negotiation is a transaction in which both parties have a right to the final outcome. This requires the approval of both parties so that there is a process of giving and receiving something to reach a mutual agreement.

Re-negotiation is also referred to as an interactive process again (re-negotiation) carried out to reach an agreement. This process involves two or more people who have different views but wish to reach/refine some resolution together. Renegotiation is also a repetition of a two-way communication process, namely between parties, namely the first party as a communicator and the second party as a communicant or alternately both in communicating their respective interests..

Judging from the legal and constitutional aspects, renegotiation has a very important role, to protect the public interest, namely the interests of the Indonesian people and nation, especially in efforts to save natural assets and resources, as well as

efforts to provide protection to the environment from excessive exploitation processes. The concept of a welfare state as adopted by the Indonesian state, it is the duty of the Indonesian government to provide the welfare and prosperity of the people as conceptualized in the welfare state.).¹³

The general reasons that form the basis for contract renegotiation are:

1. Unbalanced revenue sharing;
2. The imbalance in the bargaining position, between the government and the company in making contracts;
3. The occurrence of manipulation, abuse of office, and corruption in contract making;
4. Change of power or government regime;
5. Damage the environment; and
6. There are public objections

E. Conclusion.

The legal consequences of renegotiation on the implementation of business contracts during the Covid-19 Pandemic have created goodwill on the part of the parties to the contract where both parties act by considering the interests of the other party as well as during the current pandemic where creditors must pay attention to the interests of the debtor. In this case, creditors are expected to provide an opportunity for debtors to resolve obstacles to their inability to pay installments by being allowed to apply for renegotiation or contract review in order to reach a mutual agreement. The Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/2020 concerning National Economic Stimulus which aims to encourage banking capabilities, especially the intermediation function, maintain financial system stability and support economic growth. The form of countercyclical policy is to give special treatment to bank loans with a certain amount or by restructuring credit to debtors who are affected by the spread of Covid-19.

References / Bibliography :

Bavel, Jay J. Van, et al., "Using Social and Behavioural Science to Support COVID-19 Pandemic Response," *Nature Human Behaviour* 4, no. 5 (2020): 460–471

¹³ Nanik Trihastuti, *Hukum Kontrak Karya*, (Malang: Setara Press, 2013), h. 16.

- Spinelli, A. and G. Pellino, "COVID-19 Pandemic: Perspectives on an Unfolding Crisis," *British Journal of Surgery* 107, no. 7 (2020): 785–787.
- Livana PH et al., "Dampak Pandemi Covid-19 Bagi Perekonomian Masyarakat Desa," *Indonesian Journal of Nursing and Health Sciences* 1, no. 1 (2020): 37–48
- Simanjuntak, Ricardo, *Teknik Perancangan Kontrak Bisnis*, Edisi Ketiga, Jakarta: Kontan Publishing, 2018.
- Miru, Ahmadi, *Hukum Kontrak Bernuansa Islam*, Jakarta: PT. RajaGrafindo Persada, 2013.
- Fuady, Munir, *Hukum Bisnis Dalam Teori dan Praktek*, Bandung: PT. Citra Aditya Bakti, 2002.
- Yahanan, Annalisa, Muhammad Syafiuddin, dan Yunial Laili Mutiari, *Perjanjian Jual beli Berklausula Perlindungan Hukum Paten*, Malang: Tunggal Mandiri Publishing, 2009.
- Harahap, M. Yahya, *Segi-segi Hukum Perjanjian*, Bandung: Alumni, 1986.
- Subekti, R. *Hukum Perjanjian*, Jakarta: Intermasa, 1984.
- Muhammad, Abdulkadir, *Hukum Perikatan*, Bandung: Citra Aditya Bakti, 1982.
- Trihastuti, Nanik, *Hukum Kontrak Karya*, Malang: Setara Press, 2013.