

The Boundaries of the Force Majeure Defense in Civil Disputes: A Study of Decision Number 162/PDT/2021/PT DPS

I Made Cinta Mutiara¹, Ferdi Raditya Akbar², Hanifah Qurrotu Aini³, Fransisca Dealova Andriyanto⁴, Juniartha Gladys⁵, Muhamad Davindra Azhar⁶, Muhammad Arkan Alfarel⁷, Fayza Azmina⁸, Wardani Rizkianti⁹

¹ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611445@mahasiswa.upnvj.ac.id

² Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611410@mahasiswa.upnvj.ac.id

³ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611386@mahasiswa.upnvj.ac.id

⁴ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611101@mahasiswa.upnvj.ac.id

⁵ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611160@mahasiswa.upnvj.ac.id

⁶ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611095@mahasiswa.upnvj.ac.id

⁷ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611275@mahasiswa.upnvj.ac.id

⁸ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611271@mahasiswa.upnvj.ac.id

⁹ Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; wardanirizkianti@upnvj.ac.id.

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ABSTRACT

A contract forms the legal relationship between parties that creates binding rights and obligations as regulated in Article 1338 of the Indonesian Civil Code (KUHPer). However, the performance of a contract may be hindered by events beyond human control, known as force majeure. Under Articles 1244 and 1245 of the Civil Code, a party who fails to fulfill its obligations due to force majeure may be released from liability for damages. This study aims to analyze the limits of force majeure as a legal defense in civil disputes through a case study of Decision Number 162/PDT/2021/PT DPS between PT Royal Pacific Nusantara and PT Lorenz Marble. The research employs a normative legal method with statutory, case, and conceptual approaches, using primary legal materials such as the Civil Code and court decisions, as well as secondary materials including legal books and scholarly journals related to force majeure. The results indicate that the court recognized the Covid-19 pandemic as a relative force majeure, which temporarily hinders the performance of contractual obligations but does not permanently extinguish them. The judges found that the defendant was not negligent, as they demonstrated good faith and efforts to fulfill obligations despite global disruptions. Thus, the boundaries of force majeure as a defense are determined by the causal relationship between extraordinary events and the inability to perform, along with the good faith of the party invoking the defense.

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Corresponding Author:

I Made Cinta Mutiara

Universitas Pembangunan Nasional Veteran Jakarta, Indonesia; 2410611445@mahasiswa.upnvj.ac.id

1. INTRODUCTION

An agreement constitutes the fundamental basis for the formation of a legal relationship between parties who bind themselves to perform a specific prestation (*prestasi*). Every agreement validly entered into possesses binding force, as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUHPerdata*) (Republik Indonesia, n.d.). However, in its execution, events frequently occur beyond the capacity of the parties, rendering the obligations within the agreement incapable of being performed as intended.

Such circumstances are known as *force majeure* (coercive circumstances), defined as a situation wherein the performance of a prestation becomes impossible due to an unforeseeable and unavoidable event. Pursuant to Articles 1244 and 1245 of the Indonesian Civil Code, a party unable to fulfill an obligation due to *force majeure* is exempted from liability for damages (Subekti & Tjitrosudibio, 1994).

Nevertheless, not every event can be categorized as *force majeure*. A rigorous assessment is required regarding elements such as foreseeability, the ability to avoid the event, and the causal link between the event and the failure to perform the obligation. Consequently, the court plays a pivotal role in determining the boundaries of the *force majeure* defense to prevent its misuse by a defaulting party (Kirtan, Respationo, Erniyanti, & Fadlan, 2023).

Decision Number 162/PDT/2021/PT DPS serves as an exemplar of the application of the *force majeure* defense in civil disputes. In said case, the panel of judges assessed whether the *force majeure* plea submitted by one of the parties was legally justifiable. An examination of this decision is crucial for comprehending the boundaries of applying *force majeure* in contractual obligations, as well as how judges interpret the principles of liability under civil law.

Based on the foregoing exposition, this topic is compelling and compels the author to examine and conduct research for a thesis titled: "THE BOUNDARIES OF THE FORCE MAJEURE DEFENSE IN CIVIL DISPUTES: A STUDY OF DECISION NUMBER 162/PDT/2021/PT DPS".

2. METHODS

The compilation process of this scientific article utilizes a normative legal research method, specifically focusing on the study of positive legal norms and their application in procedural law practice. This method was selected because the research aims to analyze the application of the concept of *force majeure* as a basis for defense in civil disputes through a study of Decision 162/PDT/2021/PT DPS. In its execution, this research employs several approaches: a statutory approach to examine legal provisions governing *force majeure* as stipulated in the Indonesian Civil Code and relevant regulations; a case approach to scrutinize the judges' legal reasoning in the decision that constitutes the object of this research; and a conceptual approach to correlate the analytical results with civil law theories and doctrines regarding liability and legal defenses (Marzuki, 2017). Furthermore, the legal materials utilized consist of primary legal sources, namely the Indonesian Civil Code (*KUHPer*), relevant statutes, and Decision Number 162/PDT/2021/PT DPS as the primary object of research; followed by secondary legal materials comprising books, journals, and various legal literature pertinent to the topic under discussion.

3. FINDINGS AND DISCUSSION

A. The Chronology of The Case

This case originated from a cooperation between PT Lorenz Marble, as the supplier of marble stone and terrazzo ceramics, and PT Royal Pacific Nusantara, as the owner of the Renaissance Nusa Dua Hotel project in Bali. The initial cooperation was based on Cooperation Agreement Letter (*Surat Perjanjian Kerjasama* or SPK) Number 071/SPK-RPN/PO/III/2019 dated March 26, 2019, which governed the procurement and cutting of 220 slabs of quartz stone with a contract value of approximately IDR 2.85 billion. This was subsequently followed by a second cooperation via SPK Number 182/SPKRPN/X/2019 dated October 17, 2019, governing the procurement of 630 slabs of terrazzo tile pool deck with a contract value of approximately IDR 2.43 billion.

In the execution of SPK Number 071, there was a shortfall of 5 slabs that could not be fulfilled by PT Lorenz Marble, and after a final calculation, both parties agreed to consider said cooperation legally terminated. However, regarding SPK Number 182, PT Royal Pacific Nusantara had paid a down payment of IDR 1.15 billion in December 2019, yet PT Lorenz Marble failed to fulfill the procurement of Boska terrazzo material for the swimming pool as agreed, causing project delays and losses for the project owner.

The failure of PT Lorenz Marble in material delivery and the absence of a certain delivery schedule resulted in a default (*wanprestasi*). Conversely, PT Royal Pacific Nusantara also experienced delays in down payment and installment payments; amounts due in October 2019 were only partially paid in December 2019 and January 2020, thereby affecting the schedule for ordering and shipping materials to the project site. Furthermore, the Covid-19 pandemic situation affecting Italy and several transit ports caused delays in the shipment of goods (Agtha & Novera, 2020).

In this dispute, a lawsuit by PT Royal Pacific Nusantara against PT Lorenz Marble for default was filed, demanding the cancellation of SPK 182 and the refund of the down payment, along with compensation for costs, damages, and interest. However, the judge took into consideration the existence of default and payment delays by PT Royal Pacific Nusantara, resulting in the lawsuit being partially rejected. The judge decided to annul SPK 182, sentenced PT Lorenz Marble to refund the down payment and pay interest as well as delay costs, and simultaneously ordered a conservatory attachment (*sita jaminan*) on PT Lorenz Marble's assets as a guarantee for the execution of the ruling.

This decision illustrates the existence of mutual default between both parties, with provisions for the calculation of damages and interest regarding payment delays and the refund of the down payment. The judge also affirmed that the execution of the ruling could be carried out immediately (*uitvoerbaar bij voorraad*) despite any appeal or cassation process, with an additional penalty of IDR 5 million per day of delay in execution. Thus, the decision provides legal certainty regarding the termination of the contractual relationship and the settlement of damages arising from default and payment delays.

B. Case Position

The matter in Decision Number 162/PDT/2021/PT DPS originated from a contractual relationship between PT Royal Pacific Nusantara, acting as the Plaintiff, and PT Lorenz Marble, acting as the Defendant. Both parties executed a cooperation agreement for the procurement of marble and ceramic stones intended for the construction project of the Renaissance Nusa Dua Hotel in Bali. This cooperation was enshrined in two Work Order Agreements (*Surat Perjanjian Kerja* or SPK). The first SPK was executed in March 2019 regarding the procurement of 220 slabs of quartz stone valued at approximately IDR 2.85 billion, which was completed without impediment. Subsequently, the second SPK was executed in October 2019 with a contract value of approximately IDR 2.43 billion, governing the procurement of 630 slabs of terrazzo tile pool deck for the hotel's swimming pool area.

In the performance of the agreement, the Plaintiff paid a down payment amounting to IDR 1.15 billion in December 2019. However, the Defendant failed to deliver the materials in accordance with the agreed schedule. This condition resulted in delays in the project's completion and was deemed detrimental to the Plaintiff as the project owner. Due to the absence of certainty regarding delivery from the Defendant, the Plaintiff filed a lawsuit for default (*wanprestasi*) at the Denpasar District Court, demanding the annulment of the contract, the refund of the down payment, as well as the payment of damages and interest for the delay.

In response to said lawsuit, the Defendant rejected the allegation of default, arguing that the delay in the delivery of goods was not caused by negligence, but rather by *force majeure*. According to the Defendant, the onset of the Covid-19 pandemic in early 2020 caused significant disruptions to the global supply chain. Italy, as the country of origin for the marble materials, implemented a national lockdown, and several transit ports in other countries, such as Greece and Singapore, were also closed (Ihsanuddin, 2023). Consequently, the entire export and import shipping process could not proceed as intended. Furthermore, the Defendant explained that the Plaintiff's payment of the down payment,

which was delayed from the original schedule, contributed to the delay in the ordering and material production process at the overseas supplier's factory.

In its defense, the Defendant grounded its arguments on Articles 1244 and 1245 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), which stipulate that an individual is not obligated to pay compensation if the failure to perform an obligation is caused by an unforeseen event for which they cannot be held accountable. The Defendant also submitted evidence in the form of official notification letters to the Plaintiff regarding shipping obstacles due to international port closures. By demonstrating such communication and efforts, the Defendant sought to prove that it had acted in good faith in executing the agreement.

The Panel of Judges at the Denpasar District Court assessed that the *force majeure* plea submitted by the Defendant possessed a strong legal basis. The Judges took into consideration that the Covid-19 pandemic constituted a national non-natural disaster as stipulated in Presidential Decree Number 12 of 2020, and qualified as an extraordinary event beyond human control. In their legal reasoning, the Judges affirmed that the Defendant was not proven negligent, as it had demonstrated efforts to continue fulfilling its contractual obligations despite being hindered by global conditions.

At the appellate level, the Denpasar High Court upheld the previous decision. The Panel of Judges affirmed that the Covid-19 pandemic fell under the category of relative force majeure, defined as a condition that is temporary in nature and merely suspends the performance of an obligation rather than extinguishing it permanently (Cormacain, 2020). Therefore, the delay in delivery could not be categorized as a default (*wanprestasi*). The Judges also assessed that there was a clear causal link between the pandemic and the failure to perform the agreement, and that the Defendant had acted in good faith to potential fulfill its obligations. Based on these considerations, the Plaintiff's lawsuit was rejected in its entirety, and the Defendant was exempted from liability for damages or interest.

Discussion

2.1. The Force Majeure Clause in an Agreement

In every agreement, the existence of an emergency clause, or *force majeure* clause, plays a pivotal role as a form of legal protection for the parties in the event of circumstances beyond their control that render the agreement impossible to perform as intended. This clause functions to regulate liability and legal consequences when one party fails to fulfill an obligation due to an extraordinary event that could not have been foreseen. Without this clause, a party unable to perform their obligation risks being deemed in default (*wanprestasi*) and may be sued for damages, even if the cause of such failure did not originate from their negligence (Sinaga & Darwis, 2020).

Generally, the legal basis regarding coercive circumstances (*keadaan memaksa*) is governed by Article 1244 and Article 1245 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUH Perdata). Article 1244 states that a debtor must compensate for costs, damages, and interest if they fail to perform the agreement, unless they can prove that the non-performance was caused by an unforeseen event for which they cannot be held accountable. Furthermore, Article 1245 affirms that no obligation to pay damages exists if the failure to perform the obligation (*perikatan*) is caused by *overmacht* or *force majeure*. Thus, the *force majeure* clause in an agreement serves as a concrete elaboration of the provisions of the Civil Code, ensuring the parties possess clear guidelines when facing emergency situations (Maulidi, 2019).

In the practice of contract drafting, the *force majeure* clause is typically structured as a separate article containing the following essential elements:

1. Definition of Coercive Circumstances: This clause provides a detailed explanation of what constitutes force majeure.
2. Obligation to Notify: For force majeure to be legally accepted, the party experiencing it must notify the other party within a specified timeframe.

3. Legal Consequences of Coercive Circumstances: This section regulates the arising legal consequences, such as the suspension of obligations, temporary exemption, or even the termination of the agreement.
4. Evidence and Burden of Proof: This clause emphasizes the importance of valid evidence to support a force majeure claim, such as official government documents, reports from relevant authorities, or other written evidence.
5. Settlement After the Event Concludes: Upon the cessation of the force majeure event, the parties are obligated to resume the performance of obligations or conduct a renegotiation..

By explicitly including a *force majeure* clause, parties can anticipate potential future disputes and avoid unjust accusations of default. This clause also functions as a manifestation of the principle of good faith and the balance of rights and obligations within contract law.

2.2. The Application of the Force Majeure Defense in Civil Dispute Resolution Based on Decision Number 162/PDT/2021/PT DPS

In Decision Number 162/PDT/2021/PT DPS, the defense of *force majeure* became a critical aspect in the resolution of a civil dispute between PT Royal Pacific Nusantara as the Plaintiff and PT Lorenz Marble as the Defendant. This dispute originated from a cooperation agreement for the procurement of marble materials (Boska) for the Renaissance Nusa Dua Hotel project in Bali, based on Work Agreement Letter (SPK) Number 182/SPK-RPN/X/2019. The Plaintiff alleged that the Defendant had committed a default (*wanprestasi*) by failing to deliver goods according to the schedule stipulated in the agreement, whereas the Defendant submitted a defense arguing that the delay was caused by *force majeure* resulting from the Covid-19 pandemic that struck globally in early 2020.

According to the Defendant, the delivery delay was not a result of negligence, but rather an event beyond human control, namely the Covid-19 pandemic which caused lockdowns and port closures in European countries such as Italy (the producer of Boska marble), Greece, and Singapore, which served as a transit port. Consequently, the export-import process was delayed, and the delivery schedule could not be executed as promised. Furthermore, the Defendant explained that the Plaintiff's delay in paying the down payment also contributed to slowing the material ordering process from the manufacturer, as production funds were only received more than two months after the agreed time. Thus, the Defendant asserted that the non-performance was not due to intent or negligence, but due to external factors that were unavoidable and for which the debtor could not be held accountable.

In their defense, the Defendant grounded their arguments on Articles 1244 and 1245 of the Indonesian Civil Code, which state that an individual is not obliged to pay damages if they fail to perform an agreement due to coercive circumstances (unforeseen circumstances for which they are not accountable). The Defendant also presented evidence of communication and written notifications to the Plaintiff regarding shipping obstacles due to international port closures, as well as evidence of ordering and shipping goods once conditions permitted. Moreover, the Defendant endeavored to demonstrate good faith by continuing to attempt to fulfill the agreement rather than immediately terminating the contract.

The Panel of Judges at the Denpasar District Court, in the first instance, assessed that the *force majeure* defense submitted by the Defendant was legally grounded. The Judge considered the Covid-19 pandemic a national non-natural disaster (based on Presidential Decree Number 12 of 2020), which fulfilled the elements of *force majeure* as it was an extraordinary event beyond the will of the parties. Subsequently, at the appellate level, the Denpasar High Court upheld the previous decision by affirming that the Covid-19 pandemic constituted relative force majeure—a condition that temporarily hinders the performance of the agreement but does not permanently extinguish the parties' obligations. The Court also assessed that the Defendant was not proven negligent, as they had demonstrated sufficient effort and communication to fulfill obligations, and that the delivery delay was a direct result of external factors in the form of uncontrollable international lockdown policies.

Based on these considerations, the Denpasar High Court rejected the Plaintiff's lawsuit in its entirety and declared that the Defendant was not proven to have committed a default, as the delay was caused by legally valid *force majeure*. This decision affirmed that the Defendant could not be held liable for damages, interest, or costs as referred to in Article 1243 of the Civil Code. Thus, the *force majeure* defense in this case was successfully accepted by the court as a basis for exemption from civil liability.

2.3 Boundaries of the Force Majeure Defense Established by Courts in Determining Contractual Liability

In Indonesian judicial practice, courts apply specific boundaries when assessing the validity of a *force majeure* defense as a basis for exemption from contractual liability (Atim & Al-Qahum, 2023). Judges do not automatically accept the plea of coercive circumstances; instead, they conduct an objective test regarding the elements and the feasibility of the reasons presented.

First, the court assesses whether the event claimed as *force majeure* was genuinely unforeseeable and unavoidable. In Supreme Court Decision No. 2855 K/Pdt/2005, an increase in building material prices was declared not to be *force majeure* because it constituted a business risk that could still be reasonably anticipated. This means the court limits this defense only to events beyond human control that cannot be prevented despite maximum effort.

Second, the *force majeure* defense is only acceptable if the event renders the performance of the obligation factually impossible, not merely difficult or disadvantageous. This was affirmed in Supreme Court Decision No. 409 K/Sip/1973, where a delay in goods delivery due to temporary transport disruptions was not considered *force majeure* because performance was still possible after the obstacle ceased. Thus, economic difficulties, administrative delays, or temporary technical hurdles are insufficient to negate liability.

Third, the court requires that the party claiming *force majeure* possesses no element of negligence or contribution to the occurrence of said circumstances. If the debtor is negligent in taking preventive measures, the *force majeure* plea fails. An example can be seen in Supreme Court Decision No. 3384 K/Pdt/1984, where a business owner who failed to mitigate weather risks in project execution was deemed liable for the delays.

Fourth, the *force majeure* defense must be proven concretely and proportionally by the claiming party. The court demands strong evidence, such as certificates from official authorities or factual data demonstrating a direct link between the event and the inability to perform. Without adequate proof, the *force majeure* argument is regarded merely as an excuse to avoid contractual obligations.

Fifth, in several recent post-pandemic decisions, courts have established that *force majeure* does not apply generally/automatically but must be analyzed based on a direct causal relationship between the extraordinary event and the object of the agreement. For instance, in Central Jakarta District Court Decision No. 360/Pdt.G/2020/PN.Jkt.Pst, the pandemic was only recognized as *force majeure* for parties who were indeed directly impacted physically or operationally, not merely due to a decline in revenue.

4. CONCLUSION

It can be concluded that the defense of coercive circumstances (*force majeure*) is a vital legal instrument in civil dispute resolution, rooted in the principles of justice and the balance of liability in contractual relationships. The acceptance of a *force majeure* plea by the court is not automatic but must undergo rigorous and objective proof regarding the elements stipulated in Articles 1244 and 1245 of the Indonesian Civil Code (*KUH Perdata*). In the case between PT Royal Pacific Nusantara and PT Lorenz Marble, the panel of judges assessed that the Covid-19 pandemic met the criteria for *force majeure* as it was an extraordinary event that was unforeseeable, unavoidable, and directly hindered the performance of the contractual obligations that formed the object of the agreement.

This decision reinforces that the court views *force majeure* not as an absolute exemption from liability, but as a legal exception applicable when a contracted party can prove that their inability to

fulfill obligations was genuinely caused by events beyond their control and not due to their own negligence. In the context of this case, the Defendant (PT Lorenz Marble) was deemed not negligent because they demonstrated good faith, maintained active communication with the plaintiff regarding shipping obstacles, and attempted to fulfill obligations once the situation permitted. Conversely, the Plaintiff (PT Royal Pacific Nusantara) also contributed to the performance delay because the down payment was made past the agreed schedule. Consequently, the court deemed it unjust to impose the entire liability solely upon the defendant, leading to the rejection of the default lawsuit.

The boundaries of the *force majeure* defense as applied in Indonesian judicial practice also provide a deeper understanding of the scope of contractual liability. There are at least five main boundaries guiding judges in assessing the validity of a *force majeure* plea. First, the event must be genuinely unforeseen and unavoidable, meaning it is not part of normal business risks calculable by the parties. Second, *force majeure* applies only if the event makes performance factually impossible, not merely difficult or economically damaging. Third, the party raising the defense must not have contributed negligence to the situation, as the basic principle of liability in contract law rejects exemption for careless parties. Fourth, the defense must be accompanied by concrete and valid evidence, such as official government documents or factual proof showing a causal link between the extraordinary event and the failure to perform. Fifth, the application is casuistic; each case is judged based on the characteristics of the contract object and the actual impact of the event on the performance of obligations.

In the case of PT Lorenz Marble, all these elements were deemed fulfilled because the Covid-19 pandemic was nationally recognized as a non-natural disaster with systemic impacts on export-import activities, including the procurement of building materials from abroad. The judge affirmed that the pandemic constituted relative force majeure, meaning it was temporary and suspended the obligation rather than extinguishing it. This affirmation is crucial as it demonstrates a balanced legal position: although performance is delayed, the contract remains binding, and the parties are obliged to proceed once the obstacle ends.

From the perspective of contract law theory, this decision reflects the application of the principles of good faith and *pacta sunt servanda* (agreements must be kept), meaning that the agreement remains binding as long as it is still executable, unless a valid *force majeure* exists. The court also demonstrated a proportional justice approach, where liability is not imposed unilaterally but adjusted according to the contribution and capacity of the parties in facing such extraordinary events. This principle is vital in the context of modern business relationships facing various global risks, such as pandemics, wars, or international supply chain disruptions.

Furthermore, this research indicates that the regulation and application of *force majeure* clauses in contracts need to be drafted in detail, covering the definition, notification obligations, legal consequences, and settlement mechanisms after the event concludes. Ambiguity in clauses can lead to differing interpretations and result in disputes, as seen in this case. Therefore, the formulation of clear and proportional *force majeure* clauses constitutes a form of preventive legal protection for parties to avoid uncertainty regarding liability in the future.

Overall, Decision Number 162/PDT/2021/PT DPS illustrates a significant development in Indonesian judicial practice regarding the application of the *force majeure* concept during a global crisis. The court did not merely enforce the Civil Code provisions textually but interpreted them contextually by considering social, economic, and national policy realities.

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