WAIVER OF ARTICLE 1245, FORCE MAJEURE IN COVID-19 PANDEMIC

Oleh
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Abstract

The COVID-19 pandemic that has occurred since the end of 2019 has hit all countries in the world. The impact experienced by every country, including Indonesia, is the decline in the health of its citizens due to infection with the Corona virus, the decline in the economic capacity of the country and its citizens due to the implementation of restrictions on periodic social activities, as well as security in the country's border areas. These three impacts were not considered force majeure conditions in the Airmadidi District Court Decision Number 11/Pdt.G.S/2021/PN. Arm (Verdict a-quo). The debtor's inability to pay multipurpose financing installments as a result of imposing restrictions on social and economic activities is not considered a coercive circumstance or a condition beyond the ability of the debtor. This research will examine the a-quo decision by applying the socio-legal studies approach. The purpose of this research is to provide legal certainty in the application of force majeure and default cases. The method used in scientific research is consistent with the research under study, and the research method has at least a set of materials to answer the contradictions that exist in the formulation of the problem designed in the research. In order to deal with conditions that are quite detrimental to public health, many countries have started to establish policies regarding handling a pandemic, one of which is calling on them to reduce the intensity of face-to-face meetings. This certainly has implications for conditions that are getting worse from an economic and social perspective as a result of various policies that must be enacted swiftly and quickly.

Keyword: Force majeure, Credit agreement, Default

INTRODUCTION

In general, a person is deemed negligent or in default if he did not perform his obligations at all, if his obligations were incomplete, if he was late in meeting his obligations, or if he violated the terms of the agreement. Soebekti contends that a debtor's default occurs when he fails to fulfill his obligations. This is possible owing to two factors: the debtor's omission, which may be intentional, and negligence caused by a force majeure. In the case of a debtor's ommission, if one of the parties performs or does not perform something, or does not provide according to what was agreed upon, then it is considered a breach of contract or default [1].

The term force majeure is also often referred to as overmacht, act of God, force majeure, or emergency. Every contract agreed upon by the parties usually stipulates a force majeure clause. Force majeure is commonly used in sales contracts, leasing agreements, agreements between the government and partners, and agreements between domestic and foreign business actors. Some creditors and debtors in making credit agreements stipulate force majeure at the end of the agreement. In practice, the use of the word force majeure always appears in the contents of the agreement

and is usually included at the end of the agreement clause [2].

According to Mochtar Kusumaatmadja "force majeure can be accepted as an excuse for not fulfilling obligations due to the loss/disappearance of the object or purpose that is the subject of the agreement. This situation is aimed at physical and legal implementation, not just because of difficulties in carrying out its obligations." [3]

According to Abdulkadir Muhammad, force majeure is a condition in which the debtor is unable to fulfill his obligations due to unforeseen and unavoidable circumstances. According to Setiawan, force majeure is a situation that precludes the debtor from carrying out his obligations and for which he cannot be held liable, does not have to face the risk, and cannot bear the risk. As a result of the debtor's failure to meet his obligations at the time these circumstances arose. [3]

Articles 1244-1245 of the Indonesia Civil Code stipulate that (1) coercive circumstances can eliminate the element of default in the agreement; (2) as long as the force majeure really occurs; and (3) prevent one of the parties from performing their obligations. There is not any provision that force majeure must be regulated in the agreement to make it legal in the event of a force majeure. Therefore, the force majeure arrangement in the contract is only to strengthen it; it does not mean that the force majeure must be agreed upon so that it can be used as an excuse not to need to make compensation.

Force majeure provisions, whether placed in the agreement or not, can still in principle be used as a basis for waiving the obligation for compensation as long as the force majeure genuinely occurs. Regarding the ability to carry out the agreement's performance, there are two categories of force majeure. The first type, relative force majeure, highlights that the accomplishment of goals is ordinarily impossible; yet they are still achievable if they are pushed. Similar to the export-import agreement on goods, after the agreement is made there is a ban on the import of these goods (Sakti et al., 2023).

The second classification, absolute force majeure, is a situation that has occurred that has caused an achievement or obligation arising from a contract to no longer be carried out by one of the parties or even all parties. The subject owner of the obligation cannot fulfill his/her achievements as a result of a permanent change in circumstances. For example, if the goods that are the object of the contract have been destroyed due to fire or other natural conditions beyond the fault of the debtor. [5]

Legal compliance is an awareness of the benefits of the law that creates a form of community "loyalty" to the legal values that are applied in living together. This "loyalty" is manifested in the form of behavior that is actually submissive to the legal values themselves, which can be observed and felt by other community members.

Legal awareness refers to a person's awareness of existing laws or anticipated legislation, as well as their corresponding values. In reality, the focus is on the values pertaining to the role of law, rather than a legal evaluation of particular events in the concerned community [6].

According to Soerjono, the essence of legal compliance consists of 3 (three) factors that encourage people to comply with the law. (a) compliance, a sort of communal legal compliance brought about through consequences for rule offenders. Thus, compliance serves solely to avoid current legal punishments. For instance, if the police as law enforcers conduct an operation to check the completeness of the vehicle, the violators will find a way to circumvent the operation. (b) Identification, a sort of legal compliance in society based on establishing amicable connections with other individuals or groups. Similar to a minor who wants to drive but refrains from doing so because one of the child's parents is a law enforcement officer. (c)

Internalization, which is a kind of community legal compliance since the community understands the function and purpose of the rule of law. The objective and function of the rule of law are to compel compliance with these restrictions such as parents of minors who restrict their children from operating motorized vehicles due to their children's inability to regulate their emotions, lack of mental maturity, low sense of responsibility, and inability to comprehend the significance of safety (Soekanto, 2006).

In addition to the aforementioned factors, creditors frequently include standard terms and clauses in credit agreements. Standard clauses in standard contracts may stipulate that the recipient of the products or services must satisfy certain duties. The purpose of the implementation of standard clauses in standard agreements is to relieve one party of duty or legal duties. Typically, one of the parties applying the standard clause is a producer or business actor.

The definition of a standard clause is based on Article 1 Point 10 of Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as the Consumer Protection Law or Undang-Undang Perlindungan Konsumen). The Consumer Protection Law [7] is divided into six elements. The first element is any form of coercive regulation or provision. The second element of provisions set out the conditions that had been prepared at the outset. The third element is the determination of binding terms by one of the parties.

The fourth element is that other parties without free will are conditioned to accept that terms of the agreement. The fifth element is that business actors determine and prepare the conditions that must be implemented. The sixth element is the mandatory requirements which are set forth in a binding agreement and must be obeyed by the opposing party or the consumer (Reynaldo & Murti, 2023).

The Consumer Protection Law has emphasized the prohibition on business actors applying standard clauses to every agreement that will be applied in their business agreements. Provisions regarding the inclusion of standard clauses are regulated in Article 18 of the Consumer Protection Law. The elucidation of Article 18 paragraph (1) of the Consumer Protection Law stated that the purpose of the prohibition on the inclusion of standard clauses is so that the position of consumers is equal to that of business actors and that the principle of freedom of contract can be implemented in every agreement. The application of the principle of freedom of contract is in accordance with Article 1338 of the Indonesian Civil Code [9].

Even though it is frequently stated in a legal context that entrepreneurs and consumers are on an equal position, this equality does not exist. Entrepreneurs are able to unilaterally repudiate their contracts without filing a lawsuit. Therefore, businesses can hunt for justifications when consumers sue them for "minor" faults. The reason that is often stated by business actors is that this type of fault is not covered in the agreement (Ruslan, 2016).

Standard clauses in their meanings have been conveyed by various thinkers and legal experts including according to Gatot Supramono, standard clauses are agreements used by companies with a fast and practical system [11].

According to Remy Siahdeini, a standard clause is an agreement that has been standardized by a company on the provisions that are enforced so that there is no opportunity to negotiate or ask for changes [12].

According to Achmad Busro, a standard clause is a legally binding agreement that cannot be separated from the provisions of the law, and its existence is quite binding (Muaz-iz & Busro, 2015).

According to Abdul Kadir Muhammad, standard clauses are parameters used as guidelines and benchmarks for consumers to

enter into legal relations with entrepreneurs, which include models, formulas and measures (Nur & Carolina, 2010).

According to Hasanudin Rahman, standard clauses are the determination of conditions carried out by organizations or companies on the basis of their interests [15].

The standard clause is essentially the most concrete form of unilateral application of law, according to the collection of expert understandings. This is due to the provisions addressing this clause, which are written and determined unilaterally by debtors or consumers who frequently do not participate in the formulation of contracts (Iskandar, Juli 2017). The goal of the limitation on the insertion of standard terms is to ensure that the position of consumers is equal to that of business actors and that the principle of contract freedom can be applied to all agreements [16].

Thus, this standard clause is often less relevant to be applied as an agreement in a legal state that adheres to the free contract principle in the treaty law it applies.

However, from the perspective of business actors, drafted agreements are frequently beneficial. In order to enhance outcomes and time efficiency while implementing agreements with the public, it is crucial to utilize them. Therefore, the implementation of this standard clause has been met with a variety of controversies because, on the one hand, it is somewhat opposed to the Consumer Protection Law, and on the other hand, it is extremely useful and facilitates transactions for several business players and organizations.

Standard clauses in a standard agreement can contain obligations that must be fulfilled by the recipient of the goods or services and clauses that absolve the responsibility of one of the parties, namely the producer or business actor. The elements of a standard clause based on Article 1 Point 10 the Consumer Protection Law are: (1) all rules are in written form, (2) they limit consumer rights, (3) they add consumer obligations, and (4) they contain mandatory terms and conditions run by consumers.

According to Article 1320 of the Indonesian Civil Code, there are four (four) conditions for a contract's legality: (1) the existence of a legally enforceable contract between the parties and the making of the contract. (2) The parties to the contract must be competent and authorized to sign the contract. (3) There must be a specific condition. (4) There must be a permissible cause (causa).

The first and second conditions are subjective conditions. The third and fourth conditions are objective conditions. The difference between the two conditions relates to the legal consequences if these conditions are not met. That is, the agreement can be terminated if the subjective conditions are not met. Unless the agreement has been terminated or decided by a court, the agreement is valid and considered valid, and the agreement is legally void unless the objective conditions are met. Therefore, since the agreement is considered to have never existed without going through the cancellation process first [16].

Article 18 of the Consumer Protection Law prohibits entrepreneurs from making standard clauses such as: (1) requiring consumers to comply with new regulations; (2) deciding the change and continuation unilaterally by the business actor; (3) formulating the power of business actors to take unilateral action on consumer installment goods; and (4) reducing consumer profits and assets and regulating consumer evidence for the loss of use of goods.

RESERCH METHOD

The method used in scientific research is consistent with the research under study, and the research method has at least a set of materials to answer the contradictions that exist in the formulation of the problem designed in the research. (Metode merri)

RESULT AND DISCUSION

A. Neglect of Force Majeure during the COVID-19 Pandemic

In decision number: 11/Pdt.G.S/2021/PN Arm (a-quo) which involves the defendant and plaintiff, is basically a decision made in the midst of a pandemic phenomenon. Basically, the existing pandemic is a condition beyond the control of all parties, especially the global community. In order to deal with conditions that are quite detrimental to public health, many countries have started to establish policies regarding handling a pandemic, one of which is calling on them to reduce the intensity of face-to-face meetings. This certainly has implications for conditions that are getting worse from an economic and social perspective as a result of various policies that must be enacted swiftly and quickly.

Therefore, by using the principle of force majeure, which is the principle of reference in unforeseen conditions and beyond the control of the debtor or creditor, the panel of judges in the a-quo Decision, case considered simultaneously two types of force majeure, namely absolute and relative. In this decision, it is stated that:

"In assessing the inability to pay due to coercive circumstances, basically it is about obstacles that occur beyond the ability of the defendant to fulfill his achievements, for example problems related to technical issues and methods of payment. One example of a technical problem in payment is when, for example, due to the pandemic, banking services have been temporarily paralyzed (relative force majeure) or payment methods stipulated in the agreement are no longer possible because the value of the rupiah currency is no longer valid (absolute force majeure). As for the a-quo case, the defendant was still able to make payments using online banking services and other methods, especially during the pandemic, banking services were still available and accessible to the defendant. Based on the things that have been described above, it can be concluded that the Defendant's inability to pay the installments that are his obligations on the grounds that there is a COVID-19 pandemic is basically not a force majeure which can eliminate the element of error/negligence from the defendant's late actions in carrying out achievements, plus the defendant had broken his promise even before the COVID-19 pandemic." [22]

The concept of force majeure is recognized, referred to, considered, and implemented in Indonesia. Force majeure in many court verdicts shows that the Supreme Court and Appeal courts apply the concept of coercion according to the words in the law and have not provided a broader interpretation.

In the case of the a-quo decision, the defendant argued that the reason for the late payment was due to the COVID-19 pandemic. The a-quo decision considered that the conditions experienced by the defendant were not included in the relative force majeure category. Is the defendant's condition included in a force majeure condition that can eliminate the element of error/negligence from the defendant's actions or not? Is the delay in carrying out the achievement included in a condition of default or not?

Force majeure conditions are divided into two (2) categories: absolute force majeure and relative force majeure. Absolute force majeure is a situation where the debtor cannot fulfil his debt to the creditor at all, due to natural disaster such as an earthquake, flash flood, or mountain eruption. Meanwhile, relative force majeure is a condition that causes the debtor to carry out his performance. In carrying out these achievements, it must be done by making large, unequal sacrifices or using mental strength that is beyond human capabilities or the possibility of experiencing a very large loss hazard (Is-radjuningtias, 2015).

When all countries in the world were hit by the COVID-19 pandemic, every country imposed social restrictions and restrictions on economic activities. The impact of this policy is

that economic conditions in various countries, including Indonesia, have declined.

This decline was experienced by the retail trade sector of goods and services as well as the banking world. Business actors must adjust the restrictions on business activities from March 2020 to the end of December 2021.

In this study, the researchers raised one of the Force Majeure Default cases that occurred in North Minahasa Regency, North Sulawesi. This case began with a Multipurpose Financing Agreement signed on September 21, 2019 between Multifinance enterpise (the plaintiff) and debtor (the defendant). The plaintiff provided a credit facility of Rp222,232,048.00 with interest of Rp96,337,547.39. Monthly instalments of IDR 5,310,000.00, for a period of 60 instalments. The loan is tied up with collateral in the form of a Toyota Avanza brand car on a fiduciary basis. The charging of receivables is stated in the Deed of Fiduciary Guarantee Number: 164 dated 23 November 2018 before a Notary in North Sulawesi.

Due to late payment from the defendant on the ninth instalment which was due on June 21 2019, the defendant was late in making a payment which was made on August 23 2019 where the delay continued in the next instalment, namely the 19th (nineteenth) instalment which was due on April 21 2020 but was paid on July 21 2020. Based on this, the judge considered that the defendant's inability to fulfil his achievements in the form of timely instalment payments had basically occurred before the pandemic.

As a result of the COVID-19 pandemic experienced by the Indonesian citizens, the government has established periodic social distancing so that the debtor (defendant) experiences economic difficulties. In the 9th (ninth) instalment, around June 2020, the defendant was hampered in payment. This delay caused the Plaintiff to bill and provide a warning letter but there was no response from the defendant. The creditor as the Plaintiff considers that the defendant has been negligent in carrying out his obligations to carry out the credit agreement. Creditors apply Civil Law violations of Article 1239 of the Civil Code in conjunction with 1243 of the Civil Code committed by the debtor (defendant).

In the process of examining cases in court, the debtor conveys the reason for the delay in paying his obligations. The debtor mentioned that the implementation of periodic restrictions on business and social activities, abbreviated as PPKM Level 4, had an impact on the debtor's (defendant) restaurant business. This impact causes the debtor's business income to be minimal so that the debtor's instalment payments cannot be carried out on time. As a result of this condition, the debtor's (defendant) credit became a loss of IDR 202,144,665.11 instead of October 2021.

Force majeure was one of the clauses regulated in the credit agreement between the creditor and the debtor. The force majeure arrangement in an agreement was included in the main agreement, and it was not separated as an additional agreement and is linked to the main agreement as an accessorized agreement. Circumstances that gave rise to force majeure must occur after approval was given. If the implementation of the achievement was impossible since the agreement was made, then the agreement was null and void by law. Matters regarding force majeure were contained in the provisions governing compensation, namely Article 1244 in conjunction with Article 1245 of the Civil Code.

Article 1245 of the Civil Code determines three important elements. The first element of the debtor cannot be charged for costs, losses and interest if there is a force majeure condition. The second element, force majeure, is an event that cannot be predicted and is beyond the ability of the debtor to control it. Force majeure is not an intentional event made by the Debtor. The third element, as a

result of this force majeure, the debtor is unable to carry out his obligations.

Presidential Regulation Number 4 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 54 of 2010 (hereinafter abbreviated as Presidential Decree Number 4 of 2015) concerning government procurement of goods/services Article 91 regulates the definition of force majeure conditions that must be applied by the parties entering into a goods procurement agreement. This provision defines that force majeure is a condition that occurs beyond the expectation and will of the parties. Force majeure conditions cannot be predicted or cannot be expected to occur before the parties enter into an agreement. This condition causes one of the parties to be unable to fulfill its obligations on time.

If the force majeure occurs, then one of the parties who is harmed and has an obligation, but the implementation of his obligations is delayed, then the party who has the obligation must notify this force majeure. Notification is given within a period of no later than 14 calendar days after the occurrence of this force majeure. Notification is provided to the engagement partner.

If this force majeure occurs and is not the result of the negligence of one of the parties, then both parties cannot apply sanctions. The application of sanctions in the form of payment of interest, compensation and other costs is not permitted by Article 1245 of the Civil Code.

Delays in the debtor's obligations during the PPKM implementation period are included in relative force majeure conditions. Because the debtor is still able to carry out his obligations. The debtor only needs additional time (a reschedule) to carry out its obligations.

In essence, a force majeure condition is a condition that may result in not being able to carry out an achievement in a contract agreement. As happened in case Number 11/Pdt.G.S/2021/PN Arm, where the process of fulfilling the achievements of the plaintiff to the defendant experienced several obstacles caused by the occurrence of COVID-19.

Researchers assume that the debtor's economic condition has decreased due to force majeure. The government has decided on periodic social restrictions through Presidential Decree Number 12 of 2020 (hereinafter abbreviated as Presidential Decree Number 12 of 2020) concerning the stipulation of non-natural disasters over the spread of Corona Virus Disease 2019 (COVID-19). This condition is in accordance with the elements regulated in Article 1245 of the Civil Code. The implementation of PPKM and the COVID-19 pandemic have eliminated the element of debtor's default or negligence. PPKM and the COVID-19 pandemic were accidental events for the debtor, preventing him/her from carrying out his obligations.

As a result of the COVID-19 pandemic experienced by the Indonesian nation, the government has established periodic social distancing so that the debtor (defendant) experiences economic difficulties. In the 9th (ninth) installment, around June 2020, the Defendant was hampered in payment. The plaintiff provided a credit facility of Rp222,232,048.00 with interest of Rp96,337,547.39. Monthly installments of IDR 5,310,000.00, for a period of 60 installments. Due to late payment from the defendant on the ninth installment which was due on June 21 2019, the defendant was late in making a payment which was made on August 23 2019 where the delay continued in the next installment, namely the 19th (nineteenth) installment which due on 21 April 2020 but paid on 21 July 2020.

B. Waiver of Application of Standard Clauses

In binding agreements between plaintiffs and defendants, there are standard clauses that are determined in accordance with legal provisions regarding agreements that are often made between large companies and individuals. In this case, the plaintiff is

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domiciled as a large company while the defendant is an individual. Therefore, in order to consider the position and also try as fairly as possible, the judge considers every application of the standard clauses determined as evidence in the trial process. Therefore, the judge's considerations in order to ignore the standard clause contained in the a-quo decision are as follows: “Although in Article 2 paragraph (1) the agreement as evidence P-1/exhibit T-1 has included an exception for reasons of force majeure, the judge is of the opinion that such provisions are very unfair to the defendant, especially in the agreement where the position between the plaintiff which is a large company and the defendant who is only an individual is in principle unequal where the defendant does not have the opportunity to determine the contents of the agreement and can only submit and follow the contents of the agreement proffered by the plaintiff. Based on that, the judge concludes that the exception is basically contrary to the norms of decency and the principle of balance attached to an agreement so that the clause is declared non-binding and null and void."

However, the aforementioned decision a-quo "stated that the Multipurpose Financing Agreement (Purchase with Installment Financing) with Number 20105.18.01.024223 and its attachments is valid and binding and applies as a law for plaintiffs and defendants." In Article 2 paragraph (1) the agreement as evidence P-1/exhibit T-1 has included an exception for reasons of force majeure. The judge is of the opinion that such a provision is very unfair to the debtor. Moreover, in the agreement the position is between the creditor (plaintiff) who is a large company and the debtor (defendant) who is only an individual. In principle, this position is unequal because the debtor does not have the opportunity to determine the contents of the agreement and can only submit to and follow the contents of the agreement proffered by the creditor.

Based on that, the judge concluded that the exception was basically contrary to the norms of compliance and the principle of balance attached to an agreement, so that the clause was declared non-binding and null and void.

The valid credit agreement between the creditor and the debtor has implemented a standard clause, which is declared non-binding and null and void by law by the court because it is not in accordance with the laws and regulations. However, the credit agreement that was canceled in the legal considerations of the a-quo decision was not considered in the decision. The verdict ruled that the debtor had failed to carry out his obligations based on the agreement, which was declared null and void in the legal considerations of this a-quo decision.

In the Multipurpose Financing Agreement, the agreement used is a standard agreement. This means that the company has determined the contents of the agreement, terms and conditions including the rights and obligations of the parties. Thus, there is no opportunity for the debtor to discuss the contents of the agreement. The debtor is given the choice to agree to the contents of the agreement or not agreeing to the agreement. The form of the debtor's agreement is proven by the signing of the agreement.

This situation triggers the agreements in the standard form. A standard agreement is made unilaterally by one of the parties who has a stronger position. Thus, the terms, conditions, contents and agreements have been discovered in advance by the stronger party. For entrepreneurs, this might be a way to achieve economic goals that are efficient, practical and fast, not to beat around the bush. However, for the debtor, it is an unprofitable choice because they are only faced with one choice, namely to accept it despite their reluctance.

This legal consideration was not followed by a ruling that released the obligation for the debtor to pay for negligence arising from an agreement that had been cancelled. The a-

quo decision actually punished the debtor for failing to carry out his obligations based on an agreement which was declared non-binding and null and void. The negligence in the a-quo decision has resulted in injustice to the debtor. The debtor must lose the collateral object in the form of a Toyota Avanza and payments that have been previously paid belong to the creditor. In general, it can be seen in Article 1313 of the Civil Code, namely an act by which one person or more binds him to one or more other people. According to Subekti "an agreement is also called an agreement because both parties agree to do something, it can be said that the two words (agreement and approval) have the same meaning." (Subekti, 2005a)

Article 18 of the Consumer Protection Law makes a number of prohibitions on the use of standard clauses in (standard) contracts. According to the provisions of Article 18 of the Consumer Protection Law, the prohibition on the use of standard contracts is related to two things, namely the content and form of writing. In terms of content, it is forbidden to use standard contracts that contain unfair clauses. Meanwhile, in terms of the form of writing, the clauses must be written in a simple, clear and concise manner so that consumers can read and understand them properly [25].

Article 1320 of the Civil Code has stated that the legal requirements of an agreement are that those who bind themselves are capable of making an agreement regarding a certain matter and a lawful cause [26].

It should be noted that agreements that meet the requirements contained in the law are recognized by the law, preferably agreements that do not meet the requirements are not recognized by the law even though they are recognized by the parties concerned. Therefore, when the parties acknowledge and comply with the agreement, they made even though they did not fulfill the terms of the agreement, it applies between them, and if one day the parties do not admit it again, the judge will cancel the agreement or the agreement will be invalidated.

CONCLUSION

By examining the judge's considerations in deciding and trying the defendant as a debtor who is deemed to have defaulted on a multipurpose financing agreement with installment payments, it is evident that the position of the law in the midst of the COVID-19 pandemic, which occurred at least two years ago, is significant. Where the pandemic has paralyzed the economic sector, which is the center of people's lives, the existing legal process must also examine the social conditions that occur in the midst of a pandemic in order to determine whether achievement fulfillment can be carried out despite the fact that various government policies have changed. This appears to be an erroneous value to be under-stood as a material consideration when look-ing at the force majeure that has occurred with the existence of a pandemic. In the process, it turns out that both relative and absolute force majeure can have implications for each other when dealing with policies. Given the conditions that occurred during the pandemic, the decision should indeed have taken into consideration the social and policy aspects that were in effect during the pandemic. This is considering that the policy of social condi-tions has implications for activities that should be able to run normally but in fact experience obstacles. The decision that was taken and considered by looking at the provisions and facts that happened to the defendant turned out to be negligent in understanding how the policies were set in an effort to deal with a pandemic. The Indonesian government has established various policies that must be complied with in the midst of a pandemic, including when it has to stop the economic sector and community business activities. Thus, looking at the social and political context in the context of handling the COVID-19 pan-demic, the decisions that have been taken by judges were

indeed not in line with Article 1245 of the Civil Code. By referring to the concept of the standard clause in an agree-ment, it can be seen that a standard clause is a stipulation of a clause in an agreement sub-mitted by one party to another party to fulfill all requirements in order to meet the needs of the agreement to be made.

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