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Settlement of Disputes Due to Default on the Ground of Force Majeure: A Review Based on Articles 1244 and 1245 of the Civil Code

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Abstract. *Force majeure is often used as a reason for debtors to escape responsibility for failure to fulfill their obligations (default). This study aims to analyze the criteria for circumstances that can be categorized as force majeure and how the dispute resolution mechanism for default arising from it is based on the perspective of Article 1244 and Article 1245 of the Civil Code (BW). The research method used is normative juridical with a statutory approach and a conceptual approach. The results show that Articles 1244 and 1245 of the BW provide legal protection for debtors to avoid paying costs, damages, and interest, provided that the debtor can prove the existence of an event beyond their control that could not have been predicted beforehand. However, the application of these articles in disputes often creates ambiguity regarding the boundaries between the difficulty of contract implementation (hardship) and the impossibility of contract implementation (impossibility). Dispute resolution in this area ideally prioritizes the principle of good faith through contract renegotiation to achieve a win-win solution before resorting to litigation.*

Keywords: *Default; Dispute; Majeure; Settlement.*

1. Introduction

An agreement is a legal bond born from an agreement between two parties, where each party has rights and obligations that must be fulfilled based on the principle of pacta sunt servanda (Agus Yudha Hernoko, 2021). Ideally, performance is achieved according to the agreement. However, in the reality of business practices, situations often arise where one party is unable to fulfill its obligations, known as default. Default does not always arise due to bad faith on the part of the debtor, but can be triggered by external factors beyond human capabilities (Muhammad Syaifuddin, 2021).

One justification often used by debtors to exempt themselves from the obligation to pay compensation is force majeure. Doctrinally, force majeure is defined as an event that occurs beyond the control of the parties, is unpredictable, unavoidable, and is not caused by the debtor's fault or negligence (Niru Anita Sinaga and Nurlely Darwis, 2020). The existence of this concept is very important in Indonesian contract law because the determination of legal responsibility is fundamentally dependent on the presence or absence of an element of fault liability. If a failure to fulfill a performance is proven to be caused by force majeure, the debtor can in principle be relieved from the obligation to compensate for the resulting losses. However, without clear boundaries and parameters regarding the criteria for events categorized as force majeure, the application of this concept has the potential to create legal uncertainty. This condition can open up space for abuse by debtors acting in bad faith, while also making it difficult for creditors to obtain legal protection and fulfill their rights for losses suffered, ultimately hindering the achievement of justice in contractual relationships (Shanti Riskawati, 2021).

The Civil Code (BW) provides a normative basis for the release of debtors' responsibilities through provisions in Articles 1244 and 1245. Article 1244 of the BW in principle emphasizes that the debtor remains obligated to reimburse costs, losses, and interest if he cannot fulfill his obligations, unless he can prove that the failure was caused by an unforeseen event for which he cannot be held responsible (Ni Putu Purvanti, 2021). Thus, the burden of proof rests on the debtor to demonstrate that the failure to fulfill obligations was not the result of his fault or negligence. Meanwhile, Article 1245 of the BW emphasizes that there is no obligation to reimburse costs, losses, and interest if the debtor is prevented from fulfilling his obligations due to force majeure or an event that occurs by chance beyond his control. These two provisions systematically become an important legal foundation in contract law, because they provide guidelines for judges and parties in assessing whether an event can be qualified as a reason for exemption from liability, while maintaining a balance between protection for debtors who face circumstances beyond their control and the creditor's right to obtain fulfillment of performance or compensation (Siti Maryam, 2022).

However, in practice, the application of Articles 1244 and 1245 of the Civil Code often gives rise to complex disputes due to the broad interpretation of the concepts of "accidental" and "unforeseeable" events. Debates typically focus on determining the threshold for whether a circumstance is truly beyond the control of the parties or whether it falls within the realm of foreseeable risks. For example, extreme economic fluctuations or sudden changes in government policy cannot always automatically qualify as force majeure, as in many cases they can still be considered foreseeable business risks, especially if the business actor should have anticipated them through adequate risk management. This lack of clarity ultimately creates legal uncertainty and has the potential to harm creditors, as their position becomes vulnerable when debtors opportunistically claim force majeure to avoid liability (Dewa Gede Rudy, 2021). Therefore, a stricter and more contextual approach is needed in assessing the element of force majeure, including taking into account the good faith of the parties, the level of caution that should have been exercised, and whether the event was truly unpredictable and unavoidable, so that the balance of legal protection between debtors and creditors is maintained.

Based on these dynamics, this study is relevant to review the dispute resolution mechanism for defaults that base their defense on force majeure, particularly within the regulatory framework of Articles 1244 and 1245 of the Civil Code. Through an in-depth normative approach, this study seeks to examine how these two provisions are interpreted and applied in practice, particularly in determining the boundary between the risks that should be borne by the debtor and the extraordinary circumstances that actually exempt him from responsibility. The main focus of this study is to find a balance point between the interests of the debtor who faces circumstances beyond his control and the creditor's right to obtain fulfillment of performance or compensation for losses suffered. Thus, this study not only aims to provide conceptual clarity regarding force majeure, but also offers a more measurable and consistent interpretative framework, so that contract law can function fairly: protecting parties truly affected by force majeure, while still ensuring legal certainty and preventing the misuse of this reason in every contractual relationship.

2. Research methods

This research uses a normative juridical legal research method that focuses on the inventory and synchronization of positive law through literature study as the main method. The applied approach includes a statute approach to systematically examine the normative basis in Articles 1244 and 1245 of the Civil Code, as well as a conceptual approach to examine and describe various legal doctrines that have developed regarding force majeure and breach of contract. The legal sources used consist of primary legal materials in the form of provisions in the Civil Code, as well as secondary legal materials that include legal literature, research results, and scientific journals relevant to the topic of study. All of these legal materials were collected through document study, then analyzed descriptively and analytically using a deductive thinking method, namely drawing conclusions from general norms to more concrete problems. Through this method, the research is expected to provide a comprehensive understanding of the mechanism for resolving contract disputes hampered by force majeure, while also offering the construction of legal arguments that are fair, proportional, and guarantee legal certainty for the parties in the contractual relationship.

3. Results and Discussion

3.1. Criteria and Parameters of Force Majeure as Reasons for Forgiveness in Articles 1244 and 1245 BW

Articles 1244 and 1245 of the Civil Code are fundamental provisions in Indonesian contract law that regulate the limits of a debtor's release from liability, particularly in the context of default. Normatively, Article 1244 of the Civil Code emphasizes that a debtor remains liable to pay costs, losses, and interest if he or she fails to fulfill his or her obligations, unless he or she can prove the existence of an "unforeseen cause" that prevents the fulfillment of said obligation. This provision implicitly places the burden of proof entirely on the debtor, requiring the debtor to demonstrate that the failure to fulfill obligations was not the result of avoidable error, negligence, or lack of due care, but rather was caused by external factors beyond his or her control. Therefore, this norm not only serves as a protection mechanism for debtors under certain circumstances but also as a controlling instrument to ensure that release from liability is not granted arbitrarily without a legally justifiable basis (Putu Gede Aristha, 2022).

Article 1245 of the Civil Code emphasizes the limitations of this exemption from liability by formulating two main conditions that can be used as a basis by the debtor, namely the existence of "force majeure" or "unintentional events" that prevent the implementation of the performance. In civil law doctrine, an event can only be qualified as force majeure if it meets three cumulative elements: the event was unpredictable, unavoidable despite maximum efforts, and occurred beyond the fault or negligence of the debtor. These three elements must be fulfilled simultaneously and cannot be separated, so that the absence of one element will invalidate the force majeure claim itself. Furthermore, the assessment of the fulfillment of these elements is not abstract, but must be viewed contextually by considering the type of agreement, the characteristics of the parties' businesses, and the level of caution that is reasonably expected in the situation. Therefore, if the judge considers that the event used as a reason can still be predicted as part of the business risk or should have been anticipated through preventive measures, then the reason for force majeure can be rejected, and the debtor will still be declared in default with all its legal consequences, including the obligation to pay compensation to the creditor (Dian Eka Pratiwi, 2022).

The interpretation of the phrase "unforeseen" in Article 1244 of the Civil Code is often a crucial point that sparks debate in judicial practice, as it determines whether an event can be used as a basis for exemption from liability. Generally, a situation is categorized as unforeseen if, at the time the agreement is made, the parties, acting as reasonable persons, lacked sufficient grounds to predict the possibility of the event occurring (PNH Simanjuntak, 2023). This parameter is objective, so it does not depend solely on the debtor's subjective perception, but rather on the standards of prudence and reasonableness applicable in practice. In certain contexts, events such as large-scale natural disasters, war, or truly extraordinary government policies are often qualified as unforeseen. However, in the dynamics of modern business, which are rife with uncertainty, not all changes can be readily categorized as unforeseen. Market price fluctuations, changes in currency exchange rates, and other economic dynamics are generally considered inherent business risks and should be taken into account by the parties from the outset through adequate risk planning and management. Therefore, determining the element of "unforeseen" requires careful and contextual analysis, so that there is no expansion of the meaning that actually opens up loopholes for debtors to avoid responsibility for risks that are actually still within their realm of control (Suharnoko, 2022).

In addition to the element of unforeseeability, the element of "impossibility" is also a crucial parameter in determining whether or not force majeure exists. This impossibility can essentially be divided into two forms: absolute impossibility and relative impossibility. Absolute impossibility occurs when performance cannot be performed by anyone under any circumstances, for example, because the object of the agreement has been destroyed or lost so that it can no longer be delivered (Muhamad Sadi Is, 2021). In this condition, the reason for relative force majeure is easier to accept because the obstacles that occur are real and insurmountable. Meanwhile, relative impossibility refers to a situation where performance can theoretically still be performed, but only with sacrifices that are very large, disproportionate, or beyond the limits of reasonableness that can be charged to the debtor. This is where the debate arises, because not all difficulties or increased costs can be used as a basis for exemption from liability. In practice, judges are required to carefully assess whether the condition is truly an objective obstacle or is merely a consequence of business risks that should have been taken into account. Thus, although Article 1245 of the Civil Code implicitly provides protection against conditions that prevent the fulfillment of obligations, its application must still be strictly limited so as not to blur the distinction between legally permissible impossibilities and mere ordinary economic difficulties that do not eliminate the debtor's obligations (N. Kansil & CST Kansil, 2022).

The distinction between force majeure and hardship is crucial in analyzing the application of Article 1244 of the Civil Code, as they have significantly different legal consequences. Force majeure refers to a situation where performance becomes impossible due to events beyond the control of the parties, while hardship refers to a situation where performance of a contract remains possible, but with a significantly greater burden due to significant changes in circumstances. In this context, hardship does not eliminate the debtor's obligations but merely alters the originally agreed contractual balance. Therefore, this distinction is crucial to avoid equating absolute inability with relative hardship, which could ultimately blur the boundaries of liability in contract law (Anbar Jayadi, 2021).

In Indonesian contract law, which tends to be conservative and adheres to the principle of pacta sunt servanda, hardship is generally not automatically recognized as a reason for automatic relief from obligations. The debtor is still required to fulfill his obligations, unless he can prove that the change in circumstances has reached such an extreme level that it can be qualified as a force majeure as referred to in Article 1245 of the Civil Code (Salim HS & Erlies Septiana Nurbani, 2022). In other words, not every economic hardship or increase in costs can be used as a basis for avoiding legal liability. This assessment requires careful judgement in considering whether the conditions faced truly exceed the limits of reasonableness and can no longer be viewed as ordinary business risks. Therefore, only in certain extraordinary circumstances can hardship transform into force majeure, which exempts the debtor from the obligation to compensate.

The existence of Article 1244 of the Civil Code essentially functions as a balancing mechanism for the application of the principle of pacta sunt servanda, which emphasizes that every valid agreement must be complied with by the parties. Although this principle is the main foundation of contract law, its application cannot be carried out rigidly without considering the concrete realities that may be faced by the parties in carrying out the agreement. Civil law is basically not intended to force the fulfillment of obligations that are physically or legally impossible to carry out, as reflected in the adage impossibilium nulla obligatio est, which means that there is no obligation to do something that is impossible (Siti Aisyah, 2021). In this context, Article 1244 of the Civil Code provides corrective space by allowing the debtor to be released from the obligation to pay compensation if he can prove that the failure to fulfill the performance was not the result of his fault or negligence, but rather due to unforeseen circumstances beyond his control. Thus, this provision acts as a kind of safety valve in the contract law system, preventing substantive injustice from occurring due to the mere textual application of contracts without considering extreme and unpredictable changes in circumstances. Furthermore, this balancing function is also important to maintain the legitimacy of contract law itself, because if the law continues to force the fulfillment of performance in situations that are objectively impossible or highly unreasonable, this will actually undermine the parties' trust in the legal system (Fajar Sugianto, 2022). Therefore, Article 1244 of the Civil Code not only serves as a basis for exemption from liability, but also as a normative instrument that ensures that the application of the principle of pacta sunt servanda remains within the corridors of justice, propriety, and rationality, so that the balance between legal certainty and substantive justice can be maintained in every contractual relationship.

In the context of proving, the debtor is not only required to demonstrate the existence of an event that can be categorized as force majeure, but must also be able to convincingly prove a direct and significant causal link between the event and the inability to fulfill the obligation. This means that the existence of a natural disaster, economic crisis, or government policy does not automatically relieve the debtor from legal responsibility if it cannot be proven that the event was truly the main cause of the obstruction of the implementation of the obligation. This proof must show that without the event, the debtor would normally still have the ability to fulfill its obligations according to the agreement. Therefore, logical arguments are required, supported by concrete facts and, in some cases, supporting evidence such as documents, financial data, or expert testimony to substantiate the claim. If the debtor fails to prove a clear and direct causal link, the force majeure argument has the potential to be rejected by the judge and considered a fabricated excuse to avoid responsibility, so that the debtor is still declared in default with all the legal consequences, including the obligation to pay compensation to the creditor.

The interpretation of Articles 1244 and 1245 of the Civil Code cannot be separated from the principle of good faith as a fundamental principle in contract law, because the assessment of the presence or absence of force majeure ultimately also touches on the moral dimension and propriety in the behavior of the parties. In this case, a debtor who has been in default from the start before the event claimed to be force majeure cannot hide behind these provisions to avoid his responsibility, because such negligence has already severed the causal link between the external event and the failure to fulfill the performance (Rina Shahriyani Shahrullah, 2022). The law only provides protection and forgiveness to debtors who act honestly, do not abuse the situation, and have demonstrated maximum effort and earnest faith in carrying out their obligations according to the agreement. Therefore, the application of Articles 1244 and 1245 of the Civil Code must always consider whether the debtor has acted reasonably, prudently, and not opportunistically in dealing with the circumstances that have occurred. Thus, the force majeure criteria in the Civil Code are not merely technical or formalistic in nature, but remain based on the values of morality, propriety, and justice that exist in the practice of legal relations, thus preventing the misuse of the excuse of force majeure while maintaining a balance of protection between debtors and creditors (Ahmad Budi Santoso, 2022).

3.2. Dispute Resolution Mechanism for Default on the Ground of Force Majeure Through Litigation and Non-Litigation Approaches

The interpretation of Articles 1244 and 1245 of the Civil Code cannot be separated from the principle of good faith as a fundamental principle in contract law, because the assessment of the existence or absence of force majeure is ultimately not only a formal-juridical matter, but also touches on the dimensions of morality and propriety in the behavior of the parties (Civil Code (Burgerlijk Wetboek), Article 1338 paragraph (3)). In this context, a debtor who has been in a state of default from the start before the event that is later claimed as force majeure cannot hide behind these provisions to avoid his responsibility, because the negligence that has occurred previously basically breaks the causal relationship between the external event and the failure to fulfill the performance (Civil Code (Burgerlijk Wetboek), Article 1244). Therefore, the law only provides protection and forgiveness to debtors who act honestly, do not abuse the situation, and have shown maximum effort and sincere faith to carry out their obligations in accordance with the contents of the agreed agreement. Assessment of this requires the judge to not only see the fulfillment of the elements of force majeure textually, but also consider whether the debtor has acted reasonably, carefully, and not opportunistically in dealing with the situation that occurred (Law Number 48 of 2009 concerning Judicial Power (Article 5 paragraph (3)). Thus, the application of Articles 1244 and 1245 of the Civil Code must always be placed within the framework of the values of propriety and justice, so that the criteria for force majeure are not merely understood technically or formally, but as a legal instrument rooted in contractual ethics, which ultimately aims to prevent the misuse of the reason for force majeure while maintaining a balance of protection between debtors and creditors in every binding relationship (R. Aditya Pratama,. 2022).

During the renegotiation phase, the parties generally take steps to adjust the contractual relationship by creating an addendum to the agreement as a form of updating the previously agreed rights and obligations, especially when circumstances arise that affect the balance of contract implementation. In the context of force majeure, the nature of the event faced is a determining factor in formulating an appropriate solution. If the force majeure is temporary (temporary force majeure), so that the obstacles encountered are expected to last only for a certain period, then the resolution is usually realized in the form of rescheduling, extension of the implementation period, or other technical adjustments that allow the contract to continue after conditions return to normal (Suharnoko, 2022). Conversely, if the force majeure is permanent (permanent force majeure) and objectively eliminates the possibility of fulfilling the performance in the future, the parties can take further steps by mutually terminating the agreement without any claim for compensation. This approach is in line with the spirit of Article 1245 of the Civil Code, which in principle exempts the debtor from the obligation to pay costs, losses, and interest if the inability to fulfill the performance is truly caused by circumstances beyond their fault. Thus, the mechanism of renegotiation and contract adjustment not only serves as a practical solution in dealing with force majeure, but also reflects the flexibility of contract law in maintaining the balance of the interests of the parties amidst unexpected situations (Ridwan Khairandy, 2022).

If renegotiation fails to yield an agreement, the dispute will ultimately shift to litigation in court or through arbitration, where the judge or arbitrator plays a crucial role in assessing and legally qualifying the event claimed as force majeure. This process requires more than just textual assessment based on the contract, but also involves a more contextual approach, taking into account the social, economic, and concrete circumstances underlying the event (M. Rizky Darmawan, 2023). The judge or arbitrator will examine whether the alleged event truly meets the elements of unforeseeability, impossibility, and absence of fault on the part of the debtor as required by Article 1244 of the Civil Code, while also examining whether there is a strong causal relationship between the event and the failure to fulfill the obligation. In this case, the quality and strength of the evidence presented by the debtor are crucial factors, as the burden of proof rests entirely on the party claiming force majeure (Luh Putu Suryani, 2023). Therefore, the more comprehensive and convincing the evidence presented, whether in the form of documents, supporting data, or expert testimony, the greater the likelihood that the judge will accept the argument; conversely, weaknesses in the evidence will result in the claim being rejected and the debtor being determined to be in default, along with the legal consequences that follow.

In judicial practice, it is not uncommon for judges to apply the ex aequo et bono doctrine as a justice-based and fairness-based approach in deciding disputes involving force majeure claims, especially when the rigid application of norms is deemed incapable of reflecting a sense of proportional justice for the parties. Although Article 1245 of the Civil Code expressly provides a basis for exemption from the obligation to pay costs, damages, and interest if force majeure is proven, in reality, judges sometimes do not immediately release one of the parties absolutely, but rather take a middle ground through a risk-sharing mechanism. This approach is generally used in reciprocal contracts, where both parties have interests and the potential for significant losses, so that the burden of all risks on one party alone is considered inconsistent with the principles of justice and fairness (9 M. Rizky Darmawan, 2023). Through ex aequo et bono considerations, judges can adjust the decision to the concrete conditions faced by the parties, including considering the level of contribution of each party to the losses incurred and the real impact of the event that occurred. Thus, this approach reflects the flexibility of the law in responding to extraordinary situations, while also showing that the resolution of force majeure disputes does not always result in absolute release or imposition of responsibility, but can be directed towards a more balanced distribution of risks in order to maintain substantive justice in contractual relationships.

Analysis of Article 1244 of the Civil Code in court does not stop at proving the existence of an event claimed to constitute force majeure, but also includes a careful examination of the extent to which the debtor has made efforts to mitigate the impacts arising from the event (I Gusti Ayu Ketut Rachmi Handayani, 2023). Within this framework, the debtor is expected not to be passive, but rather to proactively take preventative or alternative measures that are reasonably feasible to continue fulfilling obligations or at least minimize any losses incurred. These mitigation efforts can include adjusting the contract implementation method,

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seeking alternative resources, conducting intensive communication with creditors, or other steps that demonstrate good faith and prudence (Muhammad Ridwan Fadli, 2023). The assessment of this aspect is crucial because it is directly related to the presence or absence of elements of error or negligence in the debtor's actions. If the court proves that the debtor did not make any mitigation efforts or even ignored the possibility of reducing the impact of the losses, the judge has the potential to determine that the failure to fulfill obligations was not solely due to force majeure but also influenced by the debtor's own negligence. In such conditions, the force majeure defense can be rejected, and the debtor is still declared to be in default along with the legal consequences, including the obligation to compensate the creditor for losses (Dewa Gede Sudika Mangku, 2022).

Furthermore, resolving disputes through litigation often takes a long time and is expensive, which in many cases actually worsens the financial condition and business relationships of the disputing parties. Protracted proceedings also have the potential to create prolonged legal uncertainty, ultimately harming both debtors and creditors. Therefore, mediation is a highly recommended alternative instrument for dispute resolution, particularly those related to force majeure claims. Through the mediation mechanism, a neutral and independent third party can facilitate constructive dialogue, help the parties understand each other's positions, and encourage the achievement of more flexible and mutually beneficial solutions (PERMA No. 1 of 2016 concerning Mediation in Court). In this context, force majeure is not merely viewed as a basis for legal defense, but as an extraordinary risk that should rationally be faced together with a spirit of cooperation and good faith. Thus, mediation not only offers efficiency in terms of time and cost, but also opens up space for the creation of more humane solutions, maintaining long-term relationships, and avoiding destructive conflict escalation in contractual relationships (Rika Lestari, 2022).

A review of Article 1245 of the Civil Code confirms that the construction of a release from liability in a force majeure situation should not be understood unilaterally as exclusive protection for the debtor, but rather must be placed within the framework of a balance of interests between the debtor and the creditor as two legal subjects who both have rights that deserve to be protected in a binding relationship. The creditor, as the party entitled to the fulfillment of performance, in fact, also bears significant losses when these obligations are not fulfilled, whether in the form of material losses, loss of economic opportunities, or disruption to the stability of the business being run (I Gusti Ayu Ketut Rachmi Handayani, 2023). Therefore, the application of force majeure reasons should not be allowed to become a loophole that is abused by debtors to carry out what can substantially be categorized as "intentional default" by hiding behind the argument of force majeure (I Nyoman Putu Budiartha, 2022). In this context, dispute resolution mechanisms, especially through litigation or arbitration, must be designed and implemented with strict and objective evidentiary standards, where each force majeure claim is thoroughly tested against authentic evidence presented in court, including supporting documents, chronology of events, and the direct link between the events that occurred and the failure to fulfill the performance. Judges or arbitrators are required to not only assess the formal aspects of fulfilling the elements of force majeure, but also to investigate whether there are indications of bad faith, hidden negligence, or even manipulation of circumstances by the debtor to avoid their responsibilities (I Nyoman Putu Budiartha, 2022). Thus, strict supervision of the evidentiary process is the main key to maintaining the integrity of the application of Article 1245 of the Civil Code, so that the norm continues to function as it should, namely as a protection instrument for parties truly affected by circumstances beyond their control, as well as a bulwark to ensure that creditors' rights are not unfairly sacrificed in the practice of contractual relations.

In conclusion, regarding the dispute resolution mechanism for breach of contract related to force majeure, a harmonious integration between the normative provisions in the Civil Code and the judge's wisdom in applying and interpreting the law contextually is necessary. The provisions in Articles 1244 and 1245 of the Civil Code essentially provide a clear framework for exemption from liability, but in practice, the application of these norms depends heavily on the judge's or arbitrator's ability to read the facts, assess the evidence, and understand the social and economic dynamics underlying the dispute (Dewa Gede Sudika Mangku, 2022). In this regard, the balance between legal certainty (rechtssicherheit) and justice (gerechtigkeit) must be the primary compass so that the resulting decision is not only normatively consistent but also reflects the prevailing sense of justice in society. A proper interpretation of the elements of force majeure, including unforeseeability, impossibility, absence of fault, and the good faith of the parties, is key to ensuring that the exemption from liability is not misused and remains within a proportional corridor. Thus, through an approach that is not merely formalistic, but also substantive and justice-oriented, it is hoped that the resolution of default disputes due to force majeure can take place effectively, provide balanced protection for debtors and creditors, and continue to support the creation of a healthy, stable, and just business climate, without ignoring the humanitarian values that are the spirit of civil law itself (R. Aditya Pratama, 2022).

3.3. Case Example of Settlement of Default Disputes on the Basis of Force Majeure from the Perspective of Articles 1244 and 1245 of the Civil Code

As a concrete illustration, consider the case of a breach of contract in a construction agreement between a contractor and the owner, which was hampered by the COVID-19 pandemic. In this case, the contractor was unable to complete the project within the agreed timeframe due to government policies such as activity restrictions (lockdowns/PSBB), disruptions to the material supply chain, and restrictions on field labor. The contractor then filed a force majeure defense, arguing that the pandemic was an extraordinary event that was unpredictable, beyond the control of the parties, and directly hampered the implementation of the agreement (Shanti Riskawati, 2021).

In the process of resolving construction disputes, whether through litigation mechanisms in court or non-litigation through arbitration, the judge or arbitrator will apply very strict and comprehensive testing standards to determine the validity of force majeure claims based on the parameters of Articles 1244 and 1245 of the Civil Code (BW). The first stage in this test is to dissect the element of unforeseeability, where the case-deciding authority will examine chronologically whether at the time the contract was signed, the parties could rationally predict the occurrence of a global pandemic and its impacts; in many jurisprudence, a pandemic is generally recognized as an unforeseeable event for contracts born before 2020, but this assessment may differ if the contract was made while the pandemic was already underway. Next, a thorough evaluation of the impossibility element is conducted, which aims to clearly distinguish whether the pandemic truly created an absolute impossibility or merely made contract implementation more difficult and economically expensive (hardship/practical impossibility). The burden of proof lies on the extent to which the lockdown policy or logistical disruptions completely paralyzed the project (Siti Aisyah, 2021). Finally, the judge or arbitrator will critically assess the debtor's good faith and mitigation efforts to ensure that the delay does not contain an element of negligence. In this case, the contractor is required to prove that they have taken adequate preventive measures, such as diversifying material suppliers, optimizing work methods under health protocols, and being proactive in establishing formal communication with the owner for rescheduling, so that the force majeure claim is not seen as a mere excuse to avoid contractual obligations.

In some decisions, if it is proven that the contractor remained in good faith and made maximum efforts to minimize obstacles, the judge tends to partially accept the force majeure argument, for example by granting an extension of the contract implementation period without imposing a late penalty. However, if it is found that the debtor failed to take adequate mitigation measures or instead used the pandemic as an excuse to cover up previous negligence, the force majeure claim may be rejected and the debtor still declared in default. In certain situations, the judge may even apply an ex aequo et bono approach by apportioning the risk of loss among the parties to achieve substantive justice.

This case study demonstrates that the application of Articles 1244 and 1245 of the Civil Code in default disputes cannot be understood simply or in a black-and-white manner, but rather requires a comprehensive and contextual assessment of various aspects surrounding the parties' contractual relationship. The determination of whether or not force majeure is accepted depends heavily on the debtor's ability to concretely prove that the event truly fulfills the elements of unforeseeability, unavoidability, and the absence of any element of error or negligence on their part. Furthermore, the aspect of good faith is an integral factor in the judge's assessment, particularly in assessing whether the debtor has made maximum efforts to continue fulfilling its obligations or at least minimize the impact of losses incurred through reasonable mitigation measures, such as adjusting contract implementation, seeking alternative fulfillment methods, or establishing active communication with creditors. Furthermore, the judge will also carefully assess the existence of a direct and significant causal relationship between the event claimed as force majeure and the failure to fulfill the performance, so that not every extraordinary event can automatically be used as a basis for exemption from liability if it is not proven to be the main cause of the default. Therefore, the success of a force majeure defense

is not only determined by the existence of extraordinary events alone, but is also greatly influenced by the quality of the legal arguments constructed, the strength of the evidence presented in court, as well as the consistency and integrity of the debtor's behavior in carrying out his contractual obligations from the beginning until the dispute occurs, so that the entire assessment process ultimately leads to efforts to maintain a balance between legal certainty and substantive justice for both parties.

4. Conclusion

Based on the results and discussion, it can be concluded that the application of Articles 1244 and 1245 of the Civil Code in the context of default due to force majeure requires a strict, comprehensive, and contextual interpretation of the elements inherent therein. An event can only be qualified as force majeure if it meets the cumulative requirements of unforeseeability, impossibility of avoidance, and the absence of any element of fault on the part of the debtor. In addition, the debtor is also burdened with the obligation to prove a clear causal relationship between the event and the failure to fulfill the performance, as well as to demonstrate good faith and maximum mitigation efforts. Thus, this provision not only serves as a basis for exemption from liability, but also as a control mechanism so that the excuse of force majeure is not misused to cover up negligence or intentional default. Within this framework, the balance between the principles of pacta sunt servanda and substantive justice is an important element that must be maintained in every application of contract law norms. The mechanism for resolving disputes arising from default on the grounds of force majeure demonstrates that the approach used cannot be singular but must accommodate various channels, both litigation and non-litigation. Renegotiation and mediation are more flexible and efficient initial steps in maintaining relationships between the parties, while litigation and arbitration serve as final forums that require rigorous and objective evidence. In practice, judges or arbitrators not only act as interpreters of norms but also as guardians of a balance of interests through an approach that considers aspects of justice, propriety, and the concrete circumstances faced by the parties, including through the ex aequo et bono doctrine. Therefore, the integration of normative provisions in the Civil Code and the wisdom of its application is key to ensuring that dispute resolution is fair, provides proportional protection for debtors and creditors, and supports the creation of legal certainty and a healthy business climate.

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