

Covid-19 Pandemic as the Reasoning of Force Majeure towards Financing in Islamic Banking

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Abstrak

Paper ini menganalisis tentang pandemi covid-19 sebagai alasan force majeure dalam pembiayaan bermasalah dan upaya hukum yang seharusnya dilakukan untuk mengatasinya. Penelitian yuridis-normatif ini menggunakan pendekatan konseptual dan perundang-undangan. Analisis menggunakan preskriptif analisis dengan logika dan penalaran hukum. Hasil penelitian menunjukkan, pandemi Covid-19 tidak serta merta dapat dijadikan alasan force majeure, meski ditetapkan sebagai bencana alam nasional non alam, karena untuk mengetahui debitur yang terkena pandemi dan sebab kesulitan pembayaran perlu dibuktikan melalui putusan Pengadilan Agama dan harus memenuhi unsur dalam Pasal 1244 dan 1245 KUH Perdata. Upaya hukum untuk menyelesaikan kredit bermasalah adalah penyelamatan dan penyelesaian. Penyelamatan dilakukan dengan meminimalkan biaya keuangan dan restrukturisasi pembiayaan. Penyelesaian dapat dilakukan dengan mengupayakan pelunasan melalui lelang atau eksekusi jaminan milik nasabah. Jika kedua upaya tersebut tidak dapat dilakukan, maka alternatif terakhir diselesaikan melalui Pengadilan Agama. Upaya hukum ke depan untuk menyelamatkan kredit macet akibat penyebaran Pandemi Covid-19 yaitu dengan melakukan renegotiasi kontrak, yaitu membuat kontrak baru atau diterbitkan sebagai addendum yang mengikat para pihak dan harus dilaksanakan dengan itikad baik. Oleh karena itu, ius constituendum sangat diperlukan dalam penyelesaian kredit macet akibat dari pandemi sebagai alasan force majeure melalui Peraturan Otoritas Jasa Keuangan.

Kata Kunci: *force Majeure, Pembiayaan Bermasalah, Pandemi Covid-19*

Abstract

This paper analyzes the Covid-19 pandemic as a reason for force majeure in non-performing loan and legal effort its. This juridical-normative research uses a conceptual, statutory and case approach. Analysis using prescriptive with logic and legal reasoning. The results show, the Covid-19 pandemic cannot automatically be used as a reason for force majeure, even though it is designated as a non-

natural national disaster because to find out which debtors are affected by the pandemic and the payment difficulties, should be proven through the decision of the Religious Court and must fulfil the elements in Article 1244 and 1245 Civil Code. Legal efforts to settle non-performing loans are rescue and settlement. The rescue is carried out by minimizing financial costs and restructuring financing. Settlement can be made by seeking through an auction or by executing the guarantee. The last alternative is resolved through the Religious Court. The legal effort of future for the rescue of non-performing loan that occurred due to the spread of the Covid-19 Pandemic is by renegotiating, whereby making new contracts or issuing addendums that bind the parties and must be implemented in good faith. Therefore, the ius constituendum is indispensable for the settlement of non-performing loan that caused by the pandemic through the OJK Regulation.

Keywords: Covid-19 Pandemic, Force Majeure, Non Performing Loan

Introduction

The Government of the Republic of Indonesia Policy on March 31, 2020 with the issuance of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions to reduce the prevention of the spread of the virus and Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Covid-19 reinforce the situation that Covid-19 is a non-natural national disaster that has shaken the stability of the national social economy, thus further worsening the industrial sector including the Islamic financial industry. The Islamic financial industry that has been most affected by Covid-19 is the Islamic banking industry. Sharia banking is a financial institution that has many customers and acts as a liaison institution between each customer or what is commonly referred to as a financial intermediary institution (Agent of intermediary financial). The activities of Islamic banks as financial intermediary institutions, namely: distribution and collection of public funds in accordance with applicable procedures (Muhammad, 2000: 03). Therefore, the spread of Covid-19 that occurs beyond human power and strength, of course, needs to be balanced by establishing regulations from the government in order to support the rate of Islamic economic growth.

Based on this, it is important and relevant to study the impact of the Covid-19 Pandemic as the cause of force majeure on financing in Islamic Banking. Customers who are bound by financing contracts, due to the COVID-19 pandemic, are constrained in managing to finance from Islamic banks, so they are unable to pay part or all of their obligations to the bank as promised. This causes the emergence of problematic financing in Islamic banking. For example, mudharabah financing, with this financing, the main source of income is obtained which supports the business continuity of both the customer and the

Islamic Bank. Conversely, if the management of mudharabah financing is not good, it will cause problems such as failure of the managed business or even losses to Islamic Bank. Delinquency in mudharabah financing payments is still a serious problem in Islamic banking in Indonesia because it can injure the contract. After all, the mudharabah agreement gives birth to an agreement, namely a contractual legal relationship that binds each party, so that it can trigger legal dispute.

Arini's (2020) research on "Corona Pandemic as the Reason for Force Majeure in a Business Contract", shows similarities about force majeure which are not automatically used as an excuse in canceling contracts. The difference with this paper is about the mechanisms that can be taken by the Islamic bank in dealing with the possibility of a force majeure in problem financing. Aminah's research (2020) on "*The Effect of the Covid 19 Pandemic on the Implementation of the Agreement*", also shows similarities, namely discussing the influence of the Covid-19 pandemic which can be the reason for the emergence of an overmacht, while the difference is that the implementation of rights and obligations must be in accordance with the contents of the agreement, if not, then it is called default. This research focuses on sharia disputes if a force majeure occurs in a contract and alternative efforts. Sufiarina and Sriwahyuni's (2020) research on "*Force Majeure and Notoir Feiten for the Covid-19 PSBB Policy*" shows the similarities in the force majeure of a contract that occurred during the Covid-19 pandemic. The difference is in the employment contract between companies providing employment and workers, whereas current research focuses on force majeure as a reason for problematic financing that can arise between customers and Islamic banks during the Covid-19 pandemic.

It is interesting to study about the legal occurrence from force majeure to problematic financing in the practice of financing contracts in Islamic Banking that were affected by covid-19, namely that most of the financing in Islamic Banking that had been made was eventually constrained and can't be implemented according to the agreed contract. The determination of a non-natural national disaster emergency over the spread of the Covid 19 Pandemic is one of the causes of problematic financing. Based on these thoughts, this paper aims to analyzes the problematic of financing can be used as a reason for Force Majeure in the 2019 Corona Virus Disease (Covid 19) pandemic, which is now designated as a non-natural national disaster in Indonesia and legal efforts that can be done by Islamic Banking to overcome the problematic of financing so that the contract

that has been agreed by both parties is not detrimental and can still be implemented. The research method used is normative juridical with a conceptual legislation and cases approach. The techniques analysis of using prescriptive with logic and legal reasoning.

Results and Discussion

1. Force Majeure as the Reasoning Non-Performing Loan in Islamic Banking during the Covid 19 Pandemic.

Covid-19 began to be identified since November 2019 in the Wuhan City of Chinese and spread very quickly, even to several other countries including Indonesia which had an impact on the shaking of global and local economic stability. The Indonesian government's of anticipation is making economic rescue schemes with Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and / or In the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability. The determination of emergency based on the consideration that, the spread of Covid-19 is of an extraordinary nature which marked by the large number of cases and / or the number of deaths, so that it has an impact on political, economic, social, cultural, defense and security aspects, as well as public welfare. President Joko Widodo through Presidential Decree Number 11 of 2020 dated March 31, 2020 determined Covid-19 as a type of disease that causes a public health emergency, so it is mandatory to take countermeasures in accordance with legislation. In addition, on April 13, 2020 was also stipulated Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Covid-19.

The practice of Islamic Banking in the era of the Covid 19 pandemic, the fact is that several problems have emerged between customers and Islamic banking in implementing financing contracts. The obligations that should be paid by the customer are not fulfilled in accordance with the contract agreed upon between the customer and the Sharia Bank, in which one of which is the customer making a late payment on the schedule agreed upon in the predetermined contract. Late payment in the law of agreement is categorized as one of the elements that causes legal disputes. If the delay continues for three consecutive months, the debtor's customer qualifications have begun to fall into the problematic category. The engagement that occurs between Islamic banking and customers

will run smoothly if each party carries out the rights and obligations as agreed upon by the contract. However, if the contract that has been made is not what it should be, it will cause obstacles. Things like this usually start with mistakes in fulfilling obligations that cause legal problems (Musjtari, 2012: 186). Problematic financing occurs because the customer is unable to pay part or all of his obligations to the Islamic Bank as the contract that was made and agreed upon at the beginning of the agreement.

Several disputes that arise in the implementation of the agreement, namely: 1) wanprestasi / don't keep promises ; 2) acts against the law; and 3) force majeure (Musjtari, 2012: 186). Implementation of the contract often occurs legal problems that arise because the rights and obligations are not implemented properly. Failure to implement the rights and obligations as in the contract will certainly lead to disputes. Disputes that occur in a contract need to be identified with the elements attached to the three types of disputes mentioned above, so that the emergence of problematic financing in Islamic Bank can be known exactly how the settlement process.

Efforts to resolve problems or disputes that occur in the process of implementing the contract are called problem handling. Handling the problem is divided into 2 (two) stages, namely: 1) efforts to save, at this stage the problem solving is more focused on efforts to recover payments from customers to Islamic banking. the way that can be done is by doing: cas collection, rescheduling, reconditioning or restructuring. this is a stage of fulfillment for a previously problematic achievement; 2) efforts to pay back by executing the guarantee provided by the customer. The settlement of this financing is more focused on taking action as a way to obtain repayment by executing existing collateral, either by disbursing cash collateral, invoicing to the guarantor, taking collateral by the bank itself, voluntary selling or selling collateral through auction.

Financing contracts that are not fulfilled by the customer cannot be accounted for if the error occurs because of something beyond his control or is referred to as force majeure (overmacht). The word force majeure is adopted from English, which in Indonesian means a forcing conditions. The term force majeure is found in agreements, contracts / sharia contracts between business actors, businesses, the public and other interested parties in an agreement. Force majeure is a situation in which a customer who acts as a debtor is unable to fulfill performance in Islamic banking. Promises that are not fulfilled in the contract are caused by external factors or events beyond their control, such

as volcanic eruptions, fires, earthquakes, tsunamis, floods, landslides, and others (Salim HS, 2003: 183). The force majeure that resulted in the agreement considered null and void, included: 1) the destruction of the object of exchange (Article 1545 of the Civil Code); 2) the destruction of goods leased (Article 1553 of the Civil Code); 3) the destruction of work outside the contractor's negligence (Article 1607 of the Civil Code); and 4) the end of the ship charter because the ship was destroyed (Article 462 of the Civil Code) (Budiono, 2011: 198).

Legal considerations related to force majeure can be found in Articles 1244 and 1245 of the Civil Code. Substantially, the article states that a contract cannot be implemented because there are unforeseen things that happen out of control. The meaning of force majeure is contained in Article 1244 of the Civil Code which reads: "*The debtor must be punished to compensate for costs, losses and interest if he cannot prove that the engagement was not carried out or the timing of the binding was not carried out due to an unforeseen event that could be insured even though there was no bad faith.*" Article 1245 of the Civil Code states that there is no compensation for costs, losses and interest if it is caused by coercive circumstances or because of something that happens by chance so that the debtor is prevented from giving or doing something that is required or committing any prohibited act. In the event of force majeure, the bank as a channel of funds or creditors is not entitled to compensation. If force majeure causes the engagement to no longer have working power, then: 1) the creditor cannot demand that the engagement be fulfilled; 2) the creditor cannot say that he is in a state of negligence, and therefore cannot sue; 3) creditors cannot request termination of the agreement; and 4) in a reciprocal agreement, the obligation to perform performance will be null and void.

Kusumaatmadja in (Isradjuningtias, 2015: 140) states that force majeure can be accepted as an excuse for not fulfilling the implementation of obligations due to the loss of objects or objectives that are the subject of the agreement. This situation is aimed at physical and legal performance, not due to difficulties in carrying out obligations. Events that can be categorized as force majeure as a result of the force are divided into 2 types, namely absolute and relative. Force majeure absolute is a condition where absolutely the debtor cannot avoid the situation that occurs so that the risks that arise are borne by the creditor. Meanwhile, relative force majeure is a condition where achievements are not

fulfilled which must be proven through the court. If there is negligence that can result in default, the risk must be borne by the debtor (Sunyoto, 2016: 96).

According to Soedewi (1980: 20), the category of force majeure, namely absolute force majeure (permanent) and relative force majeure (temporary). Force majeure absolute (permanent), namely the achievements in the agreement that cannot be fulfilled at all. Meanwhile, force majeure is relative (temporary), that is, it is still possible to fulfil the achievement in the agreement. Meanwhile, related to the consequences as described above, it must be distinguished whether force majeure is temporary or permanent. Force majeure that is temporary in nature only has the right to apply for a postponement of obligation. On the other hand, in a reciprocal engagement, if one of the parties due to force majeure is still prevented from fulfilling his achievement, his achievement will be null and void, unless the law determines otherwise (Soedewi, 1980: 22).

Soedewi (1980: 149) stated that, an occurrence can be said as force majeure if an occurrence that took place has been written in a contract. The contract contains a description of events that can be said to be force majors in the implementation of the contract and steps that must be taken by both parties in the event of force majeure, namely: 1) if the parties experience failure or late payment caused by coercive circumstances, the party is exempted from the obligation to implement the contents of the financing contract, either partially or completely; 2) the party who experiences an event categorized as a compelling state is obliged to notify the other party in writing, attaching sufficient evidence from the police or the competent authority regarding the occurrence of a compelling situation and: 3) if the notification has not been or there is no response from the party receiving it notification, then within 30 (thirty) days of receipt of the notification is deemed approved by the party. After the force majeure ends or the force majeure situation can be resolved, the party experiencing force majeure is obliged to immediately carry out its obligations.

The Covid 19 pandemic has an impact on the level of debtor's ability to carry out Islamic financing contracts that occur between customers and Islamic banks. If the customer is economically disturbed during this pandemic, it will be difficult to pay off some or all of its obligations to Islamic banks, resulting in the contract that was made at the beginning of the financing not running properly. The legal relationship in economic transactions between customers and Islamic banking should run smoothly if the parties

obey what has been agreed in the contract. However, if one of the parties is negligent or makes mistakes in fulfilling obligations, the implementation of the contract will experience obstacles and even congestion. Obstacles in implementing financing contracts that result in late payment of installments from customers to Islamic banks under normal circumstances must be accounted for by the customer. Delay in payments by consecutive customers can lead to a legal dispute because it is not in accordance with the contract that was agreed upon at the beginning. However, the current situation is different, because the Covid-19 Pandemic is a virus that spreads beyond customer control.

Basically, every financing contract that takes place always has a gap in the emergence of risk, namely the failure of the agreement stated in the contract and causing a dispute. According to the law of the agreement, a customer cannot fulfill a financing contract to the Islamic bank, so it cannot be accounted for if the error occurs due to something out of control (*force majeure*). Article 1244 of the Civil Code states that: "The debtor must be punished to reimburse costs, losses and interest, if he cannot prove that the engagement was not carried out or the timing of the engagement was not carried out due to an unexpected event, and which could be borne by him even though there was no bad faith." Article 1245 of the Civil Code states that: "There is no compensation for costs, losses and interest if due to coercive circumstances or because of something that happens coincidentally, the debtor is prevented from giving or doing something that is required, or doing something that is prohibited". Substantially, the two articles can be interpreted that, a contract cannot be implemented because of an unexpected thing that is out of control, namely a situation where the debtor is unable to fulfill his / her achievements. In problematic financing practices, something that usually arises is caused by events outside of power or circumstances outside the will of man (*force majeure*), for example: such as earthquakes, floods, landslides and other natural disasters.

Sunyoto and Putri (2017) describe the elements of an event that can be said to be *force majeure* in a contract. As for the elements in which a situation can be said to be *force majeure*, among others: 1) achievement is not fulfilled due to an event that destroys / destroys the object of the agreement, this is always permanent; 2) achievement cannot be fulfilled because an event that hinders the debtor's actions from achieving, can be permanent or temporary; and 3) this event cannot be known or is expected to be known at

the time the agreement was made by the debtor or creditor, so it is not due to the fault of the parties, especially the debtor.

The Covid-19 pandemic as a reason for force majeure against financing in Islamic banks has fulfilled the 3 (three) elements, including: 1) not fulfilled achievements due to an event that destroys / destroys the object of the agreement, this is permanent. The spread of the Covid-19 Pandemic eliminates the object of the agreement, for example in a mudharabah financing agreement where the object of the agreement is property, the business cannot be continued because there are no buyers as a result of the establishment of self-quarantine and work from home; 2) achievement cannot be fulfilled because an event that prevents the debtor's actions from achieving, can be permanent or temporary. Customers who are tied to financing with Islamic banks are unable to meet the achievement of making monthly installment payments, because the business from financing has no income; 3) This event cannot be known or is expected to be known when the agreement is made by the debtor or creditor, so it is not due to the fault of the parties, especially the debtor. The parties certainly do not know that there will be a Covid-19 Pandemic which threatens someone's life and spreads so massive that it cripples the global economy. Even though a national disaster has been declared due to the Covid-19 Pandemic, this does not automatically become an excuse as a force majeure against the ongoing financing agreement. This is because the classification must be reviewed first. Force Majeure is divided into 2 types, namely absolute force majeure and relative force majeure. Force majeure absolute is a condition where absolutely the debtor cannot avoid the situation that occurs so that the risks that arise are borne by the creditor. Force majeure relative is a condition where the achievement is not fulfilled which must be proven through the court.

Based on the explanation above, the Covid-19 Pandemic cannot necessarily be used as an excuse for force majeure, even though it is designated as a non-natural national natural disaster, because to find out which debtors are affected by the pandemic which results in difficulties in payment and implementation of existing financing agreements, it is necessary to prove it first. first through the courts. The fact that the achievement was not carried out due to circumstances outside of human power resulted in the agreement being null and void. However, this does not override the judge's authority to determine force majeure conditions. The verdict given by the judge in this case is a decision which is

declaratory in nature. Therefore, to determine the impact of the Covid-19 Pandemic on Islamic banking customer financing is a force majeure or not, a religious court ruling is required. The court's decision that determines the impact of the Covid 19 pandemic on customer financing is as force majeure (absolute / relative) or not, and the judge will decide which is declaratory to determine its legal status.

2. The Future Legal Efforts of Islamic Banking to Overcoming Non-performing Loan.

When problems arise in the implementation of a financing contract in Islamic banking, the parties (Islamic banks and customers) need to resolve these problems. Efforts to solve problems in implementing the contract can be grouped into 2 (two) stages, namely rescue efforts and settlement efforts. In the first stage, rescue efforts are more focused on achieving proper repayment of financing by means of cash collection, rescheduling, reconditioning or restructuring or what is known as the achievement fulfillment stage. Efforts made by Islamic banks to maximize profits from financing that have been provided to customers can be done by minimizing the cost of finance or losses, namely by full or partial repayment and restructuring. In this case the most likely thing is to restructure. Restructuring can be in the form of rescheduling, reconditioning and restructuring. Restructuring is an effort made by a bank to measure the ability to pay of customers so that payments become smooth. This applies to customers whose ability to pay decreases, but the willingness to pay is high. The main requirements for restructuring include: customers with good intentions, customers still have a business with good business potential and the length of arrears is still within the limits allowed by the bank

Restructuring includes 3 (three) types, including: 1) rescheduling, namely changes in financing terms related to the payment schedule or period including grace period and changes in the amount of financing installments. Rescheduling aims to make changes to the financing schedule or tenor, so that the installment burden is reduced according to the customer's ability to pay; 2) reconditioning, namely the process of returning financing by a customer that is not smooth, so that the Islamic bank can make changes to the contract according to the agreement of each party, which includes payment schedule, grace period, change in profit sharing / margin / fee, and partial or complete delay. benefits to be obtained, as well as other requirements. 3) restructuring is a change in part or all of the

financing terms which is not limited to changes in the payment schedule, period, and other requirements, except for changes in the maximum financing ceiling. Banks can change their financing structure, for example from Term Financing to Installment Financing (Turmudi, M. 2016: 95-106; . Khairan, K, 2020,1-22).

Rescuing non-performing loan because of the reason for the spread of the Covid-19 Pandemic can be done by renegotiating to provide concessions to customers. If problematic financing arises because one of the parties affected by the Covid-19 Pandemic and declared a force majeure, it will hinder the realization of the financing contract. The parties based on mutual consent and will may renegotiate the contract in advance by rearranging matters that can be adjusted to new circumstances. The substance of the new agreement in the renegotiation depends entirely on the freedom and agreement of the parties. A new agreement resulting from the renegotiation process must be stated in a new contract, or published as an addendum, binding on the parties and must be implemented in good faith. If the renegotiation results in a new agreement, then this is the best effort and achievement. This means that the parties based on their will, agreement and good faith have succeeded in resolving the problem through peaceful deliberation. In the second stage, the non-performing loan settlement procedure can be carried out by executing collateral to retry the ongoing financing payments. Steps that can be taken include: direct billing to the guarantor, disbursement of cash collateral, return of collateral, sales made voluntarily without coercion, either direct or auction. That legal effort, in accordance with the POJK No. 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Counter-cyclical Policy from the Impact of the Spread of Covid 19; POJK No.18 / POJK.03 / 2020 concerning Written Orders for Handling Bank Problems and SP 26 / DHMS / OJK / IV / 2020 concerning Operations of the Financial Services Industry in the Implementation Period of Large-Scale Social Restrictions.

Every transaction in a financing contract in Islamic banking has the potential to cause legal problems. For example, the failure of an agreement that causes a dispute. The dispute that occurs needs to be given a solution so that it does not cause harm to one of the parties and provides benefits to each party who was harmed by the Covid-19 pandemic. This is by the mashlahah theory that the solutions provided are beneficial for both parties (Manan, 2017: 10; Nasution, 2001: 127). Obligations that are not fulfilled in the financing contract due to external factors, namely the covid-19 pandemic, have resulted in a mass

slowdown in the economy, so that not only one party experiences economic difficulties and causes financing problems in Islamic banking, but both parties also experience difficulties and cannot be blamed for the law. As long as there is a good commitment between the two parties, it is necessary to resolve it in a win-win solution. However, it is not automatically used as a justification for the customer not to be responsible for the contract that has been made, so that it will cause losses for the Islamic bank. If one of the parties does this, the determination of the force Majeure reasons becomes the authority of the judge at the religious court. The benefit must be prioritized and apply in general and collectively, not individually. Based on this, the legal findings by judges in the realm of religious courts are closely related to mashlahat. According to Imam Malik, the maslahat must be by the objectives required by law and directed at efforts to eliminate all forms of difficulties that cause harm (Manan, 2017: 168; Syafe'i, 1999: 117).

Based on the above reasoning, then the legal action that should be taken by Islamic Banking in the future to salvage non- performing loan that occurred due to the spread of the Covid-19 Pandemic, which is in accordance with the benefit is by renegotiating to provide concessions to customers. The parties based on mutual consent and will may renegotiate the contract in advance by rearranging the contract according to the new conditions. The new agreement resulting from the renegotiation process is stated in a new contract or published as an addendum, is binding on the parties and must be implemented in good faith. If the renegotiation results in a new agreement, then this is the best effort and achievement. This means that the parties based on their will, agreement and good faith have succeeded in resolving the problem through peaceful deliberation. The next stage, the settlement of non-performing loan due to the impact of Covid 19, can be done by executing collateral to retry the ongoing financing payments. The steps taken, namely: direct billing to the guarantor, disbursement of cash collateral, return of collateral, and voluntary sales without direct coercion or auction.

Conclusion

The Covid-19 pandemic cannot automatically be used as an excuse for force majeure, even though it is designated as a non-natural national natural disaster, because to find debtors are affected by the pandemic and who are causing payment difficulties, it needs to be proof by the decision of the Religious Court. The decision of the Religious

Court to determine the Covid 19 pandemic as a reason for force majeure in non-performing loan at Sharia Banking institutions must also fulfill the elements in Articles 1244 and 1245 of the Civil Code. These elements, among others: 1) are not fulfilled with achievements because of an event that destroys the object of the agreement, this is always permanent; 2) achievement cannot be fulfilled because an event that prevents the debtor's actions from achieving, can be permanent or temporary; 3) This event cannot be known or is expected to be known at the time the agreement was made by the debtor or creditor, so it is not due to the fault of the parties, especially the debtor.

The Legal effort to resolve of non-performing loan are rescue and settlement. Efforts to rescue were made by minimizing the cost of finance and by restructuring financing. Meanwhile, the settlement of non-performing loan can be done by seeking repayment through auction or execution of collateral owned by customers. If these two efforts cannot be made, then the last alternative is resolved through the Religious Court. Meanwhile, future legal efforts to rescue bad credit that occurred due to the spread of the Covid-19 Pandemic, namely by conducting renegotiations. The parties under mutual agreement can renegotiate the contract in advance by rearranging the contract according to the new conditions. The new agreement resulting from the renegotiation is stated in a new contract or issued as an addendum, which binds the parties and must be implemented in good faith. This means that the parties, based on their willingness, agreement and good faith, have succeeded in resolving the problem through deliberations. Therefore, an *ius constituendum* very needed in the resolution of non-performing loan that occurred due to a pandemic as a reason for force majeure through the Financial Services Authority Regulation

References

Books:

- Budiono, Herlien. (2011). *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*. Bandung: Citra Aditya Bakti.
- Darus Badruzaman, Mariam. (1993). *KUHPerdata Buku III Hukum Perikatan dengan Penjelasan*. Bandung: Alumni.
- HS, Salim.(2003). *Pengantar Hukum Perdata Tertulis*. Jakarta: Sinar Grafika.

- Manan, Abdul. (2017). *Pembaharuan Hukum Islam di Indonesia*, Depok: Kencana Prenada Media Group.
- Muhadjir, Noeng. (2002). *Metodologi Penelitian Kualitatif*. Yogyakarta: Rakesarasin.
- Muhamad. (2000). *Sistem & Prosedur Operasional Bank Syariah*. Yogyakarta: UII Press.
- Nasution, Lahmuddin. (2001). *Pembaharuan Hukum Islam dalam Mazhab Syafi'i*. Bandung: PT. Remaja Rosdakarya.
- Nurul Musjtari, Dewi. (2012). *Penyelesaian Sengketa dalam Praktik Perbankan Syariah*. Yogyakarta: Pratama Publishing.
- Rahardjo, Satjipto. (2009). *Membangun dan Merombak Hukum Indonesia (Sebuah Pendekatan Lintas Disiplin)*, Yogyakarta: Genta Publishing.
- Soedewi Masjchoen Sofwan, Sri. (1980). *Hukum Perutangan Bagian A*. Yogyakarta: Liberty Yogya.
- Sunyoto, Danang dan Wika Harisa Putri. (2016). *Hukum Bisnis*. Yogyakarta: Pustaka.
- Syafe'i, Rachmat. (1999). *Ilmu Ushul Fiqih*. Bandung: Pustaka Setia.

Journals:

- Aminah. (2020). Pengaruh Pandemi Covid 19 pada Pelaksanaan Perjanjian. *Jurnal Diponegoro Private Law Review*, 7 (1).
- Chairunisa Isradjuningtias, Agri. (2015). Force Majeure (Overmacht) dalam Hukum Kontrak (Perjanjian) Indonesia. *Veritas Et Justitia*, 1 (1).
- Khairan, K. (2020). Strategi Penanganan Pembiayaan Bermasalah Dengan Metode Reschedulling, Reconditioning dan Restructuring Pada Lembaga Keuangan Mikro Syariah Baitul Maal Wat Tamwil. *Journal At-Tamwil: Kajian Ekonomi Syariah*, 2(1)
- Rini, Annisa Dian. (2020). Force Majeure dan Notoir Feiten atas Kebijakan PSBB Covid-19. *Supremasi Hukum*, 9 (1).
- Sufiarina dan Sriwahyuni. (2020). Pandemi Corona Sebagai Alasan Force Majeure dalam Suatu Kontrak Bisnis. *Jurnal Hukum Sasana*, 6 (1).

Turmudi, M. (2016). Manajemen Penyelesaian Pembiayaan Bermasalah Pada Lembaga Perbankan Syariah. *Li Falah: Jurnal Studi Ekonomi dan Bisnis Islam*, 1(1)

Regulation:

Kitab Undang-undang Hukum Perdata

Keputusan Presiden Nomor 11 Tahun 2020 tentang Penetapan Kedaruratan Kesehatan Masyarakat Covid-19.

Keputusan Presiden Nomor 12 Tahun 2020 tentang Penetapan Bencana Non Alam Penyebaran Covid-19 sebagai Bencana Nasional.

Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar.

POJK No. 11/POJK.03/2020 tentang Stimulus Perekonomian Nasional sebagai Kebijakan Countercyclical Dampak Penyebaran Covid-19.

POJK Nomor 19/POJK.03/2018 tentang Perubahan atas POJK No. 16/POJK.03/2014 tentang Penilaian Kualitas Aset Bank Umum Syariah dan Unit Usaha Syariah.

