International Journal of Law and Politics Studies
ISSN: 2709-0914
DOI: 10.32996/ijlps
Journal Homepage: www.al-kindipublisher.com/index.php/ijlps

IJLPS
AL-KINDI CENTER FOR RESEARCH AND DEVELOPMENT

| RESEARCH ARTICLE

The Legal Interpretation of the State of Musytari's Force Majeure on the Murabahah: Financing Contract Post Presidential Decree No. 12 of 2020

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| ABSTRACT

Force majeure may occur in a murabahah financing contract, which is the most widely used financing product by Islamic banking. This coercive situation has elements that must be fulfilled to be regulated in Article 1245 of the Civil Code (BW), which stipulates that compensation and interest can be forgiven in case of compelling circumstances. Many experts and practitioners are of the view that Article 1245 of the Civil Code can be used as the legal basis for the application of force majeure even though this clause has not been regulated in the agreed contract. On the other hand, this murabahah contract is regulated in the Supreme Court Regulation Number 2 of 2011 concerning the Compilation of Sharia Economic Law (KHES). The issuance of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster has implications for the emergence of various interpretations among the public and can be used as the basis for the cancellation of civil contracts, including murabahah contracts. The reason is that disaster is a force majeure that causes people to be unable to fulfill their achievements due to events beyond their capabilities. To overcome these problems, this research uses an analytical method based on doctrinal content by applying four types of legal approaches, namely: (i) historical/historical; (ii) Jurisprudence/philosophy; (iii) comparison; and (iv) analytical and critical. This study aims to identify the legal interpretation of Musytari's force majeure in murabahah financing contracts.

| KEYWORDS

Force majeure, Interpretation, Murabahah Financing

| ARTICLE INFORMATION

ACCEPTED: 01 January 2023 **PUBLISHED:** 16 January 2023 **DOI:** 10.32996/ijlps.2023.5.1.6

1. Introduction

It is undeniable that *murabahah* financing is the most widely recognized and most widely used financing product by Islamic banking worldwide, including in Indonesia.[1] *Murabahah* financing is the main choice because it does not contain a large risk, and in its implementation, it is also relatively easy for Islamic banks and customers. In contrast to the risk of *mudharabah* and *musyarakah* financing, if there is a risk of failure in managing the financing, Islamic banks and customers must share the loss. Because *mudharabah* and *musyarakah* financing use profit and loss sharing and the two contracts are categories of cooperation contracts so, the profit and risk of loss must be borne together.[2] According to Sophar Maru Hutagalung, force majeure is a

[1] Heykal N. H, 2018, *Lembaga Keuangan Islam: Tinjauan Teoritis dan Praktis.* Jakarta: Kencana Persada Media Group, page 43.
[2] OJK, 2020, *Kanal Syariah Data dan Statistik* https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Pages/Statistik-Perbankan-Syariah---Maret-2020.aspxhttps://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Pages/Statistik-Perbankan-Syariah---Maret-2020.aspx

condition in which the debtor is prevented from performing his performance due to unforeseen circumstances or events at the time the contract is made. This situation cannot be held accountable to the debtor while the debtor is not in a state of bad faith.[3]

Outbreaks of the Corona Virus Disease 2019 (Covid-19) case in Indonesia first occurred on March 2, 2020, when two Indonesian citizens living in Depok were infected with Covid-19. Both people with Covid-19 have a history of interacting with Japanese citizens who are known to suffer from the disease first. Based on data from the World Health Organization (WHO), the number of people with Covid-19 on April 29, 2020, recorded 3,024,029 people and 213 countries experienced cases of Covid-19.[4] Therefore, the World Health Organization (WHO) established the Covid-19 outbreak as a global pandemic on March 11, 2020, due to the rapid and widespread. A pandemic is a disease epidemic that spreads widely in a very wide area geographically, including transcontinental or global.[5]

The Covid-19 pandemic has had a serious impact on various sectors of life and the economy. The impact of Work from Home (WFH) policy by the government has an impact on several sectors such as the economy, tourism, education, social, religion and society. So that on April 13, 2020, the President of the Republic of Indonesia issued a Presidential Decree (Keppres) regarding non-natural disasters, namely Keppres No. 12 of 2020, concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster. The implication of this Presidential Decree raises speculation among the business community that the Presidential Decree can be used as a basis for cancelling civil contracts, especially business contracts. The reason is that a disaster is a force majeure, an extraordinary event that causes people to be unable to fulfill their achievements due to events that are beyond their means. In the law of agreement, there is a provision that force majeure can be used as an excuse to cancel the contract, but of course, this speculation is rather unsettling and misleading, not only in the business world but also in the banking world for the government.[6]

Banks are referred to as fiduciary financial institutions with a very strategic role in which the bank has a very noble vision and mission, namely as an institution that is assigned the task of carrying out the mandate of nation-building to achieve an increase in the standard of living of the people at large.[7] Likewise, Islamic banks have a role as financial intermediaries, namely as an intermediary between parties that have surplus funds and parties that lack funds. In connection with the contract on *murabahah* financing, which regulates the agreement between the bank acting as *Ba'i* (seller) and the customer acting as a Musytari (seller), the contract contains various clauses that regulate matters relating to the contract, one of which is a force majeure clause, namely a clause on disaster response or disaster that is preventive in nature to anticipate undesirable things. *Ba'i* will conduct a self-assessment with guidelines that at least contain the criteria for *Musytari* and sectors affected by Covid-19. Then, what if *Musytari* does not meet the assessment criteria set by *Ba'i* and can *Musytari* apply for restructuring by reason of force majeure.

Based on the description of the background of the problem above, the problem can be formulated as follows.

1. What is the legal interpretation of *Musytari's* force majeure in the *murabahah* financing contract?
2. What are the implications of the Presidential Decree No. 12 of 2020 on the legal interpretation of *Musytari's* force majeure in the *murabahah* financing contract?

2. Research Method

This research is normative legal research, namely research conducted on the principles of law, legal methods in the sense of value (norm), concrete legal regulations and the legal system [8][20] related to the material under study. The research approach used is a). The statutory approach that taken by examining the laws and regulations relating to the issues discussed. b). The conceptual approach is taken by examining the views of experts relating to the issues discussed. This approach is used when the rule of law does not exist or does not yet exist so that the views of the experts become one of the bases for strengthening the view of researchers. c). The comparative approach is made by holding a legal comparison. Comparative law is very useful because, through comparison, it can reveal the background of the existence of legal provisions so that it can be a recommendation for the preparation of legislation in accordance with the discussion of researchers.

3. Discuss and Analysis

[3] Sophar Maru Hutagalung, 2013, *Kontrak Bisnis di Asean Pengaruh Sistem Common Law dan Civil Law.* Jakarta: Sinar Grafika, page 67.
[4] https://www.who.int/emergencies/diseases/novel-coronavirus-2019 accessed on 30 April 2020 at 05.00 AM.
[5] https://www.kompas.tv/article/70893/who-tetapkan-wabah-virus-corona-sebagai-pandemi-global accessed on 29 April 2020 at 21.36 PM
[6] The Civil Law Teaching Association, "Covid-19 Disaster and Contract Cancellation in Business", Paper presented at the Seminar on Problematic Development and the implications of Force Majeure Due to Covid-19 for the Business World, Coordinating Ministry for Political, Legal and Security Affairs of the Republic of Indonesia, Jakarta 22 April 2020, page 2.
[7] Nindyo Pramono, 1997, *Hukum Perbankan 1*, PPS MMH UGM, Yogyakarta, page 1.
[8] Muhamad Djumhana, 2003, *Hukum Perbankan di Indonesia*, Ctk. Ketiga, PT. Citra Aditya Bakti, Bandung, page 77.

This research focuses on the study of the legal interpretation of the *Musytari* force majeure situation in the Post-KEPPRES No. *Murabahah* Akad No. 12 of 2020, namely identifying and describing the legal interpretation of the *Musytari* force majeure situation on the *Murabahah* contract and analyzing the implications of KEPPRES No. 12 of 2020 regarding the interpretation of the law regarding the condition of *Musytari's* force majeure on the *Murabahah* contract. To the knowledge of researchers, there have not been many in-depth studies by legal researchers, both studies that lead to a theoretical or practical level. Previous research that discusses the legal interpretation of the *Musytari* force majeure on the Post-KEPPRES *Murabahah* Agreement No. 12 of 2020 seems incomplete. Therefore, affirming the authenticity of this study is intended to avoid repetition or duplication of themes with the same focus of the study. Duplicating or repeating studies will not make a significant contribution to the development of legal science, either theoretically or practically.

Tracing of previous studies to determine the originality of this study is carried out by tracing the results of previous research (literature review), both those that have been done by researchers from within the legal disciplines themselves and outside the legal sciences, especially social sciences. Some relevant research that has been successfully collected by researchers as a comparison of previous studies is to show the originality of this study.

Nisrina Mutiara Dewi, in 2020 conducted research entitled "Overview of Force Majeure in the *Murabahah* Agreement Dispute at BNI Syariah Medan Branch." The results of his research Fulfill the provisions of Article 17 paragraph (1) of *Murabahah* Financing Agreement Number MES / 2013/198 / K., dated September 10, 2013, which states, "The parties are exempted from the obligation to carry out the contents of this contract, either in part or in whole, if failure or delay. carry out these obligations due to force majeure". As for the definition of force majeure as referred to in the provisions of Article 17 paragraph (2), which states: "What is meant by force majeure is an event or situation that occurs beyond the power or ability of one or the party, which results in one or the parties unable to carry out their rights and or obligations in accordance with the provisions of this agreement, including but not limited to fires, natural disasters, wars, military action, riots, calamities, strikes, epidemic and policies as well as Government Regulations or local authorities which can directly influence the fulfillment of the agreement implementation. "The Cassation Petitioner disagrees with the Cassation Respondent regarding the rejection of the application for Building Construction Permit (IMB) and being exposed to the entire Sub-Sub-Region Plan (RSSW) of the Plaintiff's houses; clearly, a force majeure has occurred."[9]

Umdah Aulia Rohmah, in 2019 conducted research entitled "The Concept of Force Majeure in the *Murabahah* Agreement and Its Implementation in Sharia Financial Institutions". The result of his research is the position of force majeure in the *murabahah* contract is a necessity because it is to anticipate things that are undesirable and dangerous, which are beyond the control of the parties in the *murabahah* contract. Apart from that, Islamic Law also regulates the position related to force majeure, which is known as *dharurah*, which means damaging or giving harm. The implementation of force majeure in the *murabahah* contract at Islamic Financial Institutions in practice has been implemented in the contract or agreement by the parties. The force majeure clause is an excuse not to charge the parties for losses arising from the force majeure event that occurs.[10]

Noor Hafizah Uhdiyati, in 2017 conducted research entitled "Settlement of Problematic *Murabahah* Financing (Case Study at the Banjarmasin City Religious Court)". The result of his research is the decision of the Constitutional Court[11] regarding the granting of the petition for judicial review of Law Number 21 of 2008 concerning Sharia Banking,[12] namely Article 55, paragraph (2) and paragraph (3), which regulates the settlement of disputes against Article 28 D paragraph (1) of the 1945 Constitution, which states that the law must guarantee legal certainty and justice and do not have binding legal force. Meanwhile, in Article 55 paragraph (1), it is explained that the settlement of Sharia Banking disputes is carried out by a court within the Religious Courts, while paragraph (2) states that in the event that the parties have agreed to settle a dispute other than as referred to in paragraph (1), the dispute settlement shall be carried out according to with the contents of the Akad, furthermore, in paragraph (3) Dispute settlement as referred to in paragraph (2) must not conflict with Sharia Principles, regarding the absolute authority of the Religious Courts in resolving high-cost financing disputes as referred to in Law No. 3 of 2006 concerning Religious Courts.[13]

[9] Nisrina Mutiara Dewi, 2020*, Tinjauan tentang Keadaan Memaksa (Force Majeure) dalam Sengketa Perjanjian.*

[10] Umdah Aulia Rohmah, 2019, *Konsep Force Majeure dalam Akad Murabahah dan Implementasinya pada Lembaga Keuangan Syariah*, Lex Reinssance, No. 1 VOL. 4 JANUARI 2019: 104 – 125, Program Magister Ilmu Hukum Fakultas Hukum Universitas Islam Indonesia.

[11] Decision Number 93 / PUU-X / 2012.

[12] State Gazette of the Republic of Indonesia of 2008 Number 94.

[13] Noor Hafizah Uhdiyati, 2017, *Penyelesaian Pembiayaan Murabahah Bermasalah (Studi Kasus di Pengadilan Agama Kota Banjarmasin)*, Tesis, Pascasarjana Magiter Ekonomi Syariah, Universitas Islam Negeri Maulana Malik Ibrahim, Malang.

Based on the results of research conducted by the authors above, when compared to the research to be conducted by the author, nothing is the same in terms of the scope of the object, subject, approach, methodology and paradigm used. Therefore, researchers believe that this research is original and has never been done by other people.

The development of Islamic banking in various parts of the world is so fast, including in Indonesia. This is inseparable from the understanding of the majority of Muslims who began to understand that interest and capital whose results are predetermined (predetermined return) is usury which is prohibited by Islamic sharia. Based on this understanding, since around 1950, there have been many Muslim scholars and practitioners of Islamic economics who want a bank that is free from interest or usury (interest free banking). Sharia Banking is everything concerning Sharia Banks and Sharia Business Units, including institutions, business activities, methods, and processes in carrying out their business activities. Overall Islamic banking business activities are based on sharia principles, economic democracy, and prudential principles. One form of business activity for channeling funds to Islamic banks is through *murabahah* financing products. *Murabahah* is the sale and purchase of goods at the original price with an additional agreed profit. The characteristic of the *murabahah* is that the seller must tell the buyer the purchase price of the product and state the amount of profit added to that cost.[14]

The basis of the sharia permitting *murabahah* is QS. An-Nisa': 29, as follows:

> "O you who believe, do not eat the assets circulating among you in vanity unless there is a transaction that is agreed upon between you".

The basis of the sharia permitting *murabahah* also consists of the QS. Al-Baqarah: 275, as follows:

> "Meanwhile, Allah makes buying and selling legal and forbids usury".

The basis of the sharia permitting murabahah is also mentioned in the hadith of the Prophet Muhammad SAW. The hadith mentions it as follows:[15]

> "From Suhaib al-Rumi ra, Rasulullah SAW said: "Three things in which there is a blessing: tough buying and selling, *muqaradhan* (*mudharabah*), and mixing wheat with flour for household needs, not for sale."

According to the majority (*jumhur*) of Islamic jurists, there are five pillars that make up the *murabahah* contract, namely:

a. There is a seller (*ba'i*);
b. There are buyers (*musytari*);
c. Objects or goods (*mabi* ') that are traded;
d. Price (*tsaman*) for the selling value of goods based on currency;
e. Ijab kabul (*sighat*) or contract formula, a statement of will by each party.

Murabahah financing is the most preferred Islamic banking financing product by customers because of the certainty regarding installments and margins, where there will be no change in the margin as long as the customer does not experience non-performing financing.

The role of Islamic banks in the *murabahah* contract can be described more precisely by the term financier, not the seller of goods. The bank does not hold the goods, nor does it take risks on them. Almost all bank work is related to the handling of related documents. The sales contract is just a formality.

The purchase request by the customer is accompanied by a purchase agreement accompanied by a down payment to ensure that the customer is serious about his purchase request and that he will fulfill the payment when the bank shows its readiness to complete the *murabahah* sale and purchase. Contract after the bank notifies the customer that the goods are ready for delivery or that the documents relating to the goods have arrived. The bank does not need to wait for the goods to arrive for inspection before being handed over to the buyer. The condition of the goods is not very important for the bank because the buyer is responsible for checking the specifications; before signing the contract, the customer states that he will not sue the bank for

[14] Abdullah Saeed, 2003, *Bank Islam dan Bunga, Studi Kritis dan Interprestasi Kontemporer tentang Riba dan Bunga*, Pustaka Pelajar, Yogyakarta, Ctk. Pertama, page 2
[15] Hadith of Ibn Majah.

defective goods. The definition of a *murabahah* contract is contained in the Elucidation of Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking Article 19 Paragraph (1) letter d, namely:

"What is meant by a *murabahah* contract is a financing contract of an item by confirming the purchase price to the buyer, and the buyer pays it at a higher price as the agreed profit." seller, buyer, and supplier, the object of the contract; the goods being traded and the price, the purpose of the contract, and also the contract consisting of *qabul* consent; handover. The transaction must be free from elements that are prohibited by sharia, such as *usury*, *masyir*, and *gharar*.

The request for purchase by the customer is accompanied by a purchase promise accompanied by an advance payment to ensure that the customer is serious about his purchase request and that he will fulfill the payment when the bank shows its readiness to complete the *murabahah* sale and purchase contract once the bank informs the customer that the goods have been ready to be handed over, or that the documents relating to the goods have arrived. Banks do not need to wait for the goods to arrive for inspection before being handed over to the buyer. The condition of the goods does not really matter to the bank because it is the buyer's responsibility to check the specifications; before signing the contract, the customer states that he will not prosecute the bank for defects in the goods.[16]

In connection with the contract on *murabahah* financing, which regulates the agreement between the bank acting as *Ba'i* (seller) and the customer acting as a *Musytari* (seller), the contract contains various clauses that regulate matters relating to the contract, one of which is a force majeure clause, namely a clause on disaster response or disaster that is preventive in nature to anticipate undesirable things. *Ba'i* will conduct a self-assessment with guidelines that at least contain the criteria for *Musytari* and sectors affected by Covid-19. Then, what if *Musytari* does not meet the assessment criteria set by *Ba'i* and can *Musytari* apply for restructuring by reason of force majeure?[17]

According to Black's Law Dictionary,[18] force majeure is an event or effect that can be neither anticipated nor controlled. In Indonesia's material civil law, the term force majeure is not strictly regulated. However, Article 1245 of the Civil Code states that parties to an engagement are not required to provide compensation if the party is prevented from fulfilling its obligations due to an *overmacht*. Based on the provisions of Article 1245 of the Civil Code and the Black's Law Dictionary, there is a common thread, namely that the *Musytari* cannot be asked for compensation in the event of a situation that cannot be predicted in advance or is beyond reasonable control due to external factors. In the context of the Covid-19 pandemic, can force majeure be legally fulfilled? Or does the force majeure claim still have to refer to the agreement agreed by the parties?

In the context of the agreement on the *Murabahah* financing contract, what if this phenomenon makes one party unable to fulfill its obligations? In the perspective of civil law, of course, parties who cannot carry out their obligations can be qualified as having "broken promises" or "neglected to carry out their obligations". The legal implication is clearly stipulated in Article 1243 of the Civil Code, which in essence, regulates the obligation to compensate for losses arising from non-compliance with an agreement.

However, on the contrary, referring to Articles 1244 and 1245 of the Civil Code, in essence, these two Articles show that in a situation forcing a party that is negligent in carrying out its obligations to be released from the responsibility to compensate for losses arising from the failure of an agreement. If so, reflecting on the current conditions, can the Covid-19 outbreak qualify as a force majeure? Another question that arises is, what if COVID-19 or the pandemic is not regulated in a force majeure clause in an agreement?

The provisions of Article 1245 of the Civil Code are contained in Book Three on Engagement, Chapter I on Engagement in General. In essence, the provisions of Article 1245 of the Civil Code apply to the parties in an engagement with the condition that, first, the parties submit themselves that the civil law that applies in Indonesia is the governing law; and second, the parties do not specifically regulate the force majeure clause in the engagement. Regardless of whether the parties to an agreement regulate a pandemic as a reason for force majeure, the provisions of Article 1245 of the Civil Code are still valid and must be obeyed. In the context of the Covid-19 pandemic, force majeure can be claimed because the parties cannot predict a pandemic and do not have a contributory effect, and this pandemic is an obstacle that occurs in general.

The reality is with the issuance of Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster has implications for the emergence of an interpretation

[16] Muhammad Syafi'i Antonio, 2001, *Bank Syariah dari Teori ke Praktik,* Ctk. Pertama, Gema Insani Press, Jakarta, page 101.
[17] Wiroso, 2005, *Jual Beli Murabahah,* UII Press, Yogyakarta, page 13.
[18] Bryan A. Garner,Henry Campbell Black,*Black's Law Dictionary*, Abridged, 10th Edition

among the public that this Presidential Decree can be used as the basis for canceling civil contracts, including *murabahah* contracts. The reason is that a disaster is a force majeure, an extraordinary event that causes people to be unable to fulfill their achievements due to events that are beyond their means.

3.1 The Legal Interpretation of Musytari's Force Majeure in the Murabahah Financing Contract

Islam, as a complete and comprehensive religion, teaches a lot of covenant principles. The principle is very influential in a contract agreement. When a principle is not fulfilled, it will result in the void or invalidity of the agreement made. The principles of contract law serve as the builder of the contract system. These principles affect not only positive law but also, in many ways, create a contract law system that is fair, guarantees certainty, and creates benefits. The principles of this contract are sourced from the Qur'an, hadith, and ijtihad of scholars throughout history for centuries. However, it must be noted that the principles of this contract do not stand alone but are interrelated from one principle to another.

Sharia principles or provisions are customary law and therefore apply to the legal relationship between a bank and its customers as long as it has not been regulated in the agreement and does not conflict with the compelling provisions in the law of the agreement. An agreement made between a bank and a customer sometimes has elements that are slightly different from the contracts known in Islamic law. One of them is the force majeure clause that is commonly found in Islamic banking contracts. According to Subekti,[19] it is said that a compelling situation is a condition that had arisen when the agreement was made, at least not borne by the debtor himself. If the debtor proves that there is a coercive situation, the creditors' demands will be rejected by the judge and the debtor regardless of the penalty, either in the form of fulfilling the agreement or paying compensation arising from the agreement.

The forceful situation stipulated in the Civil Code in Article 1244 of the Civil Code states, "In this case, the incidents which constitute force majeure have never been previously predicted by the parties. This is because if the parties have been able to predict the occurrence of this incident in advance, then it should have been negotiated between the parties". Articles in the Civil Code that can be used as a guideline for force majeure provisions other than Article 1244 of the Civil Code mentioned above include, among others, the Civil Code Article 1245 of the Civil Code, which reads:

> "It is not the cost of loss and interest; it must be replaced if, due to coercive circumstances or due to an accidental incident, the debtor is unable to provide or do something that is required, or because the same things have committed an illegal act".

In Article 1245 of the Civil Code, if certain goods, which have been promised to be exchanged, are destroyed without the fault of the owner, then the agreement is deemed invalid, and the party who has fulfilled the agreement can claim back the goods he gave in exchange. The coercive situation in Islamic banking also refers to the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2008 concerning the Compilation of Sharia Economic Law in Article 40, which reads:

> "A coercive or emergency situation is a situation in which one of the parties who entered into the contract is prevented from carrying out his achievement".

Meanwhile, according to KHES, namely in Article 43 paragraph 1, the formula is as follows: "The obligation to bear losses caused by events other than the fault of one of the parties in a one-sided agreement shall be borne by the borrower", then the next paragraph: "Liability to bear losses caused by external events. The fault of one of the parties in a reciprocal agreement, is borne by the lender". According to Rahmadi Usman, the causes of problems with *murabahah* financing between banks and customers are, among others, due to: (1) The customer is in default or commonly known as default; (2) the customer experiences force majeure; (3) The customer commits an act against the law.

3.2 The Legal Implications of Presidential Decree No. 12 of 2020 Regarding the Interpretation of Musytari's Force Majeure on the Murabahah Financing Contract

The impact of the COVID-19 pandemic is felt by business actors in the supply-demand cycle, including service providers and service providers, as well as creditors and debtors in credit agreements. Therefore, the submission of a force majeure claim should be carried out in the spirit of jointly fulfilling the obligations of each party in the best possible way.

The COVID-19 pandemic is included as a force majeure depending on the definition of coercion (if any) in the agreement. According to him, the type of force majeure clause consists of 2 (two) clauses, first, a non-exclusive clause in which a party can

[19] Edy Wibowo dan Untung Hendy, 2005, *Mengapa Memilih Bank Syariah*, Ctk. Pertama, Ghalia Indonesia, Bogor Selatan, page 71-72.

claim force majeure as long as there are agreed conditions for force majeure to apply and second, an exclusive clause where the force majeure is limited to the circumstances mentioned in the agreement.

In practice, the parties to the agreement will include a force majeure clause, and usually, the scope of force majeure is defined in more detail. An example of a force majeure clause is as follows: If there is a delay and/or failure to carry out the obligations contained in this Agreement by one of the parties due to an event beyond the ability or will of the party concerned,[20] then the delay and/or failure cannot be considered as negligence/error of the parties concerned. The parties concerned will be protected or will not experience demands from other parties. What is meant by force majeure are events such as fire, earthquake, flood, and civil commotion which directly result in delays and/or failure to carry out the obligations stated in the Agreement.

As an alternative, there is also a force majeure clause which explicitly mentions a pandemic as the reason for force majeure. For example, the force majeure provisions contained in the Terms and Conditions imposed by one of the hotel booking and transportation ticket service providers are as follows: We are not responsible or bear your losses in the event that We are unable to deliver the Products or provide Services to You, as a result of things that occur due to compelling circumstances or which are beyond the control of Us or Our Provider Partners, such as, but not limited to: war, riot, terrorist, industrial dispute, government action, epidemic, pandemic, natural disaster, fire or flood, extreme weather, and so on. In contrast to the previous formulation of the force majeure clause, the force majeure clause above clearly states the phrase "government actions, epidemics, pandemics, natural disasters, ..." so that it is relatively easier to claim the existence of force majeure.

Force majeure is a condition that occurs after an agreement is made that prevents the debtor from fulfilling his performance. In this case, the debtor cannot be blamed and does not have to bear the risk and cannot predict the occurrence of such a thing at the time the agreement is made. Force majeure as a result of this unexpected incident could be due to something that is beyond the control of the debtor, which condition can be used as a reason to be exempted from the obligation to pay compensation.

There are also opinions from experts regarding force majeure, including the following:

a. According to Subekti, force majeure is an excuse to be exempted from the obligation to pay compensation.
b. According to Abdulkadir Muhammad, force majeure is a condition where the debtor's achievement cannot be fulfilled due to an unexpected event that the debtor cannot expect to occur at the time of making the engagement.
c. According to Setiawan, force majeure is a situation that occurs after an agreement is made that prevents the debtor from fulfilling his performance, in which the debtor cannot be blamed and does not have to take risks and cannot predict when the agreement is made. Because of all that before, the debtor was negligent in fulfilling his achievement at the time the situation arose.

In the Civil Code, we do not find the term force majeure, it does not even explain what is called a force majeure or suspect, but the term is drawn from the provisions in the Civil Code which regulate compensation, risks for unilateral contracts in coercion or in part special contracts and of course drawn from the conclusions of legal theories about force majeure, doctrine, and jurisprudence. There are several articles that can be used as guidelines for force majeure in the Civil Code, including Articles 1244, 1245, 1545, 1553, 1444, 1445 and 1460. Article 1244 of the Civil Code describes the payment of compensation and interest if the debtor cannot prove that he has experienced unexpected things that cause him to not fulfill his achievements.

Article 1245 of the Civil Code explains the exemption of payment of fees, losses and interest if there has been a forceful situation or due to an accidental situation, the debtor is unable to provide or do something that is required, or because of the same things has committed an illegal act.

Article 1545 explains that certain goods which have been promised to be exchanged are destroyed without the fault of the owner, then the agreement is deemed invalid, and the party who has fulfilled the agreement can reclaim the goods he has given in exchange.

Article 1444 describes the termination of an engagement if certain goods which are the subject of the agreement are destroyed, cannot be traded, or are lost until it is completely unknown whether the goods are still there or not, provided that the goods are destroyed or lost beyond the fault of the debtor and before he/she is negligent in handing them over. Even though the debtor is negligent in handing over the goods, the agreement is still canceled if the goods will also be destroyed in the same manner in the hands of the creditor if the said goods have been handed over to him. However, in this case, it does not mean that the debtor can

[20] Mohd Ma'sum Billah, 2010, *Islamic E-commerce Terapan; Tinjauan Hukum dan Praktik*, Sweet & Maxwell Asia, Malaysia, page 61.

be reasoned carelessly because the debtor is obliged to prove the unexpected events he brings up. In whatever way an item is lost or destroyed, the person who takes the item is never free from the obligation to change the price.

Article 1445 describes the obligation to give such rights, and demands to creditors if the goods owed are destroyed, can no longer be traded, or are lost beyond the fault of the debtor.

Article 1460 explains that the goods being sold are in the form of goods that have been determined, so from the time of purchase, the goods will be borne by the buyer, even though the delivery has not been made, and the seller has the right to claim the price.

Based on some of the definitions above, it can be concluded that what is meant by force majeure is a condition in which what happens outside of human power can cause the debtor's achievement to be unable to be fulfilled, and the debtor is not obliged to bear the risk.

4. Closure

4.1 Conclusion

Based on the analysis above, it can be concluded as follows:

1. The legal interpretation of *Musytari's* force majeure in the *murabahah* financing contract is a compelling situation in which a condition that arises when an agreement is made, at least, is borne by the debtor alone. If the debtor proves that there is a compelling situation, the creditors' demands will be rejected by the judge and debtor regardless of any sanctions, either in the form of fulfillment of the agreement or payment of compensation arising from the agreement. The situation of violence stipulated in the Civil Code in Article 1244 of the Civil Code states that, in this case, events that constitute force majeure have never been predicted in advance by the parties. This is because if the parties have been able to predict the occurrence of this incident in advance, it must be negotiated between the parties.
2. The implications of the Presidential Decree No. 12 of 2020 on the legal interpretation of *Musytari's* force majeure in the *murabahah* financing contract are conditions that occur after an agreement is made that makes the debtor unable to meet his performance. In this case, the debtor cannot be blamed and does not have to bear the risk and cannot predict the occurrence of such a thing when the agreement is made. Force majeure due to unforeseen events can be caused by something that is beyond the control of the debtor, which can be used as an excuse to be exempted from the obligation to pay compensation.

Funding: This research received no external funding.
Conflicts of Interest: The authors declare no conflict of interest.
Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

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