Legal Effective of Putting "Business as Usual" Clause in Agreements

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Abstract: The development of business in Indonesia accompanies legal needs in the community, especially when triggered by the pandemic period of 2020, breakthroughs of business people to anticipate obstacles have made innovative clauses to be put in the agreement. The birth of the "business as usual" clause needs to be observed in this paper to study the legal impacts that may arise from its positive and negative aspects. This paper aims to analyze the impact of the agreement on the placement of a business as a usual clause on force majeure conditions and to examine the relevance of responsibility as good faith, its validity is limited so that risks can be minimized. This research paper use a random sampling method, normative-empirical legal research, socio-legal research tool types, data software through legal observations, analysis descriptions, modern or traditional agreement law reviews, and primary and secondary data collection. The results of this paper's research manifest the dispute resolution of the parties due to the agreement if it is not proven in good faith. This paper provides solutions and studies of the agreement law of business actors in an effective manner of responsibility and justice.

Keywords: Effective law, clauses, agreements, responsibility.

INTRODUCTION

The growth of Indonesian economic dynamics in the era of globalization in the business sector has experienced, so that many business people are affected by the economic health of their businesses. One of the areas of business law which is civil law written in the Civil Code along with all special regulations such as laws, government regulations, government decrees, presidential decrees, decrees, etc.) which includes all aspects of civil law, grow and develop according to the needs of the law modernization society in general and support economic development and development. So to maintain the relationship to the agreement that has been made, it must require innovation of a good clause based on an agreement, namely "business as usual" which believes that it can foster a sense of responsibility to an ongoing agreement and appears relevant to its implementation in an existing agreement (Chrystofer *et al*., 2017). The provisions stipulated in Article 1320 of the Civil Code contain provisions that the legal object of the agreement must be certain or at least can be determined. An agreement is made by the parties form, change or terminating an engagement. The law is made to provide legal direction for economic transactions, especially about the procurement of goods and services as the subject of contract law. Civil law is an inter-individual law that fosters individual rights and obligations towards one another in family relationships and in community relations, the implementation of which is left to each party (Aulia, 2018).

Agreement Law involves a legal relationship that is sided by two parties the norm in it appears to be related to the individual's right to make requests, and on the other hand with the obligations to carry out something in the Agreement Law, the one party, the transfer of resources that takes place between community members voluntarily (Munandar, 2016). Because of that he focused his attention on fulfilling the expectations of the parties formed based on binding promises. Legal relationships that are born through contracts do not always fulfill the meaning and understanding, this situation can occur due to default either by creditors or debtors, coercion, mistakes, fraudulent acts, or compelling circumstances known as force majeure or triggered by the pandemic period of the Covid-19 pandemic (Ifada Qurrata A'yun Amalia, 2018).

Indonesia is experiencing an economic downturn due to the current magnitude pandemic, hence the increasing number of issuers currently experiencing defaults, so that the agreement is classified as an achievement as a debtor who has debts to creditors. Indonesian treaty law currently adheres to the civil law tradition which is guided by the rules inherited from the Dutch East Indies colonial government, another fact that appears is the Dutch influence which has embedded the pillars of provisions that bind society and the authorities as well as society and society it self. Another evidence of the relationship between Dutch

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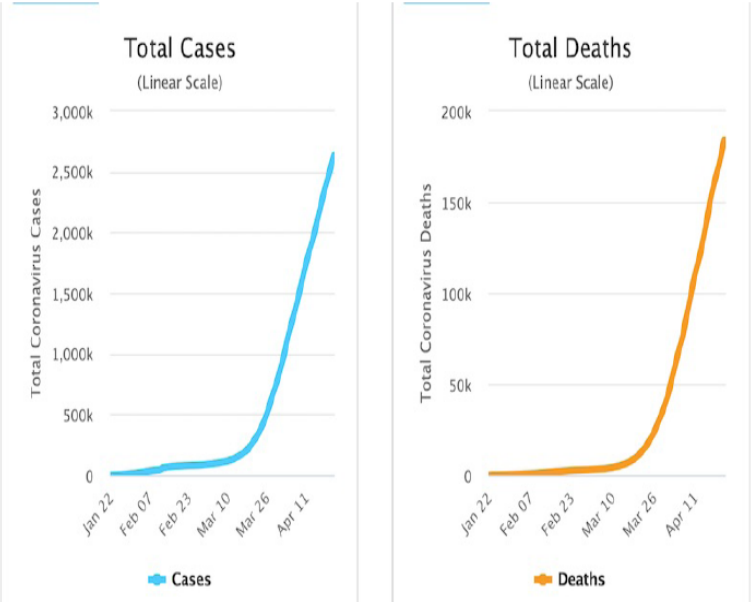

Figure 1:

law and Indonesia is the Civil Code or Burgerlijk Wetboek, especially Book III on Engagement, and more specifically, it is regulated in Chapter II concerning the Engagement that was Born from the Agreement. Burgelijk Wetboek systematics consists of:

> *First, Regarding People, second Regarding Objects, third, Concerning Engagement, fourth, Concerning Evidence and Passing Time. The aforementioned systematics are highly influenced by the Justiniasnise system institutions.*

That the statute of fraud was established in England in 1667 because it aims to avoid or reject fraudulent claims by determining the conditions for those who submit a claim to show or submit something in writing to prove the claim. It can be understood that many agreements that are made orally, whether that occured in the Civil Law system, Common Law or other systems, will face evidentiary problems in court. Agreements that are under the influence of both Common Law and Civil Law systems do not determine or impose any written requirements. This means that most agreements made are valid even though they are made in oral form or not in written form (Ariyanto, 2016).

The definition of business as usual according to the Indonesian dictionary is business as usual. A contract forms a private entity between the parties in which each party has the juridical right to demand the implementation of and compliance with the restrictions agreed upon by the other party voluntarily. The consequences that arise from this situation cause an agreement to be canceled and which is null and void (Wagner, 2019).

The force majeure regulation in Indonesia is contained in Articles 1244 and 1245 of the Civil Code, however, when examined further, these provisions emphasize more on how to compensate costs, losses and interest but can be used as a reference as a force majeure arrangement. The force majeure clause protetcts against losses caused by fire, flood, earthquake, rainstorm, hurricane, power outage, catalyst damage, sabotage, war, invasion, civil war, rebellion, revolution, military coup, terrorism, the period of the Covid-19 pandemic and so on. The phenomenon of the provisions of Article 1 paragraph (3) of Law Number 24 of 2007 concerning Disaster Management states that:

> *"Non-natural disasters are disasters caused by non-natural events or series of events, which include technological failure, modernization failure, epidemics, and disease outbreaks."*

Force majeure or pandemic force majeure is a concept in civil law and is accepted as a principle in law. Mochtar Kusumaatmadja stated that force majeure or vis major can be accepted as an excuse for not fulfilling the implementation of obligations due to the loss/ disappearance of the object or objective that is the subject of the agreement. This situation is aimed at

physical and legal implementation, not only because of difficulties in carrying out obligations (Isradjuningtias, 2015).

Reported by the fact that it is still warm in recent months in 2020 the Central Jakarta Commercial Court was flooded with several issuers who were registered for bankruptcy, including PT Sentul City Tbk, PT KSP Indosurya and others due to punctual payments and defaults due to paralyzed business wheels during the Covid-19 pandemic right now. So looking for the best steps as a solution so that business agreement activities continue to run smoothly as usual, with unusual methods such as placing a "business as usual" clause which makes the best solution for business developers. In the research paper, the author wants to examine the legal appropriateness of legal effectiveness in placing a "business as usual" clause in every new or old agreement which in the hope does not become obstacles in the agreement during the current pandemic so that it remains as usual. If a business as the usual clause is placed in the agreement, it does not give up responsibility and remains effective.

THEORETICAL FRAMEWORK

Review of the Agreement in the Force Majeure

Definition of Agreement

The agreement is an important thing because it involves the interests of the parties that make it. Every agreement should be made in writing to obtain legal force, so that the goal of legal certainty can be realized. In connection with the agreement, Article 1313 of the Civil Code provides the following definition "An agreement is an act whereby one or more people bind themselves to one or more other people" (McAfee, 2016).

Subekti's opinion states that an agreement is an event when someone promises to another person or two people promise to carry out something, from this event an engagement arises.

Abdul Kadir Muhammad's opinion reformulates the definition of Article 1313 of the Civil Code as follows, that what is called an agreement is an agreement whereby two or more people bind themselves to carry out something in the field of wealth. (Syaifuddin, 2012)

The definition of the agreement that has been described in Article 1313 of the Civil Code, has several weaknesses and deficiencies according to scholars. According to Setiawan, the formulation of Article 1313 of the Civil Code is not complete but also very broad. Incomplete because it only mentions one-sided consent. It is very broad because the use of the word "deed" it includes voluntary representation and acts against the law. In this connection, according to Setiawan, it is necessary to improve the definition, namely:

1. Actions must be interpreted as legal actions, namely actions aimed at causing legal consequences;

2. Adding the words "or binding themselves to each other" in Article 1313 of the Civil Code;

3. So that the formulator becomes "an agreement is a legal act, where one or more people bind themselves or bind themselves to one or more people".

The agreement of the parties is an absolute element for the occurrence of a contract. This agreement can occur in various ways, but the most important thing is that there are an offer and acceptance of the offer, but in general the agreement can occur in writing and not in writing, where an agreement that occurs in an unwritten form can be in the form of an oral agreement, symbol -specific symbol, or stealth (Gebhart, 2018).

Principles of Agreement Law

In the agreement law, the principle of good faith and appropriateness of Article 1338 paragraph 3 reads: The agreement must be carried out in good faith. Article 1339, Agreement is not only binding for matters expressly stated in it, but also for everything that according to the nature of the agreement is required by propriety, custom, or the law. Good faith in implementing the agreement means that we must interpret the agreement based on fairness and propriety. Interpreting an agreement is determining the results that occur. Thus according to (Pitlo,1993), there is a close relationship between the teachings of good faith in the implementation of the agreement and the theory of trust at the time the agreement occurs. Good faith and propriety (Article 1339) are generally stated in unison, that if the judge, after examining the appropriateness of an agreement, cannot be implemented, it means that the agreement is contrary to public order and morals. More importantly Article 1338 paragraph 3 and Article 1339 as a means of controlling whether good faith and propriety are fulfilled or not in the matter of "binding advice", namely submitting a dispute arising from the parties to a

referee and the matter of the party's decision, namely giving up a dispute that arises. from parties to one of the parties that have been stated in the agreement, also in the event of "amendment to the articles of association" of a legal entity, namely whether because of the change there is proper implementation of the agreement of establishing a legal entity. Good faith and fit can also change or complement the Agreement. That the agreement is not only determined by the parties in the formulation of the agreement but also determined by good faith and propriety, so good faith and propriety determine the contents of the agreement (Miru, 2014).

Elements of the Agreement

The agreement is born if it is agreed on the main or essential element in a contract. The emphasis on the essential elements is because other elements are still known in an agreement apart from essential elements. In an agreement there are three elements, namely as follows:

Terms of the validity of the agreement. The terms of the validity of the agreement according to Article 1320 of the Civil Code (Simanjuntak, 2017):

1. Agreement

A valid agreement must contain elements of suitability, suitability, a meeting of the will of the contractor or a statement of intent agreed between the parties.

The elements of the agreement:

a. Offerte, is the statement of the party offering;

b. Acceptance, is the statement of the party receiving the offer.

So the agreement is important because it is the beginning of the agreement. Furthermore, according to article 1321 of the Civil Code, an agreement must be given freely, in the sense that there is no coercion, fraud, and error, hereinafter referred to as a defect of will (the will that arises is not pure from the person concerned). circumstances (not contained in the Civil Code).

2. Acting Skills

The word person in the world of law means supporters of rights and obligations which are also called legal subjects. Even though every legal subject has the right and obligation to carry out legal acts, these actions must be supported by legal competence and authority. What is meant by a legally capable person, namely:

a. Adults (each rule is different);

b. A healthy mind (not under interdiction);

c. Not prohibited by law.

3. A Certain Thing

What is meant by certain matters, namely related to the object of the agreement (Articles 1332 - 1334 of the Civil Code). The objects of the agreement that can be categorized in the article include:

a. Objects will exist (except inheritance), provided that they are type definable and computable;

b. Objects that can be traded (goods that are used for public purposes cannot be the object of the agreement).

To determine the goods that are the object of the agreement, various methods can be used, such as: counting, weighing, measuring, or measuring. Meanwhile, to determine the value of a service, it must be determined by what must be done by one of the parties.

4. A Halal Cause

Because what is meant is the contents of the agreement itself or the objectives of the parties who agreed (Article 1337 of the Civil Code). Halal means not contrary to law, public order, and morals.

Definition 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 when the agreement is made. Force majeure due to this unexpected event could be due to something that is beyond the control of the debtor which this situation can be used as a reason for free from the obligation to pay compensation. There are also opinions from experts regarding force majeure, including the following (Isradjuningtias, 2015):

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 which the debtor cannot expect when making the engagement;

c. According to Setiawan, force majeure is a condition 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 all of that before the debtor was negligent to fulfill his performance at the time the situation arose.

The Civil Code does not find the term force majeure, it does not even explain what is called a force majeure or suspected matter, but the term is drawn from the provisions in the Civil Code which regulate compensation, risks for unilateral contracts in a state of force or part special contracts and of course drawn from the conclusions of legal theories about force majeure, doctrine and jurisprudence. Several articles that can be used as guidelines regarding force majeure in the Civil Code, including Articles 1244, 1245, 1545, 1553, 1444, 1445 and 1460. Article 1244 of the Civil Code explains the payment of compensation and interest if the debtor cannot prove himself experiencing unexpected things that made him unable to fulfill his achievements (Percival *et al*., 2017).

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 (Yamamoto & Esteban, 2010).

Article 1545 describes the destruction of certain goods that have been promised to be exchanged 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 has given in exchange (Al-Amaren, 2018).

The provisions of Article 1444 explain 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 outside the fault of the debtor and before he was negligent. hand it over. Even though the debitur neglects to hand over the said goods, the contract will still be nullified 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 be reasoned carelessly, because the debtor is obliged to prove the unforeseen 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 (McAfee, 2016).

Article 1445 describes the obligation to grant said rights and demands to the creditor 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, then from the time of purchase, the goods are borne by the buyer, even though the delivery has not been made and the seller has the right to claim the price. From some of the definitions above, it can be concluded that what is meant by force majeure is a situation that occurs outside of human power which can cause the debtor's achievement to be unable to fulfill and the debtor is not obliged to bear the risk (Ribeiro-bidaoui *et al*., 2018).

Requirements for Force Majeure

With the existence of a force majeure, it does not mean that the debtor can protect himself from the reason of a coercive situation because he only wants to run away from his responsibilities, so there must be some conditions so that this does not occur. Purwahid Patrik's opinion states that there are 3 conditions for the force majeure to take effect, namely (Dwijayadi, 2016):

a. There must be an obstacle to fulfilling its obligations;

b. The obstacle occurs not because of the debtor's fault;

c. Not caused by circumstances that become the risk of the debtor.

Meanwhile, according to R. Subekti, the conditions for a condition to be said to be force majeure are as follows:

a. The situation itself is beyond the control of the debtor and coerce;

b. This situation must be a condition which cannot be known at the time the agreement was made, at least the risk is not borne by the debtor.

With the conditions above, a person cannot say that he is experiencing force majeure at will. Because the debtor can have any reasons so that he can be free from his responsibilities. Then a judge can declare a debtor innocent so that he can be released from his responsibility for not fulfilling his obligations because the reason the force majeure must comply with the elements contained in Article 1244 of the Civil Code, including as follows:

a. There is a real event that can be proven to hinder the debtor with an outstanding performance, where the obstacle justifies the debtor not being able to perform or not performing as agreed;

b. The debtor must be able to prove himself that there is no element of guilt for events that prevent him from achieving;

c. The debtor must be able to prove that the obstacle was previously unpredictable at the time of agreeing.

Force Majeure Theories

Two theories that discuss the state of force, namely:

a. Objective theory

According to the objective theory, the debtor can only put forward a state of force, if the fulfillment of his performance for everyone is impossible. A situation is impossible to perform the agreed achievements due to the debtor's inability to face reality. In this case, the debtor is impossible to do his performance to the creditor. For example, it is impossible to hand over a house because the house was destroyed by an earthquake or other natural disaster. In subsequent developments this theory continues to develop, that is, it no longer holds to absolute impossibility but also considers it a compelling state when goods are lost or out of a trade.

b. Subjective theory

According to the subjective theory, there is a state of force, if the debtor in question remembers the personal situation then debtor cannot fulfill his achievement. The point is that if there is a forceful situation on the debtor, the debtor's condition will be erased. Thus the debtor cannot be held accountable by the creditor for not bearing any mistakes. For example, A, a small industry owner, has to hand over some goods to B, where these goods still have be made with certain materials. Unexpectedly the price of these materials had doubled, so that if A had to fulfill his feat he would to be poor. In this case subjective teaching recognizes the existence of a state of force. However, if this involves large industries, there is no compulsion (Rich, 2019).

Forms of Force Majeure

Force majeure or force majeure is an unexpected event that cannot be prevented, for example the Covid-19 pandemic occurs and has the potential to damage or threaten a business or job so that it cannot be continued. There are various forms of force majeure, such as natural disasters, riots, earthquakes, fires to war or pandemic force periods (Anonim, 2011). Apart from the above forms, there are also specific forms of force majeure, namely:

a. Law or government regulation.

In this case this does not mean that the achievement cannot be done, but the achievement should not be made due to the existence of the law or government regulation.

b. Oath.

Oaths sometimes create a compulsive situation, namely when a person who must excel is forced to swear not to perform.

c. The behavior of third parties

d. Strike.

RESULTS

A society in a positive stage, according to Comte, is the most ideal society, which fits into the five pillars of thought which are referred to as basic assumptions, namely logic-empiricism, objective reality, reductionism, determenism and value-free. The first assumption departs from the belief that knowledge can only be obtained through sensory observable experience, because only by an empirical study of this knowledge can its validity be verified. On the other hand, something that cannot be proven empirically, such as religion, positivism assumes that religious teachings are unscientific, even though as (Carld

Gustave Jung, 2014) said, humans have religious potential that requires guidance, direction and development and for that they can be approached theologically normatively, anthropologically, sociological, psychological, historical, cultural and philosophical (Echenberg, 2011).

The second assumption believes that there is an objective or single reality. This happens because there is always a distance between the subject (observer) and the object (being observed). The existence of this distance (space) causes the object to be studied by anyone with the same conclusion if the same methodology is used.

The third assumption holds that scientific objects can always be understood by breaking them down into smaller units, or in other words, that complex phenomena can be reduced to small elements. Observations of measurable units that are used as generalization materials to understand the whole/integrity of an object.

The fourth assumption is determinism, which beliefs in a linear causal relationship to guide the series of natural phenomena that it develops, because only then will science be free from doubts and the intervention of various interests that can lock human reasoning.

According to Subekti, an agreement is an event where someone promises to another person or were two other people promise to do something "thing". From this incident arises a relationship between two people which is called the engagement. This thing leads to the fulfillment of an achievement that has legal consequences, as in Article 1338 paragraph (1) the agreement made legally applies as a law for the parties making it.

The agreement or contract creates a legal relationship for the parties who agree. Freedom of contract is one of the important principles in contract law. The principle is identical to the principle in English which etymologically has three meanings: 1) basic (something on which to think or argue; 2) basic ideals; 3) basic law. A principle or principle is something that can be used as a basis, basis, foothold, a place to lean on, to return something to be explained. Legal principles are the heart of legal regulations, because legal principles are the broadest basis for the birth of a legal rule. Also, the principle of law is also the ratio logic of legal regulations.

DISCUSSION

Research Methodology

From the population above using the simple random sampling method, which is a way of taking random samples by giving the same opportunity. The method used in normative legal research to seek methods is the method of legal discovery, including interpretation, argumentation, and so on. The particularity of research on this legal-normative view is that researchers actively analyze norms, so that the role of the subject is very prominent, as said by Kon Fatt. Kiew: A researcher involved in doctrinal research must study the law in details (Manan, 2012). Due to the uniqueness of the stations, the analytis method applied in legal research relies on specific interpretation methods namely the mischief, literal and golden rules. These rules assign to the words of the statutes their true meaning. Liter a rule a llows the sta tutor word to be interpreted by considering its dictionar y meanings supplemented by basic rules of grammar. In the view of Philipus Hadjon, although normative legal research is often classified as qualitative research, because it concerns data and its consequences for analysis, normative research is itself empirical research. Even qualitative normative legal research needs to be supported by field research. Meanwhile, empirical research (non-doctrinal) argues that law as a social institution is always related to other social variables (Wagner, 2019).

Therefore, the law cannot be studied only through a series of laws alone, but it must also be studied how the law works in practice, its historical background, its relationship with new agreements, or has been made by placing a business as usual clause due to a challenge. the current chaos pandemic. Moreover, as pointed out by Hans Kelsen in his theory, the law in legislation is often not the same as the law in practice, even contradicting it. In this case Mc Conville and Wing said: non-doctrinal research, also known as socio-legal research is legal research that employs methods taken from other disciplines to generate empirical data to answer research questions. It can be a problem, policy or law reform based. Non-doctrinal legal research can be non-doctrinal approach that allows the researcher to perform inter disciplinary research where he analyzes law from the perspective of other sciences and employs these sciences in the formulation of the law. Then in data collection using data software through legal observation in a descriptive analysis that focuses on studying modern and traditional agreements with primary data collection such as searching for data

Table 1:

Subject Norms	Debtor
Operators Norms	Dispensed for?
Object Norm	Does not cover costs, losses and interest
Condition Norm	In this case he: 1. Not carrying out an engagement; 2. Failure to carry out an engagement on time; 3. If he can prove the causes; (a) due to an unexpected event; (b) he is not responsible for it; and (c) he has no bad faith (not to perform an engagement or not perform an engagement on time).

through legal cases in the community as well as court and secondary decisions such as legal books and legal opinions from experts paying attention to the data needs to be analyzed concerning the substance of the paper this. (Smits, 2012)

Effective Agreement Law Placed in a Business as Usual Clause

The agreement or contract creates a legal relationship for the parties who agree. Freedom of contract is one of the important principles in contract law. The principle is identical to the principle in English which etymologically has three meanings: 1) basic (something on which to think or argue; 2) basic ideals; 3) basic law. A principle or principle is something that can be used as a basis, basis, foothold, a place to lean on, to return something to be explained. Legal principles are the heart of legal regulations, because legal principles are the broadest basis for the birth of a legal rule. Besides, the principle of law is also the ratio legis of legal regulations.

Becoming a problem is whether the norm conditions (1), (2), (3) above are the conditions required to be called a pandemic force period? For this reason, this paper can continue the analysis in Article 1245 of the Civil Code. According to R. Subekti's opinion, the article reads "*No fees, losses and interest, must be replaced, if due to coercive circumstances or because of an accidental incident the debtor is unable to commit an illegal act*"

In that article the word force majeure is translated by R. Subekti with the word "forceful situation". It is this term that is now increasingly being translated as "force majeure". According to the Big Indonesian Dictionary, the adjective "kahar" is defined as "omnipotent" (God's nature) or "arbitrary". By referring to the lexical definition, we can say that force majeure is an arbitrary state that occurs beyond the authority of humans to expect it to occur. Because it is unpredictable, then by itself humans cannot prevent or anticipate these events. If Article 1245 of the Civil Code is structured, the following picture will appear:

At first glance it appears that Article 1245 only repeats or reinforces the provisions of Article 1244. Through the analysis of the norm structure, we can see that the difference lies in the element of normal conditions alone. However, the addition of the element of "accidental incident" to the norm conditions of Article 1245 is insignificant because Article 1244 is already

Table 2:

Subject Norms	Debtor
Norm operator	Dispensed for?
Norm conditions	In that case he: 1. not giving something that is required; 2. not doing something that is required; or 3. do something that is forbidden;
	because: 1. a state of force (force majeure; force majeure); or 2. accidental events (events that cannot be prevented).

accommodated by the condition of "something unexpected". R. Subekti also seems to have mistranslated the word "verhinderen" in Article 1245 of the Civil Code. This word should be interpreted as "prevent or hinder".

Therefore, if these two articles are combined, the meaning of force majeure is: "a forceful situation that occurs unexpectedly / is prevented [when the contract occurs], which as a result of that situation makes the debtor, does not perform an engagement or does not carry out an appropriate engagement. time (the forms are: not giving something that is obliged; not doing something that is obliged; , or doing something that is forbidden). " The legal consequence of this coercive situation is that the debtor is not obliged (in the sense of being given a dispensation not to. ...) to pay fees, losses, and interest, as long as he cannot (is not feasible) to be held accountable for the coercive circumstances and all forms of default/action His actions against the law were based on good faith.

The principle of good faith is a general principle that directly follows the principle of pacta sunt servanda. This can be traced from the placement of this principle in Article 1338 paragraph (3) of the Civil Code, which is adjacent to the principle of pacta sunt servanda.

The meaning of "forbidden" in the sentence above, should be read, not only prohibited according to the contract, but also according to propriety, custom, and statutory regulations (vide Article 1339 of the Civil Code). That is why, a lawsuit that may be filed against the debtor is not only based on default, but can also be against the law.

Can force majeure be called force majeure subjectively to one party? This question is interesting because in the developing doctrine in countries with civil law systems, there is also a business as a usual clause.

First of all, let us examine the meaning of the business as usual clause, or the full term "omniscient convention business as usual feature". The meaning is that a valid agreement is valid if the conditions are still the same as when the agreement was made. This means that if the conditions change, the agreement will no longer be valid. At first glance there is no difference between force majeure and this business as a usual clause. Both are breakthroughs in the principle of pacta sunt servanda.

The legal conditions aspired above have an important role to play in the scope of business law, especially contract law. The important points that we can take are first, to create a harmonious relationship between law and humans. Second, the law can accept the realities that occur in society, in other words, the law is able to answer people's needs. Third, the law must be able to maintain a sense of justice.

Progressive Legal Perspectives Against The effectiveness of standard contract law in business mobility standard contracts or contracts whose clauses have been determined by one of the parties is something that is in business mobility. As a legal instrument in contractual relationships. The standard contract is indeed a debate about its validity. According to this paper, the standard contract has a "currency" dimension which has two sides, the one side allows it is even possible that the standard contract becomes invalid and on the other side the standard contract can be said to be legal and its existence is urgently needed. Standard contracts can become invalid or null and void if they conflict with requirements that have been normatively determined by law. Not only by law but with legal norms in the foundation of contract law formation. First, in the context of the producer-consumer relationship, the standard contract becomes invalid when it violates the applicable provisions.

In Indonesia, the application of the principle of freedom of contract is not absolute, there are certain limitations regulated in the Civil Code and other laws and regulations. The restrictions on freedom of contract that are regulated in the Civil Code include that there are no defects in the agreement, namely coercion, error, and fraud. The teaching of abuse of circumstances can be used in the defect category in determining his will to give consent. The construction necessity of the abuse of the situation is or is considered a factor that limits or interferes with the free will to determine the agreement between the two parties. One of the situations that can be abused is due to economic dependence. The abuse of economic dependence can be seen from the agreed terms that are unreasonable or inappropriate or contrary to humanity, burdensome, where the value and results of the agreement are not balanced when compared with the mutual performance of the parties.

Injuries to the principle of freedom of contract is caused when there is a lopsided condition regarding the burden imposed by the parties in the form of transferring obligations to the weaker party, making the weak party no longer have freedom, even though in the principle of freedom of contract it guarantees someone

freedom in matters relating to the agreement. whereas if faced with the principle of good faith, that the formation of a contract must be in good faith as in Article 1338 paragraph (3), every agreement made legally is carried out in good faith. By carrying out the act of shifting the points of responsibility unilaterally to the party with a weak bargaining position in the agreement, it reflects an attitude that is contrary to good faith.

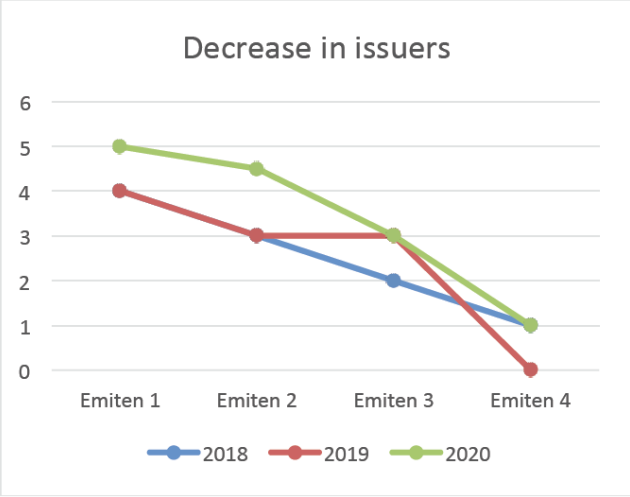

Figure 2:

Issuer 1, Issuer 2, Issuer 3, Issuer 4 has experienced a drastic decline in 2020 due to the current pandemic. The explanation above provides an illustration where a standard contract from one side has violated the norms and regulations in the contract law, because the standard contract in such a situation is questionable its validity status and may be null and void by law.

The obligations in question are legal obligations, not including moral obligations. In the Civil Code, what is meant by the obligation is the obligation to do something and the obligation not to do something as regulated in Article 1239 and Article 1240 of the Civil Code. The business as usual clause in the practice of the contractual relationship functions as anticipation of certain conditions when there is a new agreement for the contracting parties and requires changes to an article that is deemed unfavorable for both parties without having to make a new agreement, but not forgetting to add this addendum clause it must also be agreed upon in advance or it can be implemented based on the initiative of the party submitting the contract. Usually the articles in the addendum contain editorials explaining matters relating to matters that arise later after the contents of the contract are regulated then a change in agreement is needed, then it is arranged later in a separate attachment and signed by the parties agreeing. Although usually the changes in the agreement are not all changed. Technically, the changed substance is used as an attachment to the master agreement. This business as usual clause does not contradict the principle of freedom of contract and what is more important is that it does not contradict the principle of agreement as stated in Article 1338 paragraph (2) of the Civil Code, namely;

"An agreement cannot be withdrawn other than by the agreement of both parties, or for reasons which are sufficient by law."

The changes in the business as usual clause cannot be separated from the elements formulated in Article 1320 of the Civil Code; agreed that those who bind themselves, the ability to make an engagement, a certain thing and a lawful cause. In a juridical philosophical perspective, the methods for the occurrence of an offer and acceptance can be carried out firmly or not firmly, the most important thing is that it can be understood or understood by the parties that an offer and acceptance has occurred. Some examples can be put forward, as a way for an agreement to take place or an offer and acceptance is by way of writing, orally, with certain symbols, and in silence. Implemented in these ways as long as there is no defect of will (defect of agreement), some of which are due to error or heresy, coercion, fraud and abuse of circumstances. In a progressive legal perspective where the basic point of conclusion which broadly has the aim of creating harmony between law and humans, can respond to the challenges of the times and their needs and can maintain a sense of justice, the argumentation explains that the condition of the validity of standard contracts is still open to discussion because Indeed, the rapid development of the times with high social business mobility demands the availability of legal instruments that can maintain a sense of justice and legal certainty without neglecting healthy and open business patterns. Time efficiency and smooth order in business are demanded regardless of time and circumstances. Therefore, the standard contract on the one hand is felt to be very helpful in the solid mobility of the contractual design. Finally, as suggested by Roscoe Pound in the perspective of the sociology of law, the law must be seen as a social institution that functions to meet social needs, and it is the task of law science to develop a framework whereby social needs can be maximally met. When all elements are met in a progressive legal

perspective, the standard contract may fill the need for legal instruments in the context of a business contractual relationship (Khairandy, 2013).

The provisions of the Civil Code contain several legal principles that form the basis for the legal building of the agreement, namely: the principle of consensualism, the principle of freedom of contract, the principle of pacta sunt servanda, and the principle of good faith. The principle of consensualism is the birth and binding moment of an agreement, namely when an agreement occurs between the parties regarding the main matters that were agreed upon. The principle of binding strength is a consequence and implementation of the principle of consensualism. The principle of freedom of contract relates to the content and terms of the contract and the form of the contract. Meanwhile, the principle of good faith is related not only to contract execution but also to contract formation or negotiations for contract making (Hernoko, 2006).

From the opinion expressed, the principle of freedom of contract is important in contract law. The principle or principle of freedom of contract can be found in Article 1338 paragraph (1) of the Civil Code. The provisions of the article confirm that all legally made contracts apply as law to those who make them. This means that the form of a contract must be built based on a consensus that is born from the free will of the parties who wish to carry out a contract. Further elaboration of the principle or principle of freedom of contract covers the scope of: 1) Freedom to make or not to make contracts; 2) freedom to choose the party with whom he wishes to enter into a contract; 3) freedom to determine or choose the cause of the contract to be made; 4) freedom to determine the object of the contract; 5) freedom to determine the form of the contract; 6) Freedom to accept or deviate from the optional of the law (Sirhindi, 2010).

The provisions in the Civil Code regarding the general provisions of force majeure are contained in Articles 1244 and 1245 of the Civil Code. These provisions only regulate the issue of force majeure which is usually translated as a forceful situation and some call it "the cause of force majeure or the covid-19 pandemic". If you look at the regulations regarding force majeure in Indonesia, there are no articles that regulate force majeure in general for a bilateral contract, so there is no general juridical benchmark that can be used to define what is meant by force majeure. Therefore, to interpret what is meant by force majeure in the Civil Code, one thing that can be done is to draw general conclusions from special arrangements, namely special arrangements regarding force majeure contained in the regulatory section on compensation, or risk management due to force majeure. for unilateral contracts or in part of special contracts (named contracts) (Stone, 2011).

Then the Force majeure or pandemic force period in civil law is regulated in book III B.W in articles 1244 and 1245 of the Civil Code.

Article 1244 of the Civil Code:

> *"If there is a reason for that, the debtor must be punished with compensation for expenses, losses, and interest if he cannot prove that the agreement was not or not at the right time due to an unforeseen event, even if he could not be held responsible for it, all of which. that is, if bad faith is not on his side".*

Article 1245 of the Civil Code:

> *"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 a prohibited act".*

The distinction between absolute and absolute force majeure, based on R. Subekti's criteria, lies in the degree of impossibility. If the impossibility is absolute, the possibility of change is no longer open, then it becomes a compelling state for the birth of absolute force majeure. This impossibility does not only apply to the debtor, but it is impossible for anyone in such a condition. If the impossibility is still open to being possible, even at great cost, then this is relative force majeure. If this problem disappears or subsides at any time, it is still possible for the debtor to request another achievement to be fulfilled by the debtor, but this time the creditor is not allowed to propose reimbursement of fees, losses and interest.

At this point we can conclude that our Civil Code. First, that contract law in Indonesia certainly respects the principle of pacta sunt servanda, but this principle is immediately noted that the agreement must be carried out in good faith. Therefore, when we discuss force majeure as a deviation from the principle of pacta sunt servanda, force majeure itself requires good faith.

Second, that the basics of force majeure have been regulated in Articles 1244 and 1245 of the Civil Code. It appears that the civil law system in Indonesia does not differentiate between force majeure and clauses of business as usual. Even economic constraints can serve as the basis for a relative force majeure (Sunandar, 2004).

CONCLUSION

Law affects the effectiveness of law in the context of business about to the ability of business institutions to adapt to existing regulations, such as aspects of agreements, the validity of business objects, industrial relations, especially when triggered by a period of chaos during a pandemic which resulted in many issuers experiencing economic paralysis by using an agreement instrument put as a business as usual clause. Agreements or contracts are commonly used to make parties involved in legal activities in the business world to ensure legal certainty and justice in running their business, for example in banking, financial institutions, leasing services, profit institutions, to micro-securities. In general, the existing contracts are dominated by standard contracts. Whether it is recognized or not, the standard contract has become part of the instrument in business legal transactions and has become a necessity in itself. In a broad sense, the contract is part of the agreement itself, while the contract in the narrow sense is a written agreement. Contracts develop into standard contracts. In the social dimension, standard agreements arise because of the high mobility of the business which demands time and cost-efficiency. A standard contract is like a coin that has two sides, on the one hand the legality of a standard contract can be questioned and may be null and void if the contract does not pay attention to the norms in contract law such as the principle of freedom of contract, the principle of proportionality and in the context of legal liability it does not include class. business as usual or an expression that emphasizes good faith and unilateral responsibility from the standard contract maker to the party that has a weak position in negotiations, the criteria for this provision. matters that have not been regulated are then agreed in a separate agreement with amendments to the articles, although not all articles have been amended, this effort reflects the principle of freedom of contract. This paper has never previously been used as research on the substance of the business as a usual clause that is placed in the agreement, which is the authenticity of this paper. So that when all elements are met in a progressive legal perspective, a standard contract may fill the need for legal instruments in the context of a business agreement relationship. In this paper, it is hoped that the substance of the business as usual calluses placed in the agreement will provide legal certainty and proportional legal responsibility and make this paper a learning medium for both business and research actors who will develop into a similar paper on the substance that will be studied at a later date of 2012.

LIMITATION AND STUDY FORWARD

Finally, in writing this paper the concentration is on research on the issue of issuers that are experiencing economic paralysis due to the pandemic in the period of chaos to realize good faith as a solution to problems that will be caused in the future. So the business as usual clause has become a good breakthrough in the modern agreement model, especially when triggered by the current pandemic which makes it impossible for an agreement between two or more parties to run as usual but with the business as usual clause, legal certainty and legal accountability can be realized so that as proof of good faith in the future.

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