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THE EFFECTIVENESS OF FORCE MAJEUR ON THE CIVIL LAW AND DOCTRIN FRUSTRATION ON THE COMMON LAW SYSTEM IN COMPLETING BUSINESS DISPUTES DURING THE COVID 19 PANDEMIC

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ABSTRACT:

The Covid-19 disaster in all countries including Indonesia and Singapore has an impact on the economy in all countries, so that it has a lot of impact on the business world, many companies are unable to carry out their achievements as stated in their business contracts because they are beyond their capabilities which cannot be predicted in when the contract is signed or a force majeure situation. Meanwhile, countries with the Common Law system such as Singapore recognize the existence of doctrine frustration related to the inability of a person or company that cannot carry out their obligations because it is not due to their weakness or incapacity.

This type of research is juridical normative, in normative research using secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results show that force majeure is not a specific reason to cancel / terminate a

contract (excuse only) while the frustration doctrine can be used to terminate a contract, so that the frustration doctrine will be more effective in resolving business contract disputes during the Covid 19 pandemic because of the consequences if it fails to prove the existence of Frustration of Contrac is considered a refusal to carry out the contract so that the opposing party can ask for compensation for the breach of the contract.

INTRODUCTION:

Contract law in Indonesia until now still adheres to the civil law legal system which is a legacy of the Dutch East Indies, while Singapore's contract law adheres to the common law system. The connection between contract law in the era of the Dutch East Indies was the Civil Code (KUHPerdata) in which contract law in Indonesia was much regulated in Book III of the Civil Code. Meanwhile, contract law in Singapore adheres to the common law system which is regulated in the Singapore Contract Law.

Contracts that have been made and signed by the parties are binding and must be executed in good faith by the parties. However, not all contracts can run well as agreed. Sometimes, one party is unable to carry out their obligations. Parties that do not fulfill their obligations can be said to have defaulted. Against default can be divided into default due to deliberate overmacht or force majeure. Therefore, the concept of force majeure is a concept related to the fulfillment of obligations that arise from an agreement, as explained : the frustration doctrine is widely known in countries with common law systems, such as; in the UK, Australia and Singapore. The frustration doctrine does not mean canceling an agreement, but ending a contract starting from the date of an unexpected event. Rajah and Tann stated that the concept of frustration doctrine still requires parties to fulfill all forms of their previous obligations before the emergence of a frustrating event. (Hamalatul Qur'ani: 2020, 1).

The force majeure clause and the frustration doctrine have become hot issues since the emergence of Covid-19 hit the world at this time which directly or indirectly affects business activities based on contractual relationships that have been binding for the parties. The Covid-19 situation which affects business activities due to obstruction of supply chain operations, manufacturing production, decreased sales due to travel restrictions in almost all business lines has prompted companies to re-evaluate the agreed contracts.

The spread of the Covid-19 epidemic in all countries in the world, including Indonesia, has an impact on negative economic growth globally. The International Monetary Fund or IMF has also predicted that the world economy is currently in a worse situation than the Great Depression in the 1930s. The world economy is currently undergoing a global crisis. (Sorta Tobing; 2020, 1) According to the website of the Financial Services Authority, the Great Depression is an economic condition characterized by falling prices, declining purchasing power, and the amount of supply that far exceeds demand. This has caused the number of unemployed to rise sharply and the business world has experienced a blackout leading to liquidation (depression).

Even though on the other hand, contracts that have been binding must be carried out by the parties, but not all contracts run as they should, because of the Covid-19 situation above, so that one party may fail to carry out its obligations. The failure of one of the parties causes default and causes losses to one of the parties, so that the injured party has the right to sue in court to demand compensation. However, the law also provides defense rights to other parties who are unable to carry out their obligations. Defense by one of the parties or the debtor by way of countering that the achievement is not carried out due to a force majeure or Frustration event.

The parties must see the contract that has been signed whether the contract regulates the force majeure clause and what events become the force majeure. Each party will also study the risks that will occur in connection with the implementation of the contract. This is the basis for determining the existence of a force majeure or frustration event, so that it can result in delays in carrying out achievements or it can free the parties to provide compensation due to the inability to implement an agreement.

The Covid-19 pandemic currently occurring throughout the world, which has resulted in the halt of world economic activity and the large impact of many companies in the world that have closed their businesses. Based on the second finance report, there are 46 giant companies with assets of at least US $ 1 billion or around Rp. 14 trillion bankrupt because of corona until August 2020 and as many as 157 companies with liabilities of US $ 50 million have filed for bankruptcy this year. The companies include 24 retailers such as JCPenney, Brooks Brothers and Neiman Marcus, as well as major oil and gas companies also affected by the Corona. There are 33 companies that filed for bankruptcy including Chesapeake Energy, Whiting Petroleum and Diamond Offshore Drilling. (Acmad Dwi Afriyadi, 2020).

Based on the data above, countries in the world including Indonesia through their government are trying to overcome the COVID-19 pandemic which has caused many losses for all sectors of life such as the business sector, health, tourism sector and other sectors. Entrepreneurs in the business sector, there are many contracts that cannot be carried out by either party. So that one party cannot carry out its obligations, thus whether this incident includes a force majeure or frustration event and the extent to which the effectiveness of the force majeure and frustration doctrine in resolving the business contract dispute. With the above background, with the Covid-19 Pandemic which has had a major impact on companies around the world both in countries with civil law or common law systems, this research shows its renewal with previous studies related to force majeure and doctrine. frustration in completing business contracts. In addition, This research will also be followed by research onrelated to the handling of Covid 19 by the Government of Indonesia, which in fact violates many public rights (in terms of ethical and legal aspects).

LITERATURE REVIEW:

In the Journal of Law Supremacy in 2020 which was researched by Annisa Dian Arini, with the title Corona Pandemic as the reason for Force Majeure in a business contract. Have a goal To find out the circumstances of force or force majeure in an agreement, in this case a business contract that occurs during the corona virus pandemic. Which in the context of Covid-19 is used as an excuse for a force majeure in a business contract, based on Presidential Decree No. 12/2020 concerning the determination of non-natural disasters for the spread of Covid-19. The condition of Covid-19 cannot automatically be used as a cancellation of a contract, but renegotiation can be done to cancel or change the contents of the contract that has been agreed of course accompanied by good faith. Because based on 1338 the Civil Code states that every agreement made legally applies like the Law for those who made it (the parties). What distinguishes it from research journals lies in the object of research in the context of Force Majeure in countries with civil law systems as well as the Doctrine of Frustration in countries with common law systems.

Furthermore, the Perspective Journal in 2006 with the title “Force Majeur Clause” or “Hardship Clause” Problematic in Business Contract Design researched by Agus Yudha Hernoko. Have a goal To find a comprehensive picture between Force Majeure and Hardship in the design of a business contract. Which, in the discussion, the existence of an overmacht / Force Majeur must meet several requirements, such as: Fulfillment of achievement is

hindered or prevented; Obstructed from fulfilling this achievement is beyond the fault of the Debtor; and the event that causes the achievement to be obstructed is not a risk of the debtor. As for the legal consequences of Force Majeure, namely; a) Creditors cannot demand the fulfillment of an achievement; b) The debtor is no longer declared negligent; c) The debtor is not obliged to pay compensation; d) The risk of not transferring / moving to the debtor; e) Creditors cannot sue in reciprocal agreements; f) The engagement is considered null and void

Another language of Force Majeur in Malaysia (common law) is the Doctrine of Disappointment (Dokrin Frustration). As for the requirements for the application of the Frustration Doctrine: The loss or extinction of something that is the principle of the contract; Death or Disability; beyond the fault of the parties; The existence of a law and regulation that hinders the implementation of the contract; The Entry into force of War; Other circumstances such as failure to obtain permission, natural disasters, changes in laws, court decisions. Article 6.2.2 of the Principles of International Commercial Contracts (UPICC) contains a definition of Hardship, which is an event that has fundamentally changed the balance of the contract which is caused by the very high cost of contract execution burdening the debtor or the value of contract execution is reduced for the creditor.

The existence of Hardship must fulfill the following 3 elements: a) fundamentally changes in the balance of the contract; b) increase in contract implementation costs; c) decrease in the value of the contract implementation received by one of the parties. Hardship cannot be used as an excuse as a contract cancellation unless it is fundamental (depending on the circumstances of the event). Whether or not a force majeure or hardship clause is present in the contract, what is important is that the substance of the clause provides flexible space for possible circumstances that fundamentally affect the balance of the contract in its implementation. What distinguishes it from research journals lies in the presence of Covid-19 how effective is Force Majeure in Indonesia as well as the Frustration Doctrine in Singapore, both of which have different legal systems.

METHODOLOGY:

In this research, the research method used is normative juridical research method. Normative juridical research methods are legal research methods carried out by examining library materials or secondary data alone (Soerjono Soekanto, 2001: 13-14). Normative juridical research also examines and analyzes statutory regulations, legal principles and legal norms in order to obtain a clear picture of the regulations related to force majeure. In addition, this research method examines law as a guideline for various areas of life that regulate order and justice. (Sri Mamudji, 2005: 4).

There are several approaches that can be used in conducting normative juridical research in this study with secondary data, namely: (Honny Ibrahim, 2005: 300) 1. The statute approach, statute approach, namely the approach taken by examining laws and regulations and regulations related to the legal issue being handled. The statutory approach will be seen by law as a closed system which has the following characteristics: a. Comprehensive means that the existing legal norms are logically related to one another; b. All-inclusive that the set of legal norms is sufficiently capable of accommodating existing legal problems so that there will be no legal shortages; c. Systematic that in addition to being linked to one another, these legal norms are also systematically arranged; 2. Comparative approach (comparative approach). This study also uses a method of comparing legal norms related to force majeure from several countries, namely the laws in Indonesia, Singapore and Malaysia. This includes the policies of the local government regarding force majeure; 3. Case approach. In this case approach, this is also used by examining the decisions of force majeure

cases that have been decided by the courts of the three countries, Indonesia, Malaysia and Singapore.

FINDING AND DISCUSSION:

Force Majeur and Doctrine of Frustration in Completing Business Contracts:

a. Definition of Force Majeur and Doctrine of Frustration

Force majeure or in Indonesia known as overmacht is an event that is beyond the reach of humans to avoid the event. Force majeure is a legal concept derived from Roman law (vis motor cui resisti non potest) which is adopted in various legal systems. Doctrine in common law interprets this word as an inability to perform any performance against a contract, which is analogous to but not identical with force majeure. (Agri Chairunisa Israd Juningtias, 2015: 138).According to Mochtar Kusumaatmadja, he stated that force majeure can be accepted as an excuse for not fulfilling the implementation of obligations due to the disappearance / disappearance of objects or objectives that are the subject of the agreement. This situation is aimed at physical and legal implementation, not only because of difficulties in carrying out obligations. This is in line with Mieke Komar Kantaatmadjat's view about force majeure, namely a change in a situation that was not present at the time of the formation of the agreement, the change is regarding a condition that is fundamental to the agreement, the change cannot be predicted in advance by the parties, the result of the change must be radical so changing the scope of the obligations that must be carried out according to the agreement, the use of this principle cannot be applied to border agreements and also changes in circumstances resulting from violations committed by the party submitting the claim. (Harry Purwanto, 2011: 115). Black's Law Dictionary states that what is meant by "force majeure clause" as: "a contractual provision allocating the risk if performance becomes impossible or impracticable as a result of an event of effect that the parties could not have anticipated or controlled". The parties do not want a force majeure to occur, because it will have legal influence and consequences on the execution of the contract for the parties. (Black's Law Dictionary, 1991: 332).

Meanwhile, the frustration of purpose doctrine is “A court created doctrine under which a party to a contract will be relieved of his or her duty to perform when the objective purpose for performance no longer exists (due to reasons beyond that party's control). This doctrine excuses a promisor in certain situations when the objectives of contract have been utterly defeated by circumstances arising after formation of agreement, and performance is excused under this rule even through there is no impediment to actual performance. (Black's Law Dictionary, 1991: 670 -671). In this case it is according to the frustration doctrine that the Court created a doctrine in which parties to the contract will be relieved of their duties to perform when the objective objective for performance is no longer (for reasons beyond the party's control). This doctrine excuses the promoter in certain situations when the objectives of the contract have been completely overpowered by circumstances arising after the formation of the agreement, and performance is excluded under this rule even through no hindrance to actual performance. This doctrine is known in countries with Common Law legal systems. doctrine of frustration (DoF) does not mean canceling an agreement, but rather terminating or ending a contract starting from the date of an unexpected event, frustrating event.

This also applies to the application of DoF during the Covid-19 period. Companies affected by Covid-19 really have to be able to prove their impossibility to enter into a contract, no matter how difficult or more expensive it is if the contract is still implemented. Unless, the type of industry or service referred to is included in the category of non-essential

services which were subject to lock down policy by the government during the Covid-19 period. "So the documents needed to convince the courts during the Covid-19 era are more about how to overcome difficulties, obstacles or impossibilities,".

Whereas Force majeure usually also exists in an agreement made by the parties which is one of the clauses, because the clause is in the main agreement, is not separated as an additional agreement and is linked to the main agreement as an access agreement. Force majeure or what is often translated as "force majeure" (Riduan Syahrani, 2006: 243), is a condition in which a debtor is prevented from carrying out his obligations and achievements due to circumstances or events that were unexpected at the time the contract was made, the situation or event. cannot be accounted for to the debtor, while the debtor is not in a bad faith or is not the will of the debtor. This is in line with what Yudha Hernoko said, Force Majeur is an unexpected event or situation that occurs outside of the debtor's fault, after the closing of the agreement that prevents the debtor from fulfilling his performance, where the debtor cannot be blamed and does not bear any risk for the incident. (Yudha Hernoko, 2020: 3).

The kinds of force majeure itself are divided into two, namely: absolute or permanent or permanent force states (absolute onmogelijkheid) and relative or impermanent or temporary forces (relatieve onmogelijkheid). The absolute state of force is a condition where the achievement cannot be carried out, because of the earthquake and tsunami which results in the destruction of objects or goods. Meanwhile, a relative coercive situation is a condition that causes the debtor to be able to carry out his performance or temporarily postpone his performance for a while until it is possible to re-fulfill the achievement.

The absolute and relative nature of the overmacht shows the distinction between the absolute associated with the cancellation or cancellation of a debtor's obligation, and the relative that is denoted by default. Cancellation or cancellation is associated with the destruction of the object of the agreement, whereas it is relative to showing that an achievement can be made by the debtor but has no value in the view of the creditor. Abdulkadir Muhammad tries to detail the absolute nature and not (relative) of overmacht as follows: (AbdulKadir Muhammad, 1993: 206), a. A situation that shows that the achievement cannot be fulfilled because of an event that destroys (destroys) and destroys the object of the agreement. This situation shows the absolute nature of force majeure .; b. A situation that indicates that the achievement cannot be fulfilled due to an event that can prevent the debtor's actions from fulfilling the achievement. This state can be absolute or relative; c. A situation that shows uncertainty because it cannot be known or expected to occur at the time of entering into an agreement by both the debtor and creditor. This situation shows that the fault is not on both parties, especially the debtor.

b. Regulation of Force Majure in Indonesia and Doctrine of Frustration in Singapore

Force, force, overmacht, or force majeure is regulated in the provisions of Articles 1244 and 1245 of the Civil Code. This provision basically stipulates that the debtor can be exempted from all costs, losses and interest in connection with the implementation of the contract, as long as the debtor can prove that there is a force majeure. The parties based on the agreement have the freedom to formulate in their contract clauses what matters and how a situation qualifies as a force majeure. Without a detailed agreement on what matters qualify as a force majeure, the interpretation is left to the judge in the event of a dispute between the parties. Force majeure 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 provides that: "If there is a reason for this, the debtor must be punished with compensation for costs, losses and interest if he cannot prove

that the agreement was not carried out at the right time, due to an unexpected thing. he cannot be held accountable to him, all of that if bad faith is not on his side ".

Meanwhile, Article 1245 of the Civil Code stipulates that: "It is not the cost of loss and interest, it must be replaced, if due to coercive circumstances or because of 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 formulation of force majeure clauses in the Civil Code can be detailed as follows: (Agri Chairunisa Israd Juningtias, 2015: 139) a. The event that causes the force majeure must be "unexpected" by the parties, or not included in the basic assumption at the time the parties make the contract (Article 1244 of the Civil Code); b. This event cannot be held accountable to the party who has to make the presentation (the debtor) (Article 1244 of the Civil Code); c. The incident that caused the force majeure was beyond the fault of the debtor (Article 1244 of the Civil Code); d. The event that caused the force majeure was not an incident that was deliberate by the Debtor. This is an inaccurate formulation, because the action should have been "beyond the fault of the parties (Article 1545 of the Civil Code), not accidentally". This is because the parties' mistakes, whether done intentionally or unintentionally, are in the form of "negligence"; e. The parties are not in a bad condition (Article 1244 of the Civil Code); f. If there is a force majeure, the contract will be invalidated, and as far as possible the parties will be returned as if there had never been an agreement (Article 1545 of the Civil Code); g. If a force majeure occurs, the parties may not sue for compensation. Vide Article 1244 in conjunction with Article 1245, in conjunction with Article 1553 paragraph (2) of the Civil Code. However, because the contract in question is canceled due to force majeure, to maintain the fulfillment of the elements of justice, it is still possible to give restitution or quantum merit; h. The risk as a result of force majeure is transferred from the creditor to the debtor from the time the goods are supposed to be delivered (vide Article 1545 of the Civil Code). Article 1460 of the Civil Code regulates this matter inappropriately (outside the system).

On the other hand, in Singapore, the doctrine of frustration is regulated in The frustrated Contract Act (Cap115). The principles of frustration that in the oft-cited Hong kongcase li Ching Wing v Xuan Yi Xiong (2003) HKDC 54; the court considered that the tenancy agreement was not frustrated by the outbreak of the SARS virus which rendered the building uninhabitable for a short period. In the case, the isolation order prevented access to the building for 10 days. The case illustrates the high bar for those who wish to make a frustration argument in the case of a viral outbreak or lockdown. No matter the severity in terms of lives lost and number infected, it may not amount to a frustrating event if there is no direct or significant impact on the contract question. The frustration principle in the Frustrated Contract Act can be cited in the case of Hong Kong Li Ching Wing vs Xuan Yi Xiong (2003). The court considered that the rental agreement was not included in the frustration event with the SARS virus (Covid 19) outbreak, where the building lease agreement could not be occupied by building tenants because of the SARS Virus. In principle, there should be a frustrating event that has a direct impact on the performance of the contract.

c. General Principles in Contracts

Basically, the parties have the freedom to bind themselves to each other to enter into a contract and determine the contents and clauses of the contract based on mutual agreement. A contract that is legally made has binding power and acts as law for the parties that make it. The parties are obliged to carry out the contents of the contract properly based on good faith. A contract is valid if it fulfills the validity of the contract, which includes: the existence of an agreement between the parties, the ability of the parties to enter into a contract, the existence of certain objects of the contract, the contract contains lawful causes These requirements are

cumulative as well as imperative. Cumulative means that all conditions must be met without exception. Imperative means that all conditions are forcing and cannot be deviated for any reason. This is a basic principle of contract law, including the principle of freedom of contract, the principle of consensual, the principle of binding contracts, and the principle of good faith. Provided in the provisions of Article 1320 jo. 1338 paragraph (1) and paragraph (3) of the Civil Code. A party that does not carry out the agreement in the contract can be qualified as having committed default, as stipulated in the provisions of Article 1243 of the Civil Code. The party who feels aggrieved due to the default can sue the opponent's contract, to court or arbitration according to the agreement. Plaintiffs can request that the contract continue, with or without a request for compensation, or request that the contract be canceled accompanied by a request for compensation and costs. The plaintiff as the injured party has the right to determine his own demands in the petitumor demands of his claim.

The rights and obligations of the parties to the contract are basically reciprocal (reciprocal). What is the right of one party is the obligation of the other party to fulfill it. The rights and obligations of the parties to the contract have generally been confirmed in the form of contract clauses. Regarding the form, time, place, stages, and method of payment. The parties are obliged to fulfill the contract agreement in good faith as stipulated in the provisions of Article 1338 paragraph (3) of the Civil Code. Good faith or good faith, or, tegoedertrouw, is a moral principle in contract law. For the creditor, a contract is a contract, which under no circumstances remains binding on the parties. The main interest of the creditor is to demand counter performance from the debtor. After the creditor gives achievements to the debtor. Under normal circumstances the establishment of such a creditor is completely understandable. However, in an abnormal situation, for example due to a disaster, the way of looking at the problem is different. The consequences of natural disasters, such as floods, earthquakes, tsunamis, storms, liquefaction, pandemics, etc., have caused the parties to the contract, especially the debtor, to not fulfill their obligations properly. Is the obstruction or inability of the debtor to fulfill his obligations due to the occurrence of a disaster is permanent or only temporary. Case by case must be analyzed and tested contextually and the situation cannot be generalized. If the obstacle or inability of the debtor to fulfill his obligations to the creditor due to natural disasters is only contemporary, then after the situation returns to normal, the debtor is still obliged to fulfill his counter-performance.

d. Contract Cancel

Each contract contains the possibility of cancellation. Even though the parties have tried so hard in formulating the contract properly and completely as possible. Cancellation of the contract is something that can happen at a later date. Contract law regulates the terms and reasons for contract termination and its legal consequences. A contract due to certain reasons can be canceled (vernietigbaar) or deemed null and void (nietig van rechtswege). The contract can be canceled based on a cancellation agreement made by the parties, or canceled based on a court decision because of a cancellation lawsuit filed by one of the parties in the contract.

If the parties agree to renegotiate (re-negotiate) to cancel the contract they had previously made, the contract automatically becomes void, invalid and has no more binding power over the parties. A contract cancellation agreement must fulfill the terms of the validity of the contract (cancellation) and act as law for the parties making it. In accordance with the pacta sunt servanda doctrine, contracts must be respected and executed in good faith. A cancellation lawsuit can also be filed against a contract by either party if there are subjective conditions of the validity of the contract that are not fulfilled. For example, a

contract is made without an agreement. Or an agreement that contains a defect of will (wilsgebreken), because there is coercion (dwang), error (dwaling) or fraud (bedrog) as regulated in Articles 1321 to 1328 of the Civil Code.

Another thing that can also be used as an excuse to request a contract cancellation is the abuse of circumstances (eg van omstandigheden) by one party against the other. Regarding the occurrence of abuse as a reason for contract cancellation is not regulated in the Indonesian Civil Code. However, it has been applied in judicial practice. Unlike in the Netherlands, omstandighedenvan misbruik has been regulated in its New BW. A contract cancellation lawsuit can also be based on the reason that the party who entered into the agreement proved to have no contractual skills. Inability can be caused because the person concerned is not yet mature (minderjarig), is placed under guardianship (curatele), or does not have the capacity (legal standing) to represent a legal entity, for example. Such a contract will become null and void after being declared null and void based on a court ruling which has permanent legal force (inkrachtvangewijsde). In other words, in order for a contract to be canceled by the court, there must be an initiative to file a lawsuit for cancellation by the party who is injured and the arguments of the lawsuit can be proven.

On the other hand, a contract can be declared null and void (nietig van rechtswege) based on the reason that the contract does not meet the objective requirements of the validity of the contract, which includes: certain objects of the agreement and the agreement must contain a lawful cause. A contract must have a certain object, as stipulated in the provisions of Articles 1332 to 1334 of the Civil Code. A contract that violates the law, violates decency, or violates public order (openbare order, public policy), based on the provisions of Article 133sd 1337 of the Civil Code, the contract is null and void. A contract that does not meet the objective requirements of the validity of the contract, then the contract automatically becomes null and void (nietig van rechtswege) as of the moment it is made. However, in practice, to obtain legal certainty for the parties, an agreement that does not meet the objective requirements and becomes null and void is also requested to be declared null and void through a civil suit to the court.

e. Testing theories related to force majeure and frustration doctrine

1) The objective theory states that it is absolutely impossible for the debtor to perform the performance to the creditor, so the objective measure is based on normal measures in such circumstances whether one party can perform its obligations or not to the other party. So, if according to this theory the objective measure is according to the normal size in carrying out the achievement. So that with the current pandemic conditions, it can be said that conditions are not normal for companies to run their business and are also not normal to carry out their obligations;

2) In legal risk theory according to J.L.L. Wery as stated by AgusYudhaHernoko in Rahmat SSSoemadipradja explained that: "The theory of risk departs from the idea that" overmatch begins to be accepted where the risk stops "means that the debtor must be punished to pay compensation if he cannot prove that obstruction of achievement arises from circumstances that he should not accountable. In other words, even though the debtor is innocent, "should he be held accountable?" if the answer is positive, the debtor bears the risk of liability. This theory raises the risk-taking theory (GevaarzettingTheorie), which means that the debtor has taken over the risk to fulfill the achievement;

3) According to the subjective theory that the relative impossibility of the debtor to fulfill his performance. This subjective measure is based on the situation of the debtor by relating the sacrifices that must be received by the debtor if he has to perform these achievements,

meaning that more losses will be received by the debtor if in a force majeure he forces him to carry out his obligations to the creditors d) In this case according to risk theory, risk is closely related to uncertainty, although risk and uncertainty are different. According to Robinson and Berry, uncertainty is the chance of an event that cannot be measured by the contracting parties. So that the absence of certainty will pose a risk.

The Doctrine of Frustration in the Common Law System in Completing Business Contracts.

The contract law arrangements with the Common Law system in Singapore are as follows:

a. Freedom of Contract

Juridically normative, the application of freedom of contract in the common law system in Singapore is regulated clearly and firmly in Article 8.8.4 that the parties are free to bind themselves by mutual agreement, and are free to enter into negotiations to release themselves from the contractual obligations. Protection of freedom remains limited to the following matters: a) good faith; b) fair dealing (balanced transactions); c) the mandatory rules established by the principles; and d) exclusion of the principles, except as otherwise by these principles (exceptions that are permitted unless otherwise specified from these principles) (R.A.De.Rozarie, 2019: 81).It can be concluded that freedom is very important but necessary to protect interests. With the parties having the freedom to contract, it will also be known the legal consequences, habits / conditions based on the law, the nature of a contract, and its appropriateness and appropriateness.

b. Good intention

If you look at Article 1.7 (good faith and fair dealing), good faith and honesty cannot be ruled out. In addition, during the contract period it is also prohibited to commit inconsistent acts that can harm other parties.

c. Consensualism

In the common law system this is the offer-acceptance principle. According to Garner, it is an act of accepting without objection, without delay, every voter agrees unanimously (Bryan A, 2004: 673). According to the UNDIROIT Principles of international commercial contract 2010, there are several articles that provide an understanding of the principle of consensus and regulate the cancellation of the offer of a contract, this is regulated in Article 2.1.4 that (1) until the contract is closed, the offer can be canceled if the cancellation of the bid is accepted by the party. offered before he delivered his acceptance. (2) a contract is irrevocable if: (a) shows that the bid is non-cancelable, either stated over a predetermined time or (b) the offered party feels it is reasonable to expect the bidder to appear irrevocable and the party being offered it has taken a stand to expect the offer (RADe.Rozarie, 2019: 91).

Reaching an agreement uses appropriate procedures to reach an agreement that forms the basis of a contract. In Indonesia, an order like this already exists.

d. Pacta Sunt Servanda

A valid contract from Singapore's perspective is a contract that can be enforced by law or enforceable by law. So that the promise must be replied with a promise to give rise to legal binding strength.In Singapore, the term 'force majeure' usually refers to a certain type of clause in a contract which exempts a party from performance in terms of certain categories of normal events. Typically, a clause provides relief to either party when the performance of the contract is prevented by a force majeure ("FM") event, regardless of the parties' fault and

beyond their control. Generally, force majeure is a supervening event that occurs without the fault of the contracting party and neither party is responsible for the supervening. Regarding whether or not an FM clause exists, some contracts govern certain events such as changes in law. Otherwise, the parties will have to rely on the illegality or frustration of the common law 331GH doctrine.

The 2020 Covid-19 (Temporary Measure) Regulation which came into effect on April 7, 2020 is intended to help Small and Medium-sized businesses in Singapore who are unable to fulfill or carry out their contractual obligations due to the Covid-19 pandemic. Covid-19 Regulation (Temporary Measure) 2020: a) Implemented suspension of business obligations to perform contractual obligations for 6 months. b) Parties relying on the law must provide notification to the other party in the form specified. c) The obligation to do is not removed, Only suspended. d) There must be an assessment of whether the inability to appear is due to the Covid-19 pandemic or not. The assessment is carried out by the appointed Appraiser.

The Frustration Doctrine under Singapore law, failed Contracts can be terminated. A contract can fail by demonstrating that: i) the frustrating event was unexpected and beyond the control of the parties; and the event makes it physically or legally impossible to fulfill a contract or change an obligation. ii) performs obligations that are very different from those undertaken when the contract was created. It is in the Frustration Contract Act Cap 115, the rights and obligations of the parties in a failed contract can be adjusted and the parties are exempted from further performance.

Covid-19 and the Frustration principle, Depending on the nature of the contract and contractual obligations, Covid-19 may not be a frustrating event. A price increase is unlikely to be a frustrating event (see the case: Alliance Concrete Singapore Pte Ltd V Sato Kogyo (s) Pte Ltd [2014] SGCA 35). A reduction in the difficulty level of contracting is also unlikely to be a trigger, which is generally a high standard for proving frustrating events. It is not the existence of Covid-19 that is determined. Conversely, the rupture and consequently the lockout must have a direct impact on the contract it is trying to terminate or avoid, and it must make the performance of the contract irreversible or radically altered in order to be perceived as a frustrating event.

The characteristics of a frustrated contract can be noticed in events that disturb / obstruct it, even though the event is sufficiently regulated by the parties, so that it changes the foundation of contract formation or makes physical or legal achievements impossible to implement (R.A.De.Rozarie, 2019). It can be said that the settlement of business disputes with doctrine Frustration is: 1) Determining the type of supervening event as a trigger for the dispute. 2) Providing solutions in cases that cause harm in order to reach the truth (Tsang, 2020). In completing a business contractthe Frustration Doctrine can be one way of ending a contract. However, this does not necessarily end, of course, there must be sufficient evidence in the trial. Because if the frustration of contractiveness is not proven, the reported party can sue for compensation.

Comparison of Force Majeure with the Doctrine of Frustration:

If it is true. it is proven that the achievement at all cannot be carried out because of a certain event or situation, the concept of Force Majeure law or the Frustration Doctrine can be used, and both cannot be used simultaneously. Comparison of Force Majeure and the Doctrine of Frustration can be seen in terms of: 1) Legal Consequences 2) Causes 3) Consequences of Evidence and 4) Its Existence Function.

No	Comparison	Doctrine of Frustration	Force Majeure

1	Legal Consequences	An agreement can be terminated if an obligation cannot be carried out both legally and physically.	An agreement will continue to exist, either with amendments to the collective agreement to be able to complete obligations. (Articles 1244 & 1245 KUHPer)
2	Cause	The cause of frustration is not from either party unless it is stipulated in the agreement of the parties	The cause of force majeure is due to a party failing to carry out its obligations and / or due to unexpected natural disasters
3	Consequences of Proving	The consequences of failing to prove the existence of the Frustration of Contract are considered as refusal to carry out the contract so that the opposing party can ask for compensation for the breach of the contract.	The consequence is that if the Force Majeure fails to be proven, the agreement will still be valid, and still have to fulfil its achievements. And if it is proven successful, the agreement will continue with mutual agreement to get relief in carrying out its achievements.
4	Existence Function	Doctrine Frustration grounds for terminating the contract	Force Majeure is not a special reason to cancel / terminate the contract (excuse only)

Judging from the comparison of the Legal Consequences of the Frustration Doctrine, namely, an agreement can end if an obligation cannot be carried out both legally and physically. This of course must be proven, as well as one of the causes could be from changes in laws and regulations, which if the contract continues it will be against the law. Meanwhile, the Legal Consequences of Force Majeure An agreement will continue to exist, either with amendments to the collective agreement to be able to complete the obligation. In this case the affected party must give prior notification so that the affected party can be free from compensation. Furthermore, seen from the Causes of the Frustration Doctrine, the cause of frustration is not from either party unless it has been stipulated in the agreement of the parties, usually for one

reason or another so that one party cannot carry out its obligations. Meanwhile, the cause of Force Majeure is because one party fails to carry out its obligations due to circumstances that force it not from bad faith as is safe in Article 1245 of the Criminal Code.

When viewed from the comparison of the Consequences of Proof of the Frustration Doctrine, the consequences of failing to prove the existence of the Frustration of Contrac are considered as refusal to carry out the contract so that the opposing party can ask for compensation for the breach of the contract (considered to have bad faith). Meanwhile, Consequences of Proving Force Majeure. Consequences if the Force Majeure fails to be proven, the agreement remains valid, and must still fulfill its achievements. And if it is proven successfully, the agreement will continue with mutual agreement to get relief in performing its achievements. It can be said that this is an excuse for forgiveness but does not mean the contract ends. Furthermore, the comparison is seen from the Existence Function in the Doctrine of Frustration, Doctrine Frustration reasons for terminating a contract. While the Existence Function of Force Majeure is not a reason to cancel / terminate the contract because it can be said that this is just a forgiving reason.

Therefore, In substance, frustration and force majeure are similar in that both doctrines address events which are beyond the control of the parties and render the contractual obligations of parties impossible to perform. The key difference is that frustration may still be relied upon even if the contract does not contain such a clause, but, at least under Singapore law, force majeure may not be relied upon unless there is a force majeure clause in the contract. In addition, frustration operates to discharge the contract in its entirety, unlike force majeure clauses which often provide for temporary relief with the option of termination in the event of prolonged force majeure. (Mahesh Rai, 2020)

The Effectiveness of Force Majeure in the Civil Law System with the Doctrine of Frustration in the Common Law System in Completing Business Contracts during the Covid 19 Pandemic:

Force Majeure is one of the concepts in civil law in Indonesia. MochtarKuusumaatmadja stated that Force Majeure can be accepted as an excuse for not fulfilling the implementation of obligations due to the disappearance / disappearance of the object or objective which is the subject of the agreement. This situation is aimed at the implementation of both legal and physical (Isradjuningtias, 2015: 5). Force Majeure provides legal protection for one of the injured parties in an agreement with the fulfillment of objective and / or subjective conditions.

In the Civil Code Force Majeure / Overmacht / State of Force has been regulated in book III B.W, regarding the effectiveness of this concept in the first Civil Law legal system, events were unexpected by the parties or did not include the basic assumption when making a contract as referred to in Article 1244 of the Civil Code. Second, responsibility cannot be given to the debtor for events that occur. Third, the event is outside the debtor's fault. Fourth, the debtor accidentally. However, there is attention to the word "intentionally", intentionally or unintentionally it is said to be an omission as stated in Article 1545 of the Civil Code (Editorial, 2019). Fifth, there is no bad faith by the parties. Sixth, if a Force Majeure occurs, a contract will be invalidated or as if there was no such agreement, however, as in Article 1244 jo. 1245 and 1553 of the Civil Code and to keep the elements of justice fulfilled, there is the possibility to provide restitution. Especially in business agreements, there is a need for renegotiation to find a solution if this cannot be achieved through arbitration and / or an authorized court.

Therefore, the effectiveness of Force Majeure based on the Civil Code is still being used in Indonesia, which has a civil law system. However, if you look at the articles in the Civil Code regarding Force Majeure that have existed since the legacy of the Dutch heritage, some of the articles are not relevant to the current state of Indonesia, where these provisions are very much needed because they have a big impact on the business climate and or economic development in Indonesia today. until the future. Explicitly, Covid-19 is regulated in the Directorate General of Tax Decree 156/2020 stipulating that Covid-19 is a force majeure. Similar matters regarding force majeure are also regulated in the Minister of Finance Regulation 29 / PMK / 2020, OJK Circular No: 3 / SEOJK.04 / 2020, Presidential Decree 11/2020 and 12/2020 (LawFirm, 2020).

The law in Singapore upholds the freedom of contract, if the parties want to use the reason for force majeure, the parties must define what constitutes a force majeure event in the contract (LawFirm, 2020). In Singapore law known as Doctrine Frustration, the agreement / contract will be terminated when frustration arises, namely unexpected events where it is not the fault of the parties who entered into the agreement.

Singapore has a special regulation on the exemption of obligations in contracts related to Covid-19 which are regulated in the Covid-19 (Temporary Measure) Act 2020. In it regulates temporary exemption from inability to fulfill material obligations caused in particular by Covid-19. It also regulates temporary changes to bankruptcy and insolvency regulations of the parties in order to increase the debt threshold for company closure or bankruptcy and provide a safety net.

Covid-19 is not necessarily the reason for the force majeure event. Due to the various regulations given by the Indonesian and Singaporean governments, creditors need to consider giving flexibility to the debtor in fulfilling the contents of the agreement / contract. Therefore, force majeure is not a specific reason to cancel / terminate the contract (excuse only) while the frustration doctrine can be used to terminate the contract, so that the frustration doctrine will be more effective in resolving business contract disputes during the Covid 19 pandemic because of the consequences of failing to prove the existence of Frustration of Contrac is considered a refusal to carry out the contract so that the opposing party can ask for compensation for the breach of the contract.

CONCLUSION:

Force Majeure is divided into two, namely: an absolute or permanent or permanent force state (absolute onmogelijkheid) and a relative or impermanent or temporary force state (relatieveonmogelijkheid). The absolute state of force is a condition where the achievement cannot be carried out, because of the earthquake and tsunami which results in the destruction of objects or goods. Meanwhile, a relative coercive situation is a condition that causes the debtor to be able to carry out his performance or temporarily postpone his performance for a while until it is possible to re-fulfill the achievement.

The Frustration Doctrine under Singapore law, failed Contracts can be terminated. A contract can fail by demonstrating that: i) the frustrating event was unexpected and beyond the control of the parties; and the event makes it physically or legally impossible to fulfill a contract or change an obligation. ii) performs obligations that are very different from those undertaken when the contract was created. It is in the Frustration Contract Act Cap 115, the rights and obligations of the parties in a failed contract can be adjusted and the parties are exempted from further performance. Therefore, force majeure is not a specific reason to cancel / terminate the contract (excuse only) while the frustration doctrine can be used to terminate the contract, so that the frustration doctrine will be more effective in resolving

business contract disputes during the Covid 19 pandemic because of the consequences of failing to prove the existence of Frustration Contract is considered a refusal to carry out the contract so that the opposing party can ask for compensation for the breach of the contract.

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