Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
www.bircu-journal.com/index.php/birci
Budapest Institute

# Force Majeure for E-commerce Transaction during the Covid-19 Pandemic

**Wilma Laura Sahetapy**
*Petra Christian University, Indonesia*
*wilma@petra.ac.id*

## Abstract

*Covid-19 pandemic has brought major changes to the economic structure. Some changes in the economy appear to be declining in conventional activities, but e-commerce transactions actually show a rising curve during the pandemic. The pandemic makes e-commerce transactions a better option for the community to shop their daily needs, because all people must stay at home. The advantage of e-commerce transactions is the ease of use because all business people turn to this transaction. However, the increase in e-commerce transactions is also followed by numerous problems, such as breaking the agreement made during the e-commerce transaction. This agreement on e-commerce transactions does not provide clauses regarding force majeure. This actually makes consumers feel violated because the actual achievements that must be fulfilled cannot be done because of the condition of this 19th pandemic, such as the delivery limitations that cause delaying or finally cancelling the order by the business people. Force majeure in the Covid-19 pandemic can be categorized as an unexpected event that results in the cancellation of an achievement or delayed achievement. If the agreement made does not contain a force majeure clause, there is no legal force to challenge the default that has been done by the business people. Therefore, it depends on the clause that is included in making the e-commerce transactional agreements.*

Keywords
e-commerce transaction; agreement; force majeure; Covid-19 pandemic

## I. Introduction

The Indonesian government has confirmed COVID-19 as a pandemic that has caused public health emergencies. Therefore, the Government is taking steps to urge people to carry out physical distancing by working, studying, and worshiping from home, in order to be able to contain the spread of the pandemic. The steps taken by the government are reflected by the issuance of regulations that become the legal umbrella, including Presidential Decree Number 12 of 2020 concerning the Non-Natural Disasters Resolution of Corona Virus Disease 2019 (Covid-19) Spreading as a National Disaster, Government Regulation Number 21 of 2020 concerning the Containment of Large Scale Social Restrictions in the Context of Handling Corona Virus Disease 2019 (Covid-19), Regulation of the Minister of Health of the Republic of Indonesia Number 9 Year 2020 concerning the Guidelines for Large Scale Social Restrictions in the Context of Handling Corona Virus Disease 2019 (Covid-19), and Presidential Decree Number 11 of 2020 concerning the Establishment of Corona Virus Disease 2019 (Covid-19) as Public Health Emergency.

COVID-19 is a global health problem including Indonesia. This was initiated from the information of the World Health Organization (WHO) on 31 December 2019 there was a case of a cluster of pneumonia with a new etiology in Wuhan City, Hubei Province, China and later expanded beyond China. On 30 January 2020, COVID-19 was set to become the public health Emergency of International Concern (PHEIC). (Susilawati, et al. 2020)

The regulations issued by the government are intended to suppress the spread of Covid-19. The appeals given by the government to the public to carry out the physical distancing and the "#dirumahaja" campaign, indirectly affect public activities, especially in public places such as shopping places, tourist destinations, and offices, which are significantly reduced. The reduced activity of the community makes it a pretty difficult test for economic activities.

Although the public activities are decreasing significantly due to the closure of non-essential stores, many business people have initiatives to switch their services to e-commerce transactions. The increase in digital shopping or e-commerce transactions occurs because people prefer to buy their needs online, and this is in line with the implementation of some government policies, namely work from home (WFH) and study from home.

This e-commerce transaction is carried out because this electronic sale and purchase transaction can be effective and efficient in time consumption, so that one can make a sale and purchase transaction with others wherever and whenever they are, with very flexible time. This is in line with the definition of e-commerce itself, namely the process of exchanging information and transactions involving goods and services using information technology. E-commerce transactions use internet media, so during the Covid-19 pandemic, buyers do not need to leave their houses to shop. Internet media can be facilitated from smartphones which almost everyone has already had these communication tools

Before the pandemic, Indonesian markets had already started doing business transactions through e-commerce, although these e-commerce transactions were mostly optional. However, at the moment, it is important for retail shops and manufacturing producers to sell their products through e-commerce platforms in order to maintain their businesses. According to the CEO of blibli.com, Kusuma Martanto, this shift to e-commerce brings a positive impact in the long term because the consumers will get used to shop online.

In line with that, e-commerce has become one of the main economic drivers of making Indonesia, the country with the largest digital economic value in Southeast Asia, reaching $ 40 billion in 2019 and is predicted to increase further to $ 130 billion by 2025 (https: // ekonomi.bisnis.com).

Yet, the current condition is inseparable from the constraints which are experienced by many business people, whether as suppliers, service providers, service providers, distributors or consumers. These constraints, which are caused by the Covid-19 pandemic, make businesses less productive. Seeing the operational cycle of e-commerce transactions during the Covid-19 pandemic, online sellers will eventually experience shipping limitations which leads to lacking of goods scarcity because it takes longer to get products and resell them online. Another obstacle experienced by most e-commerce sellers is having a limited cash reserve, which can only sustain for one or a maximum of two months business operations. Whatever the situation is, they will continue to pay fixed costs, which will cause an imbalance in the flow of funds (cash flow) if the shutdown or lockdown conditions continue to be applied for a longer period of time.

E-commerce provides extraordinary indulgence to consumers, because consumers do not need to leave their house to shop. Besides, e-commerce offers various choices for goods and services with relatively cheaper prices. This brings both positive and negative challenges at the same time. It is said to be positive because this condition can provide benefits for consumers as they are be able to buy goods or services wherever they are and can freely

choose the goods or services they want. In addition, consumers are free to determine the type and quality of goods or services according to their needs. It is said to be negative because this condition causes the position of consumers to be weaker than the position of business people.

If the imbalance caused by the Covid-19 pandemic in e-commerce transactions continues, it needs to be questioned whether this e-commerce transaction can be said to experience force majeure. Even though the sellers and buyers involved in a business transaction never agree that the condition of the Covid-19 pandemic is as a part of a force majeure.

## II. Review of Literature

There are several opinions from some experts on force majeure, among others are (Simanjuntak):

1. According to Subekti, force majeure is a reason to be released from the obligation to pay compensation.
2. According to Abdulkadir Muhammad, force majeure is a situation which the debtors cannot fulfill their achievements because an unexpected event occurs in which the debtors cannot expect to occur at the time when the engagement is made.
3. 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 bear the risk and cannot be predicted at the time the agreement is made, as that condition happens before the debtor is negligent to fulfill his obligation at the time the situation arises.

Next are the clauses that are often used as a reference in the discussion of force majeure, namely clauses 1244 and 1245 of KUH Perdata (the Civil Code):

1. Pasal 1244 BW, menyatakan Jika ada alasan untuk itu, si berutang harus dihukum untuk mengganti biaya, rugi dan bunga apabila ia tak dapat membuktikan, bahwa tidak pada yang tepat dilaksanakannya perikatan itu, disebabkan oleh sesuatu hal yang tak terduga, pun tak dapat dipertanggung jawabkan padanya, kesemuanya itu jika tidak ada itikad buruk padanya. (Article 1244 BW, stating that if there is a reason for that, the debtor must be punished to compensate for costs, losses and interest if he cannot prove that the agreement is improperly carried out, caused by something unexpected, and cannot be justified to him, all of it if there is no bad intention in him.)
2. Pasal 1245 BW, menyatakan Tidak ada penggantian biaya, rugi dan bunga, bila karena keadaan memaksa atau karena suatu kejadian yang tidak disengaja, si berutang debitur, terhalang untuk memberikan atau berbuat sesuatu yang diwajibkan, atau karena hal-hal yang sama telah melakukan perbuatan yang terlarang. (Article 1245 BW, stating that there is No reimbursement of costs, losses and interest, if due to forced circumstances or due to an unintentional event, the debtor owes, is prevented from giving or doing something that is required, or because the same things have done the forbidden act.)

Based on these provisions, the main elements that can cause a force majeure are:

1. There is an existence of an unexpected event;
2. There are obstacles that make an achievement impossible to do;
3. The inability is not caused by the debtor's mistake;
4. This inability cannot be charged the risk to the debtor.

According to R. Subekti, the prerequisite of a condition said to be force majeure is as follows, the first is the condition itself beyond the power of the debtor and forcing, and the second is the condition must be an unknown condition at the time the agreement is made, at least the risk is not burdened by the debtor. Based on the theory, there are two types of force

majeure: absolute force majeure and relative force majeure. Absolute force majeure means a condition that occurs beyond human capability, where an agreement is no longer possible to be implemented. So, this absolute force majeure can be interpreted automatically to terminate the engagement or the engagement becomes null and void. As a result, the situation must be returned to its original state as if there has never been an engagement. For example a promises to B to send goods purchased by B, but when the delivery is done, a disaster occurs, causing the item to be destroyed and it is very difficult to find a replacement. So, in this case, A cannot fulfill his achievement. Meanwhile relative force majeure means a situation in which the debtor, in this case is the business people, may still fulfill the achievement despite undergoing difficulties or facing danger.

The achievements referred to above can be distinguished again into objective and subjective. Achievement that is objective is force majeure in which a person cannot carry out the achievement because certain items do not exist. It is said to be objective because goods which are the objects of an engagement cannot be replaced by other goods. The link must be proven that the item in question is absolutely impossible to replace it. Subjective achievement is force majeure in which a certain person cannot perform his obligations because he is in a condition beyond human strength or ability. It is said to be subjective because it involves the actions of the debtor himself, so it is limited to the debtor's actions or abilities. In this case, only certain people who cannot do their obligations while others may be able to do it.

Force majeure in relation to this unforeseen circumstance or event is in connection with a mutually agreed upon agreement. According to one of the experts, Subekti, the referred agreement, as written in the Law book of the Agreement, is a defense of the debtor to show that he did not fulfill what is promised due to unforeseen circumstances and that he can do nothing about the circumstances or events that come up unexpectedly.

The meaning of an agreement as defined by Article 1313 of KUH Perdata (the Civil Code) is "suatu perbuatan dengan mana satu orang atau lebih mengikatkan dirinya terhadap satu orang lain atau lebih" (an act in which one or more persons bind themselves to one or more other persons). Subekti defines an agreement as "suatu peristiwa di mana seorang berjanji kepada seorang lain atau di mana dua orang itu saling berjanji untuk melaksanakan sesuatu hal" (an event in which one pledges to another or in which two people promise to accomplish something). Therefore, a sale agreement, in order to have the binding power on both parties, must be made in compliance with the Law of the Agreement.

The legal terms of the agreement mentioned above are as defined in Article 1320 of KUH Perdata (the Civil Code), which says "all legally binding agreements are lawful for those who make them". In order to be legally binding, an agreement requires 4 conditions as set forth in Article 1320 of the Civil Code:

1. They agree to bind themselves;
2. They are capable to create an alliance;
3. Concerning something specific;
4. A lawful cause.

Agreements that do not meet these conditions will not be recognized by law, even if they are recognized by the parties who made them. If the parties acknowledge and abide by the agreements they make, the agreement applies between them, even though the agreements do not comply with the conditions above. If, at any time, there is a party who does not recognize the agreement and causes a dispute, the judge will declare the agreement as null and void. The first and second conditions, namely agreement and capability, are subjective conditions because they involve the subject of the perpetrator. The third and fourth conditions are objective conditions because they involve the object of the agreement.

The above statement can be interpreted that the parties in making an agreement must be based on their free will, as a manifestation of the principle of contractual freedom. The basis of contractual freedom under Indonesian treaty law covers the following scope (Remy Sjahdeini, 1993):

1. freedom to make or not make agreements;
2. the freedom to choose the party with whom he or she wants to make an agreement;
3. the freedom to determine or choose the terms of the agreement to be entered into;
4. the freedom to determine the object of the agreement;
5. the freedom to determine the form of an agreement;
6. The freedom to accept or violate the provisions of the law is optional.

The agreement referred to in this paper is the sale and purchase of e-commerce transactional agreements. It is necessary to know what is meant by e-commerce transactions. According to Taufik Hidayat (2008: 5), the definition of e-commerce is a part of e-lifestyle that allows buying and selling transactions carried out using online from anywhere. Meanwhile, according to Andi and Wahana Komputer (2007: 2), "E-Commerce means buying or selling electronically, and this activity is carried out through the internet network. E-Commerce can also mean putting advertisement, sales, and support and services in a web shop (shop in the web) 24 hours a day for all its customers".

The regular classification of e-commerce is based on the nature of the transaction. According to M. Suyanto (2003,30), the following types can immediately be distinguished:

1. Business to Business (B2B)
2. Business to Consumer (B2C)
3. Consumer to Consumer (C2C)
4. Consumer to Business (C2B)
5. Non-business e-commerce
6. Intrabusiness (Organizational) e-commerce

E-Commerce itself can also be divided into several types which have different characteristics. The first is Business to Business (B2B), in which Business to Business e-commerce has the following characteristics:

1. Trading partners that are known and generally have a long relationship. This information should be exchanged only with the partners. Because each party has already known the style of communication, the type of information sent can be arranged according to their needs and trusts.
2. Data exchange takes place repeatedly and regularly, for example every day, in a mutually agreed upon data format. In other words, certain services are used already.
3. One of the parties can take the initiative to send data, without having to wait for the partner's request.
4. The commonly used model is peer-to-peer, where processing intelligence can be distributed to both business people.

While the second is Business to Consumer (B2C), in which Business to Consumer e-commerce has the following characteristics:

1. Open to the public, where information is shared to the public.
2. The services provided are general (generic) with mechanisms that can be used by the general public. For example, as Web systems are commonly used, so services are provided using a Web base.
3. Service is provided on request. Consumers carry out the initiative and the producer must be ready to respond according to the request.

4. The client or server approach is often used where the assumption is that the client (consumer) uses a minimal system (Web-based) and processing (business procedure) placed on the server side.

As the e-commerce transactions are growing very fast, the legal umbrella is needed to regulate and provide legal protection. So, the emergence of Law No. 11 of 2008 on Information and Electronic Transactions (UU ITE) provides two important things, the first thing is the recognition of electronic transactions and electronic documents in the framework as the binding law and proof of law, so that the legal certainty of electronic transactions can be guaranteed. The second thing is the classification of actions which qualify the violations of the law related to misuse of IT (Information Technology) and are accompanied by criminal sanctions. Recognition of electronic transactions and electronic documents means that at least e-commerce activities have a legal basis.

## IV. Result and Discussion

E-commerce transactions or referred to as electronic transactions, which in the provisions of Article 1 number 10 of the Law on Information and Electronic Transactions (UU ITE) in 2008, are legal actions carried out using computers, computer networks or other electronic media. The parties involved in this electronic sale and purchase transaction have a legal relationship as outlined in an agreement or contract which is also conducted electronically and in accordance with Article 1 number 18 of the Law on Information and Electronic Transactions (UU ITE), referred to as Electronic contract, which is an agreement contained in electronic documents or other electronic media. This includes emails that are used as "written notifications" in electronic transactions.

Therefore, all transactions of buying and selling through the internet (hereinafter referred to as e-commerce transactions) are carried out without any face-to-face meetings between business people and consumers. The e-commerce transaction is carried out based on mutual trust, so the e-commerce transaction agreement that occurs between the parties is carried out either by e-mail or other electronic means. Therefore, there is no agreement file like in a conventional sale and purchase transaction. Such conditions can of course lead to various legal consequences with all consequences, including if in one of the e-commerce transactions, an unlawful act arises from one party, it will make it difficult for the injured party to sue for all losses incurred and caused acts against that law. Because it is known that from the beginning of the legal relationship between the two parties in the e-commerce transaction referred to is not directly confronting, it is possible that those who have committed illegal acts are in a country that is very far away so that making demands is very difficult to do because it is not like what can be done in conventional or ordinary legal relations.

Based on the legal relationship referred to in the e-commerce transaction, the e-commerce transaction can be divided into 2 models: the first one is B2B (business to business), meaning that a trade involves two or more parties where the traded goods will usually be for reselling. For example, the company A buys goods from the company B, and the company A sells the goods to other companies and end buyers. The second one is B2C (business to consumer), meaning that a trade involves two or more parties, where one party is the producer or the final seller and on the other parties are the consumers.

B2C e-commerce transaction activities have a very important role. In general, the meaning of a transaction is often reduced to a sale and purchase agreement between the parties who agree to it. Whereas in a legal perspective, the terminology of B2C transactions is basically the existence of an engagement or legal relationship that occurs between the parties. The juridical meaning of the transaction basically puts more emphasis on the material aspects

of the legal relationship agreed upon by the parties rather than its formal legal actions. Therefore, the existence of legal provisions regarding the engagement still applies, even if the transaction occurs electronically.

As already explained, the transactions that occur electronically, or referred to as e-commerce transactions, are also based on an engagement or agreement. So, this paper focuses on e-commerce transaction agreements, in which the parties are involved in conducting legal relations as outlined in a form of agreement or contract, and the agreement is carried out electronically, and in accordance with Article 1 point 17 of the UU ITE, such an agreement is considered as an electronic contract. Electronic contract is an agreement contained in electronic documents or other electronic media. The implementation of e-commerce transactions can be done either in the public or private sphere. As stated in the contents of article 17 UU ITE Paragraph (1), it written that "the implementation of electronic transactions can be carried out in the public or private sphere". In electronic transactions, both parties rely heavily on good faith, because electronic transactions happen in cyberspace, which do not bring both parties physically together, so to the parties that transact electronically must comply with the Article 17 paragraph (2) of the UUITE, which stipulates that the parties conducting electronic transactions must in good faith in interacting and/or exchanging Electronic Information and/or Electronic Documents during the transaction.

Because the parties of the e-commerce transactions are required to make good faith, in this case, business people offering goods or services electronically must provide complete and correct information about the terms of contracts, producers and products. As from the content of Article 19 of the UUITE which states that "the parties conducting electronic transactions must use an agreed electronic system". So, in conducting an electronic transaction, the parties must agree upon an electronic system that will be used to carry out the transaction. Unless otherwise specified by the parties, electronic transactions occur when the transaction offers have been received and approved by the recipient as specified in Article 20 paragraph (1) of the UUITE. In this case, electronic transactions only occur when an offer is sent to the recipient and there is an agreement to accept the offer after the offer has been received electronically. Article 20 paragraph (2) of the UUITE states that the "Approval of electronic transaction offers must be made with an electronic acceptance statement".

An approval of the offer for e-commerce transactions is the beginning of the existence of an electronic contract, in which the contract is an approved agreement. The agreement will rise to an engagement that is manifested in daily life with promises or abilities that are spoken or written. The legal relationship in an agreement is not a legal relationship that is born by itself, but the relationship is created because of legal actions are carried out by parties who wish to cause the legal relationship. In fact, sometimes the legal relationship in an agreement causes some defaults, meaning that the desired performance in the legal relationship cannot be carried out.

Default in an agreement or contract is a loss that is actually experienced by the consumer and a loss of profit that should have been enjoyed by the business people. The compensation requested is only limited to losse which are a direct result of the default. The limited form of compensation provided makes consumers unable to do anything. Standard compensation must be accepted by consumers. If the consumer does not agree, he can cancel the order. However, there are still many consumers in Indonesia who are not critical and careful in reading this standard clause. In fact, if it turns out that undesirable things happen in the future, there will be a loss on the part of the consumer (Edmon Makarim, 2004). The loss suffered by these consumers happens because they do not read or see any standard clauses in e-commerce transactions, therefore, this should become the concern for businesses to pay attention to the rights of consumers so that there is a balance between the two parties.

E-commerce Transaction Agreement without Force Majeure clauses. In addition to the existence of a standard clause in an agreement made by the parties, other clauses are also important, such as one of which is a clause concerning force majeure. Force majeure is often interpreted as a forceful condition that causes a business people to be prevented from carrying out his achievements because an unexpected condition or event at the time of the contract is made, the situation or event cannot be accounted to consumers, while the business people are not intentionally having a bad faith.

Indeed, there is no specific law that regulates force majeure, but Indonesian law has regulated force majeure as stated in the Civil Code as overmacht or forced state. It does not explicitly explain the definition of force majeure, but the forced state has been regulated in Article 1244 of the Civil Code and Article 1245 of the Civil Code. The provisions in Article 1245 of the Civil Code say: "Tidaklah biaya rugi dan bunga harus digantikan. Apabila lantaran keadaan memaksa atau lantaran suatu kejadian tak disengaja siberutang berhalangan memberikan atau berbuat sesuatu yang diwajibkan atau lantaran hal-hal yang sama telah melakukan perbuatan yang terlarang" (It is not loss and interest costs that must be replaced. If because of a forced situation or because of an unintentional event, the person is unable to give or do something that is required or because the same things have done prohibited acts). This means that there is no change in the cost of losses due to forced circumstances or accidental and hindered events to do something.

As it is already known, this compelling condition is a condition in which a business person is prevented from performing his achievements due to a situation or event that was not unexpected before, so the situation or event cannot be accounted for by consumers who have no bad intention. The forced or unexpected events that cause major consequences can be interpreted as floods, earthquakes, fires, hurricanes, wars, epidemics, riots or demonstrations and other events that can terminate the contracts or agreements due to goods destroyed so that fulfilment cannot be done.

The problem arises when the parties regulate otherwise, i.e. the epidemic is not a part of the clause of force majeure. When the epidemic such as the spread of the virus is not included into one type of force majeure state, this may not be classified as a forced state. In the context of treaty law, what is agreed upon by the parties will be the law that must be obeyed. If the parties do not include a force majeure clause in the agreement, they can refer to the provisions in Article 1245 of the Civil Code, which is complements to the contents of the agreement. Business people in this case can prove their failure to meet achievements due to unexpected events or force majeure.

Force majeure in other words can be interpreted as a condition that occurs after an agreement is made that prevents the business actor from fulfilling his achievements. The reality is that business people cannot be blamed and do not have to bear the risk because they cannot expect such force majeure to occur when the contract is made. Force majeure from the consequences of such unforeseen events can be caused by something outside the control of the business people which can be used as an excuse to be released from the obligation to pay compensation (H. Amran, 2018). It should also be noted if agreements between legal subjects are from different countries, the reference is the law chosen by the parties to settle the agreement. Then, the parties must see the force majeure provisions in the law of the chosen country.

If the business people and consumers involved in an e-commerce transaction never agree to the condition of the Covid-19 pandemic as part of force majeure, the e-commerce transaction cannot be said to have experienced any force majeure. This facts should get attention from both parties, especially during the Covid-19 pandemic, as the cause of the force majeure will be a reason in a breaking the agreement or default. E-commerce transactions carried out through the internet are impossible to stop, as the latest technology

breakthrough has always emerged in daily basis in the internet world, but the protection and legal certainty for internet users is insufficient. Thus serious efforts must be made to continue achieving the legal balance, especially in pandemic conditions.

This Covid-19 pandemic condition has led all levels of society to use e-commerce transactions. This is because using e-commerce transactions can minimize the spread of the Covid-19 pandemic, which is believed to be contagious by mass meeting in public places. The pandemic status has affected everyone in everyday life. The flow of technology is then connected in one system that makes it easier for everyone to access it. With the conveniences that are obtained with the e-commerce transaction, some people take advantages of the weaknesses of this e-commerce transaction.

The current pandemic situation in Indonesia is difficult to interpret directly as force majeure. Not all companies stop their operation due to this pandemic. The government has not issued policies such as the national lock downs, the necessity of self-quarantine or work from home for the public, or the closure of human and/or goods access. It is different if there are decisions or policies of local and national governments whose provisions directly hamper the implementation of achievements or obligations in contracts, then this pandemic can be classified as force majeure. For example, one of the factories has a dispute with factory workers, and in the end, the factory fails to fulfill the contract. This dispute causes a halt to production at the time of this pandemic. Observing this situation, the cause of the production stop in this pandemic situation cannot be a force majeure clause. The extent to which a state can be said to be a state of force majeure is necessary to look at the state of each condition or case that occurs.

Such a situation like this pandemic is easier to classify as force majeure when it is supported with regulations issued by the government. It prevents the party from fulfilling the performance due to the outbreak of the corona virus including force majeure. The risks therefore are borne by the parties to the agreement, except in the event that the parties have set who will be at risk in the event of a force majeure.

Although the current government policy does not do a lockdown but only to do a large scale social restriction (PSBB), many transportation activities are automatically stopped. As a result, many activities in hotels and purchased plane tickets are forced to choose two possible options, namely rescheduling (delay of implementation) or frustrated (regarding the promised object destroyed). The question that arises is whether airplane tickets and hotel reservations purchased through e-commerce transactions can be reimbursed or rescheduled. The context of reimbursement or rescheduling during the Covid-19 pandemic should be considered. Referring to Article 16 of the Consumer Protection Act (UUPK) business people in offering goods and/or services through orders are prohibited from: (a) not fulfilling orders and/or settling time agreements as promised; (b) not keeping promises for a service and/or achievement. Therefore, in this condition the passenger should still have the right to reschedule.

Article 1245 is included in a part of Book III of the Civil Code which is complementary to the agreement. That is, as long as the parties do not regulate otherwise, the provisions of Book III, particularly those related to force majeure, will apply. If an agreement regulating a pandemic is not part of a force majeure, then it must apply accordingly. "However, if the parties do not include in the agreement, the pandemic can be considered a force majeure".

Force majeure has two properties, general and special. General force majeure is related to act of God, while special force majeure is related to act of human. In the case of the Covid-19 pandemic, the Indonesian government has issued a rule, so the force majeure in the pandemic context can fall into a special category, namely act of human. However, when viewed in terms of the position of the case, it is also known that relative force majeure is an element of difficulty, and absolute force majeure which has an element of impossibility. If

during the Covid-19 pandemic, the both parties can still do the work, but it was difficult for fear of contracting the virus. Then the measurement is not impossible, but difficulties.

If force majeure can be the reason for someone's release from the obligation to fulfill their achievements in accordance with what is agreed upon, surely the losses from various business sectors are inevitable. The question is, should the business owners bear the risk of loss by himself or does the law provide more ideal compensation opportunities. In principle, whoever makes a mistake or negligence, he will bear the risk of loss in a contract.

With the case of the Covid-19 pandemic which is agreed as a disaster outside the will and ability of humans, the context of the reduction of losses in epidemic conditions must still refer to the form of the agreement first. If not specifically regulated, all people involved in the transaction must bear the risk together, ideally both parties bearing equally half of the loss. Here, the principle of justice applies, each party must be willing to bear. It will be different if the agreement has been arranged with who should bear the risk in pandemic conditions.

Regarding force majeure, it can be inferred that the principle of legal agreement or contract states that every person who makes a contract, the contract he made is valid as a law for those who make it. This means that the parties must carry out the obligations or achievements that they have agreed to, even though it is unavoidable as a problem occurs during the implementation. The party making the agreement sometimes faces problems in its implementation. If the business people feel disadvantaged, they can prosecute the consumers who are considered to be defaults by not fulfilling the obligations which are either intentional or negligent. However, if the business people consider that his negligence is not due to deliberation and not because of his bad intentions, then they can be freed from the compensation as stated in Article 1244 of the Civil Code and Article 1245 of the Civil Code, which regulate the force majeure. Force majeure can be concluded as an unexpected event which occurs outside the debtor's fault, in this case the business people, so that the business people are deterred from fulfilling his achievements, before he is declared negligent and because he cannot be blamed and bears the risk of the incident. For this reason, a method that can release or set free a business people from a consumer lawsuit is the argument of an overmacht (force majeure) that must fulfill. The requirements come as follows: the fulfillment of the achievement is hindered or prevented, obstruction of fulfillment is beyond the fault of the business people, and the event that caused the obstructed achievement is not a risk for business people.

## V. Conclusion

It can be concluded, that the application of the Covid-19 pandemic as force majeure is actually very difficult. If an affected company wants to use a force majeure clause to escape the responsibility, it must be able to prove that it really cannot overcome the impact of the epidemic. Thus, there is no possibility to continue the contract.

Steps that can be taken by the parties in order to avoid disputes, one of them is by renegotiating the agreements, or rescheduling achievements that must be done, or waiting for the conditions to return to normal for obligations that must be paid. It is hoped that business people can provide concessions as a form of concern in the current plague. Because of the importance of the understanding of force majeure as the basis of justification in terms of not fulfilling the performance of one of the parties in a contract, it is necessary to affirm the events or circumstances that are categorized as a force majeure. In doing so, the parties do not make their own understanding, meaning that there is comprehensive understanding about the definition of force majeure for both parties.

## References


Edmon Makarim. (2004). Kompilasi Hukum Telematika, PT Rajagrafindo Persada, Jakarta, September.

Elisatris Gultom, "Perlindungan Konsumen dalam transaksi perdagangan melalui electronic commerce" dalam Mieke Komar, Op.cit., hlm 58-59

Jay Folder & Patrick Quirk. (2001). Electronic Commerce and The Law, Sidney: John Wiley & Sons,

HS, Salim. (2008). Perkembangan Hukum Kontrak Innominaat di Indonesia, Jakarta, Sinar Grafika,

H. Amran Suadi. (2018). Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum, Jakarta: Prenamedia Group, hal. 115

M. Suyanto. (2005). Artikel : Aplikasi IT untuk UKM Menghadapi Persaingan Global. Kedaulatan Rakyat. Yogyakarta

Onno W. Purbo dan Wahyudi Aang Arif. (2001). Mengenal E-Commerce, PT. Elex Media Komputindo, Jakarta

P.N. H. Simanjuntak. (2017). Hukum Perdata Indonesia Cetakan ke- 3, Jakarta: Kencana.

Subekti. (2008). Hukum Perjanjian. Jakarta: PT. Intermasa, hal. 55

Sutan Remy Sjahdeini. (1993). Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia, Institut Bankir Indonesia, Jakarta, h. 47

Susilawati, et al. (2020). Impact of COVID-19's Pandemic on the Economy of Indonesia. Budapest International Research and Critics Institute-Journal (BIRCI-Journal).P.1147-1156

Kitab Undang-Undang Hukum Perdata (KUH Perdata), Wacana Intelektual, Wipress, 2007

Undang-Undang Nomor 9 Tahun 1999 tentang Perlindungan Konsumen, Jakarta 1999

Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Jakarta 2008

Peraturan Pemerintah Nomor 82 Tahun 2012 tentang Penyelenggaraan Sistem dan Transaksi Elektronik, Jakarta 2012