

Legal risk management: can the COVID-19 pandemic be included as a force majeure clause in a contract?

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Abstract

Purpose – This study aims to investigate the legal consequences of the use of force majeure (FM) clause in a contract related to the prospect of business sustainability. In addition, this paper also examines the legal risk perspective toward the interpretation of FM clauses in contracts that incorporate the coronavirus disease 2019 (COVID-19) pandemic situation.

Design/methodology/approach – The research design in this paper uses the normative juridical method, which means that it is carried out with library research on secondary data in the field of law, in the form of primary and secondary legal materials and tertiary legal materials. Primary legal materials are in the form of regulations relating to the variable topics of this paper, namely, FM, COVID-19, contracts and legal risk management (LRM).

Findings – The study found that studies of FM are still limited in terms of the aspects of contract sustainability, and none has reviewed them using the LRM paradigm.

Research limitations/implications – Given the fact that this pandemic is still ongoing and uncertain, the extent to which the broadening of the interpretation of FM in the contract by the parties and how much the designs offered above can help the parties, will greatly depend on the commitment of the parties. However, if the orientation is to maintain a long-term business relationship, it still fulfills the essence of a win-win solution that will greatly assist the parties in determining the continuity of the contract.

Practical implications – The results of this study are expected to provide benefit to the parties in an agreement affected by the COVID-19 outbreak and by regulators who wish to provide a legal basis in contract law.

Social implications – Long-term business relationships will create sound, peaceful and conducive environment for modern business. This kind of situation will sustain the business as expected.

Originality/value – This study concludes that the interpretation of FM can be extended to accommodate the interests of the parties to the contract by considering several principles in contract law and other relevant clauses. In addition, this study also produced four essential designs for LRM oriented to long-term business relationships in a win-win solution.

Keywords Legal risk management, Force majeure, Contract, COVID-19

Paper type Research paper

1. Background

Coronavirus pandemic outbreak, or popularly known as coronavirus disease 2019 (COVID-19), which began since the discovery of the first case in Wuhan City, China in December 2019, has been disastrous and miserable throughout the world. According to data provided



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