

The Implementation of Hardship Principles in OJK Regulation Number 11/POJK.03/2020 as a Strategy of Economic Strengthening in Handling the Impact of COVID-19 Pandemic

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ABSTRACT

This legal research examines the implementation of the principle of hardship in the economic stimulus policies issued by the Government of Indonesia as a strategy to strengthen the economy in handling with the impact of the COVID-19 pandemic. This legal research is a normative or doctrinal legal research conducted by reviewing the literature. The research approach carried out uses a statue approach and a conceptual approach. This legal research uses both primary and secondary legal materials. Based on the results of this legal research, the implementation of the hardship principle which has different implications from the *forje majeur* or *overmacht* principle is considered to be able to accommodate the interests and legal protection of the rights of creditors and debtors. The principle of hardship become a legal basis for not canceling a contract so as to maintain the continuity of the contract. The application of the principle of hardship in Financial Service Authority in Indonesia it called as "Otoritas Jasa Keuangan" (OJK) Regulation Number 11 / POJK.03 / 2020 aims to achieve justice for debtors and creditors in the context of facing conditions of decline in economic growth due to the impact of COVID-19 pandemic.

Keywords: principles of hardship; economic stimulus policy; COVID-19 pandemic

INTRODUCTION

Since December 2019, there was a new virus that was first discovered in the city of Wuhan, Province of Hubei, China.⁽¹⁾ The virus causes severe cases of pneumonia and can quickly spread and infect the human, which can react fatal if exposed. On February 11, 2020, World Health Organization officially named the disease caused by a new virus that emerged in the city of Wuhan as the disease (Corona Virus Diseases-2019) or now better known as COVID-19.⁽²⁾ COVID-19 is the biggest pandemic that hits evenly throughout the world after the 2nd World War.⁽³⁾ In a matter of months, the COVID-19 virus has become a global health emergency that affects almost all countries in the world.⁽⁴⁾

The impact of COVID-19 spreads to various fields, including health, social, political, economic and various other fields, causing a domino effect for all countries in the world. Talking about the economic impact caused by COVID-19, driven largely by falling demand, it can be interpreted that there are no consumers to buy goods and services available in the global economy.⁽⁵⁾ It is certain that the global economy will run stagnant, in fact there will be a tendency to experience a slowdown or even broken. This follows from the determination of the World Health Organization which states that the COVID-19 outbreak has greatly affected the sustainability of the business world. The economic downturn has become a major threat during and after the COVID-19 pandemic.⁽⁶⁾

Indonesia is one of the countries that has not escaped the attacks of the COVID-19 disease. In fact, Indonesia has experienced a decline in economic growth which it is feared will make the Indonesian economy stagnate and even recession. An economic recession can be interpreted as a condition in which a period of economic decline occurs while trade and industrial activity is reduced, generally marked by a decline in GDP in two consecutive quarters.⁽⁷⁾ COVID-19 has had an extraordinary economic impact so that the government has paid special attention to dealing with this condition. The global economic situation has shrunk by 1% due to the COVID-19 pandemic, this can worsen if activities to limit economic activities to prevent the transmission of the spread of COVID-19 are not accompanied by an adequate fiscal response.⁽⁸⁾

In facing economic problems as a result of the spread of COVID-19, the Government of Indonesia acts as a determinant both in substance of rules and in regulating functions according to its authority. The position of the government has a very vital role in acting as a command that maintains Indonesia's economic growth in order to minimize the various possibilities that may occur amidst uncertain conditions. In carrying out its economic activities, Indonesia adheres to a "Mixed Economic System" which has a definition between a market economic system and a centralized economic system.⁽⁹⁾ The implementation of economic activities in Indonesia is still regulated by the government in a macroeconomic context. However, economic actors such as entrepreneurs and

the market are given the freedom to run their business, as long as the economic activity does not conflict with the prevailing laws and regulations.

The Minister of Finance of the Republic of Indonesia, Sri Mulyani Indrawati, stated that the World Bank predicts Indonesia's economy to be minus 3.5% or 2.1% in 2020.⁽¹⁰⁾ Based on this, the Government of Indonesia needs to issue policies to allow time for economic growth during and / or after the COVID-19 pandemic conditions. One of the policies from an economic point of view issued by the government is through credit relaxation. Credit relaxation as one of the options provided to allow time for the economy to grow by relaxing performance obligations for debtors. However, this then raises questions regarding how to accommodate the interests of creditors and protection of creditors' rights, considering that both debtors and creditors are affected by the economic impact of the COVID-19 pandemic.⁽¹¹⁾

The economic stimulus policy was realized with the issuance of the Financial Services Authority Regulation in Indonesia it called as "Otoritas Jasa Keuangan" OJK Regulation Number 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of COVID-19. The economic stimulus policy issued has the function of keeping the wheels of the Indonesian economy at bay, especially when the world economy is under pressure from a global economic recession as a result of the impact of COVID-19. The Financial Services Authority as an independent institution has the functions, duties and powers of regulation, supervision, examination and investigation in the financial sector. The economic stimulus policy issued by the government is expected to be able to minimize the worst possible impact from an economic perspective.

Credit restructuring is regulated in Article 2 paragraph (2) of the Financial Services Authority Regulation OJK Regulation Number 11 / POJK.03 / 2020.⁽¹²⁾ The object designated to implement the economic stimulus policy as stipulated in Article 1 number 1 of the Financial Services Authority Regulation OJK Regulation Number 11 / POJK.03 / 2020 is a bank that includes conventional commercial banking, sharia and rural banks. Article 1 number 1 of the Financial Services Authority Regulation OJK Regulation Number 11 / POJK.03 / 2020 reads: "*Banks are conventional commercial banks including sharia business units, Islamic commercial banks, people's credit banks, Islamic people's finance banks, which carry out activities. business conventionally or based on sharia principles.*" However, there are conditions that raise questions regarding the economic stimulus policies issued by the government.

At the theoretical and dynamic level of practice, there is the existence of *overmacht* as a coercive situation that arises as a result of the parties being unable to carry out their obligations in the engagement where the cause of the inability is beyond the capabilities of the parties. However, in fact, the *overmacht* is considered to be a solution to the problem that has not been balanced in protecting the interests of the parties, in fact there is a tendency to only benefit one party. In responding to these conditions, there is a principle, namely the principle of "hardship" as a solution to problems in coercive circumstances that arise while still accommodating the interests and rights of the parties in a balanced manner. Based on the background described by the author, then the authors examines the issue of protecting the rights of creditors and debtors and the significance of the credit relaxation policy in dealing with the impact of COVID-19 pandemic in order to solve problems for parties to achieve legal certainty and legal protection. In terms of the application of the hardship principle in the OJK Regulation. OJK Regulation Number 11 / POJK.03 / 2020 in order to function as problem solving for the parties to achieve legal certainty and protection. The study written by the author is further outlined in a legal research article entitled, "**Implementation of Hardship Principles in OJK Regulation Number 11 / Pojk.03 / 2020 as a Strategy for Economic Strengthening in Handling the Impact of COVID-19**".

METHODS

Legal research compiled by the author is normative or doctrinal legal research. Doctrinal research is used to study the application of the rules or norms in positive law.⁽¹³⁾ Doctrinal legal research is a process to find legal rules, legal principles, and legal doctrine to overcome legal problems faced by examining literature that focuses on analyzing and studying primary and secondary legal materials so that legal research will be able to produce theoretical arguments or new concepts in an effort to solve legal problems.⁽¹⁴⁾ Legal research conducted by the author uses a statutory approach and a conceptual approach. The legal materials used in this legal research are primary and secondary legal materials regarding the application of the hardship principle in OJK Regulation Number 11 / POJK.03 / 2020.

RESULTS

COVID-19 has paralyzed the global economy, this impact is caused by the transmission of the virus which is massive and cannot be prevented. The policies carried out by the government in the form of social distancing, physical distancing, lockdown and various other policies of course have an impact on economic conditions in a country.⁽¹⁵⁾ As a result of the policies issued, domestic flights and international flights were closed, various transportation routes were closed, all government commercial centers which caused hotspots to spread COVID-

19 to be closed indefinitely. Based on an economic standpoint, the impact of the COVID-19 outbreak is a devastating blow to the destabilizing conditions of a country.

As of March 31, 2020, the Government of Indonesia issued a regulation regarding Large Scale Social Restrictions or in Indonesia it abbreviated as “Pembatasan Sosial Berskala Besar” in dealing with the COVID-19 outbreak. The Government of Indonesia issued details regarding the technical implementation of Large Scale Social Restrictions through the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19). Large Scale Social Restrictions mean that certain activities of residents in an area suspected of being infected with COVID-19 are restricted. The determination of the Large Scale Social Restrictions by the Government of Indonesia has basic considerations such as epidemiology, threat magnitude, effectiveness, resource support, technical operations, economic, social, cultural and security considerations.

1. School and work vacations.
2. Restriction of religious, social, cultural activities in public places or public facilities.
3. Modes of transportation.
4. Other activities are specifically related to defense and security aspects.

The imposition of Large Scale Social Restrictions certainly has an impact on the wheels of the Indonesian economy, in this case especially Jakarta. According to an economist from the Institute for Development of Economic and Finance Bhima Yudhistira Adhinegara, “Large Scale Social Restrictions impacts all business sectors in Jakarta, especially for sectors that are not engaged in the provision of public needs as regulated in the Minister of Health Regulation Number 9 of 2020 concerning Guidelines Large-Scale Social Restrictions”.⁽¹⁶⁾ An instant impact that can be felt immediately will occur on people who work in the informal sector. Gradually, the Large Scale Social Restrictions in Jakarta will feel the stability of the national economy. This happened because 70% of the circulation of money occurred in the capital city of Jakarta. Jakarta contributes significantly to national income, particularly tax revenue, of course this will have an effect on the macro economy and the State Budget.

In accordance with the Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large Scale Social Restrictions, as stipulated in Article 13 that activities at work must be closed except for some sectors that are oriented towards community services. As reported by the online “Bisnis Tempo” due in April 2020, The sectors referred to include defense and security, public order, food needs, fuel oil and gas, health services, economy, finance, communications, industry, export and import, distribution, logistics and other basic necessities. The existence of this policy certainly has an impact on other sectors that are obliged to close during the Large Scale Social Restrictions period, resulting in a decrease in work that is approaching dormant or dead. From an economic perspective, of course the Indonesian government is very much needed to design a policy to deal with the conditions of the COVID-19 pandemic to regulate the survival of the people. The Indonesian government subsequently issued an economic stimulus policy through the issuance of the Financial Services Authority Regulation OJK Regulation Number 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of COVID-19

Normatively, policy has a definition, “a purposive course of action followed by an actor or set of in dealing with a problem or matter of concern” or it can be interpreted that a policy is a series of actions that have a specific objective which is followed and implemented by an actor or group. people to find a solution to a problem.⁽¹⁷⁾ In this case, it is intended that policies that refer to concrete considerations from an economic perspective affected by COVID-19 can maintain economic stability and minimize the ongoing and future global impacts. In order to overcome the economic impact of the COVID-19 pandemic, the Indonesian Government has issued an economic stimulus policy, namely Government Regulation in Lieu of Law Number 1 of 2020 as ratified as Law Number 2 of 2020. The urgency of the issuance of Law Number 2 of 2020 is an effort from the government due to the direct implications of the COVID-19 pandemic, namely a slowdown in national economic growth, a decrease in state revenues, and an increase in state spending and financing. Through these conditions, efforts from the Government of Indonesia are needed to handling as well as the national economy with a focus on spending on health, social safety net, and economic recovery for businesses and people affected by COVID-19.⁽¹⁸⁾

The Government of Indonesia specifically issued an economic stimulus policy in the form of the OJK Regulation Number 11 / POJK.03 / 2020 concerning the National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of COVID-19. Through the issuance of the OJK Regulation, it is hoped that it can encourage optimization of banking performance, especially the intermediation function, maintain financial system stability and support economic growth. Stakeholders appointed in implementing economic stimulus policies are banking. This is regulated in Article 1 number 1 of OJK Regulation Number 11 / POJK.03 / 2020 which reads, “Banks are conventional commercial banks including sharia business units, Islamic commercial banks, people's credit banks, Islamic people's finance banks, who carry out business activities conventionally or based on sharia

principles." Through this economic stimulus policy, it can be seen that banks are taking a big role in dealing with the COVID-19 pandemic.

The economic stimulus policy through the issuance of OJK Regulation Number 11 / POJK.03 / 2020 classifies two things, namely policies for determining asset quality and policies for restructuring credit or financing.⁽¹⁹⁾ The regulated policy is in line with other economic stimulus policies stipulated in the Minister of Finance Regulation Number 23 / PMK.03 / 2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Outbreak. The policy of the Indonesian Government in the form of credit relaxation as a model of economic manipulation that is commonly practiced in various countries in the world, even credit relaxation is implemented in the tax payment delay mechanism.⁽²⁰⁾ One of the countries that has implemented credit relaxation in the face of the COVID-19 pandemic is the United States.

The COVID-19 pandemic has caused business closures, various canceled activities, and the implementation of social distancing, physical distancing and even lockdowns triggering an economic downturn in an uncertain period.⁽²¹⁾ Since the health crisis caused by the COVID-19 disease, banks in America have given safety priority to employees and customers.⁽²²⁾ In fact, the bank has also offered a range of programs to support individual and business customers affected by the pandemic, including fee waivers, deferred payments and other accommodations depending on the circumstances of the customer. This action is considered to help limit the economic impact on the country and spur recovery conditions in the future.

The condition of the COVID-19 pandemic has become a background for the government to seek credit relaxation. The credit relaxation policy is intended as an effort to restore the people's economy principle by leveling it with the principle of equality in order to protect the interests of the economy, including creditors and debtors. In realizing national ideals the economy must be formulated on the basis of cooperation. This concept as expressed by Mohammad Hatta, "*we must not forget that our country is based on moral principles, which are contained in the Pantjasila, five principles: Divine Almighty, humanity, national consciousness, democracy and social justice.*"⁽²³⁾ This is certainly in line with the mandate of Article 33 of the 1945 Constitution of the Unitary State of the Republic of Indonesia, which places the role of the state in a strategic position to organize the economy and control important production branches to ensure the prosperity and welfare of the people on an economic basis. Thus, the economic stimulus policy must be able to accommodate the prosperity and welfare of the people.

An economic stimulus policy was issued to deal with the COVID-19 pandemic conditions which hampered and even crippled Indonesia's economic growth. One of the economic stimulus policies issued by the government is OJK Regulation Number 11 / POJK.03 / 2020. OJK Regulation Number 11 / POJK.03 / 2020 is expected to accommodate the interests of the public, in this case, creditors and debtors in a fair and balanced manner in the face of this increasingly uncertain condition. Justice acts as a knife of analysis in inventorying and assessing the implementation of economic stimulus policies through the issuance of OJK Regulation Number 11 / POJK.03 / 2020 in which justice is meant as a form of protecting the rights of both creditors and debtors in a balanced manner.

In the corridor of the engagement, there is a principle that is used to measure or provide an assessment in relation to being a parameter in case of difficult circumstances. Difficult situations in the engagement corridor mean that unpredictable circumstances that occur during the process of the engagement or contract. The principle that becomes the parameter is called the principle of hardship or *rebus sic stantibus*. The formula for the unexpected actually becomes the initial basis for the application of the *rebus sic stantibus* to renegotiate contracts. The concept of hardship principle is different from default or *overmacht* or *force majeure*. The consequences of *overmacht* or *force majeure* as well as the resulting legal consequences are in some cases considered to be detrimental to one of the parties, even the resulting dispute settlement pattern is deemed unsupportive of the needs of business actors. With this background.⁽²⁴⁾ Important and fundamental differences regarding default or *overmacht* are regulated in the provisions of Book III of the Civil Code which are scattered in several articles, namely Part IV regarding Reimbursement of Costs, Losses and Interest due to non-fulfillment of an agreement (Articles 1244-1245 of the Civil Code) while the principle of hardship has not been regulated in a manner concrete in the form of a law. The reflection of the absence of rules in the form of law is that generally judges will decide a case based on the *overmacht* principle, so that the concepts of the hardship and *overmacht* principles are equated and become biased.

Etymologically, the term hardship in Indonesia is defined as a difficult situation or difficulty or it can also be interpreted as a burden. In various legal systems, the principle of hardship or *rebus sic stantibus* is used with different terms but with the same purpose, including frustration of purpose, *wegfall der geschäftsgrundlage*, *iniprevisio* and *accessiva anerosita sopravvenuta*. The principle of hardship is widely used in international trade practice. This can be identified by the inclusion of hardship clauses in various international contracts. The principle of hardship has been widely applied in the international trade arena, but has not yet been concretely regulated in the form of a law in Indonesia. The principle of hardship becomes a reference in building the theoretical foundation that will be carried put in this study. The principle of hardship is a new doctrine that fan be

used in assessment or parameter of difficult circumstances (it can be interpreted as an unpredictable situation that will occur during an engagement or contract).

In the implementation of the hardship principle, the parties are bound to carry out their observations subject to the applicable provisions regarding the hardship principle (as an exception). Based on Article 6.2.1 of the UNIDROIT Principles of International Commercial Contracts (UPICC), this matter is regulated about “*contract to be observed*” or defined as a contract that must be obeyed. In accordance with Article 6.2.1 there are two main things that are regulated, among others:

1. Binding character of the contract the general rule.

The binding nature of the contract as a general rule. The purpose of the general rule is to confirm that the contract is binding to be performed as long as possible, regardless of the burden borne by the implementing party. This can be interpreted that even though one party experiences a large loss or the implementation of the contract becomes meaningless to the other party, however, the contract must be respected.

2. Change in circumstances relevant only in exceptional cases.

The relevant change in circumstances is only related to certain contracts or contracts whose implementation has not been carried out / is still valid and has a long term.

The principle of the binding nature of the contract as referred to in letter a above is not absolutely absolute. This is mainly due to circumstances that give rise to a fundamental change in the balance of the contract. Such a situation is an exempt situation as referred to in the hardship principles.

In the international scope, the principle of hardship is regulated in the UNIDROIT Principles of International Commercial Contracts (UPICC). The normative definition of the hardship principle is regulated in Article 6.2.2 UPICC which reads,

"There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished and

- a. *The events occur or become known to the disadvantaged party after the conclusion of the contract;*
- b. *the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;*
- c. *the events beyond the control of the disadvantaged party; and*
- d. *the risk of the events was not assumed by the disadvantaged party.*⁽²⁵⁾

Based on these rules, the principle of hardship is applied in the event of an event that fundamentally changes the balance of the contract caused by the cost of contract execution to increase very high, burdening the contracting party (the debtor) or the contract execution value is greatly reduced for the receiving party (creditor). There are elements that must be fulfilled, among others, events that occur or are known to the aggrieved party after the closing of the contract, events cannot be reasonably predicted by the aggrieved party at the time of contract closure, events that occur beyond the control of the injured party and the risks of that event not suspected by the aggrieved party.

Based on the description of the UNIDROIT Principles of International Commercial Contracts (UPICC) regarding the principles of hardship and the conditions that must be met as described above, there are three conditions to determine the validity of the cause of hardship, including:

1. Fundamental alteration of equilibrium of the contract.
2. Increase in cost of performance.
3. Decrease in value of the performance received by one part.

Based on these three conditions, then the application of the hardship principle can be reviewed in the economic stimulus policy issued by the Government of Indonesia OJK Regulation Number 11/ POJK.03/2020.

DISCUSSION

The principle of hardship can be a legal basis for not canceling a contract so as to maintain the continuity of the contract. This is different from the *overmacht* which has a repressive effect until the cancellation of the contract. Therefore, hardship further protects the interests of creditors and debtors in an engagement or contract as long as the conditions as mentioned are met. In the context of the economic stimulus policy issued by the government in the form of the issuance of OJK Regulation Number 11 / POJK.03 / 2020, three conditions must be met from the application of the hardship principle, including changes in contract balance fundamentally, increased contract implementation costs and decreased contract implementation value. accepted by either party.

For the business world, the COVID-19 pandemic leaves room for its own problems. This is because the COVID-19 pandemic has stalled various business sectors in Indonesia. The business sectors that are directly affected include the hotel sector, the transportation sector, the tourism sector, the conventional buying and selling sector, the manufacturing sector and other business sectors that depend on the free movement of people. It is

predicted that some of these sectors will experience a slowdown or even experience difficulties that are threatened to stop running their business activities. In responding to these various impacts, the Government of Indonesia subsequently issued an economic stimulus policy in order to save the national economy. Various economic stimulus and fiscal and non-fiscal incentives were provided to communities and businesses affected by the COVID-19 pandemic. This step emphasized that the COVID-19 pandemic conditions had an impact, among others, on a slowdown in national economic growth, decreased state revenues, and increased state spending and financing so that various efforts were needed to save health and the national economy. One of the economic stimulus policies issued by the government is OJK Regulation Number 11 / POJK.03 / 2020.

In accordance with OJK Regulation Number 11 / POJK.03 / 2020 as an effort by the Government of Indonesia in saving health and the national economy. Banks as important actors in economic stimulus policies can provide restructuring / credit relief / financing to debtors. This can be done on condition that the debtor as intended is affected by the spread of COVID-19, either directly or indirectly, which causes the debtor to experience difficulties in fulfilling obligations to banks (conventional commercial banks, including sharia business units, Islamic commercial banks, rural banks, Islamic people's finance bank).⁽²⁶⁾ The economic stimulus policy issued by the Government of Indonesia was motivated by the stagnation experienced by the industrial sector which was unable to carry out its business activities during pandemic conditions. The implication of this is that the company cannot pay off its financial obligations to banks or finance companies.⁽²⁷⁾

In the context of the COVID-19 pandemic, the principle of hardship can be applied because both debtors and creditors cannot predict the occurrence of the pandemic. The COVID-19 pandemic is included as a force majeure depending on the definition of a coercive situation (if any) in the agreement. The principle of hardship places more emphasis on fundamentally unbalanced situation between the parties, while force majeure has a more general meaning that refers to unexpected events beyond the control of the parties. In the application of the principle of hardship in the occurrence of the COVID-19 condition, it has met the criteria because in the coercive conditions that occur between creditors and debtors there is a fundamental imbalance that cannot be predicted at the time the agreement is made.

The government has openly conveyed to financial industry players to provide credit relaxation. This credit restructuring may be granted if there is a change in the balance of the contract fundamentally. In this case, the change in the balance of contracts is fundamentally caused by the COVID-19 pandemic, where debtors experience difficulty in fulfilling their obligations to creditors due to stagnant economic growth and even slowing down due to unable to carry out business activities. The phrase "fundamental" depends on the circumstances of the events experienced by debtors and creditors. The COVID-19 pandemic has fundamentally changed the balance of contracts. The implication of this, namely on the substance of the expense which is a clause in the engagement contract.

In the Indonesian perspective, although it has not been regulated in the Civil Code, Indonesia does accommodate the application of the hardship principle in the Bill on Contracts (ELIPS) which uses the term "burden". Where the execution of a contract becomes very heavy for one of the parties, the party will however be bound to carry out its obligations subject to the stipulated provisions. The provisions regarding expenses that serve as the benchmark for changes in the balance of contracts fundamentally include:

1. In the event of events that arise or are known to the aggrieved party after the contract is made.
2. Events that the aggrieved party could not properly consider at the time of contract procurement.
3. Events are beyond the control of the injured party.
4. The risk of the event is not assumed by the aggrieved party.

Based on these provisions, the principle of hardship can be applied in dealing with the economic situation affected by the COVID-19 pandemic. The principle of hardship can be applied in the economic policy stimulus issued by the Government of Indonesia in dealing with events that cause changes in the balance of contracts fundamentally.

The state of the COVID-19 pandemic has implications for the sustainability of business contracts. This is because debtors experience obstacles and obstacles in carrying out their business activities considering that efforts are needed as regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019. In terms of preventing the transmission of the spread of the COVID-19 disease in the form of social distancing and physical distancing, this has an impact on the rate of economic growth carried out by the people, especially business actors. Business actors experience an increase in contract implementation costs that must be borne by creditors because, the contract engagement clause continues to run, but the business activities carried out cannot run optimally. The consequence that is borne for the creditor is that the context of the performance implementation must be fulfilled by the debtor by taking into account the proportionality considerations of rights and obligations.

Economic policy stimulus OJK Regulation Number 11 / POJK.03 / 2020 is the answer to this problem because it accommodates a balance of achievement for both parties between the debtor and creditor by paying attention to the rights and obligations inherent in the parties while still taking into account changes in balance contracts that occurred due to the COVID-19 pandemic. The consequence that is borne for the creditor is that the context of the performance implementation must be fulfilled by the debtor by taking into account the proportionality considerations of rights and obligations. Economic policy stimulus OJK Regulation Number 11 / POJK.03 / 2020 is the answer to this problem because it accommodates a balance of achievement for both parties between the debtor and creditor by paying attention to the rights and obligations inherent in the parties while still taking into account changes in balance contracts that occurred due to the COVID-19 pandemic.

From an economic perspective, the impact of the COVID-19 pandemic has caused an increasingly difficult situation for both business actors, service providers, distributors, consumers and even banks. For debtors, a decrease in turnover due to reduced demand will have an impact on the ability to pay credit to creditors, even worse, it can result in default. Based on the Indonesian Hotel and Restaurant Market Sentiment Survey on the Effect of the COVID-19 Outbreak in March 2020 (PHRI and Howath HTL), hotel occupancy rates fell by 25-50% with total revenue falling in the range of 25-50%. Likewise in the banking sector, the Financial Services Authority released data that as of March 27, 2020 the risk profile was still maintained with a gross Non-Performing Loan (NPL) of up to 2.79%. Seeing these conditions, the government then issued OJK Regulation Number 11 / POJK.03 / 2020 as a guideline for implementing economic stimulus policies because the COVID-19 pandemic conditions caused a decrease in the value of contract implementation received by one party (in this case the debtor).

The issuance of an economic policy stimulus in the form of OJK Regulation Number 11 / POJK.03 / 2020 by implementing the principle of hardship aimed at achieving justice for the parties, creditors and debtors. In abstract, the value of justice is subjective, justice is an abstract thing that concerns ethical values held by a person.⁽²⁷⁾ Referring to Rawls's theory, namely justice as fairness is what is considered the fairest (fair) and of course subjective from the judiciary through judges. Efforts to realize justice in law are dynamic processes, so it takes time to achieve them. The effort to achieve justice is also a process dominated by the general framework of the political order in the actualization process.⁽²⁸⁾ The principle of justice becomes the benchmark for what is right, good and right in life because it binds everyone. The value of justice must be at the forefront of every legal system.⁽²⁹⁾ Law is a form of fulfillment of the value of justice, in which the value of justice serves as the basis and critical norm in the application of law. Economic policy stimulus in the form of OJK Regulation Number 11 / POJK.03 / 2020 in accommodating the interests of debtors and creditors by applying the hardship principle after fulfilling the stipulated conditions in the form of changes in the fundamental balance of contracts, increased contract implementation costs, and decreased implementation value. The contract received by one of the parties is expected to achieve fairness. The value of justice in the issuance of the economic policy stimulus is to be able to accommodate the interests of the parties in a balanced manner which is accompanied by a form of balanced protection of the rights of creditors and debtors.

CONCLUSION

The COVID-19 pandemic has caused the rate of economic growth in Indonesia to reセッション. In order to save and handling the national economy, the Government of Indonesia issued an economic stimulus policy in the form of OJK Regulation Number 11 / POJK.03 / 2020. The economic stimulus policy accommodates the principle of hardship in providing legal protection for creditors and debtors in a balanced manner. The validity of the hardship principle is considered to have been applied if it has met the three requirements of the application of the principle, including changes in the fundamental balance of the contract, increased costs of contract execution, decreased value of contract execution received by one of the parties.

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