



UNIVERSITAS  
ISLAM  
INDONESIA

Faculty of Law  
Universitas Islam Indonesia

In the age of pandemic, Covid-19 had impacts on humans. In relation with the humans has a correlation with the development of law, and thus the committee held the 2020 International Students Colloquium with the topic of "Law and Development During Pandemic Era: Alleviating the Disadvantages to the Law that Affected by Covid-19". The objective of the conference is to acknowledge the participants regarding how the settlement should be the problem and disadvantage caused by the pandemic; to engage the participants to think critically to the polemic issue of law during a pandemic; and as a venue for lecturer, student, and community in responding to poor resolution from each country.

The conference was successfully held on November 28, 2020 along with around 289 participants consist of students and the community. As the concept of the conference comprised between the session for students to make a presentation of the issue they took, and the main session presented by the lecturer. There were 13 students submitted their papers from varies institution background. We glad to receive that they have a unique idea to discuss.

As the output of the conference, the committee proudly publishes the dissemination issue had discussed in the conference by collecting the student's paper in this proceeding. For this reason, this proceeding may inform the readers about the legal issue, particularly, in Indonesia, South Korea and Malaysia.

ISBN 978-623-94803-7-0



9 786239 480370

law.uii.ac.id



FACULTY OF  
LAW

# PROCEEDING

## Law and Development in the Era of Pandemic

Faculty of Law Universitas Islam Indonesia

PROCEEDING INTERNATIONAL

International Student Colloquium 2020

Published in July 2021



**International Proceeding**

Law and Development in the Era of Pandemic

Published in July 2021



**International Proceeding**  
Law and Development in the Era of Pandemic

Faculty of Law  
Universitas Islam Indonesia,  
Special Region of Yogyakarta, Indonesia

**Published in July 2021**



**FH UII PRESS**



**Publisher**  
**FH UII Press**

---

**International Proceeding**

Law and Development in the Era of Pandemic

ISBN: 978-6239-4803-7-0

---

© Faculty of Law, Universitas Islam Indonesia

---

Cover Design	:	Rahadian Diffaul Barraq Suwartono, S.H.
Layout Design	:	Rahadian Diffaul Barraq Suwartono, S.H.
Published	:	31 July 2021
Conference date	:	28 November 2020
Halaman	:	ix + 137
ISBN	:	<b>978-6239-4803-7-0</b>
Publisher	:	<b>FH UII Press</b>

Tamansiswa Street 158 Yogyakarta, PO BOX. 1133  
Phone: +62274-379178, e-mail: [penerbitan.fh@uii.ac.id](mailto:penerbitan.fh@uii.ac.id)

---

## **Editorial Board**

**Dodik S. N. Heriyanto, S.H., M.H., LL.M., Ph.D.** (Universitas Islam Indonesia, Indonesia)  
**Drs. Agus Triyanta, M.A., M.H., Ph.D.** (Universitas Islam Indonesia, Indonesia)  
**Dr. Nurjihad, S.H., M.H.** (Universitas Islam Indonesia, Indonesia)  
**Dr. Idul Rishan, S.H., LL.M.** (Universitas Islam Indonesia, Indonesia)

## **Board of Reviewer**

**Bagya Agung Prabowo, S.H., M.H., Ph.D.** (Universitas Islam Indonesia, Indonesia)  
**Prof. Dr. Budi Agus Riswandi, S.H., M.Hum.** (Universitas Islam Indonesia, Indonesia)  
**Assoc. Prof. Jihyun Park, Ph.D.** (Yongsan University, South Korea)  
**Assoc. Prof. Sonny Zuhuda, Ph.D.** (International Islamic University Malaysia, Malaysia)  
**Siti Rahma Novikasari, S.H., M.H.** (Universitas Islam Indonesia, Indonesia)  
**Ayu Atika Dewi, S.H., M.H.** (Universitas Islam Indonesia, Indonesia)  
**Ahmad Sadzali, Lc., M.H.** (Universitas Islam Indonesia, Indonesia)

## Steering Committee

Dr. Rohidin, S.H., M.Ag.  
 Dr. Abdul Jamil, S.H., M.H.  
 Hanafi Amrani, S.H., M.H., L.L.M., Ph.D  
 Dr. Muntoha, S.H., M.Ag.

## Organizing Committee

- Supervisor** : Dr. Abdul Jami, S.H., M.H.  
**Advisors** : Hanafi Amrani, S.H., M.H., LL.M., Ph.D.  
 Dr. Nurjihad, S.H., M.H.  
 Drs. Agus Triyanta, M.A., M.H., PhD.  
 Prof. Dr. Budi Agus Riswandi, S.H., M.Hum.
- Chairman** : Dodik Setiawan Nur Heriyanto, S.H., M.H., LL.M., Ph.D  
**Vice** : Dr. Idul Rishan, S.H., LL.M.  
**Members** : 1. Trisna Samodra. S.Si., M.Kom.  
 2. M. Arief Satejo Kinady, A.Md.  
 3. Desi Wulandari, S.Sos.  
 4. Rr. Sri Nurweningtyas, A.Md.  
 5. Novera Widyarani, S.S.  
 6. Gita Nastiti Walansari, A.Md.  
 7. Amelia Amrina Rosyada, S.H.  
 8. Rahadian Diffaul Barraq Suwartono, S.H.  
 9. Yusri Fahmanto, S.E  
 10. Helawan Perwiranto, S.Si.  
 11. Rahmad Hidayat, S.Kom.  
 12. M. Hasbi Ash Shidiki, S.Pd.I  
 13. Jeffri Ardiansyah, S.Kom  
 14. Dodi Ariyanto

## Table of Content

Editorial Board .....	v
Steering Committee .....	vi
Organizing Committee .....	vi
Table of Content .....	vii
Foreword .....	ix
<b>Paper Submission of ISC 2020</b>	
1. <b>Impact of the Pandemic Covid-19 on International Trade Law</b> <i>Dodik Setiawan Nur Heriyanto and Jihyun Park</i>	1
2. <b>Analysis of Conventional Mortgage Regulations and Electronically Integrated Mortgage Rights (eMortgage) for Land Deed Officers (PPAT), Mortgagees, and Land Offices in Klaten Regency</b> <i>Dian Shinta Amalia</i>	8
3. <b>The Role of Notaries in Loan Restructuring Impacted by Covid-19 in Islamic Banking</b> <i>Inda Siswanti</i>	18
4. <b>Turning The Substitute Notary Into An Acting Notary Upon The Death Of The Notary Public</b> <i>M. Dani Fadhlurrohmah</i>	29
5. <b>Achieving the Role of LPI (Investment Management Institution) as the State Investment Management Institution through the Job Creation Act</b> <i>Amalina Dwi Septiana</i>	38
6. <b>Covid-19, <i>Maqasid</i> Sharia &amp; Islamic Economic Law: VOSviewer Application</b> <i>Aam Slamet Rusydiana, Aisyah As-Salaftiyah, Muhammad Isa Mustafa</i>	47
7. <b>Comprehensive Efforts to Overcome Fintech Interest Rates and Compare with the Conditions of Increasing Fintech in the Pandemic Era</b> <i>Aryana Sekar Widyaningsih</i>	59
8. <b>Criminal Responsibility Towards Public Transportation Companies if Traffic Accidents Based on Law Number 22 Of 2009 Concerning Traffic and Road Transport</b> <i>David</i>	68
9. <b>Modifications to Hire Purchase Act 1967 and Housing Development (Control and Licensing) Act 1966: Protection to Purchaser and Financial Institutions Interests During Covid-19 in Malaysia</b> <i>Imtiyaz Wizni Aufa binti Othman, Izyan binti Nazim</i>	72
10. <b>The Great Reset: Legal Perspective and its Development</b> <i>Jeremy Abraham Guntur</i>	84
11. <b>Literature Review: The Development of E-Court System Technology as a Transformation of Indonesian Law in the COVID-19 Pandemic Era</b> <i>M. Kenza Radhya E. A.</i>	91



12. **Frustrated Contracts by Covid-19 Impacts** 99  
*Nik Hajar binti Nik Hisham*
13. **Advantages and Disadvantages of The Implementation of E-Litigation in Indonesia During the Pandemic Era** 106  
*Putri Ariqah*
14. **Cyber law in Indonesia and Its Relation to Indonesian Copyrights Law** 111  
*Robima Putri Ridhani*
15. **Pandemic Preparedness in Indonesia: The Role of Law and Regulation** 118  
*Safira Dewata Putri Alpatra*
16. **The Legal Implications of Covid-19 in Malaysia: Selected Issues** 125  
*Syed Ahmed Khabir Abdul Rahman, Saiful Akmal Subaimi*
17. **Encourage the Advance of Artificial Intelligent in Replacement the Position of Civil Servant Apparatus During Pandemic to Reduce the Nepotism in Indonesia's Bureaucracy** 132  
*Yuman Zaghlul Ismail*

## Foreword

*Assalamualaikum, wr., wb.,*

In the age of pandemic Covid-19 had impacts toward the humans. In relation with the humans has correlation with the development of law, and thus the committee held the 2020 International Students Colloquium with the topic of “Law and Development During Pandemic Era: Alleviating the Disadvantages to the Law that Affected by Covid-19”. The objective of the conference is to acknowledge the participants regarding how the settlement should be the problem and disadvantage that caused by the pandemic; to engage the participants to think critically to the polemic issue of law during pandemic; and as a venue for lecturer, student, and community in respond to poor resolution from each country.

The conference was successfully held on November 28, 2020 along with around 289 participants consist of students and community. As the concept of the conference comprised between the session for students to make a presentation of the issue they took, and the main session presented by lecturer. There were 13 students submitted their papers from varies institution background. We glad to receive that they have a unique idea to discuss.

As the output of the conference, the committee proudly to publish the dissemination issue had discussed in the conference by collecting the student’s paper in this proceeding. For this reason, this proceeding may inform the readers about the legal issue, particular, in Indonesia, South Korea, and Malaysia.

*Wassalamualaikum wr. wb.*

Editor in Chief,

Dodik Setiawan Nur Heriyanto, S.H., M.H., L.L.M., Ph.D.

## Modifications to Hire Purchase Act 1967 and Housing Development (Control and Licensing) Act 1966: Protection to Purchaser and Financial Institutions Interests During Covid-19 in Malaysia

Imtiyaz Wizni Aufa binti Othman<sup>a\*</sup>, Izyan binti Nazim<sup>b</sup>

<sup>a</sup>Imtiyaz Wizni Aufa binti Othman, Ahmad Ibrahim Kulliyah of Laws,  
International Islamic University Malaysia, Malaysia

<sup>b</sup>Izyan binti Nazim, Ahmad Ibrahim Kulliyah of Laws,  
International Islamic University Malaysia, Malaysia

\*Corresponding Author. Phone: (+60) 195938226, E-mail: imtiyaz.othman@gmail.com

### Abstract

*In containing the spread of Covid-19, the Malaysian government has imposed the Movement Control Order (MCO) starting from March 2020, which led to a halt in the progress of several sectors, including the hire purchase and housing development sectors. Realising several parties' financial and legal implications due to the MCO, the government has recently enacted new legislation as a temporary measure to curb the issue. The new Covid-19 Act received two-edged feedback from the society as some claimed that the Act is just too late, and the others argued on its efficiency to help the consumers due to its lack of clarity. Thus, the question that this paper seeks to resolve is whether the new Act does protect the interest of the parties involved? To answer this, this paper analyses the modifications made to the existing Hire Purchase Act 1967 and Housing Development (Control and Licensing) Act 1966 by discussing four sub-issues, namely (i) whether the relief given in section 23 forms unfair leniency against the owners, (ii) whether section 24 of Covid-19 Act is a necessary clause (iii) whether the Act protects the interest of the housing developers and purchasers because of the existence of Section 37 and (iv) whether the lack of the consequences in the event of contravention and guidelines for application limit the Act's effectiveness. Literature review methodology is applied to identify the gaps in the modification to the existing law by studying publications and news articles on the matter. By the end of the study, this paper finds that the Covid-19 Act does have the provisions intended to protect consumers but with the absence of specific provisions covering financial institutions. The saving clauses in the said modifications are found to be highly questionable and calls for analysis and amendment. This paper finds critical points within the Covid-19 Act, such as the need to study and amend the saving clauses and improving the clarity and exactness of the provisions.*

**Keywords:** Covid-19, Malaysia, Hire Purchase Act 1967, Housing Development (Control and Licensing) Act 1966, protection of consumer and financial institutions' interests, criticisms over Covid-19 Act, saving clauses.

## 1. INTRODUCTION

Following the outbreak of the coronavirus disease 2019 (COVID-19), the Malaysian government has implemented numerous preventive measures against a larger infection rate amongst Malaysians, including a movement control order which was gradually diversified to benefit infection rate among the population. The MCO halted the operation of non-essential public and private premises, which resulted in many losing their income and catalysed the introduction of, among other things, an economic stimulus plan in March 2020 and a Short-Term Economic Recovery Plan (Penjana) which cover financial aids, tax exemptions and a loan moratorium from the 1 April until the end of September as financial relief for consumers. Recently, the Minister at Legal Affairs Division of the Prime Minister's Department announced the gazetting of the Temporary Measures For Reducing The Impact Of Coronavirus Disease 2019 (Covid-19) Act 2020, hereinafter referred to as Covid-19 Act, which aims to provide temporary measures in reducing the impact of the pandemic and modify the provisions in among others, the Hire-Purchase Act 1967 and the Housing Development (Control and Licensing) Act 1966. This paper thus seeks to analyse whether the modifications made to both Acts protect the interests of purchasers and financial institutions in Malaysia.

### a. Hire Purchase Act 1967

The Hire-Purchase Act 1967 (HPA 1967) is the primary law governing the business of hire purchase between customers cum hirers, owners, and dealers, whenever applicable, in Malaysia. Its enforcement is also regulated by the Hire-Purchase (Terms Charges) Regulations 1968, Hire-Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 and the Hire-Purchase Order 1980. Following Schedule 1 from section 1 of the HPA 1967, it is evident in the everyday practice that most hire purchase agreements are those involving electrical appliances<sup>1</sup> and hire purchase financing for vehicles. In the latter's case, owners are often financial institutions which also act as the hirer's financiers. One of its provisions, section 16, regulates the owner's power to repossess hired goods when hirers have defaulted in payment of instalment twice successively.<sup>2</sup> This right to repossess is also subjected to a few other mandatory<sup>3</sup> requirements provided in HPA 1967.

### b. Modifications to HPA 1967 In Covid-19 Act

The new Covid-19 Act which was gazetted on the 23 October 2020 modified HPA 1967 under Part VIII of the Act via section 22 to 24. The Covid-19 Act has now modified the owner's existing right to repossess goods as a form of relief to the consumers. Section 23 of Covid-19 Act provides that owners cannot exercise the right to repossess goods contained in the hire purchase agreements for default in payment of

<sup>1</sup> Dr Azlinor Sufian, 'A Review on The Application Of Malaysian Hire Purchase Act 1967 And The Recent Amendments 2010' (2011) <<http://irep.iium.edu.my/16219/>> accessed October 2020 p. 2

<sup>2</sup> Ahmad Masum and Hajah Mas Nooraini Haji Mohiddin, 'Repossession of Goods by the Owner under the Malaysian Hire-Purchase Act 1967: An Overview' (2018) 1(1) Journal of Social Science and Humanities <[https://www.jsshjournal.com/uploads/2/6/8/1/26810285/004-\\_volume\\_1\\_issue\\_1\\_jssh\\_19-24\\_2018.pdf](https://www.jsshjournal.com/uploads/2/6/8/1/26810285/004-_volume_1_issue_1_jssh_19-24_2018.pdf)> accessed October 2020 pp. 21-22

<sup>3</sup> *Pang Brothers Motors Sdn Bhd v Lee Aik Seng* [1978] 1 MLJ 179 p. 3

instalment provided under section 16 of HPA 1967 throughout 1 April 2020 to 30 September 2020. The parliamentary statement indicates that the legislators intended to offer relief to hirers who suffer financial difficulties resulting from the movement restriction and its extensions.

Despite the Act coming into force later than the date provided in section 23, section 22 safeguards the provision by allowing the retrospective application of Part VIII of Covid-19 Act. Under section 22 (1), section 23 will be deemed to apply from 1 April 2020 and remain in operation until 31 December 2020. Further, the Minister responsible for the law may extend the period of operation of this part, subject to section 1(2), i.e. remain operating for two years and subsection (3) whereby the Minister may further extend the period of operation after the two years. The order in section 22(2) may be made more than once and, it must be made before the expiry of the existing period of operation.

Part VIII ends with section 24, a saving clause to the effect that it disregards section 23. An owner who had exercised his power to repossess goods under section 16 before the Covid-19 Act was published is considered to have validly exercised his right as if no modifications were made.

## 2. PROBLEM FORMULATIONS & ANALYSIS

There are several issues following the abovementioned modifications, and the main question that this paper is concerned with is whether the existing modifications made to the Hire Purchase Act in the Covid-19 Act provides fair protection to the interest of both hirers and owners. In order to analyze this, this paper will discuss three issues, namely:

### a. Whether the relief given in section 23 forms unfair leniency against the owners.

The writer is inclined to view the restriction from exercising the owner's right to repossess goods despite default in instalment payment as an active, more comprehensive application of the force majeure clauses in commercial contracts. Force majeure clauses are clauses which are voluntarily included by parties in a commercial contract to allow legal non-performance of contractual obligations during or because of force majeure events. The reason for this view is because the current pandemic undoubtedly fulfils the common essential elements of a force majeure event, namely; (1) it renders performance of contractual obligations impossible, (2) it is beyond the parties' control, (3) it is reasonably inevitable and (4) it is unforeseeable.<sup>4</sup> Force majeure clauses protect both parties from the rise of legal action when they fail to perform their contractual obligations. By inserting the repossession restriction in section 23, the legislature has made this legal excuse applicable for all hire purchase contracts made under the HPA 1967 regardless of whether they have included the clauses or not. It also provides active protection to the hirers by restricting the owners from repossessing the goods despite defaults, and not merely making the default

---

<sup>4</sup> Huber Konarski, 'Force Majeure and Hardship Clauses in International Contractual Practice' (2003) 4 International Business Law Journal <[https://www.researchgate.net/publication/284968473\\_Force\\_Majeure\\_and\\_Hardship\\_Clauses\\_in\\_International\\_Contractual\\_Practice](https://www.researchgate.net/publication/284968473_Force_Majeure_and_Hardship_Clauses_in_International_Contractual_Practice)> accessed November 2020 p. 5

excusable. Therefore, the content of section 23 is fair leniency and not oppression against the owners. This form of legal excuse for contractual non-performance has existed since hundreds of decades ago via the maxim *impossibilium nulla obligatio* (there is no obligation to do the impossible) which tempers with the rigid doctrine *pacta sunt servanda* (agreements must be kept), the basis of performance of contractual obligations.<sup>5</sup>

This view is in consideration of the severity of the impacts of the current pandemic to society's financial standing and the legal fraternity's mentions and references to the force majeure doctrine when discussing the impact of the pandemic to the legal sector. Many law firms and law experts have begun educating the people on the working mechanism of force majeure clauses and how they may be applicable in contracts in light of Covid-19 to the extent of explaining the alternatives to force majeure such as frustration and impossibility to excuse contractual non-performance.<sup>6</sup> Legal practitioners have also predicted the development of law in favour of this principle as it very much fits the current situation.<sup>7</sup> Therefore, the insertion of section 23 is expected fair leniency given to the people facing financial difficulties caused by the pandemic, and it is in line with the foundational rules in law.

Furthermore, the leniency in section 23 does not oppress the owners, especially giant financial institutions which usually act as financier and owner in the motor vehicle hire purchase, due to the many economic mechanisms available for recourse in overcoming lower-income caused by non-payment by hirers. It is undeniable that the continuous non-payment will affect banks' income through monthly payment and interest rates<sup>8</sup> but they do receive help and are thus capable of providing this relief to consumers. Among the economic mechanisms of aid available to financial institutions include the drawdown of capital and liquidity buffers which act as a stabiliser to the cash flow of financial institutions and an emergency fund to remain operating.<sup>9</sup> These mechanisms are only applicable to financial institutions and not individual consumers.<sup>10</sup>

<sup>5</sup> Peter J. Mazzacano, 'Force Majeure, Impossibility, Frustration & the Like: Excuses for Non-Performance; the Historical Origins and Development of an Autonomous Commercial Norm in the CISG' (2012) 2 *Nordic Journal of Commercial Law* <[https://www.researchgate.net/publication/228204507\\_Force\\_Majeure\\_Impossibility\\_Frustration\\_the\\_Like\\_Excuses\\_for\\_Non-Performance\\_the\\_Historical\\_Origins\\_and\\_Development\\_of\\_an\\_Autonomous\\_Commercial\\_Norm\\_in\\_the\\_CISG](https://www.researchgate.net/publication/228204507_Force_Majeure_Impossibility_Frustration_the_Like_Excuses_for_Non-Performance_the_Historical_Origins_and_Development_of_an_Autonomous_Commercial_Norm_in_the_CISG)> accessed November 2020 pp. 2-4

<sup>6</sup> Zachary M. Seelenfreund, Philip T. Simpson and Jeanne R. Solomon, 'Force Majeure, Impossibility, and Frustration of Purpose In the Era of COVID-19' (2020) <[http://www.robinsonbrog.com/docs/Force%20Majeure%20Memo%20\(01052152x9FBDB\).pdf](http://www.robinsonbrog.com/docs/Force%20Majeure%20Memo%20(01052152x9FBDB).pdf)> accessed November 2020 pp. 1-9

<sup>7</sup> Craig Rasile, Jason D. Krieser, Lisa M. Richman, Paul M. Thompson, and Shawn C. Hermes, 'Force Majeure And Covid-19: Frequently Asked Questions' (McDermott, Will & Emery, 20 March 2020) <<https://www.mwe.com/insights/force-majeure-and-covid-19-frequently-asked-questions/>> accessed November 2020. See point 10 and 11

<sup>8</sup> Dashveenjit Kaur, 'Moratorium on debt repayment a bane for banks' *The Malaysian Reserve* (27 March 2020) <<https://themalaysianreserve.com/2020/03/27/moratorium-on-debt-repayment-a-bane-for-banks/>> accessed November 2020

<sup>9</sup> 'Measures to Assist Individuals, SMEs and Corporates Affected by COVID-19' *Central Bank of Malaysia* (25 March 2020) <[https://www.bnm.gov.my/index.php?ch=en\\_press&pg=en\\_press&ac=5018](https://www.bnm.gov.my/index.php?ch=en_press&pg=en_press&ac=5018)> accessed November 2020

<sup>10</sup> Mathias Drehmann, Marc Farag, Nikola Tarashev and Kostas Tsatsaronis, 'Buffering Covid-19 losses – the role of prudential policy' *BIS Bulletin No 9* (24 April 2020) <<https://www.bis.org/publ/bisbull09.pdf>>

As such, it is safe to conclude that both parties do receive assistance from the government in surviving the pandemic. Besides, it is pertinent to note that the initial reason for the tabling of the current Covid-19 Act was to assist consumers and retailers who have no other recourse in this dilemma.<sup>11</sup> The Act was designed to be a relief, not an advantage nor oppression against the other party.

**b. Whether section 24 of Covid-19 Act is a necessary clause.**

Saving clauses in the Covid-19 Act, particularly sections 10, 21, 24, 31 and 37, were heavily criticised by members of the Parliament during the reading of the Bill. Section 24 specialises on the exception of Part VIII from applying to repossessions done before the publication of this Act. Members of the legislature who were against this clause critically argued that the existence of this clause defeats the purpose of introducing this Act entirely and should be removed from the Act. Their criticism was countered by an argument that the saving clause was required to provide certainty in the Act. The writer views this as a mistaken attempt to do something right. The inclusion of saving clauses is of importance especially when drafting legislation which seeks to change a statutory procedure<sup>12</sup> such as the Covid-19 Act with the exercise of the owner's right to repossess goods. Nonetheless, it is essential to note that inserting saving clauses must be done *ex abundanti cautela* (with an abundance of caution)<sup>13</sup>, only when necessary and must be specific.<sup>14</sup>

The problem with section 24 is that it disables the operation of Part VIII in its entirety. The clause failed to specify as to which kind of the previous exercise of the owner's right to repossess goods can be considered validly exercised and made the clause too absolute. It is understandable if the clause was to cater to matters which are already brought to court, for example, and thus is intended to avoid procedural complexity. However, should the law drafters have intended this, then they should have specified the saving clause to that effect, which they neglected. Failing to do this causes hirers facing repossession problem before this Act to be deprived of the relief from this Act even if they have yet to begin any action. It appears that the drafters were attempting to expedite the publication of the Act to the extent of overlooking the essential details of the functions and workings of saving clauses. The legislature was indeed pressured to table a Covid-19 Act as months have passed after the earliest MCO and its effects began to become apparent, but the public<sup>15</sup> and even the members of the

---

accessed November 2020

<sup>11</sup> Kalbana Perimbanayagam, 'Government urged to table Covid-19 bill to save retail, services and manufacturing sectors' *New Straits Times* (Kuala Lumpur, 29 April 2020) <<https://www.nst.com.my/news/nation/2020/04/588576/government-urged-table-covid-19-bill-save-retail-services-and>> accessed November 2020

<sup>12</sup> Rosmizan Muhamad, 'Savings Clause: Get It Right' (2011) 37(3) *Commonwealth Law Bulletin* 445 <<https://heinonline.org/HOL/P?h=hein.journals/commwlb37&i=453>> accessed November 2020 p. 446

<sup>13</sup> David Lowe and Charlie Potter, *Understanding Legislation A Practical Guide To Statutory Interpretation* (Chapter 6 Internal Aids to Interpretation, Hart Publishing 2018) p. 133

<sup>14</sup> Rosmizan Muhamad, 'Savings Clause: Get It Right' (2011) p. 446

<sup>15</sup> Vasantha Ganesan, 'How a Malaysian Covid-19 Act could help mall tenants and landlords who are in limbo' *The Edge Markets* (28 April 2020) <<https://www.theedgemarkets.com/article/cover-story-mall-tenants-and-landlords-limbo>> accessed November 2020

Parliament could not emphasise enough the importance of the retrospective application of this Act.<sup>16</sup> Disabling its application under section 24 fails the Act. It is baffling to see section 24 still there when so many have criticised it and requested its cancellation.

The question of disability of the Act brings us to the final issue, whether the Covid-19 Act is considered a little bit too late to serve its purpose. One of the Members of Parliament opined that the problem is not the lateness of the Act, but that the Act does not work.<sup>17</sup> The fact that the Act was published a lot later than it should have can be resolved with its retrospective application, but that is now no longer an option. However, none of these denies the excellent opportunities which this Act will provide for hirers to survive the pandemic in the coming months into its application. The Act will be useful to hirers and owners under the HPA 1967, but it would neglect some who have already suffered the impact of the pandemic. The government can remedy this problem with proper policy research<sup>18</sup> over the legal and procedural effects of the saving clause and by making necessary amendments to it.

### **Housing Development (Control and Licensing) Act 1966**

The housing industry in Malaysia for matters relating to purchase of property from developers is governed by the Housing Development (Control and Licensing) Act 1966, hereinafter “HDA”, read with the Housing Development (Control and Licensing) Regulations 1989, hereinafter “HDR”.<sup>19</sup> The HDA contains seven distinct parts and serves to protect the interest of purchasers by providing for the control and licensing of the business of housing development in Peninsular Malaysia. The developers and purchasers have to comply with the requirements laid down by the Parliament. Time is of the essence in housing development projects. Every procedure needs to comply with the deadline imposed by the law heavily. The MCO has called for a halt on the progress and developments of houses for three months since early March 2020.<sup>20</sup> Developers have faced problems that lead to the failure to meet the terms of the sale and purchase agreement (SPA).

### **Modifications to HDA 1966 In Covid-19 Act**

Due to the MCO, several problems have arisen, especially on the part of the developer and the purchaser. Constructions are interrupted, and the supply chain is held back. The temporary interruption caused a breach of responsibilities on the part of the developers, leading to several consequences. The Covid-19 Act 2020 has resolved a few issues arising from this predicament.

The first issue faced by the developers is the failure to comply with the deadline for

<sup>16</sup> Brian Chia and Ee Von Teo, ‘A Covid-19 Act makes legal and business sense’ *The Edge Markets* (9 June 2020) <<https://www.theedgemarkets.com/article/covid19-act-makes-legal-and-business-sense>> accessed November 2020

<sup>17</sup> Malaysian House of Representatives Deb 25 August 2020, No. 24, p. 108

<sup>18</sup> Rosmizan Muhamad, ‘Savings Clause: Get It Right’ (2011) p. 450

<sup>19</sup> Housing Development (Control And Licensing) Regulations 1989 PU(A) 58/1989

<sup>20</sup> Bernama, ‘Ministry to beef up housing development laws’ *The Edge Market* (10 September, 2020)

<<https://www.theedgemarkets.com/article/ministry-beef-housing-development-laws-%E2%80%94-zuraida.>>



delivery of vacant possession of a housing accommodation to the purchaser. Under the HDA, it shall be done within 24 or 36 months<sup>21</sup> and compensation with Liquidated Assessment Damages (LAD) be made for any delays.<sup>22</sup> The Parliament took note of the potential non-compliance; hence the enforcement of Section 35 of the Covid-19 Act saved the developers from accountability for the delay. The exclusion of the period of 18 March to 31 August 2020 from the calculation of the time for delivery and the period of liquidated damages<sup>23</sup> and application will be approved if the Minister is satisfied with the requirement.<sup>24</sup> The second issue is whether, during the MCO period where the operation is halted, the time limit is uninterrupted. The reason being if the property is defective, the buyer is entitled to claim from the developer within the Defect Liability Period stipulated in the agreement.<sup>25</sup> The Covid-19 Act provides the exclusion of the period between 18 March to 31 August 2020 from the calculation of the defect liability period.<sup>26</sup> In this event, the developer may apply for an extension of the period up to 31 December 2020, provided the Minister is satisfied that the developer is entitled to it.<sup>27</sup>

Meanwhile, for the issues faced by the purchaser, an issue arose on the difficulties in paying the purchase price within the stipulated time provided in the sale and purchase agreement, and as a result of the failure, the developers could claim from the purchaser interest on late payments.<sup>28</sup> Covid-19 Act came into rescue as the developers cannot impose late payment charges.<sup>29</sup> The purchaser can make an application for an extension to the Minister, and upon satisfaction by the necessary period, the developer shall not impose any late payment charges on the purchaser in respect of such unpaid instalment up to 31 December 2020.<sup>30</sup> This blanket extension is to ease the purchasers' affairs during this difficult time.

The modifications made to the HDA 1966 as discussed earlier is subject to the exemption and exception stipulated in the saving clause. The saving clause for Part XI is provided under Section 37 of the Covid-19 Act where it stipulates that this Act does not apply to those who terminate a contract, cause damages or initiate legal proceedings from 18 March 2020 until the date the Act comes into force. Subsection (2) stated that any late payment charges paid by the purchaser or liquidated damages that has been paid by the developer before the date of publication should not be refunded to the payer.

<sup>21</sup> Housing Development (Control and Licensing) Regulations 1989 (HDR), Schedule G and H.

<sup>22</sup> HDR, cl 23(2) of Schedule G agreement and cl 26(2) of Schedule H agreement.

<sup>23</sup> was included in this provision Temporary Measures For Reducing The Impact Of Coronavirus Disease 2019 (Covid-19) Act 2020, s 35(1).

<sup>24</sup> Covid-19 Act 2020, ss 35(2) and (3).

<sup>25</sup> Buang, S, "*Housing Development Act: Who Does It Protect?*" Working Paper presented at the National Housing Conference II: The Road Ahead in Nation Building 6 November 2001, Sunway Pyramid Convention Centre

<[https://www.hba.org.my/HBA/Speeches/hda\\_protect.htm](https://www.hba.org.my/HBA/Speeches/hda_protect.htm)>

<sup>26</sup> Covid-19 Act 2020, ss 36(1)(a) and (b) of the Covid-19 Act; Under the HDA, the Defect Liability Period is after the date the purchaser takes vacant possession and the time to undergo repair works and fix defects of the property.

<sup>27</sup> Covid-19 Act 2020, ss 36(2) and (3).

<sup>28</sup> Regulated Sale Contracts, Schedules G or H, cl 9 (2).

<sup>29</sup> Covid-19 Act 2020, ss 34(1).

<sup>30</sup> Covid-19 Act 2020, ss 34(2) and (3).

### **3. PROBLEM FORMULATIONS & ANALYSIS**

The modifications laid down above raised some concerns with the main issue being on whether the existing modifications made to the HDA 1966 in the Covid-19 Act provide sufficient protection to the interest of the purchasers and house developers. In analysing this, the discussion will focus on two issues namely:

#### **a. Whether the interest of the housing developers and purchasers is protected because of the existence of Section 37**

While Section 37(2) of the Covid-19 Act certainly benefits the housing developers in ensuring the purchaser performs their part of the contract, the purchaser might differ. The prorogation of this Covid-19 Act has led the purchasers to prioritise financial to avoid litigation, and this clause will not ease their burden if the payment cannot be refunded.

As a matter of course, the reason for the existence of the savings clause provided under Section 37 is for certainty and giving clarity to actions being made per the law. However, people's financial difficulties may not be mitigated by the inclusion of this clause. There are recommendations made by the members of the Parliament on the removal of saving clauses, including clause 37. However, in answering whether this section will be put out of the legislation, the Minister stated that the government would not remove this provision. The provisions provide certainty, and if there is a justification that it is proven to be an injustice to the public, amendments could be made in the future.<sup>31</sup> The writer's view is that the saving clause shall be removed as the primary intention of the legislation cannot be implemented due to its existence.

#### **b. Whether the lack of the consequences in the event of contravention and guidelines for application limit the Act's effectiveness**

The issue is on whether the Act's effectiveness in safeguarding the interest of the purchasers and house developers is diminished for the lack of consequential provisions and guidelines. The absence of the statutory provision may lead to prejudice on either of the parties. In answering this issue, comparison can best be made between the Singapore and Malaysia law where it can be seen that Malaysia lacks in specifying statutory provision that could safeguard the interest of purchasers as the situations where the Minister could reject the application for extension are not expressly stipulated. There are no consequential provisions as an effect of contravention made by any of the parties against the Covid-19 Act.

Reference to the Singapore's Covid-19 (Temporary Measures) Act 2020, hereinafter "Singapore Covid-19 Act", which came into force as early as 20 April 2020 can be made in the juxtaposition of the law in Malaysia and Singapore. Generally, the Singapore Covid-19 Act provides in-depth details for protection measures to the public in Singapore as compared to Malaysia's Covid-19 Act. Even though Singapore Covid-19 Act did not include a part specifically for housing developers and purchasers, the May 2020 Singapore Covid-19 Act Amendments points out the inclusion on the types

---

<sup>31</sup> Malaysian House of Representatives Deb 25 August 2020, No. 11, page 135.

of scheduled contracts entitled for the temporary relief under Sections 5, on the inabilities for parties to make payment to include the option or agreement between housing developers and purchasers.<sup>32</sup> The situations where breaches in construction affected by the pandemic and circuit breaker are provided in the COVID-19 (Temporary Measures) (Part 8 Relief) Regulations 2020. The other relevant provision in Singapore's Covid-19 Act can also be seen under Section 7A which laid down the relief from late payment interest or other charges such as the parties shall not be implicated with interest and termination of the contract because of inability from the other party to make payment.

On the question where there is no consequential provision for contravention made by any of the parties against Part XI of Malaysia's Covid-19 Act, this is a significant concern as it is not uncommon for parties to violate the law. The absence of consequential provisions puts the purchasers under the threat of manipulative developers as there is no statutory security against the contravention. Unlike in Malaysia, Singapore's Covid-19 Act does contain a penalty provision if the parties decided to act dishonestly<sup>33</sup> by establishing the consequences for taking action in contravention of the Act. The person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

For the lack of guidelines provided under the law, Malaysia did not specify the statutory provision, such as grounds for rejection of application for extension, as compared to Singapore which stipulates the occasions where the Registrar may reject an application.<sup>34</sup> The Ministry of Law Singapore also has put forward the directory and deadlines to apply for an Assessor's Determination on their website. This feature facilitates the public as they are guided in the process. The writer opines that the Malaysian government should provide a policy or platform to aid the parties and expedite the process. The effectiveness of this Act will not be achieved without proper execution. Singapore has made an exemplary effort in providing specific forms and websites regarding the subject.

#### 4. CONCLUSION

It can be concluded from the analysis that the Covid-19 Act does protect the customers, hirers in particular, under Part VIII of the Act which modified the HPA 1967 by disabling the owners' right to repossession of goods when hirers default the instalment payments. Although the modifications do not expressly create protection to the owners, this stems from the fact that the Covid-19 Act itself is designed to give protection to individual hirers who have no other recourse and are not intended to produce unfair advantage to the hirers. Criticisms over Part VIII especially on its saving clause in Section 24, however, do call for thorough assessment and amendment in order to maximize the effectiveness of the Covid-19 Act as far as the modifications to HPA 1967 are concerned.

Meanwhile, the modifications made to the HDA 1966 under Part of the Covid-19

---

<sup>32</sup> Singapore Covid-19 Act, s 4(1) read with para 1(i) and (j) of the Schedule.

<sup>33</sup> Singapore Covid-19 Act, s 8.

<sup>34</sup> Singapore Covid-19 Act, s 12.

**International Proceeding**

Law and Development in the Era of Pandemic

Act have provided relaxation and assistance which benefit both the housing developers and purchasers from legal liabilities, i.e. for extension of time, the housing developers under vacant possession and completion of housing accommodation and the purchasers for defect liability period and late payment interest. However, the modifications have accommodated the house developers more than the purchaser's interest. Thus, the government should make several amendments in the form of guidelines or regulations to truly serve the purpose of the legislation in reducing the impact of this pandemic.

**REFERENCE****Malaysia Legislation**

Hire Purchase Act 1967

Housing Development (Control and Licensing) Act 1966

Housing Development (Control and Licensing) Regulations 1989

Temporary Measures For Reducing The Impact Of Coronavirus Disease 2019 (Covid-19) Act 2020

**Singapore Legislation**

Covid-19 (Temporary Measures) Act 2020 (Singapore)

**Cases***Pang Brothers Motors Sdn Bhd v Lee Aik Seng* [1978] 1 MLJ 179**Books**Lee MP and Detta IJ, *Business Law* (3rd Edition, Oxford University Press 2018)Lowe D and Potter C, *Understanding Legislation A Practical Guide To Statutory Interpretation* (Chapter 6 Internal Aids to Interpretation, Hart Publishing 2018)**Periodicals**Aziz NA, et al. *Malaysia's approach in handling COVID-19 onslaught: Report on the Movement Control Order (MCO) and targeted screening to reduce community infection rate and impact on public health and economy* (J Infect PublicHealth, 2020) 6. <<https://doi.org/10.1016/j.jiph.2020.08.007>> accessed November 2020Bernama, 'Ministry to beef up housing development laws' *The Edge Market* (10 September, 2020)<https://www.theedgemarkets.com/article/ministry-beef-housing-development-laws-%E2%80%94-zuraida>

Buang, S, 'Housing Development Act: Who Does It Protect?' (2001) Working Paper presented at the National Housing Conference II: The Road Ahead in Nation Building 6 November 2001, Sunway Pyramid Convention Centre

<[https://www.hba.org.my/HBA/Speeches/hda\\_protect.htm](https://www.hba.org.my/HBA/Speeches/hda_protect.htm)> accessed November 2020Chia B and Ee VT, 'A Covid-19 Act makes legal and business sense' *The Edge Markets* (9 June 2020) <<https://www.theedgemarkets.com/article/covid19-act-makes-legal-and-business-sense>> accessed November 2020Drehmann M, Farag M, Tarashev N, and Tsatsaronis K, 'Buffering Covid-19 losses – the role of prudential policy' *BIS Bulletin No 9* (24 April 2020)

- <<https://www.bis.org/publ/bisbull09.pdf>> accessed November 2020
- Ganesan V, 'How a Malaysian Covid-19 Act could help mall tenants and landlords who are in limbo' *The Edge Markets* (28 April 2020) <<https://www.theedgemarkets.com/article/cover-story-mall-tenants-and-landlords-limbo>> accessed November 2020
- Kaur D, 'Moratorium on debt repayment a bane for banks' *The Malaysian Reserve* (27 March 2020) <<https://themalaysianreserve.com/2020/03/27/moratorium-on-debt-repayment-a-bane-for-banks/>> accessed November 2020
- Konarski H, 'Force Majeure and Hardship Clauses in International Contractual Practice' (2003) 4 *International Business Law Journal* <[https://www.researchgate.net/publication/284968473\\_Force\\_Majeure\\_and\\_Hardship\\_Clauses\\_in\\_International\\_Contractual\\_Practice](https://www.researchgate.net/publication/284968473_Force_Majeure_and_Hardship_Clauses_in_International_Contractual_Practice)> accessed November 2020
- Masum A and Haji Mohidin HMN, 'Repossession of Goods by the Owner under the Malaysian Hire-Purchase Act 1967: An Overview' (2018) 1(1) *Journal of Social Science and Humanities* <[https://www.jsshjournal.com/uploads/2/6/8/1/26810285/004-\\_volume\\_1\\_issue\\_1\\_jssh\\_19-24\\_2018.pdf](https://www.jsshjournal.com/uploads/2/6/8/1/26810285/004-_volume_1_issue_1_jssh_19-24_2018.pdf)> accessed October 2020
- Mazzacano PJ, 'Force Majeure, Impossibility, Frustration & the Like: Excuses for Non-Performance; the Historical Origins and Development of an Autonomous Commercial Norm in the CISG' (2012) 2 *Nordic Journal of Commercial Law* <[https://www.researchgate.net/publication/228204507\\_Force\\_Majeure\\_Impossibility\\_Frustration\\_the\\_Like\\_Excuses\\_for\\_Non-Performance\\_the\\_Historical\\_Origins\\_and\\_Development\\_of\\_an\\_Autonomous\\_Commercial\\_Norm\\_in\\_the\\_CISG](https://www.researchgate.net/publication/228204507_Force_Majeure_Impossibility_Frustration_the_Like_Excuses_for_Non-Performance_the_Historical_Origins_and_Development_of_an_Autonomous_Commercial_Norm_in_the_CISG)> accessed November 2020
- Muhamad R, 'Savings Clause: Get It Right' (2011) 37(3) *Commonwealth Law Bulletin* 446 <<https://heinonline.org/HOL/P?h=hein.journals/commwlb37&i=453>> accessed November 2020
- Perimbanayagam K, 'Government urged to table Covid-19 bill to save retail, services and manufacturing sectors' *New Straits Times* (Kuala Lumpur, 29 April 2020) <<https://www.nst.com.my/news/nation/2020/04/588576/government-urged-table-covid-19-bill-save-retail-services-and>> accessed November 2020
- Rasile C, Krieser JD, Richman LM, Thompson PM, and Hermes SC, 'Force Majeure And Covid-19: Frequently Asked Questions' (McDermott, Will & Emery, 20 March 2020) <<https://www.mwe.com/insights/force-majeure-and-covid-19-frequently-asked-questions/>> accessed November 2020
- Seelenfreund ZM, Simpson PT and Solomon JR, 'Force Majeure, Impossibility, and Frustration of Purpose In the Era of COVID-19' (2020) <[http://www.robinsonbrog.com/docs/Force%20Majeure%20Memo%20\(01052152x9FBDB\).pdf](http://www.robinsonbrog.com/docs/Force%20Majeure%20Memo%20(01052152x9FBDB).pdf)> accessed November 2020
- Sufian A, 'A Review On The Application Of Malaysian Hire Purchase Act 1967 And The Recent Amendments 2010' (2011) <<http://irep.iium.edu.my/16219/>> accessed October 2020

**International Proceeding**

Law and Development in the Era of Pandemic

**Miscellaneous**

Key Statistics of Labour Force in Malaysia, *Department of Statistics Malaysia*, (April 2020)

[https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bul\\_id=Y25FMFU4e1NLSIVpbk5reVF2M3pWUT09&menu\\_id=U3VPmlDoYUxzVzFaYmNkWXZteGduZz09](https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bul_id=Y25FMFU4e1NLSIVpbk5reVF2M3pWUT09&menu_id=U3VPmlDoYUxzVzFaYmNkWXZteGduZz09)>

Malaysian House of Representatives Deb 25 August 2020, No. 24

‘Measures to Assist Individuals, SMEs and Corporates Affected by COVID-19’ *Central Bank of Malaysia* (25 March 2020) <[https://www.bnm.gov.my/index.php?ch=en\\_press&pg=en\\_press&ac=5018](https://www.bnm.gov.my/index.php?ch=en_press&pg=en_press&ac=5018)> accessed November 2020