

## Recognition of Hardship as a Corrective Mechanism in Indonesian Contract Law under Extraordinary Changes in Circumstances

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### Abstract

Contract law in Indonesia is still often viewed as rigid and unchanging, even though in practice particularly in long-term contracts changes in circumstances can occur unexpectedly; therefore, this study examines the urgency of recognizing hardship in Indonesian contract law in the context of extraordinary events that cause fundamental changes in circumstances, focusing on the regulatory gaps within the national legal system, its comparison with developments in modern contract law, as well as the legal implications of adopting such norms through normative legal research using legislative, conceptual, and comparative approaches, and a case study of Judgment No. 28/Pdt.G.S/2021/PN.DPS, The results indicate that the force majeure mechanism in the Civil Code is insufficient to address contractual imbalances resulting from unforeseen changes in circumstances, while comparative analysis and case studies confirm that the absence of a hardship doctrine limits judicial discretion to the conventional framework of breach of contract. Consequently, this study argues that the integration of hardship can be achieved through normative reconstruction grounded in the principles of good faith and contractual balance, thereby balancing legal certainty and substantive justice within Indonesian contract law.

## INTRODUCTION

Contract law is fundamentally built on the assumption that the circumstances surrounding contractual performance remain relatively stable. The principle of *pacta sunt servanda* affirms that every lawfully concluded agreement binds the parties as law and must therefore be performed in good faith.<sup>1</sup> This principle reflects the primary orientation of contract law toward legal certainty and consistency in legal relations.<sup>2</sup> However, social and economic dynamics demonstrate that stability cannot always be guaranteed, particularly when extraordinary events arise that significantly alter the circumstances existing at the time the contract was formed.<sup>3</sup>

Within the framework of Indonesian civil law, the normative response to such disruptions is generally located in the doctrine of *force majeure*, which is rooted in Articles 1244 and 1245 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*).<sup>4</sup> In principle, this doctrine releases the debtor from liability for damages when failure to perform results from a compelling circumstance that cannot be attributed to the debtor. Nevertheless, this construction places greater emphasis on the impossibility of performance rather than on changes in contractual equilibrium. Consequently, where performance remains possible but becomes excessively burdensome from an economic perspective, Indonesian positive law does not provide an explicit corrective mechanism.

Extraordinary events in modern practice do not always render performance impossible; more often, they create serious imbalances in the rights and obligations of the contracting parties. International contract law literature identifies such conditions as *hardship*, namely a situation in which a fundamental change of circumstances disrupts the economic foundation of the contract without eliminating the possibility of performance.<sup>5</sup> This concept has developed as a mechanism to preserve contractual justice through renegotiation or contractual adaptation.<sup>6</sup> Unlike *force majeure*, which is oriented toward exemption from liability, *hardship* functions as an instrument of adjustment aimed at restoring the original contractual balance.<sup>7</sup>

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<sup>1</sup> Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2014.

<sup>2</sup> Sutan Remy Sjahdeini, *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian*, Jakarta: Kencana, 2019.

<sup>3</sup> Richard Stone, and James Devenney, *The Modern Law of Contract*. London: Routledge, 2019, 16.

<sup>4</sup> J. Satrio, *Hukum Perikatan: Perikatan yang Lahir dari Perjanjian*, Bandung: Citra Aditya Bakti, 2016.

<sup>5</sup> UNIDROIT, *UNIDROIT Principles of International Commercial Contracts 2023: Official Commentary*, Rome: UNIDROIT, 2023.

<sup>6</sup> Ewan McKendrick, *Force Majeure and Frustration of Contract*, London: Informa Law from Routledge, 2013.

<sup>7</sup> Akhmad Budi Cahyono, Togi Marolop Pradana Pangaribuan, Vivika Dyatri Raumanen, *A Change of Circumstances and Contract Adjustment: Indonesian Law and Beyond*. *Journal of Indonesian Legal Studies* Vol, 10, No. 1, 349–390.

Studies on *force majeure* within the context of Indonesian contract law have been relatively extensive, particularly in relation to extraordinary events affecting contractual performance. A number of studies have examined how global pandemics have been positioned as grounds for claims of compelling circumstances in business contracts.<sup>8</sup> Other research has explored the juridical implications of the declaration of national disaster status for civil legal relations and contractual liability.<sup>9</sup> In general, this literature focuses on the expansion or reaffirmation of the application of *force majeure* in times of crisis.

By contrast, discussion of *hardship* within the national legal context remains relatively limited. Several studies have begun to address contract renegotiation as a response to extreme changes of circumstances, particularly in business relationships.<sup>10</sup> However, these discussions remain largely descriptive and have not fully elaborated the doctrinal justification for the position of *hardship* within the Indonesian civil law system.<sup>11</sup> At the international level, modern contract principles such as the *UNIDROIT Principles of International Commercial Contracts* have recognized fundamental changes of circumstances as grounds for renegotiation. Nevertheless, the conceptual integration of these international principles with the normative structure of the Indonesian Civil Code has not been systematically examined in national legal scholarship.

This article offers a novel scholarly contribution by positioning *hardship* not merely as a comparative concept, but as a normative necessity within the framework of Indonesian contract law. Unlike previous studies that primarily emphasize the expansion of *force majeure* interpretation, this article argues that such an approach is insufficient to address problems arising from changes in contractual equilibrium.<sup>12</sup> It also integrates normative analysis of the Indonesian Civil Code with modern international contract principles in order to construct a systemic justification for the recognition of *hardship*. In addition, the article adopts a case-based approach through Decision No. 28/Pdt.G.S/2021/PN.DPS to examine the practical relevance of this concept in judicial practice.

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<sup>8</sup> Ratna Januarita dan Yeti Sumiyati, "Legal Risk Management: Can the COVID-19 Pandemic Be Included as a Force Majeure Clause in a Contract?" *International Journal of Law and Management* 63(2) (2021): 219–238.

<sup>9</sup> Wardatul Fitri, "Implikasi Yuridis Penetapan Status Bencana Nasional Pandemi Corona Virus Disease 2019 (COVID-19) terhadap Perbuatan Hukum Keperdataan," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 9(1) (2020): 76–93.

<sup>10</sup> Pardomuan Gultom, "Contract Renegotiation Due to the COVID-19 Pandemic from the Hardship Perspective," *Indonesian Law Journal* 15(1) (2022): 79–99.

<sup>11</sup> Hardian Iskandar, "Hardship dalam Kontrak Bisnis Pasca New Normal Covid-19," *Justiciabelen* 4(2) (2022).

<sup>12</sup> Sutan Remi Sjahdeini, *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*, Jakarta: Institute Bankir Indonesia, (1993), 24.

Studies concerning changes of circumstances in Indonesian contract law have generally remained dominated by the *force majeure* approach, particularly in the context of extraordinary events such as economic crises and pandemics, with a primary focus on exemption from liability due to impossibility of performance. Previous studies tend either to broaden the interpretation of *force majeure* or to emphasize the application of the principle of good faith as a basis for resolving contractual disputes. However, they have not critically examined the conceptual limitations of this approach in situations where performance remains possible but produces a fundamental imbalance. In contrast, this article positions *hardship* not merely as a comparative concept but as an analytical lens through which to assess whether Indonesian contract law truly suffers from a normative gap, or whether it already contains room for reinterpretation through the principles of good faith, contractual equilibrium, and judicial adaptation of contracts. Accordingly, this study does not simply proceed from the assumption that *hardship* is absent from Indonesian law; rather, it critically evaluates the extent to which existing legal instruments are capable of addressing fundamental changes of circumstances, while demonstrating that such reinterpretation remains limited in the absence of explicit and systematic *hardship* norms.

Based on the foregoing discussion, this article formulates three principal research questions. First, how is *force majeure* constructed within Indonesian contract law, and what are its limitations in responding to changes of circumstances? Second, how has the concept of *hardship* developed in modern contract principles, and what relevance does it have for the national legal system? Third, why has the recognition of *hardship* become urgent in Indonesian contract law, particularly in the context of lease agreements affected by extraordinary events? Through normative, comparative, and case-based analysis, this article aims to develop a comprehensive argument concerning the necessity of recognizing *hardship* within the national legal system.

To facilitate the conceptual mapping of the urgency of recognizing *hardship* in Indonesian contract law, this article develops an analytical framework as illustrated in the following conceptual map:

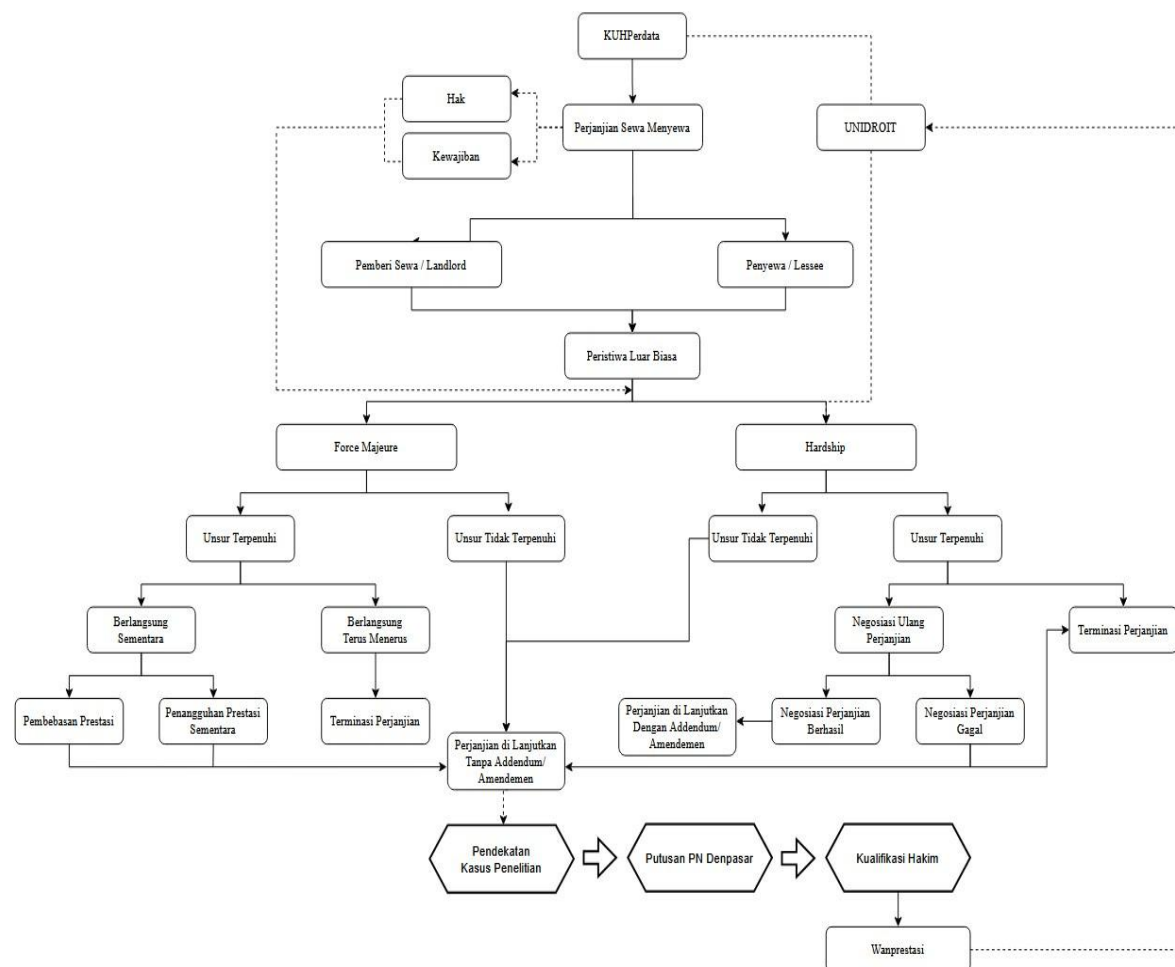


Figure 1. Research Conceptual Framework.

## METHODS

This study employs a normative legal research method focusing on the analysis of positive legal norms, legal doctrines, and principles of contract law developed in the literature.<sup>13</sup> Normative legal research views law as a system of norms that is examined through conceptual and argumentative approaches.<sup>14</sup> In this context, the study concentrates on the construction of *force majeure* within the Indonesian Civil Code (*KUH Perdata*) and the possibility of recognizing *hardship* as a corrective instrument in Indonesian contract law. Accordingly, this research does not rely on field data collection but rather on the systematic identification and analysis of legal materials.

<sup>13</sup> Ridwan Khairandy, *Hukum Perjanjian Indonesia*, Yogyakarta: FH UII Press, 2013.

<sup>14</sup> Salim HS, *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*, Jakarta: Sinar Grafika, 2018.

The research adopts several analytical approaches. First, the *statutory approach* is applied by examining the provisions of the Indonesian Civil Code, particularly Articles 1244 and 1245, as the normative basis of the doctrine of *force majeure*. This approach aims to identify the conceptual limits of the regulation of compelling circumstances under Indonesian positive law. Second, the *conceptual approach* is employed by drawing upon legal doctrines and theories of contract law to develop arguments concerning contractual equilibrium and fundamental changes of circumstances.<sup>15</sup> Through this approach, *hardship* is analyzed as a normative construct grounded in the principles of justice and good faith.

Third, this study applies a *comparative approach* by comparing the provisions of the Indonesian Civil Code with modern international contract principles, particularly the *UNIDROIT Principles of International Commercial Contracts 2023*.<sup>16</sup> This comparative legal approach is not intended to directly adopt foreign norms, but rather to assess their relevance and the possibility of conceptual integration within the national legal system. Fourth, the study also uses a *case approach* through an analysis of Decision No. 28/Pdt.G.S/2021/PN.DPS between Any Aryani and PT Bali Buzz Coffee. This approach aims to examine how judicial practice positions changes of circumstances in concrete disputes and to assess whether there is room for the application of *hardship* in judicial reasoning.

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include relevant statutory regulations and court decisions. Secondary legal materials consist of textbooks, scholarly journal articles, and international contract principles that have been incorporated into the bibliography of this study. Tertiary legal materials include legal dictionaries and other supporting references used to clarify terminology. The analysis is conducted qualitatively through systematic and argumentative interpretation in order to develop a normative justification for the urgency of recognizing *hardship* in Indonesian contract law.

This research is not merely descriptive-normative but is designed with a structured and measurable analytical strategy. The comparative approach begins by taking the construction of *force majeure* in the Indonesian Civil Code as the point of departure, and then compares it conceptually and functionally with the doctrine of *hardship* in modern contract principles, particularly the *UNIDROIT Principles of International Commercial Contracts*. The comparison is carried out through specific indicators, namely the

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<sup>15</sup> Sutan Remy Sjahdeini, *Op.Cit.*

<sup>16</sup> UNIDROIT, *Op.Cit.*

objectives of regulation, the conditions for application, and the legal consequences produced. This comparative analysis is intended to assess normative gaps while also examining the possibility of conceptual integration within the national legal system.

Meanwhile, the case analysis of Decision No. 28/Pdt.G.S/2021/PN.DPS is conducted using specific parameters, including the manner in which the judge classified the extraordinary event, the legal framework applied (breach of contract or *force majeure*), and the absence of consideration regarding changes in contractual equilibrium. Through these indicators, the case analysis goes beyond merely describing the judgment. Instead, it is used to simulate how the same dispute might have been decided differently had a *hardship* framework been applied. Accordingly, the research method functions as both an evaluative and an argumentative tool in constructing a normative justification for the recognition of *hardship* in Indonesian contract law.

## RESULT AND DISCUSSION

### 1. The Problematic Regulation of Hardship in Indonesian Contract Law

Indonesian contract law remains grounded in the classical construction of the Indonesian Civil Code (*KUH Perdata*), which emphasizes the principles of freedom of contract and *pacta sunt servanda*. Article 1338 of the Indonesian Civil Code affirms that agreements lawfully concluded shall bind the parties as law.<sup>17</sup> This paradigm places contractual stability as the primary value to be preserved in private legal relations. However, this legal framework was developed on the assumption of normal and relatively stable circumstances. When extraordinary events occur that drastically alter contractual equilibrium, the available legal instruments become limited.

From a normative perspective, the Indonesian Civil Code recognizes only the mechanism of *force majeure* under Articles 1244 and 1245.<sup>18</sup> This concept requires the existence of an objective impossibility of performance. In situations of *hardship*, however, contractual performance remains possible, but the burden borne by one party becomes disproportionately excessive. This distinction demonstrates that *force majeure* cannot conceptually substitute for the function of *hardship*. The absence of explicit regulation therefore creates a normative gap with respect to fundamental changes of circumstances that do not eliminate the possibility of performance.

Several academic studies indicate that expanding the meaning of *force majeure* is insufficient to address problems of contractual imbalance. Januarita and Sumiyati argue

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<sup>17</sup> Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek), Pasal 1338.

<sup>18</sup> Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek), Pasal 1244–1245.

that not every disruption in contractual performance can be classified as *force majeure*, particularly where performance remains possible. Junaidi and colleagues also draw a clear distinction between objective impossibility and fundamental contractual imbalance. In the absence of clear parameters, the determination of such categories depends heavily on judicial interpretation. This condition has the potential to weaken legal certainty in judicial practice.<sup>19</sup>

Furthermore, the absence of a *hardship* norm means that no systematic corrective mechanism is available to address extreme changes of circumstances. Parties are often compelled either to continue performing a burdensome contract or to face the risk of being declared in breach of contract. This situation reveals a gap between the development of modern contractual practice and the normative structure of national law. In the context of increasingly complex economic dynamics, such rigidity may give rise to substantive injustice. Accordingly, this problem underscores the urgency of reforming contract law so that it becomes more responsive to fundamental changes of circumstances.

The central problem of *hardship* regulation in Indonesian contract law does not lie solely in the absence of explicit legal norms, but also in the tendency of the legal system to implicitly equate impossibility of performance with fundamental contractual imbalance. Legal argumentation has thus far largely revolved around the general limitations of *force majeure*, making the analysis repetitive and insufficiently attentive to the conceptual distinction between situations in which performance is genuinely impossible and situations in which performance remains possible but imposes a highly disproportionate burden on one of the parties. In the context of *hardship*, the core issue is not failure of performance, but rather the disruption of the economic foundation of the contract that undermines the parties' original equilibrium. The inability of Indonesian positive law to clearly distinguish between these two conditions has resulted in burdensome changes of circumstances being forced into the legal framework of either breach of contract or *force majeure*, even though neither doctrine was designed to address problems of contractual rebalancing. For this reason, discussion of the *hardship* problem should be directed more analytically toward the conceptual failure of Indonesian contract law to respond to contractual imbalance, rather than merely repeating criticisms of the rigidity of *force majeure*.

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<sup>19</sup> Taufiq Adiyanto, *Dealing with unexpected circumstances: Judicial Modification of contract under Indonesian and Dutch Law*. Hasanuddin Law Review 5 (2019) No. 1, 102-119.

## **2. Comparative Analysis and the Development of the Hardship Doctrine**

In the development of modern contract law, various legal systems have adopted the doctrine of *hardship* as a corrective instrument. The *UNIDROIT Principles of International Commercial Contracts* (PICC) define *hardship* as a change of circumstances that fundamentally alters the equilibrium of the contract.<sup>20</sup> Under these principles, the disadvantaged party is entitled to request renegotiation as the initial step. If renegotiation fails, the court may adapt or terminate the contract. This model positions substantive justice as a complement to legal certainty.

Gultom argues that renegotiation in the context of *hardship* constitutes a more proportionate form of legal protection than contract termination.<sup>21</sup> This mechanism allows for a fairer distribution of risks arising from unforeseen changes of circumstances. In this way, the validity of the contract is preserved, while limited adjustments may be introduced. Such an approach reflects a balance between stability and flexibility. Compared with this model, Indonesian law has not yet explicitly institutionalized a similar mechanism.

From a theoretical perspective, the doctrine of *hardship* is consistent with the principle of contractual equilibrium in modern commercial contracts. Iskandar emphasizes that extraordinary changes of circumstances require an adaptive legal response in order to avoid injustice.<sup>22</sup> Without such regulation, contract law tends to preserve formalism at the expense of proportionality. Comparative analysis therefore demonstrates that the recognition of *hardship* is not a radical innovation. Rather, it represents an adaptation to contemporary contract law practice.

Moreover, the development of the *hardship* doctrine across various jurisdictions reveals a growing tendency toward harmonization in international contract law. Many countries have begun to recognize the importance of contractual adjustment mechanisms in situations involving extreme and unforeseen changes of circumstances. Such recognition is grounded in considerations of economic efficiency and the protection of the continuity of contractual relationships. In the context of increasingly globalized commercial transactions, normative flexibility has become an unavoidable necessity. Accordingly, this comparative analysis reinforces the urgency of reforming national law so that it does not lag behind the evolving dynamics of modern contract law.

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<sup>20</sup> UNIDROIT, *UNIDROIT Principles of International Commercial Contracts* 2016, Art. 6.2.2–6.2.3.

<sup>21</sup> Pardomuan Gultom, *Op.Cit.*

<sup>22</sup> Siti Iskandar, "Penerapan Klausula Hardship dalam Kontrak Bisnis Pasca Peristiwa Luar Biasa," *Jurnal Rechtsvinding*, Vol. 11, No. 2 (2022).

Although many modern legal systems have accommodated the doctrine of *hardship* as a corrective mechanism for fundamental changes of circumstances, the adoption of this concept into Indonesian contract law is not without normative and practical risks. The principal risk lies in the potential increase in legal uncertainty if the criteria of *hardship* are formulated too broadly, thereby creating opportunities for abuse of changed circumstances as a justification for evading contractual obligations. In addition, recognition of *hardship* may expand judicial discretion to adapt or terminate contracts. If such discretion is not confined by clear parameters, it may undermine the principle of legal certainty and the doctrine of *pacta sunt servanda*. From the perspective of business practice, uncertainty regarding the limits of *hardship* may increase litigation risks and weaken the predictability of contractual relations. Therefore, comparative discussion not only highlights the urgency of recognizing *hardship*, but also demonstrates that its adoption must be accompanied by clearly defined and limited criteria, a gradual mechanism such as a duty to renegotiate, and a firm affirmation that judicial intervention should operate only as *ultimum remedium*. Only under such conditions can the integration of *hardship* avoid creating new forms of uncertainty within the Indonesian contract law system.

### 3. Case Analysis and a Hardship-Based Decision Simulation

Decision No. 28/Pdt.G.S/2021/PN.DPS demonstrates that contractual disputes affected by changes in external circumstances are still analyzed within the conventional framework of breach of contract.<sup>23</sup> The panel of judges placed greater emphasis on the fulfillment or non-fulfillment of contractual obligations as formally stipulated in the agreement. This pattern of reasoning is consistent with the classical character of the Indonesian Civil Code, which is oriented toward legal certainty and the literal enforceability of contracts. However, this approach does not adequately address the dimension of changed circumstances that may disrupt the equilibrium of the parties' relationship. As a result, considerations of proportionality and risk allocation do not receive sufficient attention.

From the perspective of *hardship*, a more comprehensive assessment should precede any conclusion that a breach of contract has occurred. The court should first determine whether there has been a fundamental, unforeseen change of circumstances beyond the control of the parties. It should then examine whether such a change has produced a significant imbalance that renders contractual performance excessively burdensome. This framework differs from *force majeure* because it does not extinguish contractual

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<sup>23</sup> Putusan Pengadilan Negeri Denpasar Nomor 28/Pdt.G.S/2021/PN.DPS.

obligations but instead opens the possibility of contractual adjustment. Accordingly, the focus of judicial review shifts from fault alone to the altered economic structure of the contract.

If *hardship* parameters were applied in this case, the court would prioritize corrective measures before issuing a punitive judgment. The parties would first be encouraged to renegotiate in good faith in order to establish a new contractual balance. If renegotiation failed, the court could consider adapting the contractual terms or even terminating the contract with a more proportionate allocation of risk. This approach reflects the model of contractual rebalancing that has developed in international contract practice. Through such a mechanism, dispute resolution would not be oriented solely toward formal certainty, but also toward substantive justice.

A *hardship*-based decision simulation indicates that the outcome of the case could have been significantly different. Rather than declaring one party absolutely in breach of contract, the court could have formulated a judgment that adjusted the parties' obligations in accordance with the actual circumstances. Such a decision would affirm the role of the judge as a balancer of interests rather than merely an enforcer of contractual clauses. Moreover, this model provides normative legitimacy to economic dynamics that cannot be fully anticipated at the time a contract is concluded. Accordingly, the application of the *hardship* doctrine opens space for a transformation in the paradigm of contractual dispute resolution in Indonesia.

#### **4. Normative Reconstruction of Hardship Regulation in the National Legal System**

Based on the overall analysis presented above, the regulation of *hardship* in Indonesian contract law requires a clear and explicit formulation within the framework of reforming the Indonesian Civil Code (*KUH Perdata*). Thus far, extraordinary changes of circumstances have tended to be forced into the regime of *force majeure*, even though the two concepts are fundamentally distinct. *Hardship* does not extinguish contractual obligations; rather, it requires adjustment where performance has become excessively burdensome. For this reason, a specific legal provision is needed and should be systematically placed after the provisions governing *force majeure*. Such placement is important in order to affirm that *hardship* constitutes an independent corrective mechanism within contract law.

Substantively, the formulation of a *hardship* provision must contain measurable elements in order to avoid creating new legal uncertainty. At a minimum, these elements should include a fundamental change of circumstances, the unforeseeable nature of the event, and the emergence of a significant imbalance in the contractual relationship. In addition, it must be expressly stated that such changes occur beyond the control of the

parties and are not attributable to the fault of either party. A restrictive formulation will prevent the misuse of *hardship* as a means of evading contractual obligations. In this way, the resulting legal norm will continue to preserve the stability of contractual practice.

Furthermore, the regulation of *hardship* should place renegotiation as the primary stage before recourse is made to judicial settlement. The obligation to renegotiate reflects the principle of good faith and provides the parties with an opportunity to adjust the contract proportionately. Only when renegotiation fails should the court be granted the authority to adapt or terminate the contract on equitable grounds. This gradual model reflects a moderate approach that balances party autonomy with the corrective function of the state. Under such a construction, judicial intervention operates as *ultimum remedium* rather than as the first mechanism of dispute resolution.

The normative reconstruction of *hardship* regulation in the national legal system should therefore be directed toward the formulation of operational and applicable rules capable of serving as guidance for both contracting parties and judges in addressing fundamental changes of circumstances. In this regard, *hardship* should ideally be formulated in a restrictive manner by establishing clear normative elements, including the occurrence of a fundamental change of circumstances after the contract has been concluded, the unforeseeable nature of the event at the time of contract formation, the fact that the change lies beyond the control of the parties, and the emergence of a significant imbalance in the burden of performance borne by one of the parties.

In addition, *hardship* norms should establish a gradual procedural mechanism beginning with the obligation of the parties to renegotiate in good faith within a specified period before judicial intervention becomes available. Judicial authority in this context must be formulated narrowly, namely to adapt or terminate the contract only where renegotiation has failed and the contractual imbalance has been objectively established. In this way, judicial intervention functions as *ultimum remedium*. With such a construction, the normative reconstruction of *hardship* can serve as a legislative framework capable of maintaining a balance between legal certainty, the protection of substantive justice, and the stability of contractual practice within Indonesian civil law.

Ultimately, the recognition of *hardship* is not intended to diminish the principle of *pacta sunt servanda* as the foundation of contract law. On the contrary, its recognition enriches the legal system by incorporating the principles of contractual equilibrium and substantive justice in extreme circumstances. Harmonization between legal certainty and substantive justice therefore becomes the primary objective of this normative reconstruction. Moreover, clear regulation will enhance the credibility of national law in responding to the dynamics of modern commercial transactions, including cross-border

transactions. Accordingly, the establishment of *hardship* norms constitutes a strategic step in the reform of Indonesian contract law.

## CONCLUSION

Based on the findings of this study, it may be concluded that Indonesian contract law does not yet explicitly regulate a *hardship* mechanism as a response to extraordinary changes of circumstances. The existing legal framework remains grounded in the principle of *pacta sunt servanda* and the doctrine of *force majeure*, which are conceptually inadequate to address situations in which contractual performance remains possible but imposes a highly disproportionate burden on one of the parties. The absence of such regulation creates a normative gap in dealing with fundamental changes that disrupt contractual equilibrium. Accordingly, the central problem lies in the absence of an institutionalized corrective instrument within the national legal system.

Furthermore, developments in modern contract law across various jurisdictions demonstrate that the recognition of *hardship* has become an integral part of mechanisms designed to protect contractual equilibrium. This doctrine provides room for renegotiation and the possibility of judicial adaptation of contracts when unforeseen changes of circumstances occur beyond the control of the parties. Such comparative developments indicate that the recognition of *hardship* does not constitute a departure from the binding force of contracts, but rather an adaptation to contemporary economic dynamics. Therefore, the absence of a similar norm in Indonesian law reflects the need for normative reform in order to align the national legal system with international developments.

Analysis of judicial practice further reveals that contractual disputes affected by extraordinary changes of circumstances continue to be resolved within the conventional framework of breach of contract. This approach limits the scope of judicial consideration in assessing the proportionality of contractual burdens. If *hardship* were expressly regulated, judges would have a clearer juridical basis to order renegotiation or to adjust contractual obligations in a measured manner. This demonstrates that the recognition of *hardship* has not only theoretical significance but also practical implications for the quality of judicial decision-making.

From a practical perspective, the findings of this study carry important implications for both judges and legislators. For judges, the recognition of *hardship* as an analytical framework would provide a more adequate juridical basis for evaluating contractual disputes affected by extraordinary changes of circumstances. Judicial reasoning would therefore no longer be confined to the dichotomy between breach of contract and *force*

*majeure*, but could also incorporate considerations of contractual equilibrium and proportionality of performance burdens.

For legislators, the findings underscore the urgency of formulating explicit, restrictive, and procedural *hardship* provisions within the framework of civil law reform, so that clear guidance is available for contractual practice and judicial application. As for the development of legal scholarship, future research should be directed toward more empirical and jurisprudential inquiries, particularly through the analysis of judicial decision patterns concerning changes of circumstances across different types of contracts, as well as through the exploration of *hardship* models most compatible with the characteristics of the Indonesian legal system. In this way, future studies will not only enrich normative discourse but also strengthen the practical foundations for the recognition of *hardship* in national contract law.

In conclusion, the urgency of recognizing *hardship* in Indonesian contract law lies in the need to balance legal certainty with substantive justice. A normative reconstruction incorporating fundamental change, unforeseeability, and significant contractual imbalance as criteria of assessment would provide both certainty and flexibility. Such regulation would not weaken the principle of *pacta sunt servanda*; rather, it would complement it by introducing a corrective mechanism for extreme circumstances. Accordingly, reform of Indonesian contract law to accommodate *hardship* constitutes a strategic step toward strengthening the responsiveness of the national legal system to extraordinary events.

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