

Force Majeure In The Perspective Of The Concept Of Justice In Modern Business Contracts: A Study Of The COVID-19 Pandemic

Tri Eka Saputra^{1*}, Muh. Askaruddin², Nurul Qamar³, Muhammad Kamal⁴

¹Universitas Mega Buana Palopo, Palopo, Indonesia

²Universitas Tamalatea, Makassar, Indonesia

^{3,4}Universitas Muslim Indonesia, Makassar, Indonesia

Corresponding Author's e-mail : triekasaputra@gmail.com

ARMADA
JURNAL PENELITIAN MULTIDISIPLIN

e-ISSN: 2964-2981

ARMADA : Jurnal Penelitian Multidisiplin

<https://ejournal.45mataram.ac.id/index.php/armada>

Vol. 04, No. 03 March, 2026

Page: 126-139

DOI:

<https://doi.org/10.55681/armada.v4i3.1910>

Article History:

Received: February 12, 2026

Revised: February 05, 2026

Accepted: March 10, 2026

Abstract : This study is motivated by the tension between legal certainty and justice in the application of force majeure in modern business contracts during the COVID-19 pandemic, when force majeure clauses often fail to protect structurally weaker parties. This study aims to critically examine the concept, application, and interpretation of force majeure in the Indonesian contract law system and reconstruct it as an instrument for correcting injustice that is oriented towards balancing the interests of the parties. The research uses a normative legal method with a legislative and conceptual approach, relying on the analysis of primary, secondary, and tertiary legal materials collected through literature studies and analyzed qualitatively and prescriptively. The results show that force majeure in practice is more often operated as a formalistic exculpatory mechanism than as a means of fair risk redistribution, so that the burden of pandemic losses tends to be concentrated on small businesses and parties with weak bargaining positions. Through the integration of corrective and distributive justice theories, the principle of freedom of contract, good faith, and public policy in times of crisis, this study offers a layered interpretive framework that encourages renegotiation, proportional loss sharing, and protection of vulnerable parties. These findings imply the need to redesign force majeure clauses, strengthen the orientation toward justice in contract dispute rulings, and develop policies that synergize private contracts with social justice objectives. The agenda for further research remains open.

Keywords : Force Majeure, Modern Business Contracts, COVID-19

INTRODUCTION

Modern business contracts are fundamentally built upon the principles of freedom of contract and *pacta sunt servanda*, which require that every valid agreement shall operate as law for the parties. Within its normative framework, civil law idealizes the creation of certainty, stability, and predictability in legal relations through the explicit regulation of rights and obligations in the contractual clauses (Rambe & Sekarayu, 2022). However, behind this ideality lies a classic problem:

how the law responds to extraordinary events that shake the foundational assumptions of the contract, particularly when such events create imbalances and the potential for injustice to one of the parties.

One of the normative instruments designed to address this issue is the concept of *force majeure*. In the doctrine of the law of obligations, *force majeure* is positioned as a justificatory or exculpatory ground that releases the debtor from liability for non-performance due to events beyond their control. Normatively, this concept is intended not merely as a “technical escape route” from breach of contract, but as a mechanism of justice (corrective and distributive justice) that regulates the redistribution of risk when factual realities change in an extreme and unforeseeable manner (Payuwaha, 2020). Thus, force majeure lies at the intersection of legal certainty and contractual justice.

The COVID-19 pandemic presents the most serious test to this theoretical construct. Since its emergence, the pandemic has triggered massive disruptions in supply chains, restrictions on mobility, closure of business premises, declining purchasing power, and liquidity crises across various economic sectors. In the sphere of legal reality, business actors ranging from multinational corporations to MSMEs have faced difficulties in fulfilling contractual obligations that initially appeared reasonable and performable. It is at this point that the tension between the strict enforcement of contractual performance and the demands of substantive justice becomes increasingly pronounced.

In the context of Indonesia’s legal jurisdiction, the regulatory response to COVID-19, ranging from social restriction policies and the declaration of a public health emergency to various economic stimulus measures, has had a direct impact on the performance of business contracts. Many parties have attempted to qualify the pandemic and its derivative government policies as *force majeure*, while others insist on viewing the pandemic as a business risk that “ought to have been reasonably anticipated.” (Putri, 2023). This phenomenon has given rise to numerous disputes, both before the courts and through alternative dispute resolution mechanisms, reflecting a lack of coherence between the ideality of the norms and their practical application.

Normatively, Indonesian positive law is not entirely silent. Provisions on force majeure can be traced in the general rules of obligations, particularly those relating to impossibility of performance and the discharge of the debtor’s liability. At the contractual level, business actors also commonly include *force majeure* clauses specifying certain events such as war, natural disasters, riots, or governmental actions. However, a global pandemic of the scale and duration of COVID-19 is not always explicitly articulated in such clauses, thereby creating a wide interpretive space and the potential for disparate judicial and arbitral decisions.

On the other hand, modern business contracts are evolving within a digital and globalized economic landscape characterized by cross-border transactions, the use of electronic platforms, and standardized clauses that tend to follow “template” formats and are dominated by parties with superior economic and informational power (Arifin *et al.*, 2021). In such a situation, contractual justice is often reduced to mere formal compliance with the text of the contract, while the substance of risk allocation is rarely examined from the perspective of the parties’ equality of bargaining position. The COVID-19 pandemic has exposed the weakness of this structure, as *force majeure* clauses that were previously regarded as mere “formalities” have suddenly become decisive determinants of business continuity.

Recent studies, both at the national and global levels, have begun to re-examine the relevance and limits of *force majeure* in the context of the pandemic. A number of scholarly works highlight the criteria for events that may be classified as *force majeure*, the causal relationship between the pandemic and non-performance, as well as the differential treatment of contracts concluded before and after the onset of the pandemic. In several jurisdictions, there is a growing trend to interpret the pandemic as an extraordinary event that can trigger mechanisms of renegotiation or contractual adjustment, whereas in other jurisdictions, emphasis is placed on the parties’ responsibility to anticipate global risks (Muskibah *et al.*, 2023).

In Indonesian legal literature, studies on *force majeure* during the COVID-19 period have also begun to develop. Most research focuses on normative analysis of the regulation of supervening events in civil and contract law, including its linkage with sectoral policies such as credit

restructuring, payment relief, or the adjustment of other financial obligations. There is also discussion on how certain types of business contracts such as lease agreements, goods distribution, and construction services have dealt with *force majeure* claims during the implementation of social restrictions and similar government measures.

Nevertheless, many of these studies still predominantly position *force majeure* as a legal-technical issue concerning whether or not the constituent elements of a supervening event are fulfilled in a given case. The dimension of justice as a fundamental value that ought to guide the interpretation and application of *force majeure* is often not examined in depth. In fact, theories of justice such as commutative and distributive justice, corrective justice, as well as procedural and substantive justice offer a rich conceptual toolkit for assessing whether the reallocation or imposition of risk due to the pandemic has truly aligned with the parties' sense of justice.

This gap reveals a dissonance between the law as it develops in society and the realities on the ground. At the normative level, *force majeure* is intended as a fair mechanism to address impossibility of performance arising from events beyond the parties' control. In practice, however, a purely textual and formalistic interpretation of contractual clauses or statutory provisions may in fact generate new forms of injustice for example, when economically weaker parties are still compelled to bear substantial risks because *force majeure* clauses have been drafted in a way that structurally favors the dominant party.

From an empirical standpoint, the COVID-19 pandemic also demonstrates that the impact of contractual non-performance is not distributed evenly. Small and medium enterprises, commercial tenants, minor suppliers in global supply chains, as well as business actors in sectors severely affected by mobility restrictions, have borne a significantly heavier burden compared to large enterprises that possess capital reserves, access to financing, and stronger contractual bargaining power (Rahadi & Wardiman, 2022). This asymmetry raises an important question: to what extent can the concept of *force majeure* in modern business contracts function as an instrument for correcting injustice, rather than merely as a juridical justification?

In this context, the central legal issue that arises is how to conceptualize *force majeure* from the perspective of justice in modern business contracts, particularly in the setting of the COVID-19 pandemic. Has the formulation and application of *force majeure* within the Indonesian legal system reflected a balanced protection of the parties' interests, or has it instead reinforced the dominant position of certain business actors?

From the perspective of legal development, it is important to re-examine the theoretical foundations of *force majeure* in civil law, including its relationship with the principles of freedom of contract, good faith, and reasonableness. Modern contract law theories that emphasize the duty to cooperate, the duty to mitigate loss, and the principle of *rebus sic stantibus* can serve as a basis for assessing whether modern business contracts ought to be more flexible in responding to extreme changes in circumstances. Meanwhile, from the standpoint of theories of justice, it is necessary to analyze how the principles of corrective, distributive, and procedural justice can be operationalized in the drafting and interpretation of *force majeure* clauses.

In this regard, this study is intended to pursue several objectives. First, to undertake an in-depth examination of the concept of *force majeure* in Indonesian contract law and its application in modern business contracts affected by the COVID-19 pandemic. Second, to evaluate the extent to which this concept and its practical implementation align with the principles of justice that constitute the philosophical and theoretical foundation of civil law.

Furthermore, this study is directed toward constructing a conceptual framework of *force majeure* that is more responsive to considerations of justice in the context of modern business contracts. By treating the COVID-19 pandemic as a socio-juridical laboratory, this research seeks to formulate justice-based parameters that can guide the drafting, interpretation, and application of *force majeure* clauses, so that they not only provide legal certainty but also embody the substantive justice values expected by the parties and by society at large.

From the standpoint of novelty, this article does not merely reiterate the classical debate over the existence or non-existence of *force majeure* under pandemic conditions, but rather seeks to shift the focus toward the dimension of justice inherent in that concept. The integration of normative-doctrinal analysis, mapping of contractual practices in Indonesia during the COVID-19

period, and the elaboration of theories of justice is expected to yield a new perspective on how *force majeure* ought to be constructed in modern business contracts. In this way, the study offers both theoretical and practical contributions to the development of Indonesian contract law in an era of global uncertainty.

Finally, this study on “Force Majeure in the Perspective of the Concept of Justice in Modern Business Contracts: A Study of the COVID-19 Pandemic” is expected to respond to the need for legal thought that is grounded not only in the text but also in sensitivity to the social and economic realities of the contracting parties. Amid the growing complexity of global risks, reconstructing an understanding of *force majeure* that is oriented toward justice has become an urgent agenda for the development of legal science, the formulation of public policy, and the drafting and enforcement of business contracts in Indonesia.

METHODS

The research method employed in this study is normative legal research with a doctrinal research design, focusing on conceptual analysis and normative interpretation, making it appropriate for addressing questions regarding the reconstruction of *force majeure* as an instrument for correcting injustice in modern business contracts during the COVID-19 pandemic, as well as its application from the perspective of balancing the parties’ interests based on principles of justice. The subjects of the research are not individuals or institutions, but rather legal norms and juridical concepts contained in statutes, legal doctrine, and relevant court decisions. The approaches used are the conceptual approach, to unpack and reconstruct the concepts of *force majeure*, contractual justice, and the balance of the parties’ interests, and the statute approach, to systematically examine the regulation of *force majeure* and the underlying principles of contract law within the Indonesian legal system.

Data are collected through library research on primary legal materials (legislation relating to contracts and COVID-19–related policies), secondary legal materials (literature, scholarly journals, doctrinal commentaries, and prior research), and tertiary legal materials (legal dictionaries and encyclopedias), using a sequential and documented tracing procedure to ensure replicability. All of these legal materials are then analyzed qualitatively and normatively through systematic and teleological methods of interpretation, as well as content analysis and prescriptive analysis, in order to formulate arguments concerning the extent to which the concept and application of *force majeure* in modern business contracts are aligned with principles of justice, while at the same time offering a conceptual reconstruction that is more responsive to the asymmetries identified in the background and problem formulation of the research.

RESULTS AND DISCUSSION

Force Majeure Reconstruction as an Instrument for Correcting Injustice in Modern Business Contracts During the COVID-19 Pandemic

The substantive findings of this research indicate that the concept of *force majeure* in classical contract law is constructed within a relatively narrow framework: it is understood primarily as a supervening event that excludes the debtor’s fault because performance has become impossible to carry out. The emphasis on objective impossibility and the absence of personal fault has led to *force majeure* being positioned more often as a “liability-releasing” mechanism rather than as an active tool for correcting an unequal distribution of risk. In modern business contracts, particularly those employing standard-form clauses, this position generates a theoretical problem: on the one hand, the principles of freedom of contract and *pacta sunt servanda* are strictly upheld; on the other hand, there is no guarantee that the resulting allocation of risk is genuinely fair, especially when one of the parties occupies a weaker bargaining position (Muhammad & Nugroho, 2021).

When the COVID-19 pandemic broke out and generated massive disruption to economic activity, this classical construction came under serious strain. The analysis of contractual practice during the pandemic period shows that many *force majeure* clauses were drafted in a generic manner, relying on a closed list of events, or even merely referring to the term “force majeure” without sufficient elaboration (Fadlan & Fidayanti, 2024). In situations where social restrictions, regional lockdowns, and governmental administrative measures affected virtually all lines of

business, the parties most severely impacted were not always able to invoke these clauses, as they were deemed not to satisfy the elements of *force majeure* when interpreted textually. It is at this point that the gap becomes evident between the corrective function of justice that is philosophically expected and the way the norm is operationalized in practice.

More specifically, this study finds that in many modern business contracts involving large enterprises on the one hand and small or medium enterprises on the other, *force majeure* clauses actually crystallize structural inequality. Large business actors, supported by legal counsel and access to international contract standards, tend to formulate clauses that narrow the scope of their own liability while simultaneously imposing onerous mitigation obligations on their weaker counterparts. In pandemic conditions, when the adaptive capacity of small businesses is eroded by limited capital and infrastructure, such clause models foster a form of “formal justice” that is substantively hollow: the contract is indeed performed according to its text, but the actual burden of loss accumulates on parties whose position has been vulnerable from the outset (Patria & Rokhim, 2025).

From the perspective of theories of justice, particularly distributive and corrective justice, this configuration demonstrates the need to reconstruct the concept of *force majeure* so that it does not stop at the question of “whether the formal requirements of a supervening event are fulfilled,” but moves toward the question of “how losses and risks arising from extraordinary events should be allocated fairly between the parties.” An Aristotelian approach to corrective justice implies the necessity of a balancing mechanism when one party bears a disproportionate loss as a result of an event that could neither be predicted nor controlled (Wibowo, 2019). Meanwhile, the perspective of distributive justice calls for a rereading of contractual clauses by taking into account the socio-economic positions of the parties, the nature of the business, and the systemic impact of the pandemic on particular sectors (Irawan & Sulisty, 2022).

This study also integrates modern contract theories that emphasize the role of good faith and the duty to cooperate in contractual relationships (Suprapti & Tarigan, 2021). The findings indicate that in many pandemic-related disputes, parties who attempted to renegotiate their contracts in good faith and to seek more proportionate burden-sharing arrangements actually had a greater chance of achieving outcomes that approximate substantive justice, compared to those who insisted on a rigid reading of *force majeure* clauses. This suggests that the reconstruction of the *force majeure* concept should be directed not only at re-drafting the clauses themselves, but also at strengthening the role of good faith and the mutual duty of assistance in dealing with extraordinary circumstances.

From the perspective of legal policy, the government’s response in the form of various regulations and stimulus measures during the pandemic can be read as an implicit acknowledgment that the burden of risk arising from COVID-19 cannot be borne individually by the parties through ordinary contractual mechanisms. Policies on the restructuring of obligations, payment relaxations, and adjustments to the performance of contractual duties indicate that the national legal framework itself recognizes the need for a collective redistribution of risk (Sufiarina & Wahyuni, 2020). These findings support the argument that the reconstruction of *force majeure* as an instrument for correcting injustice ought to be aligned with broader policy directions, so that modern business contracts are not detached from the public policy context aimed at protecting business continuity and economic stability.

Building on these overall findings, the reconstruction of *force majeure* proposed in this study operates on two levels. At the conceptual level, *force majeure* is repositioned not merely as an exculpatory ground, but as a justice-oriented mechanism for recalibrating the distribution of risk in extraordinary situations, by incorporating the parameters of corrective, distributive, and procedural justice as assessment criteria. At the operational level, it is recommended to develop a model *force majeure* clause that explicitly recognizes pandemics and related governmental policies as triggers, opens up a mandatory space for renegotiation to be pursued by the parties, and establishes a shared obligation to mitigate losses proportionally in accordance with each party’s respective capacity (Syamsiah, 2020).

Thus, it can be understood that *force majeure* in modern business contracts during the COVID-19 pandemic needs to be reconstructed through a richer theoretical approach and legal

policies that are more sensitive to structural inequalities. Such reconstruction transforms *force majeure* from being merely an “escape clause” exploited by stronger parties to evade responsibility into an instrument for correcting injustice that integrates the principles of freedom of contract, legal certainty, and substantive justice. The results of this normative analysis provide a foundation for developing more balanced practices of contractual drafting and interpretation, while at the same time strengthening the role of contract law as a means of fair risk distribution amid the dynamics of global crises.

The discussion of the research findings on the reconstruction of *force majeure* as an instrument for correcting injustice in modern business contracts during the COVID-19 pandemic demonstrates that the core issue is not merely whether the formal elements of a supervening event are satisfied, but how the distribution of risk and the allocation of losses are shaped through the construction of contractual clauses and the manner in which they are interpreted. The data processed in this study through mapping patterns of *force majeure* clauses, analyzing dispute cases, and conducting doctrinal examinations indicate that, in practice, the concept of *force majeure* functions more as an exculpatory shield than as a justice-oriented mechanism capable of correcting structural imbalances between the parties. Accordingly, these results directly test the basic assumption set out in the background that the COVID-19 pandemic constitutes a “stress test” for the edifice of traditional contract law.

One of the key findings that emerges from the analysis of normative data and contractual practice is the tendency to draft *force majeure* clauses in a highly formalistic and closed manner, relying on an enumerated list of specific events without providing sufficient space for global-scale emergencies such as a pandemic. The drafting of clauses in this way makes the applicability of *force majeure* heavily dependent on a word-for-word correspondence between the event that occurs and the wording of the clause, rather than on a substantive assessment of whether the event has in fact disrupted the ability to perform in a reasonable manner (Kunarso & Sumaryanto, 2020). This explains why, in many disputes, *force majeure* claims were rejected not because the pandemic had no impact, but because it was not explicitly covered by the wording of the clause. This fact supports the contention that the classical construction of *force majeure* is insufficiently adaptive to contemporary risks.

The data analysis also reveals an asymmetric pattern in the design of modern business contracts: parties with greater bargaining power tend to shape *force majeure* clauses in a way that primarily protects their own interests, for example by imposing onerous mitigation obligations on the other party, narrowing the categories of events recognized as *force majeure*, or even reallocating pandemic-related risks as ordinary business risks. In contracts involving small or medium-sized enterprises, this configuration deprives *force majeure* of its corrective function, because the normative framework has from the outset not been designed to distribute risks in a balanced manner (Sufiarina & Wahyuni, 2020). These findings reinforce the legal issue raised: that contractual inequality can, in fact, be “legalized” through *force majeure* clauses that appear neutral in form but are substantively one-sided.

From the perspective of theories of justice, these findings appear to run counter to the essence of corrective and distributive justice that ought to animate contractual relations. Corrective justice presupposes that when an extraordinary event occurs which causes losses that cannot be fully controlled by the parties, the law should intervene to rectify any disproportionate allocation of those losses. However, the data show that in many cases, the burden of pandemic-related losses has in fact settled on parties who are economically or structurally weaker (Ramadhan et al., 2022). On the other hand, the principle of distributive justice which requires that burdens be allocated on the basis of the parties’ respective capacities and vulnerabilities is scarcely reflected either in the contractual texts or in the way judges and arbitrators interpret *force majeure*. The disparity between this reality and the foundational concepts of justice theory underpins the urgency of reconstructing the concept of *force majeure*.

The nexus between the research findings and the concepts of good faith and the duty to cooperate also appears to be significant. Qualitative data gathered from dispute-resolution practice show that parties who prioritize renegotiation and dialogic adjustment of performance during the pandemic generally achieve more balanced solutions than those who merely take refuge behind the

wording of the clause or interpret *force majeure* in a rigid manner (Kahraman, 2022). This fact confirms that the reconstruction of *force majeure* cannot stop at the level of terminology, but must also incorporate a strengthened role for good faith as an operational principle. In other words, *force majeure* must be understood in conjunction with an active duty to seek the most equitable solution, rather than merely as a passive ground for escaping liability.

From the standpoint of legal policy, the analysis of regulations and government measures during the pandemic reveals a tendency on the part of the state to acknowledge that the burden of the crisis cannot be borne entirely by individual business actors through private contractual mechanisms. Programs for restructuring obligations, payment relaxations, and various economic stimulus schemes indicate that pandemic-related risks must be distributed collectively and cannot be placed solely on the shoulders of the weakest parties. When these findings are linked to the concept of *force majeure*, a lack of coherence becomes apparent: on the one hand, public policy is moving in the direction of risk redistribution; on the other hand, contractual texts and interpretive practices remain trapped within an individualistic and formalistic logic (Nathania & Yuri, 2025). This discrepancy reinforces the argument that the reconstruction of *force majeure* must be aligned with legal policy directions that are more inclusive of social justice.

The discussion also shows that reconstructing *force majeure* as an instrument for correcting injustice does not imply negating the principles of legal certainty and freedom of contract. The normative data analyzed indicate that Indonesian contract law has, in essence, already provided room for teleological and systematic interpretation that enables judges to emphasize justice and reasonableness in exceptional circumstances (Muskibah & Hidayah, 2020). By making use of this space, *force majeure* can be repositioned not as a threat to legal certainty, but as a safety valve that prevents the rigid application of contracts when factual realities have changed dramatically. Thus, the reconstruction proposed here does not contradict existing theories; rather, it actualizes the latent potential for justice already embedded in the general principles of civil law.

More concretely, the processing of normative and contractual data in this study leads to the proposal of new parameters for drafting and interpreting *force majeure* clauses. These parameters include the explicit recognition of pandemic events and related government policies as categories of supervening events, the parties' obligation to pursue renegotiation as a first step before any complete release from liability, and consideration of the parties' relative economic capacities in apportioning the burden of loss (Andrianti *et al.*, 2021). When these parameters are tested against the dispute patterns analyzed, it becomes apparent that their application has the potential to reduce the intensity of inequality in dispute outcomes, because they open space for more proportionate solutions such as postponement of performance, price adjustments, or partial reduction of obligations rather than unilateral termination that heavily burdens one of the parties.

On the other hand, it cannot be denied that a reconstruction of *force majeure* that is more justice-oriented also raises concerns about an expanded scope of discretion and heightened outcome uncertainty. The discussion of these concerns shows that such risks can be minimized through the formulation of more measurable and consistent assessment standards, both in contractual drafting guidelines and in jurisprudence. By establishing clear standards for example, regarding the degree of interference with performance that may reasonably be considered "substantial," or indicators of loss that may be deemed "disproportionate" judges and arbitral tribunals can still maintain consistency in their decisions, while the parties are provided with clearer guidance when drafting contracts. Accordingly, the claim that the reconstruction of *force majeure* automatically weakens legal certainty is not fully supported by the results of the analysis.

The discussion also shows that, rather than being in conflict, the reconstruction of *force majeure* is in fact compatible with contemporary developments in contract theory, which conceive of contracts as long-term relationships (*relational contracts*) that require adaptive flexibility in response to changing circumstances. The COVID-19 pandemic is an extreme example of such change, compelling a reassessment of contracts that were drafted on the assumption of stability. Conceptual and practical data indicate that the contracts which successfully withstood the crisis are those that, from the outset, provided room for adaptation through mechanisms of adjustment and consultation, rather than those that closed off all avenues except cancellation or forced

termination (Houssaini & Marghich, 2022). This supports the hypothesis that the reconstruction of *force majeure* is consistent with a more relational and responsive contract paradigm.

The practical implications of this discussion for the business community and the legal profession are considerable. For business actors, the research findings signal that the design of *force majeure* clauses can no longer be treated as a “standard part” simply lifted from a template, but must instead be deliberately crafted as a fair risk-management tool. For advocates, notaries, and legal consultants, this reconstruction demands a stronger command of theories of justice and legal policy so that the contractual advice they provide is not only formally valid, but also ethically and socially defensible when tested in times of crisis. For judges and arbitrators, these findings offer the perspective that an interpretation of *force majeure* that is sensitive to the pandemic context is not a deviation, but rather a creative application of the principles of justice and reasonableness.

Finally, this discussion confirms that the reconstruction of *force majeure* as an instrument for correcting injustice in modern business contracts during the COVID-19 pandemic is a logical response to the misalignment between foundational concepts, contractual practice, and the realities of a global crisis. The claim that *force majeure* must be repositioned is supported by the normative data, contractual patterns, and dispute-resolution dynamics processed in this study, and is consistent with theories of justice as well as developments in modern contract theory. By placing justice as the primary orientation, without disregarding legal certainty and freedom of contract, *force majeure* can be reconstructed as a mechanism that not only responds to crises, but also strengthens the resilience and legitimacy of modern business contracts amid recurrent global uncertainty.

Application and Interpretation of Force Majeure in the Indonesian Contract Law System from the Perspective of Balancing the Interests of the Parties Based on the Principle of Fairness

The application and interpretation of *force majeure* in the Indonesian law of contracts essentially rest on a normative construction derived from the general provisions on obligations and from fundamental principles such as freedom of contract, *pacta sunt servanda*, good faith, and reasonableness. The analysis of primary and secondary legal materials shows that, conceptually, the legal system provides space to exclude or adjust contractual obligations when extraordinary events occur that lie beyond the parties’ control. However, the manner in which these norms are operationalized through contractual clauses and practical interpretation does not always align with the aim of justice, thereby raising the question of whether the application of *force majeure* during the COVID-19 pandemic has truly reflected a balance of interests between the parties, or has instead reinforced pre-existing structures of inequality (Yunita, 2022).

More specifically, the mapping of modern business contracts analyzed in this study shows that the wording of *force majeure* clauses varies widely, ranging from highly generic to very detailed and technical. This variation has a direct impact on patterns of interpretation and application in practice. In contracts drafted by business actors with strong bargaining positions, *force majeure* clauses are often structured in such a way as to provide broad protection for those parties, while the protective space available to their weaker counterparts becomes limited. The normative and contractual data processed in this study indicate that, in pandemic conditions, these differences in clause design have resulted in markedly different outcomes in the allocation of losses, even though the parties have been confronted with similar factual disruptions (Mawanda & Muhshi, 2019).

Another finding that emerges from the juridical analysis of dispute-resolution practice is the tendency of some decision-makers both in the courts and in alternative dispute resolution forums to adhere to a formalistic approach when assessing whether the elements of *force majeure* have been satisfied. The assessment is often focused on whether a specific event is listed in the clause, or on the extent to which performance has become absolutely “impossible,” without giving adequate consideration to the drastic changes in economic conditions and regulatory frameworks brought about by the pandemic (Lina Habibah, 2021). Such an approach may be consistent with a narrow reading of *pacta sunt servanda*, but it is not always in line with the principle of justice, as it disregards the fact that the parties’ actual ability to perform has been eroded in a disproportionate manner.

When these findings are viewed through the lens of justice theory, particularly corrective and distributive justice, it becomes apparent that an overly rigid interpretation of *force majeure* tends to disregard the dimension of balancing the parties' interests. Corrective justice demands the rectification of an unequal allocation of losses resulting from events beyond the control of both parties, while distributive justice requires that burdens be apportioned on the basis of capacity, vulnerability, and each party's relative contribution to the risk (Wibowo, 2018). The data analyzed show that interpretive practices which fail to incorporate these considerations risk shifting the bulk of the losses onto the weaker party, merely because the contractual text or normative construction is read literally without sensitivity to the crisis context (Siombo & Waluyo, 2020).

From the perspective of legal system theory, the research findings indicate a lack of synchronization among three core elements: legal substance, enforcement structure, and the legal culture of the actors involved. At the level of substance, the regulation of supervening events and the general principles of obligations actually provide a "justice gap" through the concepts of good faith, reasonableness, and teleological interpretation. However, at the structural level, the practices of law enforcement institutions and dispute-resolution mechanisms tend to be oriented toward textual certainty, while at the level of legal culture, contracting parties still regard *force majeure* clauses merely as formal components rather than as instruments of risk management and justice (Kamilah *et al.*, 2025). This combination of inconsistencies explains why the application and interpretation of *force majeure* during the pandemic have not yet been fully oriented toward balancing the interests of the parties.

The analysis of government policies during the pandemic such as programs for restructuring obligations, payment relaxations, and economic stimulus adds another dimension that enriches the legal construction of *force majeure*. When these policies are linked to private contracts, they demonstrate that the state itself acknowledges the need for risk redistribution in extraordinary situations (Rahman *et al.*, 2022). The research findings show that when such public policies are used as interpretive references, the interpretation of *force majeure* has the potential to become more aligned with the principles of justice and balance of interests, because judges and arbitrators can appreciate that contracts do not exist in a vacuum, but rather operate within a regulatory ecosystem that explicitly seeks to mitigate the impact of the crisis on vulnerable parties.

Building on these overall findings, the legal construction proposed in this study positions the application and interpretation of *force majeure* within a layered interpretive framework that integrates the principles of freedom of contract, legal certainty, and justice. At the first layer, interpretation still begins with the wording of the clause and the applicable statutory provisions, in order to preserve certainty for the parties. At the second layer, interpretation must incorporate the principles of good faith and reasonableness, which require that the parties not misuse *force majeure* clauses to shift the entire burden onto weaker counterparts. At the third layer, interpretation is supported by the principles of corrective and distributive justice, as well as crisis-related public policies, to ensure that the ultimate outcome does not produce new inequalities that run counter to broader socio-economic objectives.

Thus, the application and interpretation of *force majeure* in the Indonesian contract law system that is oriented toward balancing the parties' interests on the basis of principles of justice is not only conceptually feasible, but also supported by the normative and policy analysis developed in this study. *Force majeure* needs to be understood and practiced not merely as a technical clause for extinguishing liability, but as an instrument for guiding the fair allocation of risk in times of crisis. If this layered construction is consistently adopted by contract drafters, legal practitioners, and law-enforcement institutions, the Indonesian contract system will be better equipped to accommodate the dynamics of global uncertainty without sacrificing substantive justice for the parties bound by it.

The discussion on the application and interpretation of *force majeure* in the Indonesian contract law system from the perspective of balancing the parties' interests on the basis of principles of justice departs from the analysis of normative and contractual data, which reveals a gap between the ideal construction found in legal texts and actual practice in the field. Primary legal materials in the form of provisions on obligations, relevant jurisprudence, and *force majeure* clauses in various modern business contracts during the COVID-19 pandemic are analyzed qualitatively to

identify dominant interpretive patterns. From this data-processing process, it emerges that although doctrinally *force majeure* is intended to respond to extraordinary events that interfere with the performance of obligations, in practice its interpretation is often not directed toward balancing the parties' interests, but rather toward preserving the risk structure that has been unilaterally constructed in the contract.

Conceptually, the starting point of this analysis is the hypothesis that an application and interpretation of *force majeure* consistent with principles of justice should be capable of accommodating extreme changes in factual circumstances without sacrificing parties who are structurally weaker. When the data on contractual clauses and their modes of interpretation are processed, it becomes apparent that *force majeure* provisions are often treated as neutral technical instruments, whereas in reality they are heavily imbued with choices about risk allocation. The contracts examined reveal a tendency on the part of economically dominant parties to formulate *force majeure* clauses in such a way that maximal protection is anchored in their favor, while obligations and risks continue to rest on the other party (Kamilah et al., 2025). This fact supports the claim that the current mechanisms for applying *force majeure* are not yet fully oriented toward balancing the parties' interests.

The processing of data on dispute-resolution practices during the COVID-19 pandemic, whether through court decisions or reports of private settlements, shows that the interpretive approaches employed by law enforcers and practitioners remain predominantly formalistic. The assessment of whether the requirements of force majeure have been satisfied often stops at the question of whether the pandemic event or government measures are expressly stipulated in the clause, and whether performance has become absolutely impossible, without any further analysis of the extent to which the event has disrupted the feasibility and reasonableness of performing the obligation (Bakung et al., 2022). The results of this data processing reveal a tendency to equate justice with literal adherence to the contractual text, making it difficult for more substantive principles of justice to enter as primary considerations.

When these findings are linked to the foundational concepts of freedom of contract and *pacta sunt servanda*, it becomes apparent that both are often understood in a narrow sense as an obligation to enforce the contractual text "as is," even when the surrounding context has changed radically. Normative analysis shows that the Indonesian law of contracts in fact recognizes limits to freedom of contract through the concepts of good faith, reasonableness, public order, and justice; however, the practice data processed in this research indicate that these limits are rarely given serious operational effect in the interpretation of *force majeure* (Yunita, 2022). This leads to the provisional conclusion that the prevailing interpretive structure has not yet made optimal use of the corrective potential embedded in the general principles of civil law to balance the parties' interests in times of crisis.

From the perspective of corrective justice theory, the processing of normative and contractual data indicates that losses arising from the pandemic and restrictive government measures have often been concentrated on parties situated at the downstream end of the value chain, such as small suppliers, tenants, or business partners with limited capital. When these parties advance *force majeure* claims, the response frequently given by their contractual counterparts and by some legal interpreters is rejection on the grounds that such risks are part of ordinary business risk or are not covered by the wording of the clause (Yunita, 2022). This fact not only reveals an imbalance in the distribution of losses, but also confirms the hypothesis that the application of *force majeure* has not yet been utilized as a corrector of skewed risk allocation, and has instead functioned merely as a mechanism for testing formal congruence between the occurrence of an event and the wording of the clause.

Conversely, from the perspective of distributive justice, the data show that the parties' capacities to bear the economic impact of the pandemic differ significantly, yet contractual interpretation rarely takes these disparities into account. The contracts analyzed reveal that responsibilities for performance or sanctions for delay are often applied uniformly, without regard to the vulnerability of the parties' respective business structures (Yunita Sugiastuti 2022). In this context, the claim that our system of contractual interpretation is neutral and fair becomes difficult to sustain, because its outcomes in fact widen the gap between strong and weak parties. This reality

supports the need to incorporate distributive justice parameters into the interpretive framework of *force majeure*, so that the allocation of losses can be adjusted to the respective capacities and vulnerabilities of each party.

The processing of public policy data during the pandemic such as programs for restructuring obligations, payment relaxations, and fiscal stimulus shows that the state itself acknowledges that the burden of pandemic-related risk must not be placed entirely on individual business actors through private contracts. If these policies are situated as part of a broader normative context, then, logically, the interpretation of *force majeure* should likewise move in the direction of risk redistribution and the protection of vulnerable parties (Sufiarina & Wahyuni, 2020). This reveals a strong connection between the policy analysis results and the initial hypothesis that a just application of *force majeure* must be synchronized with the orientation of public policy, rather than standing apart in a private sphere that is sterile and detached from social considerations.

Within the framework of legal system theory, the data analysis reveals a tension between relatively progressive legal substance, an enforcement structure that remains formalistic, and a legal culture among business actors that tends to regard *force majeure* clauses merely as contractual formalities. The substantive law opens space for teleological interpretation and the use of justice-based principles; the structure tends to close off that space through narrow patterns of reasoning; while the legal culture of business actors does not encourage contractual innovation that favors balance and fairness (Nabhani & Arifin, 2025). The combination of these three elements explains why there is a substantial gap between the potential for justice afforded by the legal system and the reality of injustice produced in the actual application and interpretation of *force majeure*.

From the processing of all the data, a reconstruction of the interpretive framework for *force majeure* that is oriented toward balancing the parties' interests becomes indispensable. This framework positions the principle of freedom of contract not as a justification for locking weaker parties into one-sided risk schemes, but rather as a space for designing a rational and proportionate allocation of risk. *Pacta sunt servanda* is interpreted not merely as an obligation to abide by the contractual text, but as an obligation to honor the agreement as it ought to operate under normal conditions, with the recognition that in extraordinary circumstances adjustments are required in order to preserve the aims of justice. Thus, the results of the data analysis support the claim that the fundamental principles of civil law actually provide the foundation for a more equitable interpretation of *force majeure*.

At the technical level, the contractual data analyzed point to several parameters that can be used as guidelines for assessing whether the application of *force majeure* already reflects a balance of interests. For example, whether the *force majeure* clause provides room for renegotiation before any complete release from obligations; whether there are provisions on the proportional allocation of losses; and whether the agreed dispute-resolution mechanism affords an opportunity to assess the parties' concrete circumstances (Houssaini & Marghich 2022). When the contracts analyzed are compared on the basis of these parameters, it appears that those which incorporate such elements tend to produce more balanced dispute-resolution outcomes than contracts that contain only minimalistic and rigid *force majeure* formulations.

This discussion also shows that reconstructing the manner in which *force majeure* is applied and interpreted does not conflict with established contract theory, but rather develops the potential already inherent within it. Relational contract theory, for example, has long emphasized the importance of flexibility and adaptation in contractual relationships, particularly when confronted with significant changes in the surrounding environment (De Freitas Rosa 2022). The processing of data during the pandemic in fact reinforces the relevance of this theory, because the contracts that were most capable of sustaining business relationships are those that allowed room for adaptation through justice-oriented interpretation, rather than those that rigidly insisted on a literal reading without regard to the crisis context.

Ultimately, the synthesis of the various strands of data processing shows that the application and interpretation of *force majeure* in the Indonesian contract law system will only truly reflect a balance of the parties' interests if it is read through the lens of active, rather than passive and formalistic, justice. The facts revealed in this research support the claim that an interpretation based solely on the contractual text, without taking into account capacity, vulnerability, and policy

context, will tend to perpetuate inequality. Conversely, an approach that integrates the principles of freedom of contract, legal certainty, and corrective distributive justice in interpreting *force majeure* demonstrates significant potential to produce more balanced dispute outcomes, while at the same time reinforcing the moral and social legitimacy of the contract law system itself in the face of global crises such as the COVID-19 pandemic.

CONCLUSIONS

This study concludes that the application and interpretation of *force majeure* in modern business contracts during the COVID-19 pandemic within the Indonesian legal system has not yet fully functioned as an instrument for correcting injustice, but remains heavily influenced by a formalistic construction of clauses and a narrow reading of the principles of freedom of contract and *pacta sunt servanda*. Normatively, the civil law framework in fact provides space for more equitable protection through the concepts of good faith, reasonableness, and supervening events; however, in contractual practice and dispute resolution, *force majeure* tends to be operated as an exculpatory mechanism that entrenches unequal risk allocation and burdens structurally weaker parties. Based on the analysis of concepts, norms, and practice during the pandemic, this research concludes that there is a need to reconstruct *force majeure* as a risk-redistribution mechanism oriented toward corrective and distributive justice, by placing renegotiation, proportional sharing of losses, and protection of vulnerable parties as the main pillars in re-reading contractual relationships in times of crisis.

In terms of scholarly contribution, this research adds value by shifting the debate on *force majeure* from a mere question of satisfying the formal elements of a supervening event to a question of balancing the parties' interests on the basis of principles of justice. The integration of corrective and distributive justice theories, the fundamental principles of contract law, and the direction of public policy during the pandemic produces a more comprehensive analytical framework for understanding how *force majeure* ought to be constructed in modern business contracts. Practically, the findings of this study offer a new orientation for contract drafters, legal practitioners, and law enforcers to no longer treat *force majeure* clauses as a "standard" and neutral component, but rather as a risk-management instrument that is consciously designed to prevent the concentration of losses on weaker parties and to preserve the continuity of business relationships amid extreme uncertainty.

This study has several limitations that must be acknowledged honestly, while at the same time opening space for future research agendas. The approach employed is normative, with an emphasis on doctrinal and policy analysis, so that a broader empirical mapping of contractual drafting practices and patterns of judicial decisions across various types of disputes has not been fully explored. The focus of the study is also confined to the context of the COVID-19 pandemic and the Indonesian legal system, so that any generalization to other crisis regimes or different jurisdictions must be undertaken with caution. Going forward, empirical research is needed to map the practice of drafting *force majeure* clauses and the parties' responses to crises, cross-country comparative studies to test the competitiveness and distinctiveness of the national construction, as well as interdisciplinary analyses that combine economic perspectives, sociology of law, and public policy in order to enrich the formulation of a *force majeure* model that is genuinely sensitive to justice in modern business contracts.

REFERENCES

- Andrianti, W. P., Santoso, B., & Prasetyo, M. H. (2021). Pandemi COVID-19 sebagai justifikasi *force majeure* dalam kontrak bisnis. *Notarius*, 14(2), 739–756. <https://doi.org/10.14710/nts.v14i2.43801>
- Arifin, R., Kambuno, J. A., Waspiah, W., & Latifiani, D. (2021). Protecting consumer rights in the digital economic era: Future challenges in Indonesia. *Jambura Law Review*, 3, 135–160. <https://doi.org/10.33756/jlr.v3i0.9635>
- Bakung, D. A. H., Muhtar, M. H., & Amer, N. (2022). Comparative analysis of legal policies regarding *force majeure* during COVID-19 pandemic in Indonesia and China. *Batulis Civil Law Review*, 3(1), 1–8. <https://doi.org/10.47268/ballrev.v3i1.721>

- Dewa, K. K. P., & Rokhim, A. (2025). Klausula eksonerasi dalam e-commerce: Antara kebebasan berkontrak dan penyalahgunaan keadaan. *Jurnal USM Law Review*, 8(3), 1743–1757. <https://doi.org/10.26623/julr.v8i3.12776>
- Fadlan, M. L., & Fidhayanti, D. (2024). COVID-19 pandemic as an event of force majeure in agreements (Case study of Indonesian court decisions). *Al-Iktisab: Journal of Islamic Economic Law*, 8(2), 119–138. <https://doi.org/10.21111/aliktisab.v8i2.12955>
- De Freitas Rosa, L. F. (2022). Contratos incompletos e infraestrutura. *Revista Simetria do Tribunal de Contas do Município de São Paulo*, 1(10), 188–217. <https://doi.org/10.61681/revistasimetria.v1i10.153>
- Houssaini, S. I., & Marghich, M. A. (2022). State of health emergency and survival of the contractual relationship in international contracts.
- Irawan, A. D., & Sulisty, A. Q. P. (2022). Pengaruh pandemi dalam menciptakan ketimpangan sosial ekonomi antara pejabat negara dan masyarakat. *Jurnal Citizenship Virtues*, 2(1), 251–262. <https://doi.org/10.37640/jcv.v2i1.1184>
- Kahraman, Z. (2022). Contractual performance facing COVID-19: A comparative analysis. *Annales de la Faculté de Droit d'Istanbul*, 71, 309–348. <https://doi.org/10.26650/Annales.2022.71.0004>
- Kamilah, A., Kusworo, F., May, N., & Lestari, R. (2025). Doktrin force majeure dalam hukum perikatan: Implikasi terhadap kontrak bisnis di era digital. *Indonesian Journal of Law and Justice*, 2(4), 1–11. <https://doi.org/10.47134/ijlj.v2i4.3870>
- Kunarjo, K., & Sumaryanto, A. D. (2020). Eksistensi perjanjian di tengah pandemi COVID-19. *Batulis Civil Law Review*, 1(1), 33–45. <https://doi.org/10.47268/ballrev.v1i1.423>
- Habibah, I. L. (2021). Keabsahan force majeure dalam perjanjian di masa era pandemi COVID-19. *Recital Review*, 3(1), 64–74. <https://doi.org/10.22437/rr.v3i1.11050>
- Mawanda, M. K., & Muhshi, A. (2019). Perlindungan hukum mitra ojek daring di Indonesia. *Lentera Hukum*, 6(1), 33–45. <https://doi.org/10.19184/ejllh.v6i1.9203>
- Muhammad, M. O., & Nugroho, L. D. (2021). Perlindungan hukum terhadap pengguna aplikasi e-commerce yang terdampak kebocoran data pribadi. *Pamator Journal*, 14(2), 165–174. <https://doi.org/10.21107/pamator.v14i2.12472>
- Muskibah, M., & Hidayah, L. N. (2020). Penerapan prinsip kebebasan berkontrak dalam kontrak standar pengadaan barang dan jasa pemerintah di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 4(2), 175–194. <https://doi.org/10.24246/jrh.2020.v4.i2.p175-194>
- Muskibah, M., Yetniwati, Y., Sasmiar, S., & Holish, A. M. (2023). Force majeure during COVID-19 outbreaks: Case of the cancellation and termination of government construction contracts. *Journal of Indonesian Legal Studies*, 8(1), 129–158. <https://doi.org/10.15294/jils.v8i1.68937>
- Nabhani, M., & Arifin, B. (2025). Rekonstruksi konsep keadilan relasional dalam filsafat hukum dan implikasinya terhadap akad-akad muamalah kontemporer. *Cendekia: Jurnal Studi Keislaman*, 11(1), 96–120. <https://doi.org/10.37348/cendekia.v11i1.704>
- Nathania, C., & Yuri, N. E. (2025). Pandemi COVID-19 sebagai faktor force majeure dalam kontrak dan implikasinya terhadap kontrak. *Jurnal Sosial Teknologi*, 5(4), 809–817. <https://doi.org/10.59188/journalsostech.v5i4.32087>
- Payuwaha, B. R. (2020). COVID-19 pandemic force majeure (overmacht) in agreements as a form of legal guarantee. *Jurnal Scientia Indonesia*, 6(2), 157–178. <https://doi.org/10.15294/jsi.v6i2.36120>
- Putri, M. K. (2023). Implications of the COVID-19 pandemic on business contracts implementation. *Indonesia Private Law Review*, 4(1), 9–18. <https://doi.org/10.25041/iplr.v4i1.2920>
- Rahadi, D. R., & Wardiman, C. (2022). Strategi pemasaran UMKM di masa pandemi COVID-19. *Eklektik: Jurnal Pendidikan Ekonomi dan Kewirausahaan*, 5(1), 96–110. <https://doi.org/10.24014/ekl.v5i1.14713>
- Rahman, A., Riyanto, T. F., & Istinah, S. R. D. (2022). Juridical review of force majeure clause in credit bank agreements when COVID-19 disaster. *Sultan Agung Notary Law Review*, 4(1), 89–100. <https://doi.org/10.30659/sanlar.4.1.89-100>

- Ramadhan, S. H., Firdaus, Y. F., Sunlaydi, D. B., & Mierkhahani, R. (2022). Upaya hukum kredit bermasalah bagi bank di masa pandemi COVID-19. *Jurnal USM Law Review*, 5(2), 523–538. <https://doi.org/10.26623/julr.v5i2.5270>
- Rambe, S. H., & Sekarayu, P. (2022). Perlindungan hukum nasabah atas gagal klaim asuransi akibat ketidaktransparanan informasi polis asuransi. *Jurnal USM Law Review*, 5(1), 93–109. <https://doi.org/10.26623/julr.v5i1.4073>
- Siombo, M. R., & Adi, E. A. W. (2020). Implikasi Keppres No. 12 Tahun 2020 pada perusahaan pembiayaan. *Refleksi Hukum: Jurnal Ilmu Hukum*, 5(1), 85–104. <https://doi.org/10.24246/jrh.2020.v5.i1.p85-104>
- Sufiarina, S., & Wahyuni, S. (2020). Force majeure dan *notoir feiten* atas kebijakan PSBB COVID-19. *Jurnal Hukum Sasana*, 6(1), 1–15. <https://doi.org/10.31599/sasana.v6i1.209>
- Suprapti, E., & Tarigan, A. E. (2021). Itikad baik dalam perjanjian: Suatu perspektif hukum dan keadilan. *SALAM: Jurnal Sosial dan Budaya Syar-i*, 8(1), 147–158. <https://doi.org/10.15408/sjsbs.v8i1.19377>
- Syamsiah, D. (2020). Penyelesaian perjanjian hutang piutang sebagai akibat *force majeure* karena pandemi COVID-19. *Legal Standing: Jurnal Ilmu Hukum*, 4(1), 306–313. <https://doi.org/10.24269/lis.v4i1.2783>
- Wibowo, D. E. (2019). Penerapan konsep utilitarianisme untuk mewujudkan perlindungan konsumen yang berkeadilan. *Syariah: Jurnal Hukum dan Pemikiran*, 19(1), 1–15. <https://doi.org/10.18592/sy.v19i1.2296>
- Wibowo, M. K. B. (2018). Teori keadilan dalam perspektif filsafat hukum dan Islam. *Mamba'ul Ulum*, 14(2), 27–44. <https://doi.org/10.54090/mu.39>
- Yunita Sugiastuti, N. (2022). Force majeure as a justification for failure to fulfill contractual obligations due to the COVID-19 pandemic: Suspending or terminating contract? *KnE Social Sciences*. <https://doi.org/10.18502/kss.v7i15.12091>.