



Legal Framework For Termination Of Contract Due To Force Majority To Further Ensure Legal Certainty

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ABSTRACT

Contracts essentially arise from differences in interests between parties bound in a legal relationship. In practice, not all contracts can be executed as initially agreed, especially due to force majeure conditions. However, the Indonesian Civil Code does not explicitly detail the events that constitute force majeure, leading to legal uncertainty. This study aims to examine the legal framework for contract termination due to force majeure in order to ensure legal certainty for the parties. The research is normative legal research using statutory and case approaches, utilizing both primary and secondary data obtained through literature and document study. The findings indicate that Articles 1244 and 1245 of the Civil Code serve as the primary legal basis for force majeure, stating that a party unable to fulfill obligations due to such circumstances may be exempt from liability. However, practical implementation depends heavily on contract clauses and the burden of proof. Courts consider several aspects such as the force majeure clause, duration, good faith, and mitigation efforts in their rulings. The study concludes that although a legal framework exists, more detailed and flexible regulations are needed to address the complexities of modern contractual relationships and ensure greater legal certainty. Therefore, it is recommended that the government develop additional legal instruments regulating force majeure in contractual agreements in Indonesia.

Keyword: Legal Framework, Contract Termination, Force Majeure

ABSTRAK

Kontrak pada dasarnya lahir dari perbedaan kepentingan antara para pihak yang terikat dalam hubungan hukum. Dalam praktiknya, tidak semua kontrak dapat dilaksanakan sesuai kesepakatan awal, salah satunya akibat keadaan kahar (force majeure). Namun, KUH Perdata tidak secara eksplisit merinci peristiwa-peristiwa yang dapat dikategorikan sebagai force majeure, sehingga menimbulkan ketidakpastian hukum. Penelitian ini bertujuan untuk mengkaji kerangka hukum pengakhiran kontrak karena keadaan kahar guna menjamin kepastian hukum bagi para pihak. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan kasus, serta menggunakan data sekunder dan primer yang diperoleh melalui studi pustaka dan dokumentasi. Hasil penelitian menunjukkan bahwa Pasal 1244 dan 1245 KUH Perdata menjadi dasar utama pengaturan force majeure, dengan ketentuan bahwa pihak yang tidak mampu memenuhi prestasi akibat keadaan kahar dapat dibebaskan dari tanggung jawab hukum. Namun, implementasi di lapangan sangat bergantung pada isi kontrak dan pembuktian pihak yang mengklaim terjadinya keadaan tersebut. Pengadilan mempertimbangkan beberapa aspek seperti isi klausul, durasi, itikad baik, dan upaya mitigasi dalam memutuskan kasus-kasus terkait. Studi ini menyimpulkan bahwa meskipun kerangka hukum telah tersedia, dibutuhkan pengaturan tambahan yang lebih rinci dan fleksibel agar dapat mengakomodasi dinamika hubungan kontraktual modern dan menjamin kepastian hukum yang lebih baik. Oleh karena itu, disarankan kepada pemerintah untuk mengembangkan regulasi pelengkap mengenai force majeure dalam perjanjian kontrak di Indonesia.

Kata Kunci: Kerangka Hukum, Keadaan Kahar, Pengakhiran Kontrak



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1. Introduction

A contract essentially arises from the differing interests between parties, which are later harmonized through negotiation and formalized in a written agreement. Through a contract, the parties agree to bind themselves and adhere to legal provisions. Article 1338 of the Indonesian Civil Code (KUH Perdata) states that any legally established agreement shall be binding as law for the parties involved and must be executed in good faith. The Civil Code also regulates various types of contracts, both *nominaat* (explicitly stipulated by law) and *innominaat* (developed through societal practices).

Problems may occur when one party fails to fulfill their obligations—commonly known as breach of contract (*wanprestasi*). Such a breach may be intentional, due to incapacity, or because of a force majeure event. Not every breach is eligible for compensation, especially if the defaulting party can prove no fault or bad faith. Articles 1244 and 1245 of the Civil Code define force majeure as extraordinary, unforeseeable events beyond the control of the debtor, such as natural disasters or pandemics.

A relevant example is the COVID-19 pandemic, which was declared a national disaster through Presidential Decree No. 12 of 2020. This sparked legal questions regarding contractual obligations. Several court rulings offer guidance:

- Decision No. 3389 K/Pdt/1984: The Supreme Court rejected a force majeure claim based on a director's letter, ruling it lacked legitimate authority.
- Decision No. 21/Pailit/2004/PN.Niaga.Jkt.Pst: The court found insufficient evidence to support a force majeure defense.
- Decision No. 91/PDT/2018/PT.MDN: The local government was deemed in breach for failing to pay despite flooding.
- Decision No. 3804 K/Pdt/2024: The court recognized distribution disruptions as valid force majeure, invalidating the unilateral termination of the contract.

Judges typically assess force majeure based on several parameters: the event must be unforeseeable, beyond the party's control, directly impacting the fulfillment of obligations, and not caused by negligence. Although the pandemic was declared a national disaster, it does not automatically annul contracts. Parties can still pursue renegotiation or restructuring based on good faith principles in civil law. Nevertheless, the legal framework for force majeure remains imperfect, with challenges such as lack of clear evidentiary standards, differing interpretations, and procedural ambiguity. Strengthening legal practice and regulation is therefore essential, including: Clearly defined force majeure clauses in contracts,; Establishing a Law on Procurement of Goods and Services, Providing ongoing training on contract law and risk management, and Promoting the application of the *rebus sic stantibus* principle for renegotiating in the event of fundamental changes. Judges must interpret and apply the concept of force majeure carefully to ensure legal certainty and fairness for all parties. Legal certainty can only be realized through clear regulations and consistent implementation in both judicial and contractual practices.

The objectives of this research, based on the problem formulation above, are as follows To inventory, describe, and analyze, normatively or doctrinally, the positive legal framework in Indonesia that regulates contract termination due to force majeure; To inventory, describe, and analyze the ratio decidendi and the application of the law by judges in cases concerning contract termination due to force majeure; and To describe and analyze the construction of legal thought regarding contract termination due to force majeure to further ensure legal certainty.

2. Problem Statement

Based on the description above, several issues were identified that can be examined through the following analysis and problem formulation:

1. What is the legal framework in Indonesia regarding contract termination due to force majeure?
2. What are the judges' considerations in cases concerning contract termination due to force majeure?
3. How is the legal construction of contract termination due to force majeure to ensure legal certainty?

3. Method

According to Soerjono Soekanto, legal research is a scientific activity conducted systematically to analyze specific legal phenomena. This study adopts a normative legal research method, which focuses on

document studies involving statutes, court decisions, contracts, legal theories, and opinions of legal scholars. This approach is also known as doctrinal legal research or library-based research.

The research examines legal norms and regulatory systems to assess whether a legal event is right or wrong. It uses three main approaches:

1. Statute Approach – analyzing relevant laws and regulations,
2. Case Approach – reviewing court decisions that have permanent legal force,
3. Conceptual Approach – developing legal concepts based on expert doctrines when no explicit regulation exists.

The data sources consist of: Primary legal materials, such as the Indonesian Civil Code (KUH Perdata), Supreme Court regulations, and court decisions relevant to force majeure; and secondary legal materials, including books, legal journals, papers, draft laws, and other academic or official documents.

The data collection techniques include literature review and documentation. Literature review involves examining legal texts and related documents, while documentation refers to gathering important records relevant to the research topic to obtain complete and valid data.

This research aims to build a legal argumentation framework to understand and interpret legal events, particularly in the context of force majeure. The normative legal method enables the researcher to evaluate legal obligations and construct legal interpretations based on established doctrine and legislation.

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4. Result and Discussion

In business practice, the terms “contract” and “agreement” are often used interchangeably, although distinctions do exist. According to Mariam Darus Badruzaman, both terms carry the same meaning, while Ricardo Simanjuntak asserts that a contract entails a legally binding agreement. Hence, while all contracts are agreements, not all agreements constitute contracts. A contract is legally enforceable only when it meets certain conditions such as mutual consent, legal capacity, a lawful object, and clarity. If breached, the aggrieved party may pursue legal remedies.

Causes of Contract Termination

1. Fulfillment of Obligations (Performance). Contracts naturally end when all parties have fulfilled their agreed duties. This includes delivering goods, providing services, or making payments. Valid performance must be voluntary, by capable parties, and concern lawful and clearly defined objects.
2. Early Termination by Mutual Consent. According to Article 1338 of the Indonesian Civil Code (KUH Perdata), contracts can be terminated based on mutual agreement. This form of termination reflects the freedom to contract and does not need a legal cause, provided there is no fraud or coercion. Typically, this is documented in a cancellation agreement to avoid future disputes.
3. Termination for Legal Cause. Per Article 1320 of KUH Perdata, a contract may be annulled if a valid legal reason exists. Grounds include breach of contract (*wanprestasi*), force majeure, bad faith, unlawful acts, undue influence, or defects in consent.
 - *Wanprestasi* (Breach of Contract): Occurs when a party fails to fulfill contractual obligations, such as late or substandard delivery. Remedies include contract termination or compensation.
 - Force Majeure: Extraordinary events like natural disasters or pandemics that prevent performance. If proven, parties may suspend or end the contract without liability, based on Article 1244 and 1245 of KUH Perdata.
 - Bad Faith: Violations of trust or dishonest conduct in fulfilling contractual duties. Examples include deliberate delays or hiding crucial information. This principle is enshrined in Article 1338(3).
 - Unlawful Acts (PMH): When actions breach the law and harm another party, even if unrelated to the contract's terms. These can justify termination and compensation, based on Article 1365.

- Undue Influence: One party exploits another's vulnerable condition during contract formation. Though not explicitly regulated, courts may annul such contracts under principles of equity and justice.
- Defect in Consent: Contracts signed under error, fraud, or duress are voidable. Article 1321 of KUH Perdata affirms that valid consent must be free from misrepresentation or coercion.

In sum, contract termination must comply with legal standards, whether by mutual consent or valid cause. Legal advice and proper documentation are crucial in either scenario to protect the rights of involved parties.

4.1. *Judicial Assessment of Force Majeure and Legal Certainty in Contract Termination in Indonesia*

The District Court, both at the first and final levels, is primarily responsible for exercising judicial power to examine, adjudicate, and resolve criminal and civil cases at the first instance. This authority is outlined in Law No. 8 of 2004, as amended by Law No. 49 of 2009. A court decision, as the outcome of a legal process, must be pronounced by a judge to have binding legal force.

Sudikno Mertokusumo defines a judicial decision as a statement made by a judge with the authority to resolve a dispute. A decision only has legal power once it is read in a public court session, as required by procedural law. Judges are required to base their rulings on legal reasoning that considers legal, sociological, and philosophical factors, in line with Law No. 48 of 2009 on Judicial Power.

Judicial independence allows judges to formulate legal reasoning in deciding cases. From case analyses, courts may differ in their rulings on force majeure. Judges assess whether events fulfill the elements of force majeure, based on contract terms and evidence from both parties.

According to the Indonesian Civil Code (ICC), Articles 1244 and 1245, force majeure consists of: unforeseeable circumstances, beyond the debtor's control, which prevent contractual obligations from being fulfilled, without fault or negligence. Judges evaluate these four elements to determine whether force majeure applies.

1. Unforeseeable Circumstances: Events such as natural disasters or pandemics not anticipated during contract formation. In fixed lump-sum construction contracts, for instance, unpredictable soil conditions may justify the invocation of force majeure.
2. Beyond Control: Force majeure must involve uncontrollable external factors. Judges examine whether events like COVID-19 or natural disasters genuinely exceeded the affected party's control and whether the affected party made reasonable efforts to mitigate the impact.
3. Direct Impact on Obligations: The event must make contract performance impossible—not merely inconvenient. For example, Presidential Decree No. 12 of 2020 designated COVID-19 a national disaster but did not automatically nullify contracts. Renegotiation, not termination, was preferred.
4. Absence of Fault: The affected party must not have contributed to the force majeure event through negligence. Judges verify whether the party exercised good faith and adhered to contract procedures for claiming force majeure.

4.2. *Legal Certainty in Force Majeure Rulings*

Legal certainty is a core principle of justice, requiring consistent application of laws. In financial agreements, legal certainty ensures contractual obligations are binding. The absence of such certainty may render agreements invalid.

Force majeure is recognized under Articles 1244 and 1245 ICC, reinforced by Presidential Decree No. 12/2020 on COVID-19. This decree confirmed the pandemic as a national disaster, affecting businesses and sparking legal debate about its implications. However, the decree does not automatically serve as legal grounds for contract termination. The specific force majeure clause in a contract determines applicability.

While COVID-19 disrupted many contractual obligations, it led to credit restructuring rather than widespread contract annulment. Under Financial Services Authority Regulation No. 11/POJK.03/2020, financial institutions were encouraged to restructure loans affected by the pandemic. Restructuring measures

include interest rate reductions, term extensions, and deferred payments. These adjustments do not cancel debtors' obligations but provide temporary relief.

Dispute resolution through restructuring is an internal, non-litigation approach. Mediation is less suitable for loan restructuring, as it typically involves only the financing institution and the debtor. Government policies during the pandemic aimed to ease economic pressures while ensuring legal clarity.

Legal certainty in restructuring includes: clear regulations, good faith by debtors, and creditor rights to repayment. Agreements must be notarized to ensure enforceability. While force majeure justifies flexibility, legal clarity must be preserved to avoid new uncertainties.

Hans Kelsen's theory posits law as a system of norms defining what "ought to be." Legal certainty means predictable, transparent rules guiding societal behavior. Even amid crises like COVID-19, contracts must respect this normative structure.

Therefore, force majeure-based restructuring must follow procedural requirements: filed in good faith, refer to appropriate laws (e.g., OJK Reg. No. 14/2020), and aim to adjust—not cancel—contracts. Disputes should be resolved amicably, per contract terms, and legal counsel should be consulted.

Force majeure, as regulated in ICC and Presidential Decree No. 12/2020, remains unchanged in substance. However, legal structures (i.e., implementation and judicial reasoning) must adapt. During COVID-19, debtors were not deemed in default unless fault was proven, reinforcing fairness and legal certainty. In conclusion, the legal foundation for contract restructuring amid force majeure events like COVID-19 is well-established in Indonesian law. It balances debtor relief and creditor protection, ensuring enforceable outcomes that maintain trust and predictability in commercial relations.

4.3. Legal Construction of Contract Termination Due to Force Majeure to Ensure Legal Certainty

In the event of a permanent force majeure, the contract must be terminated because the obligations can no longer be performed, although the legal bond still exists. No party may demand performance, and the debtor is not considered at fault. While the obligation remains, its enforceability ceases. If the force majeure is temporary, the obligation may resume once conditions return to normal.

In practice, when force majeure occurs, the contractor should be allowed to terminate the contract and receive payment for the work already completed. However, current laws do not fully regulate termination due to force majeure. Previously, Presidential Decree No. 80/2003 addressed contract termination, but newer regulations such as Presidential Regulation No. 54/2010 only allow for contract amendments, not termination.

This regulatory gap leads to confusion. Practitioners often misuse the terms "termination" and "cancellation," which have different legal effects. Courts may face difficulties in assessing claims, especially when contract language is ambiguous. This creates problems for providers who suffer losses due to unclear legal remedies. Although Article 91 of Presidential Regulation No. 54/2010 refers to the possibility of amending contracts in force majeure situations, it lacks specific provisions on termination. Meanwhile, Article 87 addresses changes in scope and schedule but not contract cessation.

To strengthen legal certainty, the Civil Code Articles 1244 and 1245 should be supplemented with clear and specific rules. These rules must define force majeure as an unforeseeable, uncontrollable event that renders performance impossible. The rules should also outline a termination process, including notification and evidence submission. Legal frameworks should also address "hardship" – where performance becomes excessively difficult but not impossible. Inspired by the UNIDROIT Principles, laws can encourage renegotiation before termination. Mandatory renegotiation under hardship can promote fairness and minimize litigation.

Governments may also encourage standard force majeure clauses in commercial contracts. This provides clarity and avoids disputes due to differing interpretations. Moreover, legal mechanisms should prevent abuse. A party cannot claim force majeure if it could reasonably perform its obligations. Sanctions should apply to unfounded claims. Legal certainty provides a predictable legal framework in extraordinary situations. Parties should know what qualifies as force majeure, how to prove it, what obligations may be suspended or terminated, and how to resolve disputes. Although Civil Code provisions offer some guidance, detailed contractual clauses are necessary to address complexities in modern agreements.

In conclusion, developing a robust legal construction for contract termination due to force majeure will protect the rights of both parties and uphold fairness. Clear rules, detailed procedures, and consistent judicial interpretation are essential to maintaining legal certainty during crises.

5. Conclusion

The termination of contracts due to force majeure is regulated within Indonesia's legal framework through applicable laws and legal practices. The main legal basis is Article 1320 of the Indonesian Civil Code (KUH Perdata), which stipulates that a party unable to fulfill its obligations due to force majeure may be released from liability for damages. Overall, the Indonesian legal framework provides clear legal protection regarding contract termination caused by force majeure. However, its implementation depends on the contract's provisions and the ability of the affected party to prove the occurrence of such an event. Therefore, it is essential for the parties to formulate a detailed force majeure clause and fulfill their contractual obligations in good faith.

Judges in cases involving contract termination due to force majeure consider various legal factors and relevant facts to ensure fairness for all parties. These considerations generally include: fulfillment of force majeure criteria, the content of the force majeure clause in the contract, mitigation efforts by the parties, whether the affected party has taken reasonable steps to reduce the impact of the force majeure, causality, duration of the force majeure event, the good faith of the parties, precedents, and principles of justice.

The legal construction regarding the termination of contracts due to force majeure in Indonesia aims to ensure legal certainty, protect the rights and obligations of the parties, and maintain a balance of justice. Although the legal basis for force majeure is already stipulated in Articles 1244 and 1245 of the Civil Code, a more detailed and flexible legal construction is required to address the dynamics of modern contractual relationships. This must include: the inclusion of a clear force majeure clause in contracts, specifying definitions, conditions considered as force majeure, notification procedures, and legal consequences.; the establishment of clear standards for what constitutes force majeure—such as the nature of the event (uncontrollable, unpredictable, unavoidable) and its impact on the fulfillment of contractual obligations.; the affected party must act in good faith, make reasonable efforts to mitigate the negative impacts, and communicate transparently with the other party.; legal certainty must be strengthened through supplementary regulations, since the Civil Code provisions remain general and outdated. This could take the form of statutory laws, jurisprudence, or sector-specific regulations (e.g., banking, construction, commerce), to clarify and reinforce the legal treatment of force majeure across different sectors.

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