

Force Majeure as a Basis for Exemption of Breach of Performance in Indonesian Contract Law: A Normative Legal Study of Articles 1244 and 1245 of the Civil Code

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Abstract. *Contracts validly formed bind the parties as law (pacta sunt servanda), meaning that non-performance generally opens the door to a claim of breach of contract. Indonesian civil law, however, recognizes an exception in the form of force majeure, as regulated under Articles 1244 and 1245 of the Indonesian Civil Code (KUHPerdara), which exempts a debtor from the obligation to pay costs, damages, and interest when non-performance results from an event beyond the debtor's control. The difficulty is that the Civil Code provides no explicit definition of force majeure, leaving its application heavily dependent on doctrinal interpretation and case law, particularly in the aftermath of the COVID-19 pandemic and the growth of electronic contracting. This study analyzes the legal basis, criteria, and legal consequences of force majeure as a ground for exemption from breach of contract, together with the challenges of its application in contemporary Indonesian judicial practice. The study employs a normative juridical method with statute and case approaches, supported by secondary legal materials drawn from recent scholarly literature. The findings indicate that force majeure is validly recognized as a ground for exemption when three cumulative elements are met: the event was unforeseeable, beyond the debtor's control, and rendered performance impossible. Such exemption does not eliminate the debtor's obligation to settle any portion of performance already rendered, so as to prevent injustice to the creditor. The study recommends strengthening force majeure clauses in contracts, particularly to anticipate non-natural disaster risks and digital technology disruptions, in order to achieve legal certainty for contracting parties.*

Keywords: *Breach of Contract; Contract Law; Exemption from Liability; Force Majeure; Indonesian Civil Code.*

1. Introduction

Contract law is one of the main pillars of civil law that regulates legal relations between two or more parties based on mutual agreement. Article 1338 paragraph (1) of the Civil Code emphasizes that a legally made agreement applies as law for the parties who made it, a principle known as *pacta sunt servanda*. This principle places legal certainty as the main value in contractual relations: each party is obliged to carry out the performance as agreed, and failure to carry it out is basically categorized as a breach of contract that can be claimed for damages as regulated in Article 1243 of the Civil Code.

However, the legal certainty guaranteed by the principle of *pacta sunt servanda* is not absolute. Indonesian civil law recognizes the doctrine of force majeure or compelling circumstances as regulated in Articles 1244 and 1245 of the Civil Code, which essentially exempts the debtor from the obligation to compensate for costs, losses, and interest if the failure to fulfill the performance is caused by an unforeseen event beyond the debtor's control, without any bad faith (Bagenda et al., 2024). This doctrine acts as a safety valve that balances legal certainty with a sense of justice, especially when events beyond the control of the parties make the performance of the performance impossible.

The problem is that the Civil Code, as a colonial legal product inherited from the *Burgerlijk Wetboek* (Indonesian Civil Code), does not provide an explicit definition of force majeure or a list of events that are categorized as force majeure. Sudjai et al. (2026) emphasized that the absence of a standard definition creates inconsistent formulations of force majeure clauses in various contracts and has the potential to trigger interpretation disputes in the realm of litigation, especially after the COVID-19 pandemic forced thousands of business actors to claim force majeure as a reason for waiving default. This problem is further complicated by the presence of electronic contracts and digital business transactions, where technological disruptions such as cyberattacks and system failures create uncertainty as to whether such events can be qualified as force majeure or constitute unforgivable negligence (Kamilah et al., 2025).

Several previous studies have examined force majeure from various perspectives. Siregar and Siregar (2025) emphasized that force majeure is a valid basis for waiving a breach of contract if it meets three cumulative elements: an unforeseen event, an unavoidable event, and one that makes the performance impossible. Fatmawati (2021), through her study of Supreme Court Decision No. 959 K/Pdt/2019, demonstrated how the court categorized flooding as a relative force majeure, meaning it delays the performance of a contract without permanently eliminating the obligation. Meanwhile, Woen and Riyanti (2025) highlighted the need to update the force majeure clause post-pandemic to include non-natural disasters and cybersecurity risks, given that Indonesia's legal framework is considered lagging behind other jurisdictions that have more detailed provisions on force majeure.

Based on the above description, this study was designed to address three main questions. First, how is force majeure regulated as a basis for waiving a default under the Indonesian Civil Code? Second, how are the criteria and classification of force majeure applied in Indonesian judicial doctrine and practice? Third, what are the contemporary challenges in the application of force majeure, particularly post-pandemic and in the era of digital contracts? The novelty of this study lies in its attempt to synthesize the classic force majeure doctrine in the Indonesian Civil Code with developments in judicial practice and the challenges of digitalizing business contracts. This is expected to provide a conceptual contribution to updating force majeure regulations in Indonesia.

2. Research Methods

This research uses a normative juridical legal research method (doctrinal legal research), namely research that examines law as a written norm by examining legal principles, legal systematics, the level of legal synchronization, and comparative law. The approach used includes a statute approach to the provisions of Article 1244, Article 1245, Article 1266, Article 1267, Article 1320, Article 1338, and Articles 1444–1445 of the Civil Code, as well as a case approach through a review of court decisions relevant to force majeure disputes.

The legal materials in this study consist of primary legal materials in the form of the Civil Code and related laws and regulations, such as Law No. 24 of 2007 concerning Disaster Management, as well as court decisions related to force majeure disputes. Secondary legal materials were obtained from civil law textbooks, nationally accredited scientific journal articles published between 2015 and 2026, and relevant previous research results. The legal material collection technique was carried out through library research, while the analysis was carried out descriptively and qualitatively using systematic legal interpretation and doctrinal interpretation methods to answer the research problem formulation.

3. Results and Discussion

3.1. Legal Basis and Concept of Force Majeure in the Civil Code

The term force majeure does not originate from the original Indonesian legal system, but rather was adopted from the concept of *overmacht* in the Dutch legal tradition which was then inherited through the *Burgerlijk Wetboek* and translated into the Indonesian Civil Code as "force majeure". The legal basis for force majeure is explicitly stated in Articles 1244 and 1245 of the Civil Code. Article 1244 of the Civil Code states that a debtor must be punished by reimbursement of costs, losses, and interest if he cannot prove that the non-performance of the obligation was caused by an unforeseen event, for which he cannot be held responsible, even if there was no bad faith on his part. This provision is then confirmed by Article 1245 of the Civil Code which states that costs, losses, and interest do not need to be reimbursed if due to force majeure or due to an unintentional event, the debtor is prevented from providing or doing something that is required, or does an act that is prohibited for him.

Bagenda et al. (2024) assert that these two articles essentially form a unified norm that provides a release from liability (*exoneratie*) to the debtor, as long as the debtor can prove that the failure to perform the obligation was purely caused by events beyond their control. This provision is also relevant to Articles 1444 and 1445 of the Civil Code, which regulate the consequences of the destruction of certain goods that are the object of the agreement due to an unintentional event, as also emphasized by Fatmawati (2021) in her study of force majeure disputes in intercompany lease agreements.

However, the Civil Code does not explicitly define force majeure or provide a limited list of events that fall under it. This gap makes the application of force majeure highly dependent on the interpretation of legal doctrine and jurisprudence, giving the courts considerable discretion to assess whether a specific event qualifies as a force majeure event (Sudjai et al., 2026).

3.2. Principles of Contract Law as a Force Majeure Framework

Force majeure cannot be separated from the legal principles of agreements that form the foundation of the Civil Code. The principle of consensualism as stipulated in Article 1320 of the Civil Code emphasizes that an agreement is born from the time an agreement is reached, so that the risks that arise later including force majeure events have essentially become part of the contractual relationship agreed upon by the parties. The principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code provides flexibility for the parties to formulate a force majeure clause according to their transaction needs, as long as it does not conflict with the law, public order, and morality (Rusli, 2015).

Rusli (2015) reminds us that freedom of contract should not be interpreted absolutely, especially when there is an imbalance in bargaining position between parties, so that courts and legislators progressively limit this freedom through the doctrine of good faith and abuse of circumstances (*misbruik van omstandigheden*). In the context of force majeure, the principle of good faith as regulated in Article 1338 paragraph (3) of the Civil Code has a dual function: on the one hand, it requires the debtor to immediately notify the creditor of a force majeure event as soon as the event occurs, and on the other hand, it prevents the debtor from abusing the excuse of force majeure to avoid obligations that can actually still be fulfilled.

3.3. Criteria and Classification of Force Majeure

Indonesian civil law doctrine generally distinguishes force majeure into two main classifications: absolute force majeure and relative force majeure. Absolute force majeure occurs when performance becomes absolutely impossible, for example, the destruction of the object of the agreement due to a natural disaster. Relative force majeure occurs when performance is still possible, but requires a disproportionate sacrifice of costs, time, or risk, thus delaying performance rather than permanently eliminating it. Fatmawati (2021) demonstrates the application of this classification in Supreme Court Decision No. 959 K/Pdt/2019, where flooding that hampered coal loading was deemed a relative force majeure because it only suspended performance rather than eliminated it completely.

To determine whether an event qualifies as force majeure, Indonesian doctrine and jurisprudence consistently refer to three cumulative elements. First, the element of unforeseeability, meaning the event could not have been predicted by the parties at the time the agreement was made. Second, the element of beyond control, meaning the event was completely beyond the debtor's ability to prevent or overcome it. Third, the element of impossibility of performance, meaning the event actually caused the performance to be impossible (Bagenda et al., 2024; Siregar & Siregar, 2025). Siregar and Siregar (2025) add that release from liability is not an automatic consequence; the debtor who alleges force majeure bears the burden of proof to show that he or she has made reasonable efforts to perform the performance and that the event that occurred truly prevented its fulfillment without any element of negligence.

3.4. Force Majeure as a Basis for Waiver of Default and its Legal Consequences

Default according to Article 1243 of the Civil Code arises when the debtor fails to fulfill the agreed performance, either by not performing at all, performing late, performing inappropriately, or doing something that according to the agreement should not be done. Iwanti and Taun (2022) explain that the legal consequences of default include four main consequences, namely the obligation to pay

compensation in the form of costs, losses, and interest; cancellation of the agreement; transfer of risk over the object of the agreement; and the obligation to pay court costs if the dispute continues to the realm of litigation. For creditors who are harmed, Article 1267 of the Civil Code provides the right to choose between demanding fulfillment of performance, demanding cancellation of the agreement with compensation, or demanding cancellation alone (Sinurat et al., 2025).

Force majeure exists as an exception to the default liability regime. If the debtor successfully proves that the three elements of force majeure as described above are met, the debtor is released from the obligation to pay compensation as stipulated in Article 1245 of the Civil Code. However, it is important to emphasize that this release is not comprehensive. Bagenda et al. (2024) emphasize that force majeure releases the debtor from future obligations (unfulfilled obligations), but does not necessarily eliminate the obligation to complete the portion of the performance that was carried out before the force majeure event occurred. This principle is intended to prevent unjust enrichment and maintain a balance of interests between both parties, so that neither party bears disproportionate losses due to events beyond their control.

In line with this, Sinurat et al. (2025) through an analysis of Article 1266 and Article 1267 of the Civil Code emphasized that cancellation of an agreement due to default must essentially be decided by a judge, even though the parties can agree to an automatic cancellation clause (*rechtsverwerking*) in the contract. This principle also applies analogously to force majeure disputes, where the court remains authorized to assess the validity of the force majeure argument submitted by the debtor to ensure that the claim is not misused to avoid contractual obligations that can actually still be fulfilled.

3.5. Judicial Practice: Jurisprudential Review

Indonesian judicial practice demonstrates the application of the force majeure doctrine on a case-by-case basis, taking into account the concrete facts of each case. In Supreme Court Decision No. 959 K/Pdt/2019, as reviewed by Fatmawati (2021), a dispute arose between a shipowner and a charterer regarding demurrage payments due to flooding that hampered coal loading activities. The Supreme Court, in its decision, considered the flooding to be a relative force majeure event, as explicitly stipulated in the charter agreement clause between the parties. Therefore, the party who ignored the force majeure notification was declared in default. This decision emphasizes the importance of a detailed force majeure clause in the contract, as courts tend to give significant weight to the parties' written agreements in assessing the validity of force majeure claims.

The COVID-19 pandemic has enriched force majeure jurisprudence in Indonesia. Siregar and Siregar (2025) note that court decisions in 2020 recognized the COVID-19 pandemic as a force majeure event in certain contexts, although this recognition was accompanied by strict evidentiary requirements regarding the causal relationship between the pandemic and the impossibility of performance. This indicates that Indonesian courts do not readily accept every force majeure argument associated with national or global events, but rather continue to demand proof on a case-by-case basis in accordance with the three cumulative elements of force majeure.

3.6. Contemporary Challenges: The Digital Era and Post-Pandemic

The development of electronic contracts and digital business transactions presents new challenges to the force majeure doctrine, originally designed to anticipate physical events such as natural disasters. Kamilah et al. (2025) identified a lack of clarity in the application of force majeure to digital contracts, particularly in distinguishing technological disruptions that are truly beyond the control of the system provider from negligence resulting from inadequate risk mitigation. System providers, who are required to meet certain reliability standards under laws and regulations in the field of electronic information and transactions, potentially lose the right to claim force majeure if the disruption is caused by a security weakness that should have been preventable.

In line with these findings, Woen and Riyanti (2025) recommend updating force majeure clauses in post-pandemic business contracts so that they are no longer limited to natural disasters, but also include non-natural disasters and social disasters as categorized in Law No. 24 of 2007 concerning Disaster Management, including disease outbreaks, cyber disruptions, and data leaks. Sudjai et al. (2026) also emphasize that the lack of an explicit definition of force majeure in the Civil Code is increasingly urgent to address, given that the complexity of contemporary risks demands greater legal certainty than when the Civil Code was first drafted. These three findings consistently point to one conclusion: strengthening force majeure clauses in contracts, accompanied by clarity on notification procedures and their consequences, is a far more effective legal mitigation measure than relying entirely on judicial interpretation in the realm of litigation.

4. Conclusion

Based on the discussion above, three main points can be concluded. First, force majeure is explicitly regulated in Articles 1244 and 1245 of the Civil Code as the basis for exempting debtors from the obligation to compensate for costs, losses, and interest due to default, although the Civil Code does not provide a standard definition, so its application is highly dependent on doctrine and jurisprudence. Second, force majeure is classified into absolute and relative force majeure, and is

only acceptable if it meets three cumulative elements: unforeseeability, being beyond the debtor's control, and rendering performance impossible; the exemption granted does not eliminate the debtor's obligation for the portion of performance that has been previously performed. Third, Indonesian judicial practice applies this doctrine casuistically, demanding strict proof, while the development of digital contracts and the experience of the COVID-19 pandemic indicate that the classic force majeure framework requires updating to accommodate contemporary risks such as cyber disruptions and non-natural disasters. Based on the above conclusions, this article formulates several suggestions as follows.

- a. First, lawmakers need to consider updating or formally clarifying the scope of force majeure in national treaty law to reduce interpretative uncertainty.
- b. Second, the parties in formulating the contract are advised to prepare a detailed force majeure clause, including the definition of events that qualify as force majeure, notification mechanisms, and legal consequences, while also anticipating the risk of non-natural disasters and digital technology disruptions.
- c. Third, further research is recommended to empirically examine how first-instance courts decide post-pandemic force majeure disputes to enrich understanding of the consistent application of this doctrine in Indonesian judicial practice.

5. References

Journals:

- Bagenda, C., Murni, S., Fitriani, Y., Andika, C., & Hidayati, N. (2024). Analisis yuridis terhadap pembatalan perjanjian berdasarkan keadaan memaksa (force majeure). *Jurnal Kolaboratif Sains*, 7(12), 4763–4768.
- Fatmawati, F. (2021). Force majeure dalam kontrak sewa menyewa antar perusahaan (Studi kasus Putusan No. 959 K/Pdt/2019) [Kajian hukum]. Universitas Pembangunan Nasional Veteran Jakarta.
- Iwanti, N. A. M., & Taun. (2022). Akibat hukum wanprestasi serta upaya hukum wanprestasi berdasarkan undang-undang yang berlaku. *Jurnal Ilmu Hukum THE JURIS*, 6(2), 346–351.
- Kamilah, A., Kusworo, F. R. A., StMAY, N., & Lestari, R. D. (2025). Doktrin force majeure dalam hukum perikatan: Implikasi terhadap kontrak bisnis di era digital. *Indonesian Journal of Law and Justice*, 2(4), 1–11.
- Sinurat, B. P., Siahaan, P. G., Damanik, I. F., Manurung, K. C., Sitorus, M. T., & Sembiring, O. C. A. (2025). Hubungan antara wanprestasi dan pembatalan perjanjian terhadap kewajiban membayar ganti kerugian: Analisis Pasal 1266 dan 1267 KUHPerdara. *JLEB: Journal of Law Education and Business*, 3(2), 856–863.

- Siregar, N. J., & Siregar, T. A. F. (2025). Force majeure as a ground for exemption from breach of contract in civil law. *Jurnal Hukum Sehasen*, 11(2), 309–318.
- Sudjai, Darmawan, D., Afifudin, M. Z., Saputra, G. A. S., Rahman, T. M., & Cahyo, A. P. M. N. (2026). Analisis yuridis normatif klausul force majeure dalam perjanjian bisnis di Indonesia. *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora*, 5(2), 398–408.
- Woen, F., & Riyanti, M. D. (2025). Kebaruan klausula force majeure dalam kontrak bisnis pasca pandemi ditinjau dari hukum perdata Indonesia. *Unes Law Review*, 8(1), 329–344.

Books:

- Rusli, T. (2015). *Asas kebebasan berkontrak sebagai dasar perkembangan perjanjian di Indonesia*. *Pranata Hukum*, 10(1), 24–36.

Regulation:

Civil Code [KUHPperdata].

Law No. 24 of 2007 concerning Disaster Management, State Gazette of the Republic of Indonesia 2007 No. 66, Supplement to the State Gazette of the Republic of Indonesia No. 4723.

Supreme Court of the Republic of Indonesia. (2019). Decision No. 959 K/Pdt/2019.