



Adoption of Hardship Clauses in Indonesia's Contract Law Reform System

Ensalina Papilaya^{1*}, Sari Murti Widiyastuti¹ and Husni²

¹ Faculty of Law, Atma Jaya University Yogyakarta, Indonesia

¹ Faculty of Law, Universitas Malikussaleh, Aceh, Indonesia

Submitted: 26 March 2026

Revised: 12 July 2026

Published: 25 July 2026

Abstract:

This study aims to examine the application of hardship clauses within the Indonesian contract law system. It was conducted with the objective of understanding how judges in Indonesia handle situations of hardship arising during the performance of a contract. The research method employed was a normative approach based on statutory provisions. Data was collected through a literature review and the analysis of legal documents relevant to the subject of this study. The results of the research indicate that the application of hardship clauses can provide flexibility in agreements facing unforeseen circumstances; however, it requires clear regulations and a sound understanding on the part of legal practitioners to ensure effective application. It is hoped that this research will make a significant contribution to the development of contract law in Indonesia by facilitating justice and legal certainty in contractual practice.

Keywords: Hardship clause; Contract; Justice; Indonesian Legal System

INTRODUCTION

Contract law is a part of civil law that regulates the legal relationship between the parties to the agreement (Dumbiri et al., 2026). A contract is a legally binding agreement between two or more parties to create, modify, or abolish rights and obligations (Merryman, 2022). The function of a contract in the legal context includes providing legal certainty, regulating the rights and obligations of the parties, and legal protection for the implementation of the agreement (Badruzaman, 1983). In addition to acting as a binding rule, contract law also serves as a tool to achieve justice and balance in legal relationships. Therefore, contract law must be able to adapt to social and economic changes to remain relevant and effective.

In Indonesia, the Civil Code has not explicitly regulated hardship clauses, so judges often rely on the principle of good faith (Article 1338 paragraph [3] of the Civil Code) to adjust the performance of contracts in difficult situations. This approach often creates legal uncertainty because there is no clear normative basis for contract adjustments due to changing circumstances. Force majeure, which is regulated in Articles 1244 and 1245 of the Civil Code, refers to extraordinary circumstances that cannot be foreseen and are beyond the control of the parties so that the execution of the contract becomes impossible (Sulistyaningrum, 2024).

In the event of force majeure, the affected party is exempted from liability without sanction. In contrast to force majeure, hardship refers to a situation in which the performance of a contract is still possible but becomes very burdensome or unfair to either party due to a fundamental and unexpected

*Corresponding Author : Ensalina Papilaya, Faculty of Law, Atma Jaya University Yogyakarta, Indonesia, ORCID iD: 0009-0000-1375-6091, E-mail: linapapilaya95@gmail.com

change in circumstances after the contract is made (Bagus et al., 2026). The hardship clause provides a mechanism for renegotiation or adjustment of the contract so that the contractual balance can be restored.

The COVID-19 pandemic has shown how important hardship clauses are. Social restrictions, supply chain disruptions, and declining demand have caused many parties to have difficulty fulfilling contractual obligations, resulting in an increased need for contract renegotiation or adjustment (Wirawan et al., 2022). In addition to the pandemic, global economic fluctuations, inflation, and regulatory changes also have an impact on contract execution; Economic uncertainty increases business risk so that contracts that were previously stable are vulnerable to failure to be executed (Alikhanova, 2021). Hardship clauses are recognized in international instruments such as the Unidroit Principles of International Commercial Contracts (UPICC) Articles 6.2.2–6.2.3, as well as recognized in the European legal system such as Article 1195 of the French Civil Code and the Wegfall der Geschäftsgrundlage doctrine in Germany, all of which provide adjustment mechanisms to maintain contractual fairness (Maulana et al., 2026).

Because the Indonesian Civil Code has not yet regulated hardship clauses, judges often use the principle of good faith or the analogy of force majeure to handle hardship disputes, although these solutions are not always adequate. The principle of good faith requires the parties to carry out the contract honestly and fairly, so that it becomes a basis for the judge to encourage renegotiation or interpret the true intentions of the parties (Article 1347 of the Civil Code). However, the limitations of the rules cause uncertainty in the court's decision. Therefore, it is necessary to reform Indonesia's contract law by explicitly adopting hardship clauses for the sake of a balance between legal certainty and substantial justice, as well as for contract law to be more responsive to global economic and social dynamics. This research will focus on how Indonesian judges consider and apply hardship clauses in judgments and whether their application is consistent with the principle of good faith.

METHODS

The type of research employed in this study is normative legal research. Peter Mahmud Marzuki defines normative research as the process of identifying legal rules, legal principles and legal doctrines in order to address the legal issues at hand (Negara, 2023). Normative research is also referred to as doctrinal research, in which the law is often conceptualised as what is written in legislation (the law in the books) or as rules or norms that serve as benchmarks for behaviour deemed appropriate (Chang, 2024).

This study employs a statutory approach, examining all written rules governing contractual legal relationships between parties. Its primary focus is on understanding the content, meaning and hierarchy of provisions in civil law, particularly in relation to legal drafting.

The data used in this study is secondary data. Secondary data consists of information in the form of documents obtained either directly or indirectly through a literature review, which the researcher utilises to support the analysis. In research on contract law, this data typically takes the form of bibliographic material. Its function is to explain, analyse, or critique the key rules relating to agreements or contracts.

RESULTS

Judges in Indonesia consider and apply hardship clauses in contract decisions by reviewing the legal aspects used, national and international case studies, factors influencing judges' decisions, and the impact of judgments on legal practice. Because the Civil Code has not explicitly regulated hardship, Indonesian judges often fill these normative gaps by referring to general principles such as good faith (Article 1338 paragraph (3) of the Civil Code), force majeure provisions (Articles 1244–1245), provisions on the validity of agreements (Article 1320), and arbitration regulations (Law No. 30/1999).

In practice, good faith is the main basis for a judge's assessment of a hardship claim: the court requires the claimant to be open, mitigate, and negotiate before demanding a contract adjustment. The evidentiary standards applied are relatively stringent; Changes in circumstances must be fundamental, unforeseen at the time the contract is made, beyond the control of the claimant, and incur a substantive, provable economic burden, often through an independent audit or appraisal. Analysis of domestic judgments shows variations in judges' approaches when hardship clauses are not listed.

In some cases, such as production and marketing disputes, the panel rejected the application for provision because the evidence was insufficient and affirmed the need for proof in the subject matter; In development disputes, judges assess the validity of agreements and encourage verification of losses by independent experts; In the case of renting a stall that caught fire, the fire is categorized as force majeure so that the judge evaluates reasonable steps post-event.

Meanwhile, in project termination disputes and public procurement disputes, judges often reject hardship's defense if the relevant parties fail to show mitigation efforts or evidence that conditions exceed normal business risks. Cases resolved through mediation or peace deeds also show that renegotiation and peaceful settlement are often practical alternatives that are in line with the purpose of hardship clauses, which is to maintain the continuity of the contractual relationship without cancelling the contract altogether.

Comparisons with international and arbitral awards show important differences. Judgments in jurisdictions that have adopted hardship clauses or refer to international principles, such as *Associated British Ports v. Tata Steel*, ICC Case No. 2508 (phosphate plant case), *Wintershall AG v. Qatar*, and ICC Case No. 19566 (*GTP v. Largo*), show that the clauses formulated clearly provide a solid basis for the forum to order a renegotiation or adjustment of a contract (Berger, 1999).

International arbitral awards are generally more flexible in applying adjustments based on transnational principles (e.g. UPICC), but still demands concrete evidence and good faith. Putusan Wintershall menyoroti ambang tinggi untuk menganggap fluktuasi pasar sebagai hardship; panel arbitrase menolak klaim yang sekadar mencerminkan risiko bisnis normal (Lookofsky, 2022). Oleh karena itu, keberadaan klausula hardship yang eksplisit dan Containing notice, mitigation, negotiation, and materiality criteria procedures can reduce uncertainty and make it easier for courts or arbitrators to take fair action.

The ethics of the people's principle and deliberative legal legitimacy (the Fourth Principle) require This section also identifies the determining factors of the judge's decision: macroeconomic conditions (market fluctuations, inflation, changes in exchange rates) that can trigger hardship claims; high quality of evidence and burden of proof; the good faith behavior of the parties during the formation and execution of the contract; redaction of the contract and the clauses it contains; the choice of the chosen dispute resolution and legal forum; as well as the role of the public or state which often involves considerations of the public interest and budgetary capacity.

The influence of court decisions on legal practice in Indonesia develops through the mechanism of *rechtsvinding* jurisprudence fills the gap in norms so that some decisions that consider the hardship principle begin to form more adaptive patterns of practice. The impact is seen in contract drafting practices: legal counsel and businesses are increasingly encouraged to explicitly include hardship clauses, establish notification and renegotiation mechanisms, and choose forums that allow adjustments.

In Indonesia, judges have begun to apply the principles of hardship analogously based on good faith and other provisions in the Civil Code, but this practice is still fragmented and demands a high standard of proof. In order for the hardship clause to function effectively as a balancing instrument between legal certainty and substantial justice, a combination of wise contract drafting, clear judicial guidelines or regulations, improving the competence of judges and socialization to the parties is needed. With these measures, Indonesia's contract law system can become more adaptive, maintaining legal certainty while providing a fair mechanism to respond to changing circumstances

While the adoption of the hardship principle offers a number of advantages namely contractual flexibility, continuity of business relationships, fostering a culture of negotiation, and protection for

vulnerable parties this section highlights the weaknesses that hinder its effectiveness in Indonesia. The absence of explicit regulations creates uncertainty and diverse interpretations between judges; the high burden of proof is detrimental to small business actors and resistance to change due to the strong tradition of *pacta sunt servanda* makes some practitioners still hesitant to include adjustment clauses.

Therefore, the authors make practical recommendations that are straightforward: first, the parties should formulate clear hardship clauses in long-term commercial contracts including the definition of hardship, materiality thresholds, notification obligations, mitigation obligations, renegotiation procedures, time frames, and forum authority (mediation/arbitration/court) to adjust the terms. Second, judicial guidelines or even legislative updates (revision of Book III of the Civil Code) are needed that regulate the parameters of proof and procedures for applying hardship so that the verdict becomes more consistent. Third, judicial capacity building and socialization for legal practitioners regarding international standards (UPICC, ICC model clause) are important for harmonization of implementation.

DISCUSSION

The concept of the hardship clause in contract law plays a vital role in maintaining the balance of rights and obligations between the parties when a fundamental and unforeseen change in circumstances occurs after the contract has been signed (Arif et al., 2026). Generally, hardship clauses aim to provide a mechanism for renegotiation or adjustment of the contract should an event occur that disrupts the contractual balance, without necessarily terminating the agreement outright (Chandra & Lie, 2026).

In this context, Indonesia and Malaysia have fundamental differences in the legal frameworks governing hardship clauses, whether from a doctrinal, regulatory or judicial practice perspective. In Indonesia, hardship clauses are not explicitly regulated in the Civil Code (KUHPerdota). Principles approximating this concept can only be found through the doctrine of *rebus sic stantibus* and the principle of good faith, as set out in Article 1338 of the Civil Code (Hernoko, 2006).

However, its application remains controversial as judges tend to rely on the principle of *pacta sunt servanda*, which states that contracts must be honoured as agreed (Fichtelberg, 2026). In practice, Indonesian courts still adhere more closely to the letter of the law and have not yet accommodated the substance of contracts, except in truly extreme circumstances, for example through the application of the principle of equity (Togle, 2026).

This contrasts with the modern contract law model adopted in the UNIDROIT Principles of International Commercial Contracts (UPICC), which explicitly provides for hardship mechanisms in Articles 6.2.2 and 6.2.3 (Mistelis, 2022). However, its application in Indonesia remains limited to soft law. (UNIDROIT Principles of International Commercial Contracts, Articles 6.2.1–6.2.3, 2016) (Michaels, 2017). Nevertheless, the UPICC principles have subsequently been incorporated through Presidential Regulation of the Republic of Indonesia No. 59 of 2008 on the Ratification of the Statute of the International Institute for the Unification of Private Law.

In the development of international contract practice, the application of hardship clauses in Indonesia has also begun to be influenced by the '*rebus sic stantibus*' doctrine and the principle of good faith set out in Article 1338(3) of the Civil Code. This provision stipulates that a contract must be performed in good faith, thereby allowing for the renegotiation of a contract when one of the parties faces a disproportionate burden. Article 2(1) of Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, 2023), stipulates that the performance of contracts is based on certain principles, such as legal certainty, utility, solidarity, sustainability, efficiency and justice.

In the context of hardship clauses, this provision allows for the adjustment of business contracts in line with economic developments and unforeseen circumstances, as the Job Creation Law prioritises flexibility and efficiency in the business world. This means that, although the Indonesian Civil Code does not explicitly recognise the concept of a hardship clause, Article 2(1) of Law No. 6 of 2023 can

serve as a basis for legal interpretation that agreements may be adjusted to specific situations and conditions in the event of a significant change in circumstances. This is in line with the spirit of the Job Creation Law, which promotes an adaptive investment climate and business activities, thereby allowing for the renegotiation of contracts or the redrafting of contractual clauses when an imbalance in obligations arises due to circumstances beyond the parties' control.

In the context of contract law, Indonesia and Malaysia take different approaches to hardship clauses, namely situations where the performance of a contract becomes unduly onerous for one of the parties due to significant and unforeseen changes in circumstances. These differences can be seen in the legal basis, doctrinal concepts and opportunities for contract renegotiation. In Indonesia, the contract law system is still based on the Civil Code, specifically Articles 1244, 1245 and 1338 (Civil Code of Indonesia (Burgerlijk Wetboek voor Indonesie), n.d.). The Civil Code essentially adheres to the principle of *pacta sunt servanda*, which means that agreements are binding on the parties like laws.

However, contemporary legal developments through Law No. 6 of 2023 on the Enactment of the Cipta Kerja Government Regulation in Lieu of Law (Perppu) provide greater flexibility. Article 2(1) of the Cipta Kerja Law sets out the principles governing the implementation of the Cipta Kerja Law, which include legal certainty, public benefit and justice. These principles open up opportunities for adaptation to extraordinary circumstances, including the inclusion of hardship clauses in modern contracts, which allow for renegotiation in the event of significant changes in circumstances that affect the balance of rights and obligations between the parties. Consequently, contractual practice in Indonesia is increasingly moving towards the acceptance of the concept of *rebus sic stantibus* a doctrine that permits the adjustment of contracts when circumstances change drastically even though this is not yet explicitly regulated in the Civil Code.

CONCLUSION

Judges in Indonesia have begun to fill the normative void related to the hardship clause by referring to the principle of good faith (Article 1338 paragraph (3) of the Civil Code), the provisions of force majeure (Articles 1244–1245), and other relevant rules. However, due to the absence of explicit regulations, the application in the courts is still analogous and diverse. In judicial practice, hardship claims are subject to a high standard of proof: changes in circumstances must be fundamental, unforeseen at the time the contract is made, beyond the control of the parties, and create a substantive economic burden. Judges generally require concrete evidence as well as mitigation and renegotiation efforts by the claimant.

Domestic rulings show a tendency to maintain the principle of *pacta sunt servanda* while allowing room for substantive justice; More legally adequate international and arbitral awards show that clearly formulated hardship clauses facilitate contract adjustments and reduce uncertainty. The determining factors for the decision include the economic situation, the quality of evidence, the good faith of the parties, the redaction of the contract, the choice of forums, and the involvement of the public. Without standard guidelines, consistency of decisions is difficult to achieve and the burden of proof creates obstacles for small business actors. Overall, the adoption of hardship clauses both through explicit contractual clauses and through the harmonization of jurisprudence and legislation has the potential to improve contractual balance, protect business relationships, and align Indonesian contract law with international practice.

This study recommends that the Government and the House of Representatives need to consider explicit arrangements regarding hardship clauses in the revision of the Civil Code (Book III) or its implementing regulations. These provisions should regulate the definition of hardship, materiality criteria, notification and mitigation obligations, the order of renegotiation, and the authority of the court/arbitrator to adjust or terminate the contract.

With regard to judicial guidelines, this study recommends that the Supreme Court needs to issue a SEMA or PERMA that contains technical guidelines for judges in assessing hardship claims, including evidentiary parameters, independent audit/appraisal standards, and procedural stages

(notice, negotiation, mediation, arbitration/court). These guidelines will improve the consistency of the decision.

In Practical Contract Drafting, this study recommends that legal practitioners and business people are encouraged to include clear hardship clauses in long-term contracts. Model clauses should include definitions, materiality thresholds (e.g., percentage increases in costs or performance value decreases), notification obligations, mitigation obligations, renegotiation periods, and dispute resolution forums.

Conflict of Interest

All the authors declare that there are no conflicts of interest.

Funding

This study received no external funding.

How to cite:

Papilaya, E., Widiyastuti, S.M. (2024). Adoption of Hardship Clauses In Indonesia's Contract Law Reform System. *International Journal of Law, Social Science and Humanities (IJLSH)*, 3(2), 529-535. <https://doi.org/10.70193/ijlsh.v3i2.302>.

REFERENCES

- Alikhanova, L. F. (2021). Comparative Analysis of the UNIDROIT Principles and the CISG: A Focus on Hardship. *Journal of International Commercial Law*, 10(2), 122–134.
- Arif, J., Sutrisno, N., Heriyanto, & Heriyanto, D. S. N. (2026). Hardship Clauses in Business Contracts from the Perspective of Prophetic Law. *Prophetic Law Review*, 8(1), 60–82. <https://doi.org/https://doi.org/10.20885/PLR.vol8.iss1.art3>
- Badrulzaman, M. D. (1983). *KUH Perdata – Buku III, Hukum Perikatan Dengan Penjelasan*. Alumni.
- Bagus, S., Ryandra, R., Darmawan, A., Marquez, N. Y., & Santiago, F. (2026). Interpretation of Jimenez's Theory in Contract Law Practice in Indonesia. *Jurnal Ilmiah Gema Perencanaan*, 4(3), 2537–2552. <https://doi.org/https://doi.org/10.61860/jigp.v4i3.343>
- Berger, K. P. (1999). *The Creeping Codification of Transnational Commercial Law: An Analysis of the UNIDROIT Principles of International Commercial Contracts*. Kluwer Law International.
- Chandra, W., & Lie, G. (2026). Recognition of Hardship as a Corrective Mechanism in Indonesian Contract Law under Extraordinary Changes in Circumstances. *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, 26(1), 997–1011. <https://doi.org/https://doi.org/10.24252/al-risalah.vi.66411>
- Chang, Y. (2024). The Empirical Foundation of Normative Arguments in Legal Reasoning. *European Journal of Empirical Legal Studies*, 1(1), 69–88. <https://doi.org/https://doi.org/10.62355/ejels.18070>
- Dumbiri, D. N., Makhmia, L., Mandasari, P. W., Firmansyah, Y. D., & Prakos, F. A. (2026). Contract Law and Default in Indonesian E-Commerce Transactions: Legal Certainty, Consumer Protection, and the Future of Digital Contract Enforcement. *Jurnal Sahabat ISNU SU*, 3(1), 118–129. <https://doi.org/https://doi.org/10.70826/jsisnu.v3i1.1244>
- Fichtelberg, A. (2026). Performing Legitimacy in Irregular Criminal Justice: Lessons from the People's Tribunals. *International Journal of Law, Social Science, and Humanities*, 3(2), 460–472. <https://doi.org/https://doi.org/10.70193/ijlsh.v3i2.298>
- Hernoko, A. Y. (2006). Force Majeur Clause” Atau “Hardship Clause” Problematika Dalam

- Perancangan Kontrak Bisnis. *PERSPEKTIF: Kajian Masalah Hukum Dan Pembangunan*, 11(3). <https://doi.org/https://doi.org/10.30742/perspektif.v11i3.276>
- Lookofsky, J. (2022). *Understanding the CISG*. Kluwer Law International,.
- Maulana, Mursal, Purnawanty, J., Darodjat, R., Permatahati, M., & Wolff, M. (2026). The Paradigm Shift In Contract Interpretation: A Comparative Analysis Of Indonesia, New Zealand, The CISG and The UPICC. *Indonesia Private Law Review*, 7(1), 35–50. <https://doi.org/https://doi.org/10.25041/iplr.v7i1.4681>
- Merryman, J. H. (2022). *The Civil Law Tradition*. Stanford University Press.
- Michaels, R. (2017). The Hardship Clause in International Contracts. *International Journal of Law and Commerce*, 35(1), 45–67.
- Mistelis, L. A. (2022). *The UNIDROIT Principles of International Commercial Contracts: A Commentary*. Edward Elgar Publishing.
- Negara, T. A. S. (2023). Normative Legal Research in Indonesia: Its Originis and Approaches. *Audito Comparative Law Journal (ACLJ)*, 4(1), 1–9. <https://doi.org/http://dx.doi.org/10.22219/aclj.v4i1.24855>
- Sulistyaningrum, H. P. (2024). E-Contract Consensus in Indonesian Contract Law. *Batulis Civil Law Review*, 5(2), 89–98. <https://doi.org/https://doi.org/10.47268/ballrev.v5i2.1930>
- Togle, G. M. A. (2026). Challenges, Acceptance, and Adoption of Electronic Payment at Teodoro Arcenas Trade Center Towards Efficient Local Development. *International Journal of Law, Social Science, and Humanities*, 3(2), 451–459. <https://doi.org/https://doi.org/10.70193/ijlsh.v3i2.306>
- Wirawan, V., Anditya, A. W., Suryanata, A. R., & Karim, A. (2022). Force Majeure During The Covid-19 Pandemic (A Study Of Causality In The Perspective Of Engagement Law). *Law Science and Field*, 11(2), 695–703.