Force Majeure In Employment Contracts: Business Continuity and Worker Protection

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Abstract. Crises such as pandemics, economic shocks, and natural disasters often disrupt business operations and create legal uncertainty in employment relationships. Employers may invoke force majeure to suspend, modify, or terminate employment obligations, while workers remain entitled to wage security, fair treatment, and legal protection. This article examines the legal position of force majeure in employment contracts and its implications for balancing business continuity with workers' rights protection. The study employs normative juridical research using statutory, conceptual, and case-based approaches, supported by analysis of labor regulations, contract law principles, and relevant legal doctrines. The findings indicate that force majeure cannot be used automatically to release employers from employment obligations. Its application must be assessed carefully based on unforeseeability, causality, impossibility of performance, good faith, proportionality, and compliance with labor protection norms. The article concludes that crisis management in employment contracts requires a balanced legal framework that safeguards business survival without undermining workers' fundamental rights.
Keywords: Force Majeure; Employment Contracts; Business Continuity; Workers' Rights; Labor Law.

1. Introduction

Crisis situations, whether caused by pandemics, natural disasters, economic shocks, public health emergencies, or other extraordinary circumstances, often disrupt the stability of employment relations. In such conditions, employers may face declining revenues, operational restrictions, supply-chain disruption, rising production costs, and the risk of business closure. At the same time, workers are placed in a vulnerable position because they may experience wage reduction, temporary furlough, unilateral changes to working conditions, delayed payment of employment rights, or even termination of employment. This situation indicates that employment contracts cannot be understood merely as private contractual arrangements between employers and workers, but must also be viewed as legal relationships situated within the broader framework of labour protection, industrial justice, and social welfare. Indonesian labour law places employment relations within a legal framework that must balance the employer's interest in maintaining business continuity and the worker's interest in obtaining protection for fundamental employment rights. [1], [2], [3]

The problem becomes more complex when employers invoke force majeure as a legal basis for suspending, modifying, or terminating obligations arising from employment contracts. Under Indonesian civil law, force majeure is generally associated with an event beyond the debtor's fault that makes contractual performance impossible, as reflected in Articles 1244 and 1245 of the Indonesian Civil Code. However, the application of force majeure in employment contracts cannot be equated entirely with its application in ordinary civil or commercial contracts. Employment relations involve an unequal bargaining position between employers and workers; therefore, freedom of contract in labour law is limited by mandatory and protective legal norms. Accordingly, the central issue of this article is how force majeure should be legally positioned in employment contracts during crisis periods and how the law can balance business continuity with the protection of workers' rights. [4], [5]

The theoretical framework of this article is based on legal protection theory, contractual justice theory, and the principle of proportionality. Legal protection theory is relevant because workers are generally positioned as the weaker party in employment relations, both economically and structurally. Legal protection

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is not only repressive, through the provision of dispute settlement mechanisms after violations occur, but also preventive, through the establishment of mandatory norms, limitations on the grounds for termination of employment, regulation of wages, protection of normative rights, and mechanisms for resolving industrial relations disputes. In the context of force majeure, this theory is used to assess whether a crisis is genuinely invoked as a lawful, objective, and good-faith legal reason, or whether it is used merely as a pretext to transfer the entire burden of business risk to workers. Legal protection for workers must ensure that extraordinary circumstances do not become an instrument for weakening fundamental labour rights. [6]

In addition, contractual justice theory and the principle of proportionality are used to assess the balance between the rights and obligations of employers and workers in employment contracts. Although an employment contract is formed through agreement, such agreement must remain subject to minimum labour standards, the principle of good faith, and the requirement of fairness in contractual performance. During a crisis, employers may objectively experience difficulties in fulfilling their obligations. However, the use of force majeure must be tested through several elements, namely the unforeseeability of the event, the external nature of the event, the causal relationship between the crisis and the non-performance of obligations, the impossibility or serious impediment of performance, the absence of bad faith, and the consideration of less harmful alternatives before workers' rights are reduced or employment relations are terminated. Therefore, wage reduction, worker furlough, changes to working conditions, or termination of employment cannot be justified automatically merely because a crisis exists. Such measures must be assessed proportionally, negotiated in good faith, and taken only after fairer alternatives for preserving employment relations have been considered.[7], [8]

Previous studies have discussed the relationship between force majeure, hardship, and employment contracts, particularly in the context of the Covid-19 pandemic. Widiastiani explains that the Covid-19 pandemic may be examined in relation to force majeure and hardship in employment contracts, especially when employers experience difficulty in fulfilling obligations such as wage payment or religious holiday allowance. Nevertheless, the application of force majeure in employment relations still requires careful legal assessment and cannot be accepted automatically. Junaidi, Surahmi, and Romli further emphasize that the pandemic revealed the weakness of relying solely on force majeure as a basis for termination of employment; therefore, the principles of hardship, renegotiation, and legal protection for workers need to be strengthened in resolving employment relations during crisis periods. These findings show that employment disputes during crises should not be resolved by unilaterally releasing employers from their obligations, but through mechanisms that are fair, transparent, and oriented toward preserving employment relations. [9], [10], [11], [11], [12]

International labour discourse also emphasizes that crisis management in employment relations should be based on social dialogue, collective bargaining, and negotiated solutions. The International Labour Organization states that collective bargaining during the Covid-19 crisis played an important role in strengthening labour market resilience, preserving jobs, protecting workers' income, ensuring occupational safety and health, and supporting business continuity. This approach is relevant to the Indonesian context because employment relations during crises always involve competing interests between employers' need for business flexibility and workers' need for income security and protection of normative rights. Therefore, force majeure should not be positioned as an automatic legal escape for employers to release themselves from labour obligations. Instead, employment policies during crises should be directed toward dialogue, transparency, proportionality, protection of minimum labour standards, and prevention of termination of employment as a measure of last resort. [19]

Although previous studies have made important contributions, a research gap remains. Most existing studies focus on the Covid-19 pandemic and termination of employment, while broader analysis of force majeure in employment contracts across various forms of crisis remains limited. In addition, previous research has mostly examined whether force majeure can be applied in employment relations, but has not sufficiently formulated the limits of its application based on the principles of business continuity, workers' rights protection, good faith, proportionality, and social dialogue. The novelty of this article lies in its attempt to construct a balanced normative framework for assessing force majeure in employment contracts, not merely as a legal defence for employers, but as a legal concept that must remain within the protective

character of labour law. Thus, this article aims to analyse the legal position of force majeure in employment contracts during crisis periods and to formulate a model of legal protection that safeguards business continuity without disregarding workers' fundamental rights.

2. Research Methods

This research uses a normative juridical method, because the object of analysis is the legal norm governing force majeure and employment contracts during crisis situations. The research is descriptive-analytical in specification, as it describes the legal position of force majeure in employment relations and analyses its implications for balancing business continuity with the protection of workers' rights. The approaches used in this article include the statute approach, conceptual approach, and analytical approach. The statute approach is applied by examining relevant legal instruments, particularly the Indonesian Civil Code, Law Number 13 of 2003 concerning Manpower, Law Number 6 of 2023 concerning Job Creation, and Government Regulation Number 35 of 2021. The conceptual approach is used to analyse the concepts of force majeure, employment contracts, good faith, proportionality, business continuity, and labour protection. Meanwhile, the analytical approach is used to assess whether the invocation of force majeure in employment contracts can be justified without undermining workers' fundamental rights. [13], [13]

The data used in this research consist of secondary data obtained through library research. The legal materials include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of statutory regulations related to civil law, employment law, and industrial relations. Secondary legal materials include books, journal articles, legal opinions, and previous studies concerning force majeure, hardship, employment contracts, termination of employment, and workers' rights protection during crises. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references used to clarify legal concepts. The data collection technique is conducted through document study by identifying, classifying, and analysing relevant legal materials. The data are analysed qualitatively using legal interpretation, systematic analysis, and prescriptive reasoning to formulate a balanced legal framework for applying force majeure in employment contracts while maintaining both business survival and the protection of workers' rights.

3. Results and Discussion

3.1 The Legal Position of Force Majeure in Employment Contracts during Crisis

The findings of this research show that force majeure in employment contracts during crisis situations cannot be understood as an automatic legal ground that releases employers from all labour obligations. In civil law, force majeure is generally related to circumstances beyond the debtor's fault that make contractual performance impossible. Articles 1244 and 1245 of the Indonesian Civil Code provide the general basis that a debtor may be exempted from liability for damages if non-performance is caused by circumstances that cannot be attributed to the debtor. However, when this concept is applied to employment relations, its legal assessment must be stricter because an employment contract is not merely a private contractual relationship, but is also subject to protective labour norms. Therefore, force majeure in employment relations must be positioned as a limited, case-specific, and evidentiary legal ground, not as a unilateral argument that automatically eliminates the employer's obligations toward workers. [14], [15]

This normative finding shows that a crisis must be distinguished between a situation that truly makes contractual performance impossible and a situation that merely creates economic difficulty or decreases business capacity. This distinction is important because not every disruption to business activity can be legally qualified as force majeure. If a crisis only causes increased costs, declining revenue, or changes in business strategy, such a situation is closer to the concept of hardship than to force majeure. Force majeure refers to circumstances that make performance impossible or objectively obstructed, whereas hardship emphasizes a change of circumstances that makes contractual performance extremely burdensome but still possible through certain adjustments. In the context of employment contracts, this distinction is significant because the use of force majeure tends to lead to the release or termination of obligations, while hardship encourages renegotiation, adjustment of employment relations, and preservation of industrial relations. [11], [18][16], [17]

In employment relations, the invocation of force majeure must be examined through several elements, namely the existence of an extraordinary event that could not reasonably have been foreseen, the external nature of the event beyond the control of both employer and worker, a direct causal relationship between the crisis and the inability to perform obligations, the absence of fault or bad faith by the party invoking force majeure, and the unavailability of less harmful alternatives to preserve the employment relationship. If one of these elements is not fulfilled, force majeure should not be accepted as a legal basis for reducing, postponing, or eliminating workers' rights. Thus, the burden of proof cannot be satisfied merely by stating that a company is experiencing a crisis. It must be supported by objective evidence regarding the impact of the crisis on business operations, payment capacity, and the continuity of employment relations.

Normatively, Indonesian labour law recognizes that force majeure may become one of the grounds related to termination of employment. This can be seen in the regulation of termination of employment under the labour law regime after the changes introduced by Law Number 6 of 2023 and its implementing regulation, Government Regulation Number 35 of 2021. However, the recognition of force majeure as a ground for termination of employment does not mean that employers are free to terminate employment unilaterally. Government Regulation Number 35 of 2021 continues to regulate the procedure for termination of employment and workers' rights arising from termination, including in cases where a company closes due to force majeure or where force majeure does not result in company closure. Therefore, the existence of force majeure only opens space for legal assessment; it does not eliminate procedural obligations or the employer's obligation to pay workers' normative rights. [18], [19]

The use of force majeure in employment contracts must also be read within the framework of legal protection theory. According to this theory, workers are legal subjects who require protection because they are generally in a weaker position in employment relations. Such protection is not only provided after a violation occurs, but also through preventive norms that limit unilateral actions by employers. In this respect, force majeure must not become an instrument for transferring the entire business risk to workers. Business risk essentially falls within the responsibility of employers as the parties controlling capital, production organization, and company management. Workers are indeed bound by employment relations, but they cannot be burdened with all consequences of business failure that are beyond their control. Therefore, the use of force majeure must always be controlled by the principle of worker protection. [6], [20], [21]

From the perspective of contractual justice, employment relations cannot be analysed only through the principle of freedom of contract. In employment contracts, formal consent does not always reflect an equal meeting of wills because workers are often in an economically weaker position than employers. The theory of justice requires that the structure of legal relations take into account the position of the most vulnerable party and not merely prioritize economic efficiency. Therefore, a force majeure clause in an employment contract must be interpreted restrictively, fairly, and consistently with minimum workers' rights. If such a clause is used to justify wage reduction, unpaid furlough, or termination of employment without proper procedure, it must be critically examined because it may contradict the protective character of labour law.

Accordingly, the main finding of this section is that the legal position of force majeure in employment contracts is that of an exceptional legal ground. Force majeure may be considered if a crisis truly creates an objective impediment to the performance of obligations, but its application must not eliminate workers' rights, industrial relations procedures, or the employer's duty to act in good faith. This finding confirms that in employment contracts, force majeure cannot be positioned as an absolute mechanism of release from obligation, but must be examined through the principles of legal protection, contractual justice, and proportionality.

3.2 The Limits of Force Majeure between Business Continuity and Workers' Rights Protection

The next finding of this research indicates that business continuity is a legitimate legal interest, but it cannot be placed absolutely above the protection of workers' rights. During a crisis, companies may face serious pressures such as declining revenue, operational restrictions, loss of market access, disruption in the distribution of raw materials, and rising operational costs. These conditions may threaten business continuity and ultimately affect the sustainability of employment relations. However, the interest in preserving business must be managed within the limits of labour law. Law Number 13 of 2003 concerning Manpower regulates

employment relations, protection, wages, welfare, and industrial relations as part of a labour law system that cannot be separated from the objective of worker protection. This means that business rescue measures must not be carried out by unilaterally sacrificing workers' normative rights. [22]

From the perspective of proportionality, employer actions during a crisis must be assessed through the balance between purpose, means, and legal consequences. The objective of maintaining business continuity may be legitimate, but the means used must be appropriate, necessary, and not cause excessive harm to workers. If employers still have less harmful alternatives, such as adjustment of working hours by agreement, shift rotation, the lawful use of leave, operational restructuring, or renegotiation of working conditions through social dialogue, then reduction of workers' rights or termination of employment should not become the first option. Therefore, termination of employment on the ground of force majeure must be positioned as a last resort after reasonable and transparent alternatives for preserving employment relations have been pursued.

Wage reduction, postponement of employment rights, or unpaid furlough are measures that must be examined critically. In labour law, wages are not merely contractual performance, but also an instrument for ensuring a decent livelihood for workers and their families. Therefore, any change affecting wages cannot be made unilaterally merely because the company is experiencing a crisis. Changes to employment conditions relating to wages, working time, or employment status must have a legal basis, contractual basis, or valid agreement between the employer and the worker or trade union. If such changes are made unilaterally, they conflict with the principle of good faith and may weaken the protective function of labour law. In this framework, crisis must not be used as a justification for normalizing unfair labour practices.

This discussion also shows that the distinction between force majeure and hardship should be used as a critical analytical tool. In many crisis situations, companies are not truly unable to perform their obligations, but are experiencing serious difficulty in maintaining financial performance. Such circumstances are more appropriately approached through the principle of hardship, which emphasizes renegotiation and adjustment of legal relations rather than the immediate use of force majeure to terminate obligations. Widiastiani explains that the Covid-19 pandemic may be examined in relation to both force majeure and hardship in employment contracts, but its application still requires careful legal assessment. Similarly, Junaidi, Surahmi, and Romli argue that the principle of hardship provides greater space for worker protection because it encourages renegotiation before termination of employment is carried out. Thus, hardship can serve as a fairer approach in responding to crises that do not make performance entirely impossible but render it extremely burdensome.

From the standpoint of legal protection theory, the limitation of force majeure must be directed toward preventing the abuse of the employer's dominant position. Employers have greater access to company financial data, management policies, and operational decisions. Workers, by contrast, often do not have sufficient information to assess whether the crisis truly prevents the company from fulfilling its obligations. This information asymmetry creates the risk that force majeure may be misused. Therefore, the application of force majeure in employment relations must require transparency, evidence, and worker participation. Without these three elements, force majeure may become a unilateral pretext for reducing labour costs without adequate legal accountability.[23]

At this point, social dialogue becomes an important limit to the use of force majeure. The International Labour Organization emphasizes that collective bargaining during crises plays a role in preserving jobs, protecting income, supporting occupational safety and health, and maintaining economic activity. In the Indonesian context, social dialogue may be realized through bipartite negotiations between employers and workers or trade unions before changes to employment conditions or termination of employment are carried out. Such dialogue should not be understood as a mere administrative formality, but as a mechanism for testing the truth of the crisis justification, searching for alternative solutions, and ensuring that the burden of crisis is not borne only by workers. Therefore, social dialogue is an important instrument for connecting business interests with worker protection. [20], [21]

This discussion produces the finding that the limits of force majeure rest on five principles. First, force majeure must be based on an objective and provable event. Second, there must be a direct causal relationship between the crisis and the inability to perform obligations. Third, the employer must show that no less harmful alternative is available other than rights reduction or termination of employment. Fourth, all actions must be carried out in good faith, transparently, and through negotiation. Fifth, minimum workers' rights must not be eliminated merely because a crisis exists. These principles indicate that business continuity and workers' rights protection do not have to be placed in absolute opposition. Both can be balanced if force majeure is applied proportionally and controlled by protective labour norms.[11], [11], [12]

3.3 A Legal Protection Model for the Application of Force Majeure in Employment Contracts

Based on the normative analysis, this article finds that the most appropriate legal protection model for the application of force majeure in employment contracts is a balanced protection model. This model does not reject the employer's interest in maintaining business continuity, but it also does not justify unilateral reduction of workers' rights. Balanced protection means that the law must allow space for the adjustment of employment relations during crisis periods, but such adjustment must be carried out within legal limits, based on objective evidence, through dialogue, and with respect for workers' minimum rights. This model is consistent with legal protection theory, which emphasizes the importance of preventive and repressive protection for weaker parties. Preventive protection is required so that workers are involved before crisis-related decisions are made, while repressive protection is required when rights violations occur due to the misuse of force majeure.

This balanced protection model must also position force majeure as a gradual legal mechanism. At the first stage, the company must prove the existence of a crisis that directly affects the performance of employment obligations. At the second stage, the company must disclose relevant information to workers or trade unions, particularly regarding the impact of the crisis on operations, payment capacity, and the need for adjustment. At the third stage, the parties must conduct negotiations to seek alternatives less harmful than termination of employment. At the fourth stage, if adjustment is unavoidable, changes to employment conditions must be recorded in a valid agreement and must not conflict with minimum labour standards. At the fifth stage, if termination of employment becomes the last resort, the required procedure and workers' rights arising from termination must still be fulfilled in accordance with applicable law. These stages show that force majeure does not operate as an immediate release from obligations, but as a basis for layered legal evaluation.

This model is important because termination of employment during a crisis does not only affect the contractual relationship between employer and worker, but also affects social stability, public purchasing power, and workers' family welfare. From the perspective of contractual justice, law must not only protect the economic efficiency of the company, but must also consider the impact of business decisions on the more vulnerable party. Therefore, if a crisis can still be addressed through reasonable adjustment, preservation of employment relations must be prioritized. Termination of employment can only be justified if the company truly has no viable alternative, and even in such circumstances, workers remain entitled to procedural protection and economic rights under statutory regulations.

In the balanced protection model, the principle of good faith becomes a central requirement. Good faith requires employers not to conceal information, not to use crisis as a pretext for irrelevant efficiency measures, and not to impose the entire burden of business loss on workers. Conversely, workers or trade unions also need to open space for negotiation if the crisis is objectively proven to threaten business continuity. Thus, good faith does not merely mean formal compliance with procedure, but also includes honesty, openness, reasonableness, and willingness to find solutions that do not excessively harm one party. In this context, good faith functions as a bridge between business interests and worker protection.[11]

The principle of proportionality is also an important instrument in this protection model. Proportionality requires every employer action during crisis to be assessed based on the suitability between objective and

measure, the necessity of the measure, and the balance between harm and benefit. For example, if the company's objective is to reduce temporary cost burdens, the chosen measure should not immediately take the form of mass termination if other less harmful options remain available. Similarly, if adjustment of working time can preserve employment relations, such a measure is more proportional than permanent termination of employment. In this way, proportionality helps prevent the excessive use of force majeure.

The balanced protection model also requires strengthening the role of bipartite negotiation and industrial relations dispute settlement mechanisms. In employment relations, decisions concerning changes to working conditions or termination of employment should not be made unilaterally, but through communication and negotiation. If negotiation fails to produce agreement, the dispute must be resolved through available industrial relations mechanisms. This is important because disputes concerning force majeure often do not only concern whether a crisis exists, but also whether the crisis truly causes inability to perform obligations, whether the employer has acted proportionally, and whether workers' rights have been fulfilled. Therefore, industrial relations dispute settlement institutions play an important role in examining the objectivity of force majeure arguments.[24]

The final finding of this discussion is that force majeure in employment contracts during crisis must be interpreted restrictively, proportionally, and protectively. Restrictive interpretation is needed so that not every business difficulty is qualified as force majeure. Proportional interpretation is needed so that the interest of maintaining business continuity does not eliminate workers' rights. Protective interpretation is needed because labour law has a special character that distinguishes it from ordinary civil contract law. Therefore, the use of force majeure in employment contracts can only be justified if it fulfils strict legal elements, is exercised in good faith, is preceded by social dialogue, considers alternatives for preserving employment relations, and continues to guarantee workers' normative rights.

Based on the overall discussion, this research affirms that the balance between business continuity and workers' rights protection cannot be achieved by giving dominance to one party. If the law overemphasizes employers' interests, workers will lose protection at their most vulnerable moment. Conversely, if the law provides no room at all for company adjustment during crisis, business continuity and employment opportunities may also be threatened. Therefore, the required legal model is one that recognizes crisis as an economic reality while still positioning workers as legal subjects entitled to protection. In this model, force majeure is not a reason to eliminate workers' rights, but a legal basis for reorganizing employment relations fairly, transparently, and responsibly.

4. Conclusion and Recommendation

Based on the results and discussion, it can be concluded that force majeure in employment contracts during crisis situations cannot be treated as an automatic legal ground for releasing employers from their labour obligations. Although force majeure is recognized in civil law as a circumstance beyond the debtor's fault that may prevent contractual performance, its application in employment relations must be interpreted more carefully because employment contracts are governed not only by private law principles but also by protective labour norms. Therefore, force majeure in employment contracts must be positioned as an exceptional legal ground that requires strict proof of unforeseeability, externality, causation, impossibility or serious impediment of performance, absence of bad faith, and the unavailability of less harmful alternatives.

The study also concludes that the balance between business continuity and workers' rights protection must be built through the principles of good faith, proportionality, transparency, and social dialogue. Business survival is a legitimate legal interest, especially during crises that threaten company operations. However, this interest cannot be used to justify unilateral wage reduction, unpaid furlough, changes to working conditions, or termination of employment without proper legal basis and procedure. If a crisis merely creates serious difficulty but does not make performance impossible, the principle of hardship and renegotiation is more appropriate than the direct use of force majeure. Thus, termination of employment should be treated as a last resort after reasonable alternatives for preserving employment relations have been considered.

Furthermore, this article concludes that the proper legal protection model for applying force majeure in employment contracts is a balanced protection model. This model recognizes the employer's need to maintain business continuity while ensuring that workers' fundamental rights remain protected. The model requires objective proof of crisis, disclosure of relevant information, bipartite negotiation, proportional adjustment of employment conditions, and fulfilment of workers' rights if termination becomes unavoidable. In this sense, force majeure should not function as a legal instrument to eliminate workers' rights, but as a basis for reorganizing employment relations fairly, transparently, and responsibly during crisis periods.

Based on these conclusions, it is suggested that employers should not invoke force majeure unilaterally in employment contracts without objective evidence, good-faith negotiation, and consideration of less harmful alternatives. Employers should prioritize social dialogue with workers or trade unions before deciding on wage adjustment, furlough, restructuring, or termination of employment. The government should also strengthen regulatory guidance on the distinction between force majeure and hardship in employment relations, so that crisis-related employment disputes can be resolved more consistently and fairly. In addition, workers and trade unions should actively participate in bipartite negotiations by requesting transparency, examining the proportionality of proposed measures, and ensuring that minimum labour rights are not ignored. Future research may further examine judicial decisions or industrial relations dispute cases concerning force majeure in employment contracts to evaluate how courts and dispute settlement bodies apply the principles of legal protection, good faith, proportionality, and business continuity in practice.

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