



Implementation of Hardship Principles on Financing Agreements Islamic Bank Due to Corona Virus Disease 2019

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Abstract

Introduction to The Problem: This research analyzes covid-19, designated a disaster by the Indonesian government, especially its correlation to finance agreements in Islamic banks. The determination of disaster raises the question of whether covid-19 is a force majeure or hardship. According to Financial Service Authority (OJK), non-performing financing in Islamic banks is increased. Implementation of Force majeure principle to finance agreement in Islamic bank as a government policy is not right decision.

Purpose/Objective Study: this legal research aims to analyze the effects of the coronavirus disease 2019 on finance agreements in Islamic banks and how is the implementation due covid-19 to renegotiation of finance agreement force majeure principle or hardship principle.

Design/Methodology/Approach: This legal research is a normative legal study with two approaches: statute and conceptual approaches. Primary sources from Finance agreements in Islamic banks and statutes/rules. Secondary sources are books, journals, research, and dictionary. The legal analysis is carried out by classification of primary and secondary sources using the statute and conceptual approaches.

Findings: The spread of the covid-19 virus has had many impacts on the ability of Islamic bank debtors to carry out their achievements due to the difficult conditions experienced due to restrictions by the government. The determination of the status of covid-19 as a disaster has implications for the occurrence of forced circumstances, so it is necessary to make adjustments to the situation based on the principle of hardship for financing agreements with Islamic banks. The occurrence of hardship for sharia bank customers provides an opportunity for customers to apply for contract renegotiation in the context of adjusting problematic contracts in the form of rescheduling, reconditioning, or restructuring.

Paper Type: Research Article

Keywords: Contract; Hardship Principles; Financing Agreements; Islamic Bank; Covid-19

Introduction

Coronavirus disease 2019, commonly known as Covid-19 has had a tremendous global effect, including in Indonesia. The spread of the coronavirus not only impacts public health but also greatly affects the economy due to the restrictions imposed to break the chain of the spread of the coronavirus. Based on data from the World Health Organisation (WHO) website on July 21st, there were 191,773,590 confirmed cases of Covid-19 with a death toll of 4,773,590 people worldwide. WHO, a health organization under the United Nations (UN), has declared Covid-19 a Pandemic.

The restrictions imposed by the government to break the chain of the spread of COVID-19 have impacted economic difficulties for the general public and business actors due to activity restrictions and public fear of the spread of COVID-19. For many business actors, restrictions and public fears have a very large effect due to changes in a situation that they must adapt directly to these conditions.

Islamic Banks are one of the financial institutions that are heavily affected by the effects of spread of the Covid-19 virus due to the risk of default because many financing customers have difficulty paying their debts. The customers faced difficulties from a decrease or even loss of income due to restrictions imposed by the government.

One thing to be observed from the customers' and the banks' relationship is their legal act of entering into agreements or contracts. The contract, as a reflection of the relationship and agreement between the bank and the customer, must reflect the principles of the contract contained in the laws and regulations and Islamic law (Nugraheni, 2010). It contains a legal certainty of the rights and obligations of both parties related to accounts payable. In the current pandemic conditions, the potential for default/breach of promise from credit/financing agreements with banks, especially Islamic banks, which will be examined in this paper, is very large.

Due to the difficulty in providing funding for consumers to carry out their accomplishments due to COVID-19, there is now an unfair power disparity between Islamic banks and clients. This event changed the balance fundamentally. An event that fundamentally affects the contract balance as arduous, of course, will have legal consequences for the contract made by the parties (Hernoko, 2006).

The Indonesian government has determined the status of the spread of coronavirus disease 2019 (Covid-19) as a non-natural disaster based on Presidential Decree No. 12 of 2020 concerning the Designation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster. New norms need a new approach by Islamic finance and any legal institution since the operation relies heavily on adherence to Syariah requirements and guidelines (Jamaruddin & Markom, 2020).



Determination of the disaster status of financing agreements with Islamic banks raises many perceptions of whether the COVID-19 pandemic situation can apply the principle of force majeure or hardship. The principle of implementing Islamic banks can be beneficial for the parties. For example, the provisions of the *murabahah* agreement between the creditor as the party requesting financing and the debtor as the party providing the financing must be mutually beneficial (Djuniarti, 2019).

Applying the force majeure principle to financing agreements for Islamic banks affected by COVID-19 will have a major impact on the sustainability of these Islamic financial institutions. Due to the force majeure, the debtor is forgiven for not carrying out his achievements due to unforeseen circumstances, even though the funds distributed in the form of financing by Islamic banks are funds from customers' collected savings.

Based on the above paragraph, this article concerns the implementation of the force majeure principle or hardship principle in finance agreements with Islamic banks due to the effects of the coronavirus disease pandemic effects. Overcome the challenges of the post-covid-19 economic environment, but also help them even to develop their customer portfolio and improve value-added banking intermediation (Amrani & Najab, 2020).

Methodology

The research method used in this legal research is empirical normative research, and normative legal research. The approach used in this research is a statute approach and a conceptual approach (Marzuki, 2005). The case approach is by reviewing financing/credit agreements with Islamic banks affected by COVID-19. The statutory approach is carried out by analyzing the provisions of the laws and regulations related to the legal issues raised so that conclusions are obtained to answer the legal problems in the issues raised. The conceptual approach is carried out by using the doctrines of legal experts whose knowledge is relevant to the legal issues raised.

Results and Discussion

The Kind of *Aqad* Financing Contracts at Islamic Banks

In the practice of Islamic banking in Indonesia, Islamic banks are not much different from conventional banks in terms of the products offered. As an intermediary institution, Islamic banks have products for collecting funds and products for channeling deposit funds (financing). During the covid-19 outbreak, for the interaction term Islamic covid-19, we have found that Islamic banks have reported significantly high asset risk, with a marginally high insolvency risk (Elnahass et al., 2021).

There are several financing with different contracts in the practice of Islamic banks in Indonesia, according to the Financial Services Authority, that is:

- a. *Mudharabah* contract, this contract is a type of business cooperation agreement



between the first party (*malik, shahibul mal* in this case, sharia bank) which provides all the capital where the second party (*'ami; mudharib* or what we are familiar with the term customer) in this case act as a fund manager with the agreement stated in the contract. For instance, in the *mudharabah* agreement between the Islamic Bank and Bang Aco, concerning the rice processing business in Sidrap for seven months. Islamic Bank provides business capital of one billion dollars, and both parties agree on a profit-sharing ratio (40:70). After conducting business for seven months, Bang Aco experienced a development where the capital of one million became 1.5 million, so the difference of 500 million would be multiplied by forty percent for Islamic Banks and sixty percent for conventional banks.

- b. *Musyarakah* contract is a cooperation agreement between two or more parties for a particular business in which each party gives their respective portion of the funds. An example of a *musyarakah* contract, in a profit-sharing business collaboration, Bang Aco, a duck breeder in the context of business development, Bang Aco offers business cooperation to investors (Islamic banks) with 60% of capital from the bank and Bang Aco the rest, the parties can agree upon the profit portion.
- c. *Murabahah* contract is a financing contract of an item by confirming the purchase price to the buyer, and the buyer pays a higher price as an agreed profit. For example, in a sharia bank, Bang Aco asked the Samata Sharia Bank for help to buy a Honda brio. The Samata sharia bank then informed A that the Honda brio price was 150 million and explained that he would take 40 million profit on the financing, so the selling price had to be agreed upon was 190 million. If Bang Aco agrees, a more detailed financing agreement will be made regarding the payment procedure and installments.
- d. *Salam* contract is a financing contract for an item by ordering and paying the price in advance with certain agreed conditions. For example, Andi bought a cellphone for 5 million through an online marketplace. Andi ordered from the seller and immediately paid the money first, then the cell phone would be handed over to Andi at the agreed time.
- e. *Istisna'* contract is a contract for financing goods in the form of an order for the manufacture of certain goods, which is agreed between the buyer or buyer (*mustahni'*) and the seller or maker (*shani'*). Examples of current *istishna* contracts can be seen in home financing, where goods are ordered first and then be made.
- f. *Ijarah* contract is a provision of funds in order to transfer the usufructuary rights or benefits of an item or service based on a lease transaction, without being followed by the transfer of ownership of the goods themselves. Example: Bang Aco' carries out an agricultural harvesting business and requires a harvesting machine as a support, then Bang Aco comes to a sharia bank to rent a harvesting machine tool after the agreement.
- g. *Ijarah Muntahiyah Bit Tamlik* contract, which is a contract for the provision of funds in the context of transferring use rights or benefits of an item or service



based on a lease transaction with the option of transferring ownership of the property;

- h. *Qard* contract is an agreement to guarantee funds to customers with the stipulation that the customer is obliged to return the funds received at the agreed time.

The Government's Form of Handling Covid-19 with Restrictions on Activities

Since the spread of the coronavirus disease 2019 (Covid-19) in March 2019 in Indonesia, various policies have been issued by the government ranging from large-scale social restrictions (*Pembatasan Sosial Skala Besar – PSBB*), transitional PSBB, Emergency Enforcement of Restrictions on Community Activities (*Pemberlakuan Pembatasan Kegiatan Masyarakat – PPKM*) to the latest PPKM level 4 summarized from various electronic media sources and print the following chronology of the government's covid-19 policy:

1. Large-scale social restrictions (PSBB)

A month after the spread of COVID-19 in Indonesia, the government issued a PSBB policy that included closing schools and workplaces, religious restrictions, and also restrictions on activities in public places or facilities. The form of restrictions in the form of PSBB is the choice chosen by the government compared to lockdown, although in practice, the restrictions on community activities on PSBB and countries that apply lockdown are not much different. The PSBB policy has had a major impact on the community's economy due to restrictions that have resulted in a drastic reduction in people's income, and many have lost their jobs.

2. Policies in the form of Legislation in handling Covid-19

To cope with the spread of the coronavirus, the government issued several laws and regulations from the central government to local governments. Here are some regulations related to the prevention of COVID-19:

- a. Government regulations in lieu of law Number 1 of 2020 concerning state finances and financial stability for handling COVID-19;
- b. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19);
- c. Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Corona Virus Disease as a National Disaster

3. Enforcement of Restrictions on Community Activities (PPKM)

After the PSBB was implemented, the impact on the community's economy was tremendous, so the government then implemented a policy of lighter restrictions than PSBB in the form of PPKM with the term levels from 1 to 4. In the form of restrictions of PPKM, the community began to be able to return to activities more loosely than during the PSBB period, such as trade and socio-religious activities.

Presidential decree No. 12 of 2020 can be referred to as a policy issued by the

government during the COVID-19 pandemic. As this Presidential Decree is a legal rule, it will have legal consequences, which Ridwan HR describes into 3, namely (HR, 2014):

- a. Give rise to some changes to existing rights, obligations, or authorities;
- b. Changes to the legal standing of an existing person or object
- c. The existence of certain rights, obligations, and authorities or statuses.

COVID-19 Is Not the Reason for the Occurrence of Force Majeure in the Financing/Credit Agreement

Because the word coercive condition appears in the abstract of Article 1245 of KUHPerdata, it is not sufficient to just read the linguistic provisions; rather, it must be demonstrated that there is a barrier that genuinely prevents the achievement from being achieved. Therefore, the circumstances surrounding COVID-19 may not always result in applying the force majeure defense. The legal component of the agreement relating to the regulation of force majeure as regulated in the requirements of Articles 1244 and 1245 of the KUHPerdata will have a major difficulty categorizing the impact of a pandemic to constraint situations that result in force majeure. In the case of Islamic banks, integrating social impact into the bank's operation is expected to be more holistic (Shaharuddin, 2020).

In general, in a business contract, it is normal for a clause related to force majeure to be included in a business agreement, but what has often stated in a force majeure clause is related to the condition of being hindered by the debtor due to natural disasters. The important thing that must be considered is the principle of *pacta sun servanda*, which binds the parties so that what they agree on should be the law for the parties.

The International Commercial Contract Force Majeure Clause 2003, which will be the relevant clause in most international commercial contracts rather than the 2020 version, includes "epidemics" among the list of factors deemed to constitute a force majeure event but not a "pandemic." It is also the case in the March 2020 version (Twigg-Flesner, 2020). Considering the risks that may arise from applying force majeure to existing agreements with Islamic banks, it is necessary to carefully apply the force majeure principle to financing agreements due to the 2019 corona virus disease.

The main reason for Presidential decree No. 12 of 2020 does not immediately apply the force majeure principle is related to the risk to the national economy. According to Salim H.S (HS, 2019), force majeure will result in the following circumstances:

- a. The debtor does not need to pay compensation based on the provisions of Article 1244 of the KUHPerdata;
- b. The risk burden does not change, especially in temporary compulsions;
- c. By law, creditors do not have the right to fulfill achievements, but at the same time, they are free from their obligations to submit counter-achievements, except for



those stated in Article 1460 of the KUHPperdata.

Suppose the covid-19 condition in the financing/credit agreement at the Islamic financial institution is categorized as force majeure as regulated in Article 1245 of the KUHPperdata. In that case, the consequence is that debtors affected by COVID-19 may be allowed not to carry out their achievements because of obstacles that occur to them, for example, debtors who have reduced income or even lost income. The condition can put Islamic banking financial institutions at high risk due to the non-implementation of the achievements of debtors who only have reduced income due to the impact of COVID-19 or debtors who have lost income due to the impact of the pandemic.

Covid-19 as the Reason for the Hardship Principle

Hardship is a paradigm in international treaty law adopted in Indonesia based on the provisions of the Unidroit Principles of International Commercial Contract. Indonesia ratified the principles of the UPICC through Presidential Regulation Number 59 of 2008 concerning the Ratification of the Statute of The International Institute For The Unification of Private Law. UNIDROIT Principles may be used as a yardstick to ensure an interpretation and supplementation of the respective domestic law consistent with internationally accepted standards and/or the special needs of cross-border trade relationships (Bonell, 2018).

The ratification institution basically comes from the conception that comes from international law, but in subsequent developments, this institution has developed into an international treaty (Pratomo, 2016). Ratification of the UPICC provisions makes existing contracts in Indonesia no longer subject to force majeure provisions in the event of an unexpected event that results in default. Force majeure and Hardship can be doctrines that should be included in existing agreements in Indonesia, both business contracts and non-business contracts.

Hardship is a notion that is frequently used in conjunction with the *rebus sic stantibus* principle in an effort to legitimize the acts taken by the parties to an agreement to terminate or postpone its implementation (Purwanto, 2011). The onerous doctrine refers to a contract clause causing a change in circumstances because of a factor outside the parties' control. Force majeure and hardship share some characteristics, but they have different effects. In comparison, hardship gives time to make adjustments, and force majeure excuses default.

According to the provisions of Article 6.2.1 of the UNIDROIT Principle 2016, when one party's performance of a contract is made more difficult due to a particular circumstance, that party is still required to fulfill its obligations, subject to the following provisions on hardship. However, the party experiencing a change in circumstances is still required to fulfill its performance obligations.

Article 6..2.2 UPICC requires the element of arduous to fulfill "the occurrence of events



fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished." The provision states that hardship occurs when an event fundamentally changes the contract balance because of increased performance costs or otherwise resulting in difficult circumstances. From the definition of arduous in article 6.2.2 UPICC, three elements can be drawn so that a situation is said to be arduous, namely (Adi, 2015):

- a. Fundamental alteration of equilibrium of the contract;
- b. increase in the cost of performance;
- c. decrease in value of the performance received by one party.

The application of the principle of hardship or force majeure due to the COVID-19 pandemic to existing financing agreements with Islamic banks, of course, first needs to be explained the main problems that occur, namely:

- a. Can the impact of the spread of covid-19 apply the force majeure clause?
- b. Does the debtor's condition delay the implementation of his accomplishments or prevent him from carrying them out?
- c. Whether the force majeure clause can be applied to the covid-19 pandemic condition while in the financing agreement, the force majeure clause is not stated regarding the covid-19 pandemic condition;
- d. Should force majeure be applied to the condition of debtors affected by COVID-19, or is it better to apply a hardship clause? Moreover, it is necessary to pay attention to the domino effect that can occur if an error occurs in the application of the two clauses.

Hardship as a form of change in circumstances that is a condition for contract renegotiation must meet the requirements related to the impact of restrictions imposed by the government. If we refer to the provisions of Article 6.2.2 of the UPICC that the conditions intended for the occurrence of arduous are one of the parties experiencing difficulties in carrying out their achievements due to changes in aggravating circumstances such as the PSBB or PPKM conditions in Indonesia where the restrictions imposed result in the obstruction of the implementation of activities, which affect the income or the implementation of achievements in the financing agreement at Islamic banks.

Legal Consequences of Determining Covid-19 as a Non-Natural Disaster on Financing Agreements at Islamic Banks

Presidential decree No. 12 of 2020 explicitly states that the pandemic is a disaster. However, the determination as a disaster does not automatically become the basis for a force majeure situation that makes the debtor party deviate from the agreement he has made. The stipulation of Presidential Decree 12 of 2020 is more appropriate if it is used as a basis for making adjustments to the situation in implementing achievements, especially in financing agreements with financial institutions.



In some legal systems, this may be subject to a good faith provision to prevent abuse of rights. The people may plausibly argue that the scale of the pandemic takes it outside any potential scenario envisaged and thereby justify the renegotiation of existing contracts. Equally, in consumer contracts, any term that is imbalanced against consumers may be subject to challenge under laws controlling the use of unfair contract terms (Alderman et al., 2020).

The Financial Services Authority (OJK) did not lag behind in issuing policies in order to anticipate the impact of the pandemic, one of which was by issuing OJK Regulation Number 11/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus Disease spread which was later changed to POJK Number 48/POJK.03/2020 (hereinafter referred to as POJK 48 of 2020). The issuance of POJK 49 of 2020 is based on several considerations, namely:

- a. the impact of covid-19 on the performance and capacity of debtors in fulfilling credit or financing payment obligations that are felt directly or indirectly;
- b. the existence of credit risk and liquidity risk that can have an impact on the resilience of bank capital;
- c. maintain financial system stability with countercyclical policies

Suppose we refer to the provisions of Article 2 Paragraph 2 of OJK rules POJK 48 of 2020. In that case, it is stated that debtors affected by the spread of the 2019 coronavirus disease, including debtors of micro, small and medium enterprises, can be given policies in the form of determining asset quality and restructuring credit or financing. In issuing policies for debtors, banks must still pay attention to applying risk management in the context of providing policies. OJK, in the provisions of Article 2 Paragraph 4 of OJK Rules POJK 48 of 2020, provides conditions for banks to implement risk management, such as having guidelines in determining debtors affected by COVID-19, then assessing debtors who can survive the impact of Covid-19 so that they can be classified as debtors to be entitled receiving a restructuring policy. In restructuring bank financing, it is also required to consider capital resilience and additional reserves to anticipate the potential decline in the quality of the restructured financing.

Implementation of Hardship Principles into Financing Agreements at Islamic Banks

Implementing the arduous principle based on the UPICC provisions gives rights to parties affected by covid-19 that cause difficult conditions so that they have the right to request an adjustment to the situation because covid-19 is an unexpected event. The effect of the spread of COVID-19 on Islamic financial institutions, especially Islamic banks, is experiencing great risk due to not few financing customers from Islamic banks who are experiencing financial difficulties. The indirect impact experienced by customers also resulted in a domino effect of an increase in non-performing loans, commonly referred to as bad loans. A solution is required to accommodate the interests of the financing customer (the debtor) and the Islamic

bank (the creditor). The solution is to anticipate the risk of default in the financing agreement, which is growing due to the large number of Islamic bank customers having financial difficulties.

One formulation in dealing with the impact of COVID-19 on the risk of hindering debtors from carrying out their achievements is to make several changes in the form of financing restructuring. Financing restructuring is carried out in terms of adjusting to the situation where debtors who are experiencing difficult conditions can carry out their achievements due to the impact of the pandemic. Since the civil law connection resulting from the agreement is the foundation of the underlying relationship between the debtor and the Islamic bank, this adjustment needs to be spelled out in an agreement.

Adjustment of Troubled Financing Contracts for Islamic Banks Due to Covid-19

In the context of handling the risk of covid-19 for Islamic banks, it is necessary to make efforts to support the performance of Sharia banking, such as returns that provide convenience for customers. These OJK regulations support Islamic banks and are committed to improving MSME business to the maximum by providing financing with easy terms (Ichsana et al., 2021). Typical determinants of net interest margins hold for both developing and developing countries (Mohammed, 2022).

Financing customers at Islamic banks have different handling related to the provision of policies for financing restructuring based on the level of impact experienced by customers. Based on the provisions of Article 3 Paragraph 9 of the Financial Services Authority Regulation Number 19/POJK.03/2018 concerning Amendments to the Financial Services Authority Regulation Number 16/POJK.03/2014 concerning Asset Quality Assessment of Sharia Commercial Banks and Sharia Business Units associated with OJK rules POJK Number 40 /POJK.03/2019 Regarding the assessment of the asset quality of commercial banks, customers are classified into five categories of credit collectability based on their ability to pay, as seen in Table 1.

Table 1. categories of credit collectability based on customer ability to pay

No	Collectability	Status	Description
1	Collectability 1	Fluent/ Current/ Pass	If the debtor always pays principal and interest on time, the account development is good, there are no arrears, and in accordance with credit requirements
2	Collectability 2	In Special attention/ Special Mention	If the debtor is in arrears in payment of principal and or interest between 1-90 days



3	Collectability 3	Not fluent/ Less Current/ Sub-Standard	If the debtor is in arrears in payment of principal and/or interest between 91-120 days
4	Collectability 4	Doubtful	If the debtor is in arrears in payment of principal and/or interest 121-180 days
5	Collectability 5	Non-Performing Loan	If the debtor is in arrears in payment of principal and or interest for more than 180 days

Adjustment of the situation is an effort so that the achievement performance continues to be carried out. However, at this stage, there should be no abuse of circumstances (*misbruik van omstandigheden*) where there are unreasonable conditions, the debtor is in a state of stress, and the value of rights and obligations is reciprocal that does not occur balance between the parties (Arifin, 2017). Because this contract adjustment is a policy given to the debtor, the adjustment takes into account the debtor's ability with identification by a Sharia bank.

Some of the methods used in adjusting non-performing financing affected by the pandemic in Islamic banks can be done by adjusting the duration of payments or other policies. When providing financing, Islamic banks have assessed the quality of productive assets in the form of financing by considering business prospects, customer performance, and ability to pay.

Financing restructuring through contract adjustments on non-performing financing due to the impact of COVID-19 is a facility provided by policymakers. However, the technical implementation of financing restructuring is left to each bank because banks are obliged to have policies and standard operating procedures (SOPs) related to adjusting non-performing financing contracts by way of financing restructuring.

There are several forms of contract adjustment to problematic financing that have often been applied to commercial banks and Islamic banks, namely:

- a. Rescheduling; contract adjustments can be made by rescheduling debtor payments in terms of duration and amount, which are adjusted to the ability of the debtor while taking into account the assessment of asset quality; by rescheduling, it is possible to reduce the amount of installment by extending the installment payment period. Wangsawidjaja claims that the rescheduling approach entails altering the financing period, the payment period, and the amount of the payment.
- b. Reconditioning (rearrangement), adjustment of the financing contract with partial or complete changes to the terms of financing, including the payment schedule, duration, ratio, and other requirements;
- c. Restructuring (re-requirements) is carried out by changing part or all of the

financing requirements, which is not limited to changes in the payment schedule, time period, and other requirements but does not include the determination of the financing limit.

The government's restructuring policy to consumer financing still creates problems for Islamic banks because many customers have complained that banks are still obliged to pay monthly installments. They know the relief in the form of "postponement of installments" and "reduced interest," as conveyed by the President (Tjoanda, 2021). Policies achieved through finance are still looking to be safe from losses, consumer difficulties, and other potential risks.

Conclusion

The spread of the 2019 coronavirus disease has had a huge impact on national banks, including Islamic banks, noting that many debtors experienced income difficulties due to restrictions imposed by the government in tackling COVID-19. Debtors' financial difficulties due to COVID-19 have resulted in difficult conditions (hardship) to carry out their achievements, so it is necessary to adjust the situation so that debtors affected by COVID-19 can still carry out their obligation to pay back the financing from Islamic banks. That difficult circumstance concerning the performance of the debtor's achievements is regulated in the UPICC arduous doctrine, which gives the debtor the right to request adjustments to the renegotiation of the financing agreement. So, the arduous clause can be applied to financing agreements affected by COVID-19, including Islamic banks in the city of Makassar. The application of the arduous principle in the financing agreement at Islamic banks can be a reason for the debtor to adjust the financing contract. One form of arduous implementation is agreement renegotiation by restructuring the agreement by means of rescheduling, reconditioning, or restructuring. Islamic banks can use one or a combination of these three alternatives in adjusting the situation to renegotiate the financing agreement while still referring to the ability of the customer and the impact suffered by the customer due to COVID-19. The Indonesian government must make a rule to cover the hardship principle that makes the differences between Force Majeure and Hardship on non-performing contracts while natural disasters or where the performance of a contract becomes more onerous for one of the parties.

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References

- Adi, D. P. (2015). Absorpsi Prinsip 'Rebus Sic Stantibus' dalam Kerangka Pembaharuan Hukum Perjanjian Nasional. *Jurnal Hukum Jatiswara*, 30(1), 71–91.
- Alderman, R., De Franceschi, A., Giancaspro, M., Howells, G., Lei, C., Lete, J., Micklitz, H. W., Miscenic, E., Naude, T., Pichonnaz, P., Poillot, E., Ramsay, I., Terryn, E., Twigg-Flesner, C., & Wilhelmsson, T. (2020). Consumer Law and Policy Relating to Change of Circumstances Due to the COVID-19 Pandemic. *Journal of Consumer Policy*, 43(3), 437–450. <https://doi.org/10.1007/s10603-020-09463-z>
- Amrani, O., & Najab, A. (2020). COVID-19 and Islamic Banking Services: Digitalization as a Post-Crisis Solution (Case of Morocco). *European Journal of Islamic Finance*, 16, 1–10. <https://doi.org/10.13135/2421-2172/4913>
- Arifin, M. (2017). Penyalahgunaan Keadaan Sebagai Faktor Pembatas Kebebasan Berkontrak. *Universitas Muhammadiyah Sumatera Utara*, 3(2), 15.
- Bonell, M. J. (2018). *The law governing international commercial contracts and the actual role of the U NIDROIT Principles*. 23(March), 15–41. <https://doi.org/10.1093/ulr/uny001>
- Djuniarti, E. (2019). Perlindungan yang Seimbang Para Pihak dalam Pembuatan Akad Murabahah. *Jurnal Penelitian Hukum De Jure*, 19(2), 247. <https://doi.org/10.30641/dejure.2019.v19.247-257>
- Elnahass, M., Trinh, V. Q., & Li, T. (2021). Global banking stability in the shadow of Covid-19 outbreak. *Journal of International Financial Markets, Institutions and Money*, 72, 101322. <https://doi.org/10.1016/j.intfin.2021.101322>
- Hernoko, A. Y. (2006). "Force Majeur Clause" Atau "Hardship Clause" Problematika Dalam Perancangan Kontrak Bisnis. *Perspektif*, 11(3), 203. <https://doi.org/10.30742/perspektif.v11i3.276>
- HR, R. (2014). *Hukum Administrasi Negara*. Raja Grafindo Persada.
- HS, S. (2019). *Hukum Kontrak Teori dan teknik Penyusunan Kontrak* (Cetakan 19). Sinar Grafika.
- Ichsan, R. N., Suparmin, S., Yusuf, M., Ismal, R., & Sitompul, S. (2021). Determinant of Sharia Bank's Financial Performance during the Covid-19 Pandemic. *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, 4(1), 298–309. <https://doi.org/10.33258/birci.v4i1.1594>
- Jamaruddin, W. N., & Markom, R. (2020). the Application of Fintech in the Operation of Islamic Banking. *Syariah and Law in Facing COVID-19: The Way Forward*, 3(1), 31–43.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana Prenada Media Group.
- Mohammed, K. (2022). The Moderating Role of Covid-19 on Determinants of Bank Spread. *Pakistan Social Sciences Review*, 6(II), 538–553. [https://doi.org/10.35484/psr.2022\(6-ii\)46](https://doi.org/10.35484/psr.2022(6-ii)46)
- Nugraheni, D. (2010). Asas Kesetaraan dalam Akad Pembiayaan Musyarakah pada



- Bank Syariah di Yogyakarta. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 22(1), 127–139. <https://doi.org/10.20303/jmh.v22i1.305>
- Pratomo, E. (2016). *Hukum Perjanjian Internasional*. Elex Media Komputindo.
- Purwanto, H. (2011). Keberadaan Asas Rebus Sic Stantibus dalam Perjanjian Internasional. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 0(0), 102–121. <https://doi.org/10.22146/jmh.16160>
- Shaharuddin, A. (2020). Do Islamic Banks Act 'Islamic' During COVID-19 Pandemic? *The Journal of Muamalat and Islamic Finance Research*, 17(March), 3–12.
- Tjoanda, M. (2021). The Outbreak of Covid-19 as an Overmacht Claim in Credit Agreements. *Fiat Justisia: Jurnal Ilmu Hukum*, 15(1), 75–92. <https://doi.org/10.25041/fiatjustisia.v15no1.2195>
- Twigg-Flesner, C. (2020). A comparative perspective on commercial contracts and the impact of COVID-19 : change of circumstances, Force Majeure, or what? In *Law in the Time of COVID-19* (Issue June, pp. 155–165).