

## **“FORCE MAJEUR CLAUSE” ATAU “HARDSHIP CLAUSE” Problematika Dalam Perancangan Kontrak Bisnis**

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### **ABSTRACT**

*The significance of contract is to secure a fair transaction of rights and obligations of the party to the contract, by which it creates a safely, properly, and beneficially contractual relation. Under no circumstances is the contract made to harm one or both of the parties. Despite fair formation, due to breach of contract or force majeure the contract is not performed as supposed to be.*

*The stipulation of force majeure clause, in some cases, are not accomodative to the business activity because the dispute settlement is usually put in the court. Therefore, there is a new way to apply hardship doctrine which in the perspective of business is seen more flexible and accomodative to solve the dispute.*

*The hardship characteristic, as mention above, is appropriate to the business character which needs both dynamic activity and the business continuity among parties. The implementation of hardship doctrine is a “win-win solution” model which benefits both parties.*

**Keywords** : *business contract, force majeure clause, hardship clause, win-win solution contract.*

### **PENDAHULUAN**

Pada dasarnya suatu kontrak bisnis berawal dari suatu perbedaan atau ketidaksamaan kepentingan di antara para pihak untuk kemudian saling dipertukarkan (*exchange of interest*). Perumusan hubungan kontraktual tersebut pada umumnya senantiasa diawali dengan proses negosiasi di antara para pihak. Melalui negosiasi para pihak berupaya menciptakan bentuk-bentuk kesepakatan untuk saling memper-

temukan sesuatu yang diinginkan (kepentingan) melalui proses tawar menawar. Pendek kata, pada umumnya kontrak bisnis justru berawal dari perbedaan kepentingan yang dicoba dipertemukan melalui kontrak. Melalui kontrak perbedaan tersebut diakomodir dan selanjutnya dibingkai dengan perangkat hukum sehingga mengikat para pihak. Dalam kontrak bisnis pertanyaan mengenai sisi kepastian dan keadilan justru akan tercapai apabila perbedaan yang ada di antara para pihak terakomodir melalui mekanisme hubungan kontraktual