

TINJAUAN YURIDIS PRINSIP *HARDSHIP* SEBAGAI UNSUR KEADAAN KAHAR DALAM PERJANJIAN PENGADAAN KONSTRUKSI (Studi Kasus Pada PT Hutama Karya (Persero) Selama Masa COVID-19)

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis dampak terjadinya *hardship* terhadap pemenuhan ketentuan dalam perjanjian pelaksanaan jasa konstruksi pada PT Hutama Karya (Persero), serta untuk mengetahui dan menganalisis pemenuhan unsur keadaan kahar atas *hardship* merujuk pada regulasi di bidang pembangunan jasa konstruksi yang berlaku saat ini.

Penelitian ini berjenis penelitian hukum empiris dan normatif. Penelitian hukum empiris meneliti data primer berdasarkan hasil penelitian lapangan yang dilakukan di PT Hutama Karya (Persero), selaku salah satu perusahaan BUMN di bidang konstruksi di Indonesia dengan mengambil 3 (tiga) proyek sebagai objek penelitian, yaitu Proyek Revitalisasi Rusun Karang Anyar, Proyek Integrated Building Bandara Soekarno-Hatta dan Proyek Apartemen Aspenna Residence. Penelitian hukum normatif meneliti bahan-bahan pustaka atau data sekunder yang mencakup bahan hukum primer, sekunder dan tersier yang dikaitkan dengan rumusan permasalahan yang ada dalam penelitian ini. Dalam melakukan analisis data, metode yang digunakan dalam penelitian ini adalah metode deskriptif kualitatif.

Berdasarkan hasil Penelitian, ditemukan bahwa konsep *hardship* umum dipergunakan dalam hukum kontrak internasional, khususnya UPICC, dimana berdasarkan Peraturan Presiden Nomor 59 Tahun 2008 tentang Pengesahan *Statute Of The International Institute For The Unification Of Private Law*, ketentuan dalam UPICC dapat diberlakukan di Indonesia sebagai pelengkap KUHPerdara, meskipun secara eksplisit belum diatur dalam regulasi standar perjanjian jasa konstruksi di Indonesia, yaitu Peraturan LKPP Nomor 12 Tahun 2021 tentang Pedoman Pelaksanaan Pengadaan Barang/Jasa Pemerintah Melalui Penyedia. Ditemukan pula bahwa *hardship* identik dengan definisi dari keadaan kahar relatif, dimana saat ini Indonesia condong mendefinisikan keadaan kahar sebagai keadaan kahar absolut. Hakim dalam hal ini dapat melakukan penafsiran dan penemuan hukum, sehingga dalam menangani sengketa yang melibatkan konsep *hardship*, hakim

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perlu melakukan identifikasi secara mendalam dan cermat untuk memastikan keadilan dan keseimbangan antara para pihak yang terlibat.

Kata kunci: *hardship*, keadaan sulit, konstruksi, kontrak, COVID-19

**JURIDICAL REVIEW OF HARDSHIP PRINCIPLES AS AN ELEMENT OF FORCE MAJEURE IN CONSTRUCTION PROCUREMENT AGREEMENTS
(Case Study at PT Hutama Karya (Persero) During the COVID-19 Period)**

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ABSTRACT

This research aims to determine and analyze the impact of hardship on the fulfillment of the provisions in the agreement for the implementation of construction services at PT Hutama Karya (Persero), as well as to determine and analyze the fulfillment of the elements of force majeure for hardship referring to regulations in the field of construction services that are currently in effect.

This research is of the type empirical and normative legal research. Empirical legal research examines primary data based on the results of field research conducted at PT Hutama Karya (Persero), as one of the state-owned companies in the construction sector in Indonesia by taking 3 (three) projects as research objects, namely the Karang Anyar Flats Revitalization Project, the Integrated Project Soekarno-Hatta Airport Building and Aspena Residence Apartment Project. Normative legal research examines library materials or secondary data which includes primary, secondary and tertiary legal materials which are linked to the problem formulation in this research. In conducting data analysis, the method used in this research is a qualitative descriptive method.

Based on the research results, it was found that the concept of hardship is commonly used in international contract law, especially the UPICC, where based on Presidential Regulation Number 59 of 2008 concerning Ratification of the Statute of the International Institute for the Unification of Private Law, the provisions in the UPICC can be applied in Indonesia as a complement to the Civil Code, although it has not been explicitly regulated in the standard regulations for construction service agreements in Indonesia, namely LKPP Regulation Number 12 of 2021 concerning Guidelines for Implementing Government Procurement of Goods/Services Through Providers. It was also found that hardship is synonymous with the definition of relative force majeure, where currently Indonesia tends to define force majeure as absolute force majeure. Judges in this case can carry out legal interpretations and discoveries, so that in handling disputes involving the

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concept of hardship, judges need to carry out in-depth and careful identification to ensure justice and balance between the parties involved.

Keywords: hardship, difficult circumstances, construction, contract, COVID-19