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Business Losses and Force Majeure in Murabahah Disputes (Legal Analysis of Supreme Court Decision No. 179 K/Ag/2017)

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Abstract

This paper analyzes Supreme Court Decision No. 179 K/Ag/2017 on murabahah financing disputes. It focuses on force majeure, the principle of pacta sunt servanda, and good faith in assessing debtor business losses. This analysis helps explain the Supreme Court's decision within the framework of Islamic economic law. The method used is philosophical jurisprudence, with a descriptive-analytical approach to the decision. This approach clarifies how judges consider force majeure, pacta sunt servanda, and the good-faith standard. The study found that the force majeure argument was rejected because there was no direct causal link between the BPJS policy and the business losses. As a result, pacta sunt servanda still applies. The debtor's good faith was not enough to exempt them from murabahah payment obligations. Theoretically, the decision affirms that the limits of force majeure in murabahah contracts reinforce the principles of pacta sunt servanda and good faith. The practical implication is that the decision guides Islamic banking practitioners and customers. Proof of force majeure must include direct causality between regulatory uncertainty and business risk. Without this proof, the judge will apply the principles of pacta sunt servanda and good faith. This study contributes to the development of Islamic contract law by emphasizing the consistency of judicial interpretations of extraordinary circumstances. It highlights the importance of the burden of proof in establishing the existence of force majeure in Islamic nancing disputes. By strengthening legal certainty, this decision promotes responsible risk management and contractual compliance in murabahah transactions. Ultimately, the ruling supports a balance between justice and legal certainty in resolving disputes under Islamic economic law.

Keyword: *Supreme Court Decision; force majeure; pacta sunt servanda; good faith*

Introduction Section

The basic concept of force majeure in civil law and Islamic economic law research is generally understood as an extraordinary circumstance that is unpredictable, beyond the parties' control, and that creates objective obstacles to performance. In the context of murabahah disputes, this concept becomes problematic because, doctrinally, murabahah is a sale-and-purchase agreement with a fixed price and a fixed margin, not a risk-sharing agreement. The Supreme Court's decision as a judex juris in Islamic economic cases shows that murabahah customer default is more often classified as a breach of contract or a business risk, not as pure force majeure, unless there is evidence of an external event that truly prevents performance. This explanation highlights the tension between the classical force majeure doctrine and the fixed obligation character of murabahah (Alam et al., 2024).

In the regulatory sphere, the concept of force majeure is scattered throughout the Civil Code (Articles 1244–1245), the Compilation of Sharia Economic Law (KHES), and the DSN-MUI fatwa, which emphasize the principles of justice, ta'awun, and the prohibition of ta'widh for non-negligent inability (Supena, 2021).). However, the data show that these regulations have not provided clear operational criteria for distinguishing between force majeure and ordinary economic difficulties in murabahah disputes. The Supreme Court, in its decisions, tends to use a normative prudential approach by combining the Civil Code, KHES, and sharia principles, but still places murabahah within the framework of legal certainty

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and protection of the banking system, so that force majeure is rarely accepted as a basis for the elimination of obligations (Saefuddin, 2019).

An aspect that has not been widely discussed in previous research but has emerged as the leading cause of legal uncertainty in the data is the lack of synchronization among the construction of force majeure in civil law, the KHES, and the Supreme Court's judicial practice (Ahmad Sodik, 2020). Several rulings indicate that "unforeseen situations," such as business-sector crises, pandemics, or national economic instability, are recognized as external factors. Still, their elements are not consistently treated as force majeure. As a result, there is ambiguity as to whether these conditions constitute murabahah business risks that customers must bear, or force majeure circumstances that should delay or adjust obligations. This methodological gap is not explicitly addressed in regulations or previous research, but it is clearly reflected in the disparity in judges' arguments.

In light of this gap, this article proposes a conceptual framework for force majeure in murabahah disputes, grounded in an analysis of the Supreme Court's decision as a judex juris. This article aims to explain how Supreme Court Decision Number 179.K/Ag/2017 positions force majeure, whether as an exception to default, the basis for restructuring, or merely a sociological factor that is considered to a limited extent, and to examine its consistency with KHES and MUI DSN Fatwa Number 4/DSN/MUI/IV/2000 and DSN Fatwa Number 17/DSN-MUI/2000 concerning Capable Customers who delay Payment. Thus, this research does not stop at the normative text but links it to judicial rationality in cassation practice.

This article seeks to develop the doctrine of force majeure in Islamic economic law, especially murabahah. It highlights the boundaries between business risk, financial inability, and valid force majeure. In practice, these findings can guide judges, Islamic banks, and contract designers. They can help draft clearer force majeure clauses that align with Supreme Court practice. By connecting research and practice, this article aims to strengthen legal certainty and ensure substantive justice in murabahah disputes.

Literatur Review

In business contract studies in Indonesia, "force majeure" is usually not treated as a dispute issue but rather as a "risk management clause" placed at the end of the contract to address extraordinary events (e.g., natural disasters, social unrest, or changes in external conditions). This pattern is seen in the draft model cooperation agreement for extractive industry contracts, which places force majeure as a mechanism that must be in place so that contractual relationships still have an "emergency brake" when unexpected events occur, while still ensuring that core obligations (e.g., restoration/rehabilitation obligations) are not simply lost.

When force majeure shifts from a "prevention" clause to a basis for a "defense" argument in a dispute, the legal analysis generally begins with the general elements of force majeure. These events are unforeseeable, beyond the parties' control, unavoidable despite reasonable efforts, and completely impede performance. This explanation means that force majeure is understood as a doctrine that can exempt (or at least postpone) liability for default under certain conditions. This formulation is also evident in the legal literature, which affirms that force majeure constitutes a ground for exemption from obligations when external events render the performance of a contract impossible or severely impede it (Subagiyo & Widjangkoro, 2024).

Previous research also shows that "force majeure" is often discussed alongside the concept of "hardship/rebus sic stantibus" as its "doctrinal twin," both of which emphasize the impossibility of performance (Budi cahyono, 2025). In contrast, hardship emphasizes an "extreme imbalance" that makes performance extremely burdensome and encourages renegotiation. This combination has emerged strongly in the wake of the pandemic, as many disputes do not stop at the question of "liability or not," but shift to the question of "whether the contract needs to be adjusted fairly" (Hadi & Riqiey, 2025)

As for sharia financing, particularly murabahah, previous research has placed it in a unique tug-of-war, because, on the one hand, murabahah is a sale-and-purchase agreement with a margin agreed in advance, so that, structurally, it requires certainty of payment obligations. However, a crisis can lead to a state of "ta'assur" (difficulty in paying), necessitating restructuring or rescheduling. Therefore, the scientific debate in the Indonesian system related to force majeure in the context of murabahah contracts is understood juridically through two layers of positive law (the doctrine of force majeure/overmacht and the principle of agreement) and a layer of sharia principles (fairness, benefit, and protection from harm).

As for the positive law layer, the literature on murabahah disputes generally focuses on two theoretical axes: first, the principles of "pacta sunt servanda" and "good faith" (contracts are binding and must be executed honestly/correctly) (Abdullah pakarti, 2025). Second, the doctrine of force majeure is an exception that must be strictly proven so that it does not become a general excuse to avoid obligations. This explanation means that even if force majeure is recognized, it is

usually treated as a "narrow exception" that does not automatically terminate the agreement, but rather is often directed towards options for postponement, restructuring, or renegotiation if the event is temporary.

As for the principles of Sharia, previous research on financing contract disputes (including murabahah) links coercion with the concepts of "al-'udzur" (legitimate Sharia reasons/excuses) and "maslahah" (public interest), then operationalizing them through restructuring policies that are considered to be in line with Sharia objectives (maqāṣid) (Yusuf et al., 2025). Here, the theory at work is not the absolute "elimination of obligations," but rather "correcting the manner in which obligations are carried out" in order to remain fair, for example, through rescheduling, restructuring, or certain relaxations as long as they do not violate the principles of prohibiting usury/injustice (Sulistianingsih et al., 2024).

Regarding previous research on how judicial institutions implement force majeure, the tendency to "lock in" force majeure to prevent it from becoming uncontrolled is evident in how courts assess the force majeure argument. Judges tend to demand a clear causal relationship between extraordinary events and the inability to perform, as well as to assess whether the debtor remains in good faith (e.g., by communicating, proposing restructuring, or demonstrating reasonable efforts). Therefore, many studies emphasize that what is at stake in force majeure disputes is not only "the existence of a major event," but "whether that event meets the elements and the evidence is sufficient."

An important example in Supreme Court literature, often cited as a reference for understanding the court's stance on "force majeure" in Sharia economic disputes, is Supreme Court Decision Number 569 K/Ag/2015 (on a multi-service ijarah financing contract). The focus was on the customer claiming force majeure to avoid sanctions/penalties under the DSN fatwa framework. However, the decision still imposed consequences that the study's author considered tantamount to ordinary default. This explanation shows that in practice, the court may be "more dominant" in using the logic of default and payment certainty rather than accepting the argument of force majeure as an automatic exemption.

In financing disputes that are closer to murabahah, court ruling literature shows a similar pattern, namely that the force majeure argument is often not sufficient with only a claim of "difficult circumstances," but must be matched with evidence that the obligation was indeed impeded by unforeseen events and not the result of managerial negligence. If the evidence is not strong, the court tends to reject the cancellation of the contract and uphold the creditor's rights, including the execution of collateral (Asyiqin & Alfurqon, 2024).

At this point, it appears that the most commonly used "analytical tool" for interpreting force majeure disputes in business transactions, including when extended to murabahah contracts, is a combination of the doctrine of force majeure/overmacht as an exception, with the principles of pacta sunt servanda and good faith as the regular basis. Meanwhile, the concept of hardship/rebus sic stantibus emerges as a reinforcement when it is more realistic to resolve the case through contract adjustment rather than total exemption (Armandhanto & Arie, n.d.). In other words, the literature and prevailing trends suggest that, in Indonesia, force majeure more often serves as a basis for restructuring/renegotiation than for the absolute "elimination of obligations," especially in financing contracts that require certainty.

In conclusion, in the legal analysis of murabahah disputes related to force majeure, including when comparing court decisions and judicial argumentation trends, the most frequently used legal concept is "overmacht/force majeure" within the framework of contract law (as a strict exception), which is always "drawn back" to the binding nature of contracts and good faith (Arrosyiid & Febriansyah, 2022). In contrast, in Islamic economics, this concept is often combined with the normative legitimacy of fatwa/fiqh (al-'uzhr, maslahah, and maqāṣid) (Hidayati & Hidayatullah, 2021). However, judicial practice shows that acceptance of force majeure remains highly dependent on proof of causation and an assessment of good faith, rather than merely on the magnitude of the external event.

Method

This research is a judicial case study that emphasizes in-depth research on legal considerations and the views of Supreme Court judges in deciding murabahah disputes influenced by force majeure circumstances. The approach used is philosophical jurisprudence, which examines the concept of force majeure in Sharia contract law by focusing on the values of justice, legal certainty, and benefit as the basic principles of Sharia economics within the framework of positive law (Isman & Zainul Muttaqin, 2024).). The primary data in this study are secondary, while the primary data are used as supporting data. Primary data is obtained directly from the source.

In contrast, secondary data is obtained from literature reviews covering Supreme Court decisions that are the subject of the study, as well as relevant judicial decisions, laws, and regulations related to Islamic banking and contract law, literature, research reports, and journals. The data collection technique involved library research on relevant court decisions and laws and regulations on Murabaha, as well as judges' legal considerations regarding the application of force majeure as a limitation of liability in Murabaha disputes (Isman et al., 2023). The analysis was carried out by describing the study's results to explore the principles of transcendental justice, elaborating on legal facts, particularly regarding Murabaha disputes, and emphasizing the boundaries between business risk, economic incapacity, and legally valid force majeure

Result and Discussion

Supreme Court Legal CONSIDERATION

Initially, this dispute arose from the legal relationship between H.A.S. and PT B.B.S.KCP.T and KPKNL M., which were bound by a murabahah financing agreement dated November 27, 2013. Under this agreement, the Plaintiff obtained financing in the amount of Rp200,000,000.00 (two hundred million rupiah), with the obligation to repay in instalments over 60 months, until November 2018. As collateral, the Plaintiff submitted a plot of land and a building as evidenced by a Building Use Rights Certificate in his name. In practice, the instalment payments ran smoothly until July 2014, indicating that in the early stages of the contractual relationship, there were no disputes or defaults on the part of the Plaintiff.

Problems began to arise when, starting in August 2014, the Plaintiff's Herbal Clinic business experienced a decline in income. The Plaintiff argued that this decline was caused by the government's policy regarding the Social Security Administration Agency (BPJS), which led customers to switch to BPJS facilities, thereby directly affecting the continuity of his business (Murty et al., 2024). According to the Plaintiff, this situation made it impossible to meet installment obligations on time, so the Plaintiff considered this event to be a force majeure 7 beyond its control and will.

Based on these facts, in its appeal, the Plaintiff argued that the decline in business due to BPJS policies constituted a force majeure event under the murabahah financing agreement. Therefore, the Plaintiff argued that it should be released from its debt obligations, or at least be granted relief through restructuring. The Plaintiff also links this force majeure argument to the provisions of Article 17 of the agreement and to the principles of justice and Sharia, emphasizing that the Defendant's application of sanctions and auction measures does not reflect the principles of prudence and justice in Sharia financing (Andespa et al., 2024).

Conversely, in the counter-memorandum of appeal, the Defendant firmly rejects the force majeure argument put forward by the Plaintiff. The Defendant argues that the government's policy regarding BPJS cannot be qualified as force majeure because it did not directly cause the Plaintiff's inability to pay the installment. The Defendant emphasized that the payment obligation under the murabahah contract is definite and binding, and that the Plaintiff remains legally obligated to fulfill its obligations even if business declines. Thus, according to the Defendant, the conditions experienced by the Plaintiff are business risks that the bank cannot bear(Hartanto & Sulaksono, 2019).

The Plaintiff advanced his legal argument that the decline in business due to the BPJS policy constituted an event satisfying the elements of force majeure, with legal consequences including a request to cancel the agreement, release from debt obligations, and cancellation of the collateral auction plan. Meanwhile, the Defendant links the late payments since August 2014 to the contract's provisions on default and bases its actions on the principle of legal certainty and the DSN-MUI fatwa on the permissibility of sanctions against customers who delay payments (Widjaja, 2024).

Thus, in abstract terms, the dispute concerns a difference in legal interpretation over whether the BPJS policy qualifies as force majeure. This difference is at the heart of the dispute and was ultimately assessed by the Supreme Court in deciding the case.

At the first level, the Makassar Religious Court confirmed that the legal relationship between the Plaintiff and the Defendant arose from a valid and binding murabahah financing agreement. This fact was confirmed by the existence of a financing agreement Number 103 (Murabahah financing contract) with a financing value of IDR 200,000,000.00 (two hundred million rupiah) for a period of 60 months, with installments of IDR 5,735,833.00. (five million seven hundred thirty-five thousand eight hundred thirty-three rupiah) Moreover, the existence of collateral in the form of land and buildings covering an area of 217 m2 located at BTN Citra Sari Block B 7/1, Sudiang Raya Village, Biringkanaya District, Makassar City, owned by the Plaintiff. These facts indicate that the Makassar Religious Court found, from the outset, that a contractual relationship existed, giving rise to reciprocal rights and obligations for both parties.

Furthermore, the Makassar Religious Court confirmed the fact that the Plaintiff had failed to fulfill its obligation to pay installments in accordance with the provisions of Agreement Number 103 (Murabahah Financing Agreement) dated November 27, 2013, since August 2014. This fact of late Payment was confirmed through letters of summons from the Defendant dated June 4, 2015, regarding a Warning Letter for arrears amounting to IDR 17,095,358.00 (seventeen million ninety-five thousand three hundred fifty-eight rupiah), dated June 12, 2015, regarding the Second Warning Letter for arrears amounting to Rp22,828,689.00 (twenty-two million eight hundred twenty-eight thousand six hundred eighty-nine rupiah), dated June 23, 2015, regarding Warning Letter III requiring the settlement/payment of all obligations (total) of Rp192,336,525.00 (one hundred ninety-two million three hundred thirty-six thousand five hundred twenty-five rupiah) and the Plaintiff's own admission that he was experiencing business difficulties. Therefore, according to the Makassar Religious Court, the Plaintiff has been proven to have breached the contract, namely the failure to perform as agreed under the murabahah contract.

In contrast to the first-instance court's consideration, the Makassar Religious High Court, in its appeal decision, stated that the Plaintiff's lawsuit contained formal defects. The Makassar Religious High Court emphasized the lack of clarity in

the formulation of the lawsuit, both in the statement of facts and the statement of claim. The Makassar Religious High Court stated that the Plaintiff's lawsuit did not explicitly determine the legal basis, whether it was a breach of contract or an unlawful act, thus causing ambiguity (obscur libel)(Badrinathan et al., 2025).

In addition, the Makassar Religious High Court emphasized the contradiction between the statement of claim and the petition. This fact was confirmed by the Plaintiff's argument, which, on the one hand, stated that it still intended to fulfill its obligations through restructuring, but, on the other hand, demanded an exemption from all payment obligations (Dwi Kurniawan et al., n.d.). The High Court Agama Makassar confirmed this contradiction as an inconsistent argument that rendered the lawsuit noncompliant with the formal requirements.

Based on all these formal facts, the Makassar Religious High Court ruled that the Plaintiff's lawsuit was inadmissible (niet ontvankelijk verklaard). The Makassar Religious High Court did not examine the merits of the case but instead dismissed it on procedural grounds.

Entering the cassation examination stage, the Panel of Judges then qualified the arguments of both parties based on the cassation brief and counter-brief. First, the Plaintiff's failure to fulfill their obligation to make installment payments since August 2014 constituted a breach of contract. This qualification was based on the Plaintiff's failure to fulfill the obligations stipulated in the agreement, despite repeated warnings from the Defendant. Therefore, legally, the Panel of Judges confirmed that the element of default had been fulfilled, so that the Plaintiff's legal position was that of a party in breach of contract.

Meanwhile, regarding the Plaintiff's force majeure argument, the Panel of Judges found that the decline in business due to BPJS policies constituted a force majeure event. In its consideration, the Panel of Judges ruled that the BPJS policy could not be classified as force majeure, as it was not proven to be an event that directly and absolutely prevented the Plaintiff from fulfilling its payment obligations. The force majeure argument did not meet the legal requirements to release the Plaintiff from its contractual obligations (Holijah et al., 2023).

The cassation panel of judges considered the fact of default that had previously been proven at the Judex facti level. The qualification of the Defendant's actions as lawful and justified by law meant that the auction of collateral could not be considered an unlawful act, but rather a legal consequence of the Plaintiff's failure to fulfill its obligations under the murabahah contract.

At the appellate level, the Makassar Religious High Court qualified the Plaintiff's lawsuit as formally defective. This qualification was based on the fact that the lawsuit contained ambiguities regarding the basis for default and unlawful acts, as well as a contradiction between the posita and the petitum. Thus, the lawsuit failed to meet the formal requirements of civil procedural law and should be declared inadmissible.

The Supreme Court then reassessed the legal qualification made by the Makassar Religious High Court. In its legal considerations, it emphasized that the formal assessment by the Makassar Religious High Court was inappropriate, because the substance of the Plaintiff's lawsuit was actually clear enough to be examined. However, the Supreme Court still qualified that in the main case, the Plaintiff could not prove his arguments, particularly regarding force majeure.

Based on these legal qualifications, the Supreme Court concluded that, even though the Makassar Religious High Court's decision was overturned, the Makassar Religious Court's verdict rejecting the Plaintiff's claim in the main case was correct and in accordance with the law. Thus, it can be confirmed that the Plaintiff's actions constitute a breach of contract, that the force majeure argument is not proven, and that the Defendant's auctioning of the mortgaged land and buildings has a valid legal basis.

Juridical Analysis

First, at the Makassar Religious Court level, the judge consistently argued that force majeure falls outside the category of exceptions to breach of contract. These facts are evidenced by the legal relationship between the parties arising from a valid and binding murabahah contract that contained clear payment obligations (Naili & Lahrichi, 2022). Although the Plaintiff had failed to make payments since August 2014, the Panel of Judges still found that the situation constituted a breach of contract. The most substantial evidence that force majeure was not treated as an exception to breach of contract was the judge's assertion that the elements of breach of contract had been satisfied, even though the Plaintiff argued that business had declined due to BPJS policies.

Second, the judge also did not base restructuring obligations on force majeure. Although factually the Plaintiff expressed good faith and business difficulties, the Makassar Religious Court did not use these circumstances as a reason to change, postpone, or adjust contractual obligations (Efendi et al., 2025). Evidence of this argument is apparent from the fact that the judge continued to use the provisions of the contract as the primary reference for assessment, so that force majeure was not given a normative function as a basis for reconstructing legal relations.

Third, the judge's force majeure is treated only as a sociological factor, considered to a limited extent, not as a legal category that exempts liability(Jannani et al., 2024). This fact is evident from the judge's consideration, which acknowledged the decline in business due to BPJS policies, but explicitly stated that these conditions did not constitute force majeure because they did not directly and absolutely prevent Payment. In other words, force majeure in this case is a socio-economic background that explains the difficulties and business risks experienced by the Plaintiff, not a legal basis for eliminating obligations.

Fourth, the consistency of this argument is also evident in the judge's assessment of the Defendant's actions. Since force majeure is not recognized as an exception to default, the collection and auction of collateral are qualified as lawful acts. If force majeure were considered an exemption or basis for restructuring, these actions should have been deemed unlawful. However, the judge's finding that the Defendant's actions were lawful

The Supreme Court then emphasized that even though the case was examined substantively, the force majeure argument remained unproven. This consistency is evident from the Supreme Court's conclusion that the Plaintiff failed to prove force majeure, thereby upholding the Makassar Religious Court's decision to dismiss the lawsuit. This consideration reinforces the point that, from the outset to the cassation level, force majeure was never recognized as a basis for exemption from default or for restructuring(Muskibah et al., 2023).

The judges' arguments at both the judex facti and judex juris levels viewed the construction of force majeure in this dispute as a sociological factor, considered only to a limited extent, without any legal consequences, such as exemption from breach of contract or restructuring of obligations. This fact explains the judges' orientation (Fidhayanti et al., 2025). This fact also prioritizes contractual certainty over losses arising from business risks stemming from the debtor's economic difficulties.

Regarding the Supreme Court's considerations, it is explained that the legal relationship under a murabahah contract is valid and binding. This consideration is evidenced by both parties' recognition of the existence of a complete financing agreement, including the financing value, term, installment amount, and collateral. This consideration means that the Supreme Court began its analysis from the principle of pacta sunt servanda, so that any force majeure argument must be strictly tested in the context of the contractual obligations that have been agreed upon.

The Supreme Court found that the Plaintiff's failure to pay installments since August 2014 constituted a default. The Supreme Court emphasized that the elements of default had been fulfilled because there was continuous negligence, even though the Defendant had issued warnings. By maintaining this qualification of default, the Supreme Court explained that force majeure is not placed as an exception that eliminates the debtor's fault.

The Supreme Court explicitly rejected the BPJS policy's qualification as a force majeure event. This rejection confirms that the decline in business due to the BPJS policy was not proven to be an event that directly and absolutely prevented the fulfillment of payment obligations. Force majeure is not recognized as a basis for exemption from legal liability, as it only explains the factual circumstances of the Plaintiff's losses (Pangestu & Muramuzi, 2025).

The Supreme Court also did not use force majeure as a basis for restructuring obligations. This consideration proves that force majeure is not given a normative function to change or adjust the legal relationship between the parties. In its considerations, the Supreme Court stated that although the lawsuit was worthy of substantive examination, the Plaintiff still failed to prove the force majeure argument. Thus, from the first level to the cassation, force majeure was never elevated to a basis for exemption from default or restructuring.

Based on these considerations, the Supreme Court consistently treated "force majeure only as a sociological factor that is considered to a limited extent, without legal consequences for the validity of the contract or payment obligations. This approach confirms the Supreme Court's orientation towards contractual legal certainty and strict proof of the doctrine of force majeure.

The Supreme Court did not find that the judges of the Makassar Religious Court or the Makassar Religious High Court had misapplied the law when rejecting the force majeure argument, but instead found that their approach was in line with the principle of murabahah contracts as affirmed in DSN-MUI Fatwa No. 04/2000. The fatwa emphasizes the obligation to fulfill contracts ("awfū bil 'uqūd") and states that customers are still obliged to settle their debts even if they experience business losses or changes in economic conditions, as long as there are no legal circumstances that absolutely prevent the fulfillment of obligations (Asyiqin & Alfurqon, 2024).

The above legal considerations align with DSN-MUI Fatwa No. 04/2000, which does not require automatic restructuring if a customer experiences business difficulties; instead, the payment obligation remains with the customer in accordance with the initial agreement (Andalusi & Selian, 2019). Thus, the Supreme Court holds that the judge of the Makassar Religious Court acted within the limits of his authority because he did not create a new norm by restructuring that is not mandated by the contract or fatwa

Fatwa DSN-MUI No. 17/2000 explicitly distinguishes between customers who are unable to pay due to force majeure and customers who delay Payment without proof of compelling circumstances (Atho Mudzhar, 2013). The fatwa emphasizes that only customers who are genuinely unable to pay due to force majeure should not be subject to sanctions.

At the same time, delays without strong evidence are still treated as negligence. Based on DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000, the distinction between customers who are unable to pay due to force majeure and customers who delay Payment is determined by both subjective and objective elements. The subjective element is that the customer still has good faith and the will to pay. The objective is that the customer is genuinely in a state of force majeure beyond their control.

Discussion

The assessment of the Makassar Religious Court Judges that force majeure is only a factual factor that is considered to a limited extent is appropriate and consistent with both DSN-MUI fatwas. The Fatwa No. 17/2000 does not eliminate the obligation to pay debts, but only regulates the prohibition of imposing sanctions if force majeure is proven. Since this proof was not provided, the Supreme Court ruled that there was no reason to correct the substance of the first-instance judge's considerations, apart from the formal aspects criticized by the Makassar Religious High Court.

In summary, the Supreme Court did not find any errors in the judge's application of the law, exceeding of authority, or failure to fulfill the requirements of the law. This consideration is in line with DSN-MUI Fatwa No. 04/2000 and No. 17/2000, which places force majeure not as an exception to default or a basis for restructuring, but only as a sociological factor that must be proven 12strictly, and which in this case was not fulfilled (Sumanto, 2020).

Based on decision No. 179 K/Ag/2017 and DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000, it appears that "the force majeure criteria used by the Supreme Court are not fully consistent with the force majeure norms in the DSN fatwa." The DSN-MUI fatwa normatively distinguishes force majeure as a condition of absolute inability of the customer beyond their control and accompanied by good faith, thereby implying a prohibition on the imposition of sanctions. However, in the Supreme Court's consideration, force majeure is narrowly tested by emphasizing the element of "the unproven nature of events that directly and absolutely prevent payment." It is stated that the BPJS policy cannot be qualified as force majeure because it does not directly cause an inability to pay (Putra et al., 2020). This approach shows that the Supreme Court adopts the classic standard of force majeure in positive civil law (overmacht absolut), rather than the functional-economic approach adopted in the DSN-MUI Fatwa, which allows for the factual inability of customers, provided it is proven objectively and subjectively

The Supreme Court's consideration of combining the concepts of "business risk" and "force majeure" risks ambiguity, as the Plaintiff's decline in business due to the BPJS policy has not yet been proven. By classifying these conditions as business risk without further examining whether the government policy meets the criteria for external, unforeseeable, and uncontrollable events, the Supreme Court risks blurring the line between normal business risk and force majeure from a Shariaperspective (Harja & Widiati, 2021). This ambiguity is further highlighted by the Supreme Court's acknowledgment of the Plaintiff's business difficulties, which it does not consider grounds for assessing force majeure as defined in the DSN-MUI Fatwa, but only as a sociological background with no legal consequences for the payment obligation.

Considering the above explanations, the judge legally used the theory of "Absolute Overmacht (absolute impossibility)" in assessing the force majeure argument submitted by the Plaintiff (Arrosyiid & Febriansyah, 2022). This argument was that there was no evidence that the BPJS policy was an event that directly and absolutely prevented the Plaintiff from fulfilling its obligation to make installment payments. The object of performance in the form of Payment still existed and could logically still be carried out. The judge's line of argument shows the use of the concept of "absolute force majeure," not "relative force majeure," because the difficulties faced by the business as a result of the BPJS policy are treated as normal business risks that are still within the realm of human will and ability to overcome.

In addition, the Supreme Court judge's assessment pattern reflects a more objective standard in assessing the element of unforeseeable force majeure, rather than a specific debtor standard. This consideration can be seen from the way the judge rejected the force majeure argument by emphasizing that the decline in the Plaintiff's business due to the BPJS policy, the loss of customers, damage to stock, and cash flow difficulties were common and inherent business risks, not extraordinary events that were statistically and historically impossible to predict by business actors in general. The Supreme Court explicitly stated that the government's policy on BPJS did not necessarily cause the impossibility of fulfilling obligations, nor did it prove the existence of a direct causal relationship that was extraordinary and unavoidable, so that, objectively, it was still considered to be within the realm of normal business risk (Putri et al., 2023).

The dominant theory used by judges is the objective foreseeability test, which places the standard of general prudence and normality of business risk as the primary benchmark, rather than the subjective inability of the individual debtor.

Conclusion

Based on Supreme Court Decision Number 179 K/Ag/2017, force majeure is positioned not as an exception to default or a basis for restructuring obligations, but merely as a sociological factor that is considered to a limited extent. The Plaintiff's failure to pay the murabahah installments remains a default because the contract is valid and binding. The claim of a decline in business due to BPJS policy is not an event that directly and absolutely prevents Payment, so it does not constitute force majeure and does not exempt from legal liability or contractual reconstruction. This legal consideration is reinforced by the Supreme Court's assertion that collection and collateral auction actions are valid, while also emphasizing that the epicenter of its legal consideration is the principle of pacta sunt servanda. When linked to DSN-MUI Fatwas No. 04/2000 and No. 17/2000, the Supreme Court's consideration is in line with the aspects of the obligation to fulfill the agreement and strict proof of force majeure. However, it is not yet entirely consistent conceptually, because Fatwa-DSN No. 17/2000 provides the opportunity to recognize the absolute inability of customers based on objective and subjective elements with the implication of a prohibition on sanctions, while the Supreme Court examines force majeure narrowly through the absolute overmacht standard and objective foreseeability test, and tends to classify economic difficulties as inherent business risks. The contribution of this research lies in the formulation of doctrinal boundaries that are Accurate in Islamic economic law, particularly in murabahah contracts, so that normal business risks, actual economic incapacity, and legitimate force majeure circumstances can be distinguished in accordance with the DSN-MUI's fatwa.

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