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Formalization Of The Doctrine Undue Influence Into Positive Legal Norms In Indonesia

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Abstract

Undue Influence in the agreement causes harm to one party, and provides an opportunity for profit for the other party. Undue Influence is contrary to the principle of good faith, the principle of freedom of contract and is not in accordance with the principles of decency, fairness, and habit. This research is a normative legal research with a juridical approach. The results of this study indicate that the doctrine of undue influence as one of the defects of the will has been recognized in Indonesia. The legal considerations taken by the judge in granting or denying the undue influence are very varied. This happens because there is a vacuum and legal uncertainty that regulates the undue influence as one of the defects of the will in the agreement. To guarantee rights and provide legal certainty for the parties to the agreement, there needs to be a legal formulation in the short term and long term.

Keywords: Doctrine Undue Influence; Positive Legal Norms; Indonesia

I. INTRODUCTION

Many agreements indicate an element of undue influence, both in standard agreements and non-standard agreements.¹ One type of agreement that is most often found undue influence is in a standard agreement (standard contract or standard voorwaarden).² People who enter into legal relations are often faced with standard agreements,³ namely an agreement that has been prepared in advance by an institution in the form of a standard form.⁴ The purpose of the original standard agreement was to facilitate legal relations between the parties, but turned into a necessity to create legal relations between the parties because there were parties who abused the situation by parties who had economic advantages or psychological advantages to put pressure or coercion on them. other party through a standard agreement.⁵ It is possible that the undue influence can be

indicated in a non-standard agreement, at the unilateral will of an institution that has economic advantages and psychological advantages.

The element of undue influence causes harm to one party, and provides an opportunity for profit to the other. From the second element, two traits arise, namely the abuse of economic advantage and the abuse of psychological (psychological) advantage.⁶ Misuse of circumstances will indirectly put pressure on the weak party by dealing with the pinched economic situation/position as an excuse to force the weak party to have no other choice. In this condition the weak party no longer has the free will (freedom of contract) in accordance with Article 1338 paragraph (1) of the Civil Code and in this condition also has formed bad faith from the strong party.

Misuse of circumstances is against the principle of good faith (good faith),⁷ and the principle of freedom of contract, and not in accordance with the principles of decency, firmness, and custom.⁸

Freedom of contract requires that the bargaining position of each must be balanced with one another,⁹ give freedom to the parties to agree as desired by the parties.¹⁰ Freedom of contract does not mean absolute, but must also be in accordance with the principles of propriety, custom, and decency.¹¹

The agreement which is canceled by the court judge for undue influence considers that the agreement is not based on the principle of freedom of contract so that one of the parties is declared to have abused the circumstance, which resulted in the agreement containing a defect of will.¹²

Although the abuse of this situation has not yet been regulated in the Indonesian Civil Code, judges in Indonesia have accepted the doctrine of abuse of this situation as one of the reasons the agreement is deemed to contain a defect of will, so it can be canceled. Judges in Indonesia adopted this doctrine from the development of civil law, especially the NBW in the Netherlands.

The first judge's decision in Indonesia to adhere to the doctrine of undue influence was the Decision of the Supreme Court of the Republic of Indonesia (MARI) No.1904 K/Sip/1982 dated July 30, 1985 regarding the power of judges to interfere with the contents of the agreement, and MARI Decision No.3431 K/Pdt/1985 Date March 4, 1987 concerning interest on loans and collateral which is contrary to propriety and justice.¹³

In the Supreme Court Decision No. 1904 K/Sip/1982 dated July 30, 1985 the judge interfered in the contents of the agreement that had been made by the parties.¹⁴ The power of attorney to sell the house as the object of debt

guarantee by the Judge of the Supreme Court must be considered as a pseudo agreement, which is actually a defective agreement. Then the judge saw the condition of the debtor at the time of signing the Deed of Sale and Purchase Number 2/5/1978 dated May 8, 1978, in a state of urgency because the debtor was bound by other debts, therefore the judge canceled the agreement on the Deed of Sale and Purchase Number 2/5/1978 Dated May 8, 1978. From this decision, it can be understood that the judge explored the sense of justice in the circumstances and facts in the events of this agreement. The judge of the Supreme Court in this case interfered with the contents of the agreement that had been made by the parties by regulating the rights and obligations between the parties in the agreement by returning to the principles of justice.

Furthermore, in the MARI Decision No. 3431 K/Pdt/1985 dated March 4, 1987 regarding the interest on loans and collateral which is contrary to propriety and justice.¹⁵ This case is known as the pension fund case/case. The judge of the Supreme Court is of the opinion that the interest on the loan of money and collateral required by the creditor to the debtor is contrary to propriety and justice. The plaintiff has lent money to the defendant with the promise of an interest of 10% every month to be paid by the defendant accompanied by the submission of the defendant's pension fund savings book as collateral for the loan. The Supreme Court judged this case on its own with legal considerations that the interest set at 10% per month in the loan agreement was too high and contrary to propriety and justice, considering that the defendant was a retired person with no other income. The provisions in the agreement to submit the defendant's pension savings book as collateral are also contrary to propriety and justice. While the defendant as a

borrower has paid interest of Rp. 400,000, - from the loan amount of Rp. 540,000, -.¹⁶

The reasons stated in the legal considerations of the Supreme Court above, it is known that indirectly the Supreme Court has applied the doctrine of undue influence, both regarding material (tangible) losses and elements of undue influence or opportunities by the plaintiff (creditor).¹⁷The Supreme Court sees that the debtor is dependent on the creditor so that he must accept and agree to the agreement even though the conditions are burdensome (10% loan interest must be paid every month), so that the Supreme Court determines the proper and fair interest is 1% every month.

The two decisions⁵ above can be said to be the starting point for the application of the doctrine of undue influence in Indonesia. If we look at the two Supreme Court decisions and³⁸ some of today's final decisions. Although in contract law the principle of freedom of contract is known,¹² reality it is very difficult to implement this freedom of contract, this is because the position of the parties is often unequal. Usually one of the parties to the agreement has an advantage both economically and psychologically. And this dominant position is often used to take advantage for himself.

The legal basis for court judges in Indonesia currently used to cancel agreements that contain defects of will because they¹⁴ take advantage of these special circumstances is not based¹ on Article 1321 of the Civil Code,¹⁸ but only based on the doctrine of undue influence. The jurisprudence mentioned above has been used in court decisions (court decisions that apply undue influence jurisprudence), both used by litigants and court judges.¹⁹From several judge³ decisions in Indonesia, it is known that the doctrine of abuse of this situation has been accepted into the contract

law system in Indonesia through jurisprudence. Even though a legal act in a judge's decision has been permanently and truly accepted as a general legal belief or in other words, in a legal matter a permanent jurisprudence has been formed, but based on judicial independence, court judges still have to look at the usual and general traditions or customs in accordance with the law. With the development of the times and basic norms, judges' beliefs that are general in nature are created, not just specific beliefs (jurisprudence), so that in turn this belief can be accepted by the community.

Although the doctrine of abuse of this situation has become jurisprudence¹⁶, it should be noted that on the other hand Indonesia as a country that adheres to a civil law legal system²⁰, judges are not bound by jurisprudence.²¹The inconsistency of judges' decisions and judges' considerations is in principle a natural and legal thing because the law has given the judges the authority to make extraordinary decisions in accordance with the principle of judicial independence.²²However, what needs to be considered is that regarding the character of court decisions in the civil law legal system, decisions made by judges are only binding on the litigants, the wider community outside is not obliged to submit and obey the decisions made. This creates legal uncertainty regarding the general provisions of the engagement, especially⁷ regarding defects in the will in the agreement as a condition for the validity of the agreement.

The absence of regulation on the abuse of this situation in the legal norms that can be applied generally makes it easy for parties who have a more dominant economic or psychological advantage to abuse this situation. For this reason, normalizing the doctrine of abuse of this situation into a legal product that can apply in general is very much needed. However, what legal product is the right one to

fill the legal vacuum in this case that can be effective and appropriate. This is what underlies the researcher considers it important ¹ conduct research on the standard application of the cancellation of the agreement based on the doctrine of undue ¹ influence in court decisions, in order to provide input for legislators in order to perfect the conditions for disability of will as regulated in Article 1321 of ² the Civil Code so that there are the formulation of the doctrine of undue influence becomes a legal product that regulates undue influence as one of the conditions for the defect of will for the cancellation of the agreement into legal norms in the future.

²² RESEARCH METHODS

The type of research used in the research by choosing normative legal research. Normative legal research refers to doctrines (doctrinal research) and theories (theoretical research), secondary data, positive legal norms, legal principles or principles, and court decisions,²³ using relevant theories, and legal rules.²⁴ The reason for using this type of normative research is related to efforts to examine and analyze the judgment standards of court judges who accept or reject the argument for undue influence in various court decisions.

The nature of the research in this dissertation is descriptive and explanative. This study seeks to describe the facts in the field, explain and also analyze these facts.²⁵ This study not only describes the application of the doctrine of undue influence in court decisions, but also explains and ²⁶ analyzes judges' decisions, as well as justifies the application of undue influence in court.

The approach taken is to use a juridical approach,²⁶ and includes all secondary data.²⁷ Using a conceptual approach (conceptual approach),²⁸ This study also compares the arrangements in the Civil Code (Indonesia) and

Nieuw Burgerlijk Wetboek or NBW (The Netherlands) dated January 1, 1992 related to the regulation of undue influence, as in Book 3 and Book 6 NBW, Article 3: 44 lid 1 NBW (read: Book 3 Article 44, paragraph 1), and Article 6: 228 ² lid 1 NBW which has set the conditions for a legal action to be canceled if it contains a threat (bedreiging); fraud (bedrog), misguidance (dwaling), and including undue influence (misbruik van omstandigheden).

This study also looks at the laws that live in society.²⁹ The separation between positive law and the living law appears as a dialectic between the schools of positive law and the schools of historical law.³⁰ This is related to experience and the fact that the ⁵ doctrine of misbruik van omstandigheden or undue influence which has long been applied in court practice, can actually provide justice for the weak and legal certainty for economic actors, but the regulations have not yet been regulated ³⁵ in the Civil Code.

Data collection techniques are carried out through library research and document studies. Collecting data through document studies is intended to obtain court decisions through the Indonesian Supreme Court ¹ directory (online website) relating to the cancellation of an agreement on the basis of undue influence. In addition, Document studies were also carried out at the Medan District Court to obtain court judges' decisions relating to the cancellation of the agreement on the basis of abuse circumstances.

Primary legal materials or the main and principal legal materials are jurisprudence on undue influence, and court decisions that apply undue influence. Jurisprudence on undue influence used are:

- 1) Semarang District Court Decision No.976/Pdt/1979/PN.Smg Date. April 2, 1980, Decision of PT Semarang

- No.47/Pdt/1981/PT.Smg Date. 17 October 1981, and Supreme Court Decision No. 1904 K/Sip/1982 Date. July 30, 1985. Between Luhur Sundoro (Plaintiff / Opponent) against Mrs. Oei Kwie Lian, Iwan Hermanto, Soetardjo, Mrs. Mursinah Soetardjo, and PT Prana (Defendants / Opponents).
- 2) Kotabumi District Court Decision No. 08/Pdt.G/2015/PN.Kbu Date. April 25, 2016, Decision of PT Tanjung Karang No.42/PDT/2016/PT.Tjk Date. 17 October 2016, and MARI Decision No. 669 K/Pdt/2017 Date. 13 June 2017. Between Akam (plaintiff / appellate / respondent of cassation) against Edy Djon (defendant / appellate / petitioner for cassation).
- 3) South Jakarta District Court Decision No. 328/Pdt.G/2015/PN.Jkt.Sel., Date. 22 December 2015, and the Decision of the DKI High Court No. 398/Pdt/2016/PT.DKI., Date. August 5, 2016. Between Kusumah Periatna (plaintiff / appellate) against Poni Madjukie (defendant / appellate).

Secondary legal materials are materials that provide explanations and reviews of primary legal materials, including: books, papers, magazines, scientific journals, both national and international journals, articles, online and printed newspapers, including documents or personal records collected related to the cancellation of the agreement on the basis of undue influence.

The research data was then analyzed qualitatively, not quantitatively (not using statistical formulas). This study seeks to provide justification for the fulfillment of the element of undue influence in an agreement and it is hoped that there will be uniform legal

considerations for Indonesian court judges in order to fulfill legal justice and legal certainty.

III.DISCUSSION

1. Formalizing the Doctrine of Undue influence as One of the Conditions for Disability of Will into Legal Norms to Fulfill the Principles of Justice and Proportionality for Weak Parties

Formalizing the doctrine of undue influence as one of the conditions for a defect of will into legal norms aims to fulfill the principles of justice and proportionality for the weak. Morality and public order in Article 1337 of the Civil Code, as well as justice, customs, and laws in Article 1339 of the Civil Code, are conditions for a prohibited cause in realizing the word "agree" into an agreement. Although the Civil Code does not specify propriety fairness as a prohibited cause, but based on the principle of balance (proportionality) and the principle of justice in contract law, an agreement that does not meet the principle of decency and fairness must also be a prohibited cause in the agreement.

Defect of will is the elaboration of the first terms of agreement in Article 1320 of the Civil Code, namely from the word "agree" or "agreement", because agreement or agreement is closely related to the statement of will of each party. The statement of will that comes from the party who offers (offerte) in the form of an offer can be answered with a statement of will also by the party who accepts the offer (acceptatie), in the form of acceptance or rejection. Thus, the defect of the will is related to the first subjective condition, namely agreement or agreement.

Misuse of circumstances is also an elaboration of the word "agree" in Article 1320 paragraph (1) of the Civil Code. To realize the word "agree" into the agreement, the parties should fulfill the principles of freedom of contract and good faith (Article 1338 of the Civil Code) in a balanced and fair manner in the sense of proportion (vide: commutative justice). In the undue influence, the strong party suppresses the weak party, meaning that the

18 weak party does not have free will according to Article 1338 paragraph (1) of the Civil Code and in this condition bad intentions have also been 16 formed from the strong party and the use of the principle of freedom of contract is infinite.

The cancellation of the agreement can be in the form of null and void / cannot be implemented (if the objective element is not met), and 30 can be canceled (if the subjective element is not fulfilled). If an agreement does not meet the subjective and objective conditions, then the agreement will cause legal defects and be canceled or threatened with nullity (nulitas).³¹ An agreement that contains an element of undue influence means that the agreement contains a violation of subjective conditions, namely the word "agree". So that the agreement can be canceled by one of the parties, namely the party who suffers because of the act of abusing the situation.

Almost all cases/cases analyzed in this study show injustice and imbalance in the determination of rights and obligations in the agreement (object of dispute). As in a mock agreement (quasi-agreement), the strong party always pressures the weaker party, the emphasis is carried out gently, which when viewed from the psychological aspect, the weak party cannot make their choice freely, because the situation is pressed and squeezed. Like it or not, the weak party must sign the agreement. Usually the agreement to be signed has been prepared (organized) by the strong party, so that the weak party does not have time to read and understand the agreement material more deeply.

2 Therefore, it is important to formalize the doctrine of undue influence as one of the conditions for the defect of will into legal norms to fulfill the principles of justice and proportionality for the weak. Aristotle divides justice into three namely commutative justice,

distributive justice, and legal justice.³² The principle of justice in the sense of proportionality is one of the main reasons and references in this norm, although in fact the principle of justice can be understood in the meaning 29 equality before the law.

Commutative justice is the justice of coordination between two or more parties involved face each other as equals. There is an equal relationship in the acquisition of equal rights.³³ Requires a policy to give everyone what is their due or as close as possible to their rights (to give each one his due) equally. For example, punishment and/or compensation are equally imposed on everyone (without exception) who is proven to have violated the rights of others (acts against the law).³⁴

As the second phase of the principle of equality, commutative justice ignores as far as possible the stratification or status of the people involved in an affair. Only see the rights that are general to all people in a particular group. The rights of employees are given the same, and wages must be the same, every student gets the same education, and every violator of the law must be punished.³⁵ While legal justice is justice that has been formulated by law in the form of rights and obligations, where every violator will be punished.³⁶

Distributive justice gives proportionate portions with unequal values. The same rights will only be given if it is appropriate and unequally to goods and services. The distribution of rights to citizens is only granted if the public goods are allocated according to proportional equality.³⁷ The problem of distributive justice and commutative justice is actually related to his investigation into the nature of equality to assess proportionality.³⁸ Unequitable fairness is the first phase of the meaning of the principle of equality, while equal justice is the second phase of the meaning of the principle of equality.³⁹

⁴⁴Based on the theory of justice, if the principle of commutative justice is equal (aquality before the law), namely giving rights to everyone as close as possible to their rights (to give each one his due),⁴⁰then the principle in distributive justice is unequal, namely giving everyone what he deserves and deserves (according to his achievements).⁴¹In this context, if it is understood that the legal relationship formed in an agreement between a creditor and a debtor (for example a debt-debt agreement), it can be ascertained that almost no such agreement absolutely fulfills the principle of justice in the sense of commutative justice (fifty: fifty / 50: 50). The principle of justice contained in all agreements, whatever the name and type, must be distributive justice.

Based on the review of the abuse cases above, if it is noticed that the burden of each party is not absolutely balanced, then the justice contained in the abuse of this situation is distributive justice. The problem is how to realize distributive justice into an agreement, for example a debt agreement between creditors and debtors. Of course it is not easy, because the creditor must feel that his situation is better and stronger than the debtor, both from an economic point of view and from a psychological perspective. The transfer of the object of collateral by the creditor without the voluntary consent of the debtor is still common.⁴²So to realize distributive justice in the agreement so that there is no undue influence, a balance in the sense of proportionality is needed.

So from that relationship, it can be concluded that in debt agreements between creditors and debtors or any type of agreement,

whatever the name or field, the principle of justice contained in all agreements (without exception) is the principle of distributive justice. This is what is called the principle of justice in the sense of proportionality. Giving to everyone what he deserves and deserves can be analogous to a kind of distribution of the rights of the parties into an agreement, with the sentence, "giving the weak party (the debtor) what he deserves".

2. The Importance of Formalizing the Doctrine of Undue influence as One of the Conditions for Disability of Will into Legal Norms for Uniform Judgment of Judges and Legal Certainty

The importance of formalizing the doctrine of undue influence as one of the conditions for a defect of will into legal norms aims to establish uniformity of judges' consideration⁶ and legal certainty in order to guarantee and protect the various interests of the community in the field of contract law. In the context of cases of cancellation of agreements that contain defects of will for undue influence, which are currently still guided only by jurisprudence, raises the question whether uniformity of judges' considerations is needed, or judges' considerations that are more appropriate and fairer than just applying jurisprudence or are required by law. -law for legal certainty? All cases in the following table are related to reasons because they relate to undue influence to cancel the agreement.

To answer this question, the cases of agreement cancellation identified related to undue influence are summarized in the following table:

Table I Uniformity and Differences in Judgment of Court Judges

JURISDICTION OF ABUSE OF CONDITIONS				
No	The parties	Dispute Object	Judge's Consideration	Condition of Case in Court
1	Semarang District Court Decision	pseudo agreement (fake)	MA said that the plaintiff abused	PN and PT: does not assert that the

	<p>No.976/Pdt/1979/PN.Smg Date. April 2, 1980, Decision of PT Semarang No.47/Pdt/1981/PT.Smg Date. 17 October 1981, and Supreme Court Decision No. 1904 K/Sip/1982 Date. July 30, 1985. Between Luhur Sundoro (Plaintiff / Opponent) against Mrs. Oei Kwie Lian, Iwan Hermanto, Soetardjo, Mrs. Mursinah Soetardjo, and PT Prana (Defendants / Opponents).</p>	<p>agreement). Initially, it was a debt-receivable agreement which was then unilaterally changed by the plaintiff into a Deed of Sale and Purchase Agreement Number 2/5/1978 dated May 8, 1978.</p>	<p>the condition of Defendant III inappropriately and unfairly because Defendant III was in a tight economic situation (a lot of debt) or because his mental state was under pressure. When the opposing party III was trapped, he was forced (against his will) to sign the Deed of Sale and Purchase Agreement Number 2/5/1978 dated May 8, 1978 as a substitute for the previous debt deed.</p>	<p>plaintiff abused the circumstances of the defendant III. MA: expressly declares that the plaintiff / opponent abused the circumstances of Defendant III, tried a more appropriate and fairer trial by canceling the Sale and Purchase Deed Agreement Number 2/5/1978 dated May 8, 1978, and returned to the original agreement, namely the debt-receivable agreement, namely the Notary Deed No. 9 September 6, 1977.</p>
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THE PARTIES TO JURISDICTION APPLYING JURISDICTIONS

No	The parties	Dispute Object	Court Judge Considerations	Condition of Case in Court
1	<p>Wonogiri District Court Decision No. 04/Pdt.G/2014/PN.Wng Date. 2 June 2014. Between Yustinus Soeroso (the plaintiff) against Soeratno and Soelistyaningsih (the defendants).</p>	<p>quasi-covenant (fake agreement). Deed of PIJB No.60 dated June 11, 2012 made before a notary is not a stand-alone agreement, but begins with an agreement on debts to guarantee three parcels of land,</p>	<p>PN: interfere in the affairs of the agreement between the two parties and argue that in this case there is a defect of will caused by undue influence because of the economic advantage possessed by the plaintiff. So</p>	<p>PN: rejected the plaintiff's claim which said the defendant was in default of the PIJB Deed No.60 dated June 11, 2013, and adjudicated himself which was more appropriate and fairer stating that the plaintiff had</p>

		namely: (1) SHM No.403, SHM No.00699, SHM No. 00700, Public Fuel Filling Station (SPBU) No.44,551.15.	because of the urgency of necessity, the defendants agreed to sign the Deed of PIJB No.60 dated June 11, 2012 before a notary, whereas previously the defendants intended to borrow money, but what happened was the PIJB, not the Debt Agreement. So that there is a discrepancy between the intention/will with the implementation. The PIJB Deed contains absolute power which is contrary to the Instruction of the Minister of Home Affairs No. 14 of 1982 which expressly prohibits the existence of absolute power. PT: --- MA: ---	abused the situation. The relationship between the plaintiff and the defendant is a debt agreement, not a PIJB. PT: --- MA: ---
2	6 South Jakarta District Court Decision No. 328/Pdt.G/2015/PN.Jkt.Sel., Date. 22 December 2015, and the Decision of the DKI High Court No. 398/Pdt/2016/PT.DKI., Date. August 5, 2016. Between Kusumah Periatna (plaintiff / appellate) against Poni	Management of land and building problems belonging to YKAN. Deed of Agreement No.22 dated 13 February 2006	PNand PT: the plaintiff's lawsuit on the basis of PMH for abusing the economic situation was granted by the PN and PT because of the element of abuse	PN: granted the plaintiff's claim and stated that the defendant was proven to have abused the situation, canceled the Deed of Agreement No.22

	Madjukie (defendant / appellate).	1 and Compensation Payment Agreement dated 20 September 2010.	of the situation. This argument was proven to be carried out by the defendant to the plaintiff through promises, persuasion, lure, and deception from the defendant to the plaintiff for the management of the settlement of the land and building problems belonging to YKAN, until the defendant finally succeeded in getting rid of all the founders of YKAN, including the plaintiff, and YKAN was fully taken over and controlled by the defendant.	dated 13 February 2006 and the Compensation Payment Agreement dated 20 September 2010, and stated other unknown deeds related and containing similar contents that had been made between the defendants and the plaintiff and/or notary are declared null and void with all the legal consequences. PT: strengthen the PN's decision. MA: ---
3	Kotabumi District Court Decision No. 08/Pdt.G/2015/PN.Kbu Date. April 25, 2016, Decision of PT Tanjung Karang No.42/PDT/2016/PT.Tjk Date. 17 October 2016, and MARI Decision No. 669 K/Pdt/2017 Date. 13 June 2017. Between Akam (plaintiff / appellate / respondent of cassation) against Edy Djon (defendant / appellate / petitioner for cassation).	Letter of Cooperation Agreement for Sales of Agricultural Products Dated December 23, 2012	PN, PT, and MA: the plaintiff and the defendant have entered into a cooperation agreement, namely the plaintiff collects agricultural produce from the farmers, while the defendant brings it to the city for sale. The defendant did not submit the proceeds from	PN: granting the plaintiff's claim and declaring the defendant in default and punishing the defendant to pay the sale of land belonging to the plaintiff which was not paid by the defendant to the plaintiff in the amount of Rp.640,000,000,-

			<p>the sale of the farmer to the plaintiff to be paid to the farmer, so that the defendant was proven to be in default of Rp. 640,000,000.-. The plaintiff's argument on the basis of undue influence was rejected at all levels of the court.</p>	<p>PT: strengthen the PN's decision. MA: rejected the defendant's appeal.</p>
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Source : Summarized From Undue influence Jurisprudence and Decisions of Courts Applying Undue influence Jurisprudence

From the cases above, it can be concluded, among others:

1. Court judges' considerations in jurisprudence generally say that the act of abusing the circumstances in the case is an act that is inappropriate and unfair or contrary to propriety and justice (vide: all jurisprudence in the table).
- 46 2. In general, the consideration of court judges in court decisions that apply jurisprudence to agreements that are proven to contain defects of will for undue influence are based on propriety and justice.
3. Pseudo agreements (fake agreements) are generally canceled by court judges because they contain defects of will by abusing circumstances.
4. Although in these cases, the parties do not at all postulate the abuse of the circumstances of the agreement, but 28 if the court judge finds facts at trial that the agreement contains a defect of will due to undue influence, then the court judge can interfere with the parties' agreement to be canceled.
5. Even though one of the parties postulated that there was an abuse of

the conditions in the agreement, the abuse of the condition was not proven or was not granted or rejected by the court judge. It is possible that what has been proven and approved by the judge is another act such as PMH.

6. Of the cases of undue influence summarized in the table, there are also court judges' decisions that equate PMH with undue influence.

Based on the conclusions from these cases, it can be concluded more specifically for the uniformity of judges' considerations in cases of undue influence. Whereas in accordance with the most prominent considerations considered by court judges in jurisprudence, and also the most prominent considerations found in court decisions that have implemented jurisprudence are propriety and justice (proper and fair), then for uniformity of judgment of court judges should be based on the element of propriety and justice must always be in the judge's consideration when the agreement in the case he is trying is proven to contain a defect of will due to undue influence. So it's not just applying jurisprudence,

In addition, if you pay attention to the facts in people's lives that cannot be separated

from what are called civil agreements and cases of undue influence and the legal basis is not yet solid (still in the form of jurisprudence), then laws or other regulations are needed that regulate undue influence. as a condition for the defect of the will to cancel the agreement⁶ for the sake of legal certainty to guarantee and protect the interests of the community in the field of contract law.

Judges are obliged to explore and understand the legal values and sense of justice that live in society in order to produce objective decisions and be able to give satisfaction to the community, judge according to the law, but not to sacrifice legal certainty.⁴³To fulfill the principle of objectivity of the decision, the judge's opinion in the decision must be accompanied by reasons³⁴ or facts and legalistic legal basis including unwritten legal sources that are used as the legal basis for adjudicating cases.⁴⁴

3. Formalization of the Misuse of Circumstances Doctrine as a Condition of Defect of Will in the Cancellation of an Agreement in Legal Norms in the Future

The formalization of the doctrine of undue influence as a condition for the fourth defect of the will to cancel an agreement into legal norms in the future is very necessary so that there is legal guarantee and strong legal protection for the community, especially the parties. How is the formalization that must be taken, whether to amend the Civil Code as in the Netherlands (vide: NBW), or set out in a Supreme Court Circular (SEMA), or in other forms of regulation. This is an important part discussed in this sub-chapter as a solution going forward to overcome the problem of the unregulated cancellation of agreements containing defects of will due to undue influence in the Civil Code.

Guarantees of legal protection for weak parties or parties whose circumstances have been abused in an agreement containing defects

of will have not been guaranteed and protected in the law (Civil Code), but can only be found¹⁶ in jurisprudence and adjudicated on the basis of Law of the Republic of Indonesia Number 15 of 2009 About Judicial Power. With judicial power as an independent state power in administering justice in order to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the party who abuses the conditions in an agreement must be formalized into law as an act that is prohibited and contrary to the principles of propriety and sense of belonging⁶ g. justice.

At the regulatory level, legal protection for debtors (weak parties) in the agreement must be carried out by limiting the interests of creditors (business actors or strong parties) to obtain commercial benefits.⁴⁵The limitation of a person's right to grant rights on the other hand is intended to ensure that all interests can interact with each other properly and productively,⁴⁶and to keep one group in society from always being defeated by another.⁴⁷The principle of freedom of contract has been limited in Article 1338 of the Civil Code with the principle of good faith². These restrictions include the prohibition of the use of the principle of freedom of contract indefinitely for creditor¹⁰ against violations of the rights of debtors based on the principle of good faith, on the other hand the freedom of debtors⁴ must also be limited by law to protect creditors based on bad principles.

Article 1321 of the Civil Code stipulates: "No agreement has any power if it is given by mistake or obtained by coercion or fraud". In this article there are three types of acts/agreement¹ that can be canceled because they contain a defect of will in Article 1321 of the Civil Code, namely: for reasons of (1) error or error (dwaling), (2) coercion or threat (dwang or bedreiging), and (3) fraud (bedrog). If it is traced in the Civil Code, there is no article that regulates the undue influence

(misbruik van omstandigheden) as a condition for a defect in the will to cancel the agreement. Whereas this doctrine is one of the private interests that must be guaranteed and protected by law.

Article 1337 of the Civil Code stipulates: "A cause is prohibited, if the cause is prohibited by law or if the cause is contrary to decency or public order". In this article it is explicitly stated that decency and public order. Article 1339 of the Civil Code stipulates: "Agreement does not only bind what is expressly stipulated in it, but also everything that by its nature approval is required based on justice, custom, or law". In this article it is stated explicitly that justice, custom, or law, nothing about propriety.

Conditions for disability in Indonesia are regulated in a separate article, namely Article 1321 of the Civil Code due to reasons of error or error (dwaling), coercion or threats (dwang or bedreiging), and fraud (bedrog). Meanwhile in the Netherlands, threats (bedreiging), fraud (bedrog), and undue influence (misbruik van omstandigheden) are regulated in one article in Article 3.44 NBW. Meanwhile, dwelling in the Netherlands is not regulated in one article in Article 3.44.NBW, but is regulated separately in Article 6.228.1 NBW.⁴⁸

The abuse of conditions in the Netherlands in Article 3.44 NBW has been in effect since January 1992, which coincided with the change of BW to NBW.⁴⁹ Before the misbruik van omstandigheden doctrine was incorporated into the NBW (Article 3.44) in 1992, in court practice there was already jurisprudence in the Netherlands, including the cases of Bovag II, HR January 11 1957, NJ 1959, 57 and Bovag III, HR February 26 1960, NJ 1963, 376; the BUMA vs. Brinkman case (HR May 24 1968, NJ 1968, 252); widow's pension case (HR 29 April 1971, NJ 1972, 336); case of Brandwijk vs Bouwbureau Brandwijk BV (HR 2 November 1979, NJ 1980, 429); the

case of Van Elmbt vs. Feierabend (HR 29 May 1964, NJ 1965, 104); the case of Bluijssen vs. Kolhorn (HR June 13, 1975, NJ 1976, 98); the case of Charmant vs. Hart van Africa (HR 18 February 1978, NJ 1978, 227); and the case of Penterman vs. Handgraaf, HR June 30, 1978, NJ 1978, 160.⁵⁰

Jurisprudence that is well-known in Indonesia to support the formalization of this doctrine into law (KUH Perdata) or other regulations, among others: Penvoy of the Semarang District Court No.976/Pdt/1979/PN.Smg Date. April 2, 1980, Decision of PT Semarang No.47/Pdt/1981/PT.Smg Date. 17 October 1981, and Supreme Court Decision No. 1904 K/Sip/1982 Date. July 30, 1985. Between Luhur Sundoro (Plaintiff / Opponent) against Mrs. Oei Kwie Lian, Iwan Hermanto, Soetardjo, Mrs. Mursinah Soetardjo, and PT Prana (Defendants / Opponents). Kotabumi District Court Decision No. 08/Pdt.G/2015/PN.Kbu Date. April 25, 2016, Decision of PT Tanjung Karang No.42/PDT/2016/PT.Tjk Date. 17 October 2016, and MARI Decision No. 669 K/Pdt/2017 Date. 13 June 2017. Between Akam (plaintiff / appellate / respondent of cassation) against Edy Djon (defendant / appellate / petitioner for cassation). South Jakarta District Court Decision No. 328/Pdt.G/2015/PN.Jkt.Sel Date. 22 December 2015, and the Decision of the DKI High Court No. 398/Pdt/2016/PT.DKI., Date. August 5, 2016.

In general considerations in jurisprudence, court judges say the reasons in their legal considerations are because the act is contrary to propriety and justice.⁵¹ Therefore, on the grounds that it is contrary to propriety, it is sufficient to support the inclusion of undue influence into the law (Perdata). Moreover, in the provisions of the Civil Code, quite a number of reasons are found for the cancellation of an act because it is contrary to custom. The principle of habit in the Civil Code also

supports strengthening the principle of propriety which is still minimally regulated in the Civil Code.

There are interesting things in Article 1337 and Article 1339 of the Civil Code, namely that the terms decency and fairness are not mentioned in Article 1337 of the Civil Code or Article 1339 of the Civil Code. In fact, propriety and fairness are often a source of problems in contracting activities. Meanwhile, restrictions on the conditions of propriety and fairness are not found in the Civil Code. The provisions propriety and fairness can be found in Article 74 of the Law of the Republic of Indonesia No. 40 of 2007 concerning Limited Liability Companies, but it does not explain further what propriety is.

Is a down payment in a contract considered appropriate or inappropriate if the amount of down payment is required for example above 50% or 70%. Appropriateness is conformity or compatibility, in accordance with the boundaries that apply in society. Propriety can be perceived as polite, proper, and fair. Indicators of propriety and fairness include all that can be captured and accepted, both with the intellect (reason) and feelings in society. Propriety as justice is seen from the balance in sharing the benefits between the parties. Justice and balance are formed from good faith.⁵²

Appropriateness in the implementation of the agreement is in the good faith of the contracting parties. Good faith is the fulfillment of the subjective element, lies in the hearts of the parties and people who have an interest in an agreement, while propriety, which has an objective element, lies mainly in the circumstances surrounding the agreement, namely its relationship with norms and its relationship in view local community or the public.⁵³

Based on the undue influence jurisprudence and court decisions that have implemented the undue influence jurisprudence, one form of agreement that is

often canceled by the court is a sham agreement (quasi-agreement). It turns out that the impropriety in the pretend agreement (pseudo) contains absolute power over the guarantee of the debt (the object of the dispute). For example, in a debt-receivable relationship, the creditor seems to consider himself absolute power over the collateral (collateral in the form of land, houses, etc.) of the debtor's property and at will, he even sells the collateral, either selling it to himself or to others. The other party when the debtor stops paying because of a tight economic situation, he takes advantage of the situation for his own benefit.

Based on the existing juridical facts as well as the facts on the ground, the right solution is to formalize the doctrine of undue influence as a condition for the fourth defect of the will to cancel an agreement into legal norms in the future into law or be included in the law. The Civil Code, especially inserted into Article 1321 of the Civil Code or in other related articles. Moreover, the makers of the Republic of Indonesia Law Number 3 of 2009 concerning the Second Amendment to the Republic of Indonesia Law Number 14 of 1985 concerning the Supreme Court (UUMA) have also given signs so that the Perma material does not take material that should be the material for forming the law.

The alternative which argues that the doctrine of undue influence as a condition for the fourth defect of the will to cancel an agreement should be regulated in a Supreme Court Regulation (Perma) is irrelevant. The reason is because the doctrine of undue influence is related to material law, while the content of the Perma according to Article 79 of the UUMA is only part of the procedural law as a whole. Based on Article 8 paragraph (1) of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislative Regulations, determining that the Supreme Court Regulation is one of the legal hierarchy, and based on Article 79 of the UUMA, determines, "The Supreme Court can

further regulate matters relating to things that are needed for the smooth running of the judiciary if there are things that have not been sufficiently regulated in this law."

The reasons for formalizing the doctrine of undue influence as a condition to cancel an agreement containing a defect of will into law are based on the following considerations:

1. Article 1321 of the Civil Code has regulated conditions for defects of will such as oversight or error or error (dwaling), coercion or threats (bedreiging), and fraud (bedrog) to cancel the agreement between the parties, while undue influence (misbruik van omstandigheden) has not been regulated in the Civil Code. the Civil Code or in the laws and regulations is a condition for the defect of the will to cancel the agreement.
2. The doctrine of undue influence views that an agreement containing a defect of will can be canceled because the act of abusing circumstances is contrary to the principles of expressing the will freely, in good faith, propriety, and justice.
3. In practice, agreements between creditors and debtors (both standard and non-standard agreements) often lead to undue influence by party whose position is strong with the use of absolute power and then continues to the formation of a sham agreement (quasi-agreement) which is detrimental to the party whose position is weak.
4. Based on the considerations in letters a, b, and c, in order to guarantee legal protection for the community, especially individual interests in the agreement and for the sake of legal certainty for the parties in declaring their free will in the agreement, it is deemed necessary to regulate the

doctrine of abuse of this condition as a the fourth requirement in Article 1321 of the Civil Code is to cancel an agreement containing a defect of will in the law.

Based on the explanation above, the material regulated in the law is not the same as the material regulated in the Perma. The material in the law can contain material law or formal law. Meanwhile, the materials regulated in the Perma are only those related to procedural law (formal).⁵⁴ Meanwhile, the doctrine of undue influence which teaches the cancellation of the agreement because the agreement contains a defect of will, is not a matter of civil procedural law, but is in the field of material law.⁵⁵

Legal guarantees and protection for the community and the parties in an agreement is a protection for individual interests (private interests) which should be based on Pancasila and the 1945 Constitution of the Republic of Indonesia which must be protected by law.⁵⁶ That is why it is better to formalize the doctrine of abuse of this situation regulated in law or in the Civil Code, so that it is more guaranteed and protected by law, in other words there is legal guarantee and strong legal protection for the community, especially the individual interests of the parties involved. dispute.

As in the Netherlands, the doctrine of undue influence can be included in Article 3.44 NBW which has been in effect since January 1992, which coincided with the change of BW to NBW. Defects of will in the Dutch NBW are regulated in Boek 3: Vermogensrecht in het algemeen (property law in general) to be precise in Title 2: Rechtshandelingen (legal acts). So it is called Article 3.44 NBW because the defect of will is regulated in Book 3 Article 44 NBW. The types of will defects regulated in Article 3.44 NBW are threats (bedreiging), fraud (bedrog), and undue influence (misbruik van omstandigheden). Meanwhile, dwelling in

the Netherlands is not regulated in one article in Article 3.44.NBW, but is regulated separately in Article 6.228.1 NBW.

IV. CONCLUSION¹

The formalization of the doctrine of undue influence as a condition for the 4th defect of the will to cancel an agreement into legal norms in the future is very appropriate if it is carried out by revising the Civil Code specifically in Book III, but if it has not. If it is possible, then as a shortcut that can be done is to issue a special law on engagements born from agreements. This solution is needed to ensure legal protection of various public interests, especially the private interests of the parties in carrying out the principle of freedom to express one's will, it must not conflict with the principles of good faith, propriety, custom, and justice. At the same time to ensure strong legal certainty for the parties in exercising the right to freedom of contract for those that abuse the conditions in the agreement. The Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power as the Transfer of Land Rights, has supported this norm because it prevents undue influence, in particular preventing the occurrence of sham agreements (quasi-agreements). In addition, the existing jurisprudence in Indonesia is also sufficient to support the formalization of this doctrine into new legal norms in the future.

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