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Undue influence in the Agreement Based on Indonesian Civil Law and Islamic Law

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Abstract

Agreement is an agreement or approval. Agreements may not be made due to an oversight or obtained under coercion or fraud. Based on the provisions of Article 1320 of the Civil Code, this has the consequence that one of the parties can request cancellation of the agreement. In its development, coercion can also be carried out through undue influence which results in the party being forced to be in a state that is not free at the time of making the agreement. In Islamic law, the true source of the agreement is the Qur'an and Sunnah. By making the Qur'an and Sunnah the main source of agreements, it is hoped that there will be no deviations in making agreements. Through normative research with a statutory approach, an analysis of agreements originating from the undue influence of the two laws mentioned above is carried out. In conclusion, defects of will due to undue influence are not regulated in Indonesian civil law, but found in doctrine and law enforcement. It is different with Islamic law, defects of will due to factors of undue influence are prohibited, this act is the same as having done injustice and vanity to another, which results in an agreement being null and void by law.

Keywords

Agreement; Undue influence; Loss

Introduction

If the buffalo is held by the rope, while the human is held by the mouth, this proverb means "If a promise must be kept, because if the buffalo is held by the

rope, then the human will keep the promise. There is a meaning contained in this proverb, including fulfilling promises or commitments. Commitment as a force that binds individuals to an action process that is relevant to one or more targets (Bricci, Fragata & Antunes, 2016). Humans are believed to be creatures that have the potential for perfection (Sumanta, 2023), because it has a responsibility to fulfill its commitments.

The appearance of commitment changes everything (Nesse, 2001). Fulfilling promises or fulfilling commitments is an obligation that must be fulfilled. Not only Indonesian national law or Islamic law regulates it, local wisdom as an Indonesian culture also regulates it. Fulfilling promises or fulfilling commitments is a theme that people often talk about when a sweet relationship feels bitter. The word commitment was then sued, as if one party had been harmed because the other party did not fulfill its promise.

In fact, suing commitments to fulfill promises is not something new in Indonesia or even in the world. In principle, suing commitments has existed since human history. Prophet Adam AS. and Eve descended to earth after violating the prohibition against eating khuldi fruit in heaven (Republika, 2021). The prohibition to stay away from the forbidden fruit is clearly emphasized by God in QS Al A'raf: 19. A number of commentators say the forbidden fruit in question is the fruit of khuldi. As mentioned in surah Taha verse 120 (detik.com, 2023).

An interesting discussion in the agreement is the undue inducements as a defect of the will. Undue inducements in Dutch is called *misbruik van omstandigheden*. Undue inducements are problematic because they result in excessive exposure of the offeree to risk (Largent & Lynch, 2017). In practice, it is found that parties then use ¹¹ take advantage of the undue influence in making an agreement. For example: Decision of the Supreme Court of ¹¹ Republic of Indonesia Number 3666 K/PDT/1992 dated 26 October 1994, Decision of the Supreme Court of the Republic of Indonesia Number 275 K/PDT/2004 dated 29 August 2005, Decision ¹⁹ of the Jakarta High Court Number 143/PDT/2016/PT.DKI . and South Jakarta District Court Decision Number: 778/Pdt.G/2017/PN.Jkt.Sel.

The birth of an act to use the undue influence in an agreement occurs because the parties involved in the agreement are not economically balanced. This situation is then exploited by other parties in the agreement to suppress or take hidden advantage of the agreement made. "Often the unequal bargaining position between the two parties causes the party with a higher bargaining position to dictate its will to the other party" (Sumriyah, 2019). To become an undue influence in the eyes of the law there must be coercion (Peisah, et al., 2009), coercion occurs due to an imbalance of the parties, so that the other party in the agreement imposes hidden desires through the agreement. Any attempt to define undue influence becomes nothing more than a word about substituting one's will for another (Scalise, 2008), in this case of course the will written in the agreement is influenced by the hidden will of certain parties who agree in the agreement.

In Indonesian contract law as stipulated in the Civil Code, the principle of undue influence is not elaborated explicitly, even though the agreement is stated as a law for those who make it. "In the Civil Code there are no provisions regarding undue influence" (Hermansyah, 2022). In contrast to Islamic law, Islamic teachings that govern the way of life are called laws (Nuroniya, 2022), in Islam the agreement must be made clearly and may not be based on handicapped will. In addition, agreements in Islamic law must be implemented based on pillars and conditions and fulfill the elements of justice and balance ('Adl wa Tawazun). "A balanced agreement can balance the position of the parties. The parties do not put pressure on each other with a balanced bargaining position" (Fidhayanti, 2018).

Moving on from the thoughts above, this article examines undue influence in the agreement based on Indonesian civil law and Islamic law. At the beginning of this article, a general opening about the agreement will be introduced, followed by a research methodology. This is followed by a discussion that outlines a review of Indonesian civil law regarding undue influence in agreements, then followed by a review of Islamic law regarding undue influence in agreements. After that, at the end, it is filled with conclusions from what the author has discussed before.

It should also be explained that this article was prepared in the context of developing legal knowledge and disseminating ideas related to contract law. Therefore, this article does not have a conflict of interest with anyone, either in its writing or in its publication. In fact, this article was compiled and published without being sponsored by anyone, whether politically, economically or otherwise.

Research methodology

This research is a normative research with statutory approach and concept approach. This article examines several legal concepts related to undue influence, both under Indonesian civil law and Islamic law. The legal materials used (primary, secondary and tertiary) were collected through literature study. The legal material is then analyzed using legal interpretation related to systematic interpretation and extensive interpretation.

Results And Discussion

Review of Indonesian Civil Law Regarding Undue influence in the Agreement

Article 1320 of the Civil Code requires that the parties making an agreement must fulfill the legal requirements of an agreement which include: (1) an agreement for those who are bound; (2) the ability to make agreements; (3) certain things; and (4) a cause permitted by law. The agreement becomes invalid or threatened with annulment if the agreement made does not fulfill one of the legal terms of the agreement.

"Freedom to contract means the freedom to choose and make a contract, the freedom to make and not to make a contract, and the freedom of the parties

to determine the contents and their promises⁴ and the freedom to choose the subject of the agreement" (Cahyono, 2023). The freedom of the parties to the agreement²⁴ is principally formed at the time of making the agreement. At that time, the parties bound by the agreement should be in a balanced position⁴, without being dominated by one party over the other in the agreement. The freedom of the parties to the agreement largely determines their will in relation to what was agreed, and what was agreed even because of the freedom of the parties, is also not the contents of the agreement and because the freedom of the parties to act is against⁵ the law.

The principle of freedom of contract¹³ in Article 1338 of the Civil Code means that all agreements made in accordance with the law apply as laws for those who make them⁴. However, based on Article 1337 of the Civil Code, an agreement made freely will be prohibited if it is born for prohibited reasons. Prohibited reasons include: prohibited by law⁴ prohibited because it is contrary to decency or prohibited because of public order. Based on Article 1337 of the Civil Code, the freedom of will of the parties to the agreement is not absolute, but limited, limited by prohibited reasons.

The defect of will is the elaboration of the terms of the first agreement⁹, namely from the word agreement or agreement. Agreement is closely related to the statement⁴ of the will of each party contained in the agreement. The condition for disability of will as stipulated in Article 1321 of the Civil Code is only limited to the following provisions: (1) agreed to be given due to an oversight⁵, and (2) obtained under coercion or fraud. The defect of will contained in Article 1321 of the Civil Code is a classic form of prohibition, so undue influence is not regulated as one of the conditions for disability of will to be able to cancel an agreement. This shows: does not correspond to reality, and needs to be adjusted and added (Diep, 2023).

In its development, it is not impossible to make an agreement because of a defect of will (Hernoko & Anand, 2017). Disabilities can also occur in cases of *misbruik van opstandigheden* (undue influence) (Kristiyani, 2020). It is possible that at the time the Civil Code was drafted, the drafters at that time had not found⁵ any practice or doctrine related to the undue influence, so this was not regulated in the Civil Code.

In practice⁵, the doctrine of law and jurisprudence is known to be defective in will outside of Article 1321 of the Civil Code, namely in the form of undue influence. "Many scholars have criticized the doctrine of undue influence in wills, but so far none have called for its abolition" (Spivack, 2009). "Abuse of the present state, when a person takes advantage of another person's distress, dependence, thoughtlessness, abnormal state of mind or inexperience to induce them to perform certain legal acts which are detrimental to them" (Lebens-de Mug, 1981). Even without a weak negotiating position on the part of the other party, abuse is also evident in the nature and purpose of the agreement (Haazen, 1995). Undue influence in an agreement can occur because:

1. An unequal position between the parties to the agreement.
2. There are certain parties who take advantage of the weaknesses of other parties through agreements.

. This imbalance can occur due to factors: (1) economy, (2). political, (3). law and (4). mental. Economic factors, for example, often occur in debt agreements between capital owners and those who need capital. Because in a state of need of capital, the debtor usually agrees on what conditions are needed by the owner of the capital. If you do not agree to the conditions required by the owner of the capital, it is very likely that the application for capital will not be approved. The debtor's agreement in the loan agreement occurs due to an unequal position between the capital owner and the capital applicant. Through this agreement, the capital owner has hidden desires from the capital applicant, such as wanting to control the property of the capital owner and the capital applicant has no other choice but to sign the agreement.

In terms of political factors, for example agreements to support regional head candidates or others. Although it is difficult to prove, support from certain groups for certain partners occurs because of hidden desires from support groups, such as the desire to get a project if the one supported is elected as a regional head, or at least get fresh money during the period of support. By abusing the situation and the political superiority it has, an agreement is built between the supporters and the candidates they support. Candidates who are supported have no other choice, except for support in order to win,

On legal factors, for example a peace agreement between the alleged perpetrator and the victim. Most of them are loaded with peace, which is too tough to agree on jointly. It should even be suspected that with a little threat from the victim, the perpetrator voluntarily submitted to fulfill the victim's wishes, this happened because there was a choice between making peace or continuing the case legally to court. In the end, the peace agreement occurred because of an imperfect will, occurred because of the weak state of the perpetrator.

Psychological factors occur because of the relationship privileges from other parties, such as the relationship of care from the healthy to the sick, inexperienced circumstances, and so on. This psychological factor can be seen, for example, in the habits of some Indonesian people, when a child takes care of his parents until the end of his life, the child will receive a will in the form of his parents' house becoming his property. This testament was issued because it should be suspected that it had happened undue influence from a psychological element. This will, of course, will give birth to injustice to other children, and on the other hand, it is the child's obligation to care for his parents.

An agreement must be based on the agreement of the parties who bind themselves in the agreement. The agreement of the parties must be based on a will or will that is made freely, in atmosphere without pressure and without being influenced by any force, so that the principle of freedom of contract must really be

fulfilled. Conformity between will and statement is the basis for forming an agreement (Sumriyah, 2019).

Agreements are legal actions that are often carried out as a form of human social relations (Andriawan, 2022). However, there are many legal cases regarding undue influence (Peisah, et al., 2009), occurring on society. The result of misuse of the conditions in the agreement is the emergence of losses for one party and gains for the other party. Even though it is not regulated in Article 1321 of the Civil Code, armed with the legal doctrine and jurisprudence of the Supreme Court of the Republic of Indonesia, the undue influence in making agreements can be canceled. In addition to threats, deceit and mistakes, undue influence can also be used as an excuse for canceling legal actions (Lebens-de Mug, 1981). Agreements can be canceled if undue influence arises (Hoens, 2017).

The development of teachings on the undue influence in Indonesia cannot be separated from the support of the judiciary. Several judges' decisions through the judiciary have provided consideration in a civil dispute regarding an agreement between the plaintiff and the defendant. Based on the facts revealed during the trial, the agreement was considered unfair, causing losses to parties whose position was weak and had to be cancelled.

Consideration of the teachings on undue influence (misbruik van omstandigheden), can be seen as contained in the Decision of the Supreme Court of the Republic of Indonesia Number: 1904K/Sip/1982 in the case of Luhur Sundoro or Mrs. Oei Kwie Lian Cs, and the Decision of the Supreme Court of the Republic of Indonesia Number: 3431K/Sip/ 1985 in the case of Sri Setyaningsih or Mrs. Boesono Cs. The decision principally states that the will given so as to give birth to an agreement, if influenced by misuse of circumstances by another party, is an element of defective will in forming an agreement. (Sjaifurrahman, 2011).

In the legal considerations of the panel of judges in case Number: 778/Pdt.G/2017/PN.Jkt.Sel. argues: "With the proven unlawful act committed by the Defendant by abusing the situation (misbruik van omstandigheden/undue influence) in signing the Deed of Acknowledgment of Debt Number: 63 dated 27 September 2013, drawn up before Indra Gunawan, SH, M.Kn., Notary in Jakarta and the Derivative Agreement, it is appropriate that the Deed of Acknowledgment of Debt Number: 63 and the Derivative Agreement be declared null and void or at least annulled by a judge."

Review of Islamic Law Regarding Undue influence in the Agreement

Covenant in Islam is called al-'aqdu (contract) and al-'ahdu (promise). The term al-'aqdu (contract) can be equated with the term *verbintenissen* in the Civil Code. Meanwhile, the term al-'ahdu can be equated with the term agreement, which is a statement from someone to do or not do something that is not related to other people (Dewi, Wirduyaningsih, & Barlinti, 2018). In the Sharia Economic Law Compilation it is stated that a contract is an agreement in an agreement between

two or more parties to perform and or not perform certain legal actions. The word contract is defined as the relationship between consent and acceptance in accordance with the will of the Shari'a which determines the existence of legal influence (effect) on the object of the engagement (Gayo, 2015).

From the several definitions above, it shows that: first, the contract is a connection or meeting of consent and acceptance which results in legal consequences. Second, the contract is a legal action of two parties because the contract is a meeting of consent which represents the will of one party and acceptance which states the will of the other party. Third, the purpose of the contract is to produce a legal consequence (Amalia & Hanifuddin, 2021).

In the view of Islam, the true source of the agreement is the Qur'an and sunnah. By making the Qur'an and Sunnah as the main source of the agreement, it is hoped that there will be no deviation from the agreement. Agreements in Islamic law are realized by offering and accepting. This shows that there is mutual consent between the two parties and must be in accordance with the will of the Shari'a (Fidhayanti, 2018). Legally, on the basis of QS. An-Nissa verse 29, "O you who believe, do not eat each other's wealth in a vanity way, except by way of trade that applies with mutual consent between you. and do not kill yourselves; Verily Allah is Most Merciful to you." Agreements in Islamic law in principle adhere to the principle of freedom of contract.

In principle, agreements in Islamic law are carried out with the following provisions:

1. Ikhtiyari or voluntary.

Every agreement must be made at the will of the parties, avoiding compulsion due to pressure from one party or another party. Even Allah forbids tyranny, both to himself and to others. Islam wants humans to live in peace, in an orderly manner and does not want crime to occur, let alone commit injustice (Panjaitan & Harahap, 2023). Islam is a religion full of justice and far from tyranny. Therefore, Islam also orders to act justly and forbids wrongdoing (Muslim, 2023). Belief in tyranny and injustice encourages cynicism and behavior without feeling obligated to act according to the rules of justice. Justice comes from harmony between the mind, soul, and tastes that exist in people (Reisch, 2002). Through ikhtiyari or voluntarily, the agreement must be made independently without any element of pressure or coercion from and by anyone, including taking advantage of the weaknesses of the other parties in the agreement, or at least using the abuse of the conditions in the agreement, because that is tantamount to committing injustice and is strictly prohibited. in Islam. To place ikhtiyari or voluntarily as an integral part of building an agreement according to Islamic law, the agreement made must not contain elements of error (ghalath), not carried out under coercion (ikrah), not made on the basis of deception (taghrir). and not made incognito (ghubn).

2. Trust/keep promises.

Trust is closely related to responsibility. The person who maintains the trust is called the person in charge. On the other hand, people who don't keep their trust

are referred to as irresponsible people, or people who don't keep their promises. In real life, one of the reasons for keeping promises is to facilitate future cooperation (Baumgartner, et al., 2009). The provision regarding trust is contained in QS al-Anfal verse 27, "O you who believe, do not betray Allah and the Messenger, and (also) do not betray the mandates entrusted to you, while you know". Each agreement must be carried out by the parties in accordance with the agreed terms and at the same time avoid default. People who default means they are not trusted.

3. Ikhtiyati / caution.

Ikhtiyati shows security measures against the content or meaning contained in the agreement and its implementation. Through Ihtiyati, the parties must be careful in determining the contents of the agreement. The agreement must be made in writing and not cause different interpretations to each person regarding its contents. Because of that, every content of the agreement must be carried out with careful consideration and implemented properly, carefully, earnestly, not violating God's provisions and applicable regulations.

4. Luzum/unchanged.

Every agreement must be made with clear objectives and careful calculations, so as to avoid speculative or maisi practices.

5. Win-win solution.

The formation of an agreement must be carried out to fulfill the interests of the parties so as to prevent manipulation practices and harm one of the parties.

6. Taswiyah/equality.

The parties contained in each agreement must have an equal position, and have equal rights and obligations.

7. Transparency.

Each agreement is carried out with the accountability of the parties openly.

8. Ability.

The agreement must be carried out according to the ability of the parties, so that it does not become an excessive burden for those concerned.

9. Taisir/convenience.

The agreement must be carried out by mutually providing convenience to each party to be able to carry out it in accordance with the agreement.

10. Good intention.

Agreements must be made in order to uphold benefit, not contain elements of traps and other bad deeds.

11. Halal reasons.

Agreements may not be made with provisions that are contrary to law, not prohibited by law and not unlawful.

With the provisions mentioned above, in theory there is no place for undue influence when making agreements according to the provisions of Islamic law. The undue influence encourages one of the parties to impose his will through the agreement and for the other party does not have the opportunity to do something that is not of his choice. This coercion in Islamic law causes the cancellation of the agreement if:

1. The coercion is capable of carrying it out;
2. The coerced party has a strong suspicion that the coercion will immediately carry out what he has threatened if he does not comply with the coercive's orders;
3. The one who was threatened pressed heavily on the soul of the person being threatened.
4. Threats will be executed immediately;
5. Coercion is against the law.

In addition, in the provisions of Islamic law, undue influence will also lead to acts of fraud. Fraud is influencing other parties by deceit to form an agreement, which with the agreement seems to build benefit, but in reality it is the opposite. Undue influence by deceptive means actually results in the birth of reasons for canceling an agreement in Islamic law. What has been determined to be the authority of a judicial body based on law, then this authority is absolute. Likewise with the Religious Courts, the area of authority has been determined based on the law. One of its powers is to examine and decide on sharia economic disputes. Regarding agreements in Islamic law are also included in the jurisdiction of the Religious Courts.

Conclusion

Disability of will as contained in Article 1321 of the Civil Code is a classic form of prohibition, so undue influence is not regulated as a condition in canceling an agreement. In accordance with the doctrines and practices of law enforcement that have developed in Indonesia as contained in several court decisions, defects of will due to undue influence have become an inseparable part of making agreements. Thus no one is allowed to make agreements based on undue influence.

In Islamic law, defects of will due to factors of undue influence are expressly prohibited and result in agreements being null and void. In the view of Islamic law, undue influence is the same as committing injustice and vanity. Injustice is something that is forbidden. In order to avoid tyranny and evil, the agreement made must not contain elements of error (ghalath), not be carried out under coercion (ikrah), deception (taghrir), and disguise (ghubn). Settlement of contractual disputes based on Islamic law in law enforcement practices in Indonesia is carried out by religious courts.

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