

## The Principle of Legal Undue Influence as a Reason for Canceling the Agreement



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**ABSTRACT:** Undue influence has not yet become a norm in the provisions of laws and regulations in Indonesia, so cases relating to undue influence are adopted by judges in deciding cases by referring to expert opinions. Legal certainty is needed regarding undue influence in order to achieve a legal goal, thereby guaranteeing the element of undue influence that applies in Indonesia. The research method used is a normative research type with a statutory approach, conceptual approach, case approach and comparative approach. The focus of the problem studied in this thesis is: 1) What is the meaning of misuse of circumstances as a reason for the cancellation of an agreement? 2) What is the legal certainty of the doctrine of undue influence in jurisprudence? The results of this research include 1) The meaning of undue influence as a reason for canceling an agreement must be fulfilled by the elements, imbalance of position, inappropriate performance and counter-performance as well as loss of one of the parties; 2) Viewed from the aspect of legal certainty, the doctrine of undue influence outlined in jurisprudence does not fully provide legal certainty. This is because jurisprudence is recognized as a source of law for judges in examining and deciding cases. In the decisions analyzed there are differences in the decisions, thus providing legal uncertainty in terms of implementation.

**KEYWORDS:** Legal Certainty, Undue Influence, Cancellation of Agreement.

### I. INTRODUCTION

The basic thing in carrying out an agreement is that from the pre-agreement stage it is carried out with no coercion or other force which makes the agreement carried out in mutual good faith (good faith) of the parties with the legal consequences of mutually fulfilling the agreed achievements (Jamil et al, 2020:1045). The consequences of the agreement between the parties are regulated in Article 1338 of the Civil Code (hereinafter abbreviated to the Civil Code), that an agreement legally entered into by the parties according to Article 1320 of the Civil Code (Subekti et al, 2013:339) will have the legal force of law (pacta sunt servanda principle) (HS, 2013: 10).

This contractual obligation is the starting point for the parties to freely choose their wishes. The wishes of the parties are the basis for the agreement to occur. The occurrence of legal actions is based on the terms of the consensus of the parties (Pangabean, 2010:19). Agreements must be based on free will and atmosphere. When consensus is reached, the agreement must be mutually beneficial, namely the fulfillment of free will and the balance of contractual positions (Saputra, 2019:5), in contract law known as the principle of freedom of contract.

Freedom of contract often gives rise to injustice because there is an unequal bargaining position (Tilamuta, 2023). Imbalanced contractual relations, in practice, sometimes the agreement between the parties is the result of coercion, mistake or fraud (Subekti et al, 2013:339). A contractual relationship exists based on the agreement between the parties, but in this aspect of the agreement there are elements of fraud and/or coercion. The defect of will in such an agreement fulfills this element (Khairandy, 2014: 217).

A defect of will is a contractual relationship that is not perfect even though an agreement has emerged. The presence of a defect of will in an agreement can be interpreted as an agreement that was not formed on the basis of free will. Contractual relationships that contain defects of will occur in the pre-contract phase (Khairandy, 2014: 217). In its development, civil law, especially in the context of contract law, in several decisions of the panel of judges, factors that cause defects of will are known, namely undue influence (miburuk van omstandigheden or undue influence) (Saputra, 2019:7).

There is no positive law in Indonesia that specifically regulates the doctrine of undue influence, but it has been used in several judges' legal considerations (implicitly) stated in decisions, so that the decision is jurisprudence. Even though jurisprudence is a recognized source of material law, judges are not obliged to follow it, meaning that judges in Indonesia are not bound by precedent or previous decisions of judges regarding legal issues similar to those they decide (Mertokusumo, 2010: 150).

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This results in decisions on legal facts that fulfill the elements of undue influence that do not follow jurisprudence, giving rise to disparity in decisions (Simajuntak, 2019: 100)

The lack of specific regulation of the undue influence doctrine has given rise to differences in the legal opinions of judges in giving consideration to legal facts that contain elements of undue influence with different final decisions. This fact causes legal uncertainty. The occurrence of legal uncertainty is related to the doctrine of undue influence which causes the elements of undue influence to be unclear so that there is a lack of uniformity in the meaning of judges in deciding cases. Several decisions on similar cases were decided differently. Several differences in the rulings occurred in the Bandung District Court Decision Number: 247/Pdt.G/2017/PN Blb, the Ende District Court Decision number: 13/Pdt.G/2011/PN End, the Manado Court Decision number: 226/Pdt. G/2011/PN Mdo, and District Court Decision Number: 16/Pdt.G/2011/PN Tbk, these decisions have relatively the same legal facts but there are different decisions based on the interpretation made by the judge. The classification of elements is the location of the differences in the rulings decided by the panel of judges. In this decision, the annulment of an agreement made it unclear whether the elements contained undue influence, resulting in legal uncertainty regarding the jurisprudence that had been decided by the previous panel of judges.

## **II. MATERIALS AND METHODS**

The type of legal research used by researchers in this article is normative legal research. This type of research is research with the object of study being legal and regulatory documents and library materials (Marzuki, 2017:47). This type has a specific purpose, namely in explaining it in detail and compiling it systematically which is related to legal rules that specifically regulate certain issues, as well as analyzing the implications between regulations (Susanti et al, 2014:11). In this research, there are several problem approaches that researchers use, namely the statutory approach, conceptual approach, case approach and comparative approach.

## **III. RESULT AND DISCUSSION**

### **The Meaning of Undue Influence as a Reason for Canceling an Agreement**

Undue influence as a (new) reason to cancel the agreement. In Indonesia there are still several differences in definitions both from dictionaries, legal expert opinions and other legal sources in providing definitions and elements of undue influence. Various sources provide a definition of undue influence, but in its development it cannot be classified as an unlawful cause but rather is categorized as a defect of will so that the requirements that must be fulfilled are more influential than subjective requirements (Mustafida, 2021:11).

Misbruik van omstandigheden is a Dutch word that means undue influence. According to the legal dictionary, this abuse is defined as helplessness, an emergency situation for other people, an unhealthy state of mind, recklessness, or not having the experience to carry out legal actions that can harm oneself (Andreae, 1983:302). Meanwhile, in English, undue influence is called undue influence, the meaning of undue influence in Black's Law Dictionary is: "Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relationship between them is justified in assuming that the person will not act safely inconsistent with his welfare" (Garner, 2009:1666). (Free translation: Undue influence is unjust persuasion from a party who is under the domination of the person doing the persuasion or which based on the relationship between them is justified by the assumption that the person will not act in interests that are contrary to his or her welfare). Meanwhile, in the Big Indonesian Dictionary (KBBI) the phrase undue influence was not found.

Henry P. Pangabea (2010:43) defines undue influence as a condition that plays a role in the occurrence of a contract, such as enjoying the condition of another party, does not result in the contents of the contract being unacceptable, but causes the misused will to become a will that is not free. Undue influence is a factor that interferes with or limits free will in the context of carrying out an agreement between the parties involved.

A legal expert in Indonesia who provided great input and ideas regarding undue influence is Henry P. Pangabea in his book quoting Nieuwenhuis, an agreement can be canceled if there is an undue influence (article 3:44 lid 1) stating four (4) conditions for undue influence (Code: 2023):

1. Special circumstances (bijzondere omstandigheden), for example conditions resulting from carelessness, lack of common sense, emergency, and lack of experience;
2. A real thing (kenbaarheid), requires that a party knows that the other party has the privilege to close an agreement;
3. Abuse (misbruik), a party commits a detrimental action and knows that the action is not in accordance with the agreement made;
4. Causal relationship (causal verband), that without abusing the situation, the agreement will not be closed.

Undue influence is categorized as a defect of will, this consideration is based on the content and essence of the misuse of circumstances itself which is related to the subjective terms of the agreement, namely the incomplete fulfillment of the word "agree" by both parties, and it is not appropriate if undue influence is categorized as not fulfilling the stated cause. halal as an objective condition of the agreement (Pangabea, 2010:51).

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Legal experts from the Netherlands who provide attention and explanation about undue influence are Van Dunne and Van der Burght to carry out the doctrine of abuse which has four approaches. These four approaches are presented in the form of questions including the following (Dunne et al, 1987:50): "a) Does one party have an economic advantage over the other party?; b) Does the party with a weaker economic position have urgent needs so that it makes a contract with the party with a stronger economic position?; c) Is the content of the contract unbalanced and favors the party whose economic position is stronger?; d) Can the unequal situation be justified by a special situation on the part of the party whose economic position is stronger?"

If questions a, b, and c are answered yes, while the fourth question is answered no, it is possible that an undue influence has been committed so that the contract can be closed and cancelled. Van Dunne, quoted by Henry Pangabean, explained that undue influence has two elements, namely (Pangabean, 2010:39): 1. It harms one party, 2. One party benefits from certain circumstances. The two elements above then result in two characteristics of actions, namely psychological superiority and economic superiority.

Rendy Saputra (2019:94) provides an illustration that an agreement can fulfill an act of undue influence if it meets three benchmark aspects, namely: aspects of the position of the parties in the pre-contractual phase, aspects of agreement formulation, and aspects of morality. Ridwan Khairandy (2013:234) differentiates undue influence due to economic superiority and psychological superiority, with the following explanation:

1. Requirements for abuse of economic advantage:
  - a. Terms that are contrary to humanity or unreasonable terms in an agreement;
  - b. The debtor is in a depressed condition, both visibly and in reality;
  - c. The condition of the debtor who is in difficult choices so that he enters into an agreement with burdensome conditions;
  - d. Reciprocity and value in the agreement are not balanced between the parties.
2. Requirements for abuse of mental superiority:
  - a. The parties to the agreement are dependent from a relative perspective, for example the relationship between husband and wife, parents and children, boss and employee so that the other party takes advantage of this dependence;
  - b. One party takes advantage of a situation where the other party has shortcomings such as lack of experience and knowledge, physical condition, mental disorders, carelessness, etc.

Yohanes Sogar Simamora's (1993:58) opinion regarding the elements of undue influence that must be proven by the Plaintiff are: "1. The Defendant has misused an opportunity, which could be an opportunity due to economic (financial) advantages or psychological superiority; and 2. The plaintiff suffered losses." Furthermore, according to Setiawan and Z. Asikin Kusumah Atmadja, quoted by Herlien Budiono (2019:100), they argue that undue influence is a disturbance or limitation that is contrary to the free will contained in an agreement.

The definition of undue influence (*misbruik van onstandigheden*) when viewed from several jurisprudence of the Supreme Court of the Republic of Indonesia is:

1. Supreme Court Jurisprudence. RI number: 3666K/PDT/1992, states "The condition of the Defendant who is in a state of economic difficulty is used by the Plaintiff to take legal action which is detrimental to the Defendant or beneficial to the Plaintiff, the Plaintiff commits an act of abuse of the situation (*misbruik van onstandigheden*) and the legal action taken by the Plaintiff is declared null and void" .
2. Supreme Court Jurisprudence. Republic of Indonesia number: 275K/PDT/2004 dated 25 August 2005, states "sales and purchases which are originally based on debts and receivables are pseudo agreements, where the seller is in a weak and pressured position, thereby containing economic abuse."
3. Bale Bandung District Court Decision number: 247/Pdt.G/2017/PN. Blb dated July 25 2018, states "a situation where one party has an economic advantage over another, and the other party is then forced to enter into an agreement can also be classified as an undue influence (*misbruik van onstandigheden*). So the legal consequences of the Deed of Sale and Purchase Agreement (APJB) number 64, deed of agreement to vacate number: 65 and Deed of Authorization to Sell number: 66 which were made on the same date as the debt and receivable agreement, which contain elements of undue influence (*misbruik van onstandigheden*) include the deeds are legally defective and the legal status of these deeds is void and does not have binding legal force."
4. Tanjung Balai Karimun District Court decision number: 16/Pdt.G/2011/PN.TBK dated 04 April 2012, states:
  - a. That misuse of circumstances as a reason for the cancellation of an agreement is related to conditions that existed or occurred at the time the agreement was made.
  - b. That it can be declared as an undue influence if it is on one of the parties. there are circumstances that limit or interfere with the free will to determine an agreement between the two parties when entering into an agreement.
  - c. That the circumstances that can limit or interfere with the free will referred to above are special circumstances such as emergencies, dependency, carelessness, insanity and inexperience.
  - d. That the doctrine of undue influence contains 2 (two) elements, namely loss on the part of one party, and abuse of superiority by another party in economic or psychological terms.

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In simple terms, whether there is misuse of circumstances can be a benchmark indicator, namely (Tilamuta, 2023):

1. Formulations, countermeasures and achievements in an aspect of the agreement are detrimental to one of the parties or are unbalanced;
2. Undue influence by one party results in that party having the upper hand over the other party because of superiority from a psychological and economic perspective so that the agreement can be closed.

The author's hypothesis regarding the construction of the meaning of undue influence is that undue influence can occur during the pre-agreement period of an agreement where the parties finally agree, but the agreement is a pseudo-agreement (not in full or agreed because they were forced to). This pseudo-agreement can be caused by an imbalance in one of the parties, namely due to economic and psychological advantages. Undue influence as a reason for the cancellation of the agreement must be met by the following elements: imbalance of position, inappropriate performance and counter-performance as well as loss to one of the parties. Undue influence more accurately falls into the category of defective will as an interpretation of the non-fulfillment of the subjective terms of the agreement and brings legal consequences to the agreement that fulfills the elements of undue influence which can be cancelled.

### Legal Certainty of Undue Influence Doctrine Based on Jurisprudence

In Indonesia, the teaching about Undue Influence has not been found in law (Civil Code), however, in practice Undue Influence has been accepted as stated in jurisprudence. For example, in the jurisprudence of the Supreme Court Decision. RI Number: 3666 K/PDT/1992 and Supreme Court decision. RI Number: 275K/PDT/2004. The existence of this jurisprudence has proven that the doctrine of Undue Influence has been accepted, used and used as a basis by judges in judicial practice in Indonesia. However, the application of this doctrine among courts by judges at first instance is still a matter of debate. Has this doctrine been perfectly accepted by the judge? Considering that there are still many disparities in decisions regarding the use of this teaching. Moreover, judges in examining non-binding cases must follow jurisprudence.

The concept of *misbruik van omstandigheden* in NBW which differentiates it from prohibited actions in Article 1321 explains that it relates to an action that is initially permitted, but the action then harms another party, causing the action to be prohibited. Abuse is not only related to conditions where there is an imbalance in the contents of the contract, but also from the beginning when the contract was made. *Misbruik van omstandigheden* in the view of the civil law system is a defect in the will to provide more evidence to the plaintiff in order to prove what losses have been obtained due to Undue Influence committed by another party to a contract (Judanto et al, 2022:10391-10392).

The fact that it is not regulated in statutory regulations does not mean that in practice the courts do not take into account considerations. Quite a number of cases of Undue Influence have been submitted to the Court, from the first level to the cassation level (Nurhayati, 2019:5). The accommodation of cases based on Undue Influence is in line with the provisions of article 10 paragraph 1 of the Judicial Power Law that judges have an obligation and are prohibited from refusing to examine, try and decide a case on the pretext that a law does not exist or is unclear.

In the article above it is explained that judges are able to conduct examinations, hear and decide cases and do not depend on what is already in the law. Judges must be able to interpret and discover the law when trying a case. In this case, the judge must review whether the case before him is correct or not. The judge then determines the program, then the judge completes the program requirements. Only then can the judge determine the law that will be used to resolve the existing case. In determining the law, judges in Indonesia refer to statutory regulations and jurisprudence but are not attached to previous judges' decisions to be used as a consideration (Simajuntak, 2019:100).

In this research, the author analyzes 4 (four) judge's decisions relating to Undue Influence as a reason for canceling an agreement, namely:

No.	Case number and type	Elements of Undue Influence	Court ruling
1.	Number 247/Pdt.G/2017/PN.Blb Civil lawsuit Act against the law	There is an element of Undue Influence regarding the fact "the legal relationship between the Plaintiff and the Defendant is that debts and receivables are stated in the Sale and Purchase Agreement (APJB)"	"Cancel the Deed of Sale and Purchase Agreement (APJB) number 64, Deed of Vacation Agreement number 65 and Deed of Authorization to Sell number 66 because they were made based on Undue Influence ( <i>misbruik van onstandigheden</i> )"
2.	Number 13/Pdt.G/2011/PN.End Civil lawsuit for unlawful acts	There is an element of misuse of circumstances over facts: "The legal relationship between the Plaintiff (debtor) and the Defendant (creditor) is outlined in the credit agreement which contains standard clauses (standard	Cancel Articles 9, 10 and 13 clauses in the credit agreement because they were made based on misuse of circumstances or <i>misbruik van omstandigheden</i>

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		contract).	
3.	Number 266/Pdt.G/2011/PN.Mdo Lawsuit: An unlawful act in the form of Undue Influence	- In his legal considerations, the judge assessed that the Defendant's actions towards the Plaintiff were an unlawful act, not an Undue Influence - Based on the author's analysis, the legal relationship between the Plaintiff (debtor) and the Defendant (creditor) has fulfilled the element of Undue Influence because the Defendant has forced the Plaintiff to sign an addendum to the credit agreement which the Plaintiff actually does not need as a condition for the Defendant to be willing to sign a credit agreement for the Plaintiff's 16 users. So the conditions given by the Defendant (even though they were very burdensome and detrimental to the Plaintiff), with a heavy heart the Plaintiff had no other choice but to agree to them. The plaintiff, due to his weakness, was "forced" to sign an addendum to the agreement.	State that the Defendant has committed legal action
4.	Number 16/Pdt.G/2011/PN.Tbk A lawsuit for breach of contract, there is a lawsuit for compensation for Undue Influence	- Based on the legal considerations of the panel of judges, there was no element of Undue Influence. - The author agrees with the judge examining the Aquo case	Declare that the small work construction work agreement is valid according to law

The Indonesian contract law system provides the potential and opportunity to specifically regulate the doctrine of abuse of this condition in legislation like the Dutch state. This is because historically the Civil Code was adopted from the Dutch Burgerlijk Wetboek, while in the Netherlands itself changes have been made to the Nieuw Burgerlijk Wetboek (NBW). Or do you continue to allow the doctrine of Undue Influence to develop in court practice, even though basically the Indonesian legal system (civil law) in its judicial system does not recognize the principle of *stare decisis et queta non movera*, as is adopted in common law system countries (Suwandono et al, 2023:4).

In the context of the decision, there are several considerations by Indonesian judges which are important points in fulfilling the element of Undue Influence, namely: The formulation of the agreement puts pressure on the economic situation of one of the parties, and indirect coercion (Clarins, 2021:2152). The lack of regulation in legislation regarding the teaching of Undue Influence (*mibsruiik van omstandigheden*) needs to be questioned. According to Gustav Radbruch, quoted by Aan Efendi and Dyah Ochtarina, he explains the certainty provided by positive law in an effort to make decisions regarding injustice or uselessness, but there is no absolute priority regarding legal certainty in the demands of justice and benefit (Efendi et al, 2021:69).

*Mibsruiik van omstandigheden* in Indonesia has been used by judges to decide cases relating to the invalidation of an agreement or contract. It is proven that in the Supreme Court decision directory data, a search for the words "Undue Influence" turns up 2,846 data (Mahkamah Agung RI, 2023). There are many decisions and even jurisprudence proving that the application of the doctrine of Undue Influence has been accepted and is open to lawsuits by legal subjects who feel that justice has been violated.

Judges are not only people who implement statutory regulations, but must also be able to see the justice that exists in the values of society so that in their application the Judge is able to provide a sense of justice in society by comparing statutory regulations and societal values.

Bambang Sutiyo (2012:104) explained that, "there is no legislation that is as complete or as clear as possible, legislation is static and rigid, while human development always increases from time to time." Furthermore, the above is in line with the statement "Het recht hink achter de feiten ann" namely that written law always lags behind events. In line with this, judges need to look at the fact that there is a phenomenon of Undue Influence which is an important consideration in deciding cases.



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The teaching of Undue Influence, in practice, has various conflicting decisions between one another in terms of Undue Influence, namely the rejection and acceptance of the use of this teaching. The cause of this conflict is because in Indonesia jurisprudence plays a role not only in developing legal knowledge, the incompleteness and backwardness of the law so that judges are always up to date in determining the cases before them (Pangabean, 2008:69). This is because Indonesian judges are not bound by precedent or decisions of previous judges regarding legal issues similar to those they decide (Mertokusumo, 2010:150).

Based on the jurisprudential concept above, in case Undue Influence originating from jurisprudence should provide legal certainty regarding the validity status of Undue Influence as a reason for the cancellation of agreements in Indonesia. However, the fact is that this is not the case, the legal system adopted by Indonesia (Civil Law) recognizes the adegium of non-binding jurisprudence, meaning that there is freedom for judges not to be bound by previous decisions in similar cases (Lotulung, 2000:6-7). With this provision, the existence of Undue Influence outlined in jurisprudence is not optimal enough to create legal certainty.

The uncertainty in the application of Undue Influence can be illustrated in decision Number: Decision Number: 247/Pdt.G/2017/PN Blb, Decision Number: 13/Pdt.G/2011/PN.End, Number 266/Pdt.G/2011/PN.Mdo as the author explained in the previous chapter. This means that there is no obligation for judges to follow jurisprudence so that facts that fulfill the elements of Undue Influence are not fully accepted by the judge examining the case as Undue Influence.

## CONCLUSIONS

Undue influence is a doctrine in law which in its development, the doctrine of undue influence was used as a legal consideration by judges as one of the reasons for the invalidation of agreements in Indonesia. Currently, undue influence is often found in decisions and some of these qualify as jurisprudence. The meaning of undue influence is divided into several categories from legal dictionaries, legal experts, and jurisprudence and decisions with the meaning that undue influence can occur at the beginning of an agreement when the parties express an agreement, but the agreement is not complete or in other words they agree because they are forced to. This compulsion can be caused by an imbalance in one of the parties, namely due to economic and psychological advantages. So that undue influence more appropriately falls into the category of defective will as an interpretation of the non-fulfillment of the subjective terms of the agreement and brings legal consequences to the agreement that fulfills the elements of undue influence which can be cancelled. Undue influence is categorized as an unlawful act because the imbalance in position is detrimental to one party in fulfilling achievements and counter-achievements as well as causing losses to one of the parties.

Undue influence outlined in jurisprudence has been applied as one of the judge's considerations in deciding cases and has even been accepted as a reason for the invalidation of agreements outside the provisions of article 1321 of the Civil Code as in the analysis of several decisions in this thesis. The application of the doctrine of undue influence as outlined in jurisprudence within the scope of justice in Indonesia is a form of development and investigation by judges of laws that develop in society, but in the context of legal certainty in Lon L. Fuller's view it does not yet fulfill the elements of legal certainty. Legal certainty is considered as the absence of regulations so that the misuse of the conditions outlined in jurisprudence has not been fulfilled to provide legal certainty.

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