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Legal Analysis of Misbruik Van Omstandigheden Doctrine as a Reason for Canceling the Agreement

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ABSTRACT: This research uses a normative juridical method with a statutory, comparative and case approach. Based on civil law in Indonesia, an agreement can be canceled if three things occur, namely error, coercion or fraud. However, something else can also happen, namely misuse of the situation. This research then compares this with several countries, namely Malaysia, Singapore and the United States regarding the application of abuse of circumstances as reasons for canceling agreements. In common law countries, misuse of circumstances can be used as a reason for canceling an agreement without having to file a lawsuit in court and be used as a reason for cancellation, whereas in Indonesia misuse of circumstances is an indicator of an unlawful act, not an indicator of things that can cancel an agreement. So the result of this research is that there is a need for improvements to revise regulations regarding indicators of reasons for canceling an agreement by including abuse of circumstances as one of the indicators of reasons for canceling an agreement.

KEYWORDS: agreement, cancellation, doctrine

INTRODUCTION

In business activities, humans need capital to support their business activities and continuity, where obtaining capital loans is often and always obtained from banking institutions.[1] According to O.P. Simorangkir "Bank is a financial institution business entity that aims to provide credit and services. "The provision of credit is carried out either with our own capital or with funds entrusted to us by third parties or by circulating new payment instruments in the form of money."[2] Meanwhile, according to Article 1 paragraph (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, hereinafter referred to as the Banking Law, states "Banks are business entities that collect funds from the public in the form of deposits and distribute it to the community in the form of credit and/or other forms in order to improve the standard of living of many people. This is in accordance with the statement *"Het recht hinkt achter de feite naan",* this means that the law lags the event, or in the sense that a law exists after an event occurs. Although this statement is not very accurate, because law is not a person, but a system consisting of sub-systems.[3] Thus, it means that the Bank as a financial institution has an important and large role in people's lives. From this provision, it can be seen that the Bank's function is as an intermediary institution or intermediary between parties who have excess funds (surplus of funds) and parties who have shortages and need funds (lacks of funds) with due observance of the precautionary principle.[4] In society, the definition of credit is always equated with a loan, which means that if someone gets credit, it means they get a loan.[5] Thus, credit can be interpreted as any agreement for a service (performance) and remuneration (contra-performance) in the future. The definition of credit is the ability to carry out a loan with a promise, payment will be made within the agreed period.[6]

That the origin of this case occurred as follows in 2015 with the intermediary Harry Tanoe Soedibyo, PT. Bangun Bumi Bersatu with Defendant I PT. Bank MNC Internasional, Tbk has been bound by legal relations as stated in Credit Agreement No. 23, dated 26 August 2015, which was made before Ati Mulyati, S.H., M.Kn., Notary in Jakarta (hereinafter referred to as "CREDIT AGREEMENT"). Where in the Credit Agreement in essence the parties have agreed to legally bind themselves to each other that

[1] Hermansyah, *Hukum Perbankan Nasional Indonesia.* Prenadamedia Group, Jakarta, 2014, hal. 57

[2] O. P. Simorangkir, 1998, *Seluk Beluk Bank Komersial,* Aksara Persada Indonesia, Jakarta, 1998, hal. 10

[3] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Jilid I, Yogyakarta, 2003, hal. 103.

[4] Zainal Asikin, *Pengantar Hukum Perbankan Indonesia*, Rajagrafindo Persada, Jakarta, 2015, hal. 17.

[5] Atik Winanti, Frendy Christianto Imanuel Siahaan, "Aspek Hukum Perbuatan Melawan Hukum Atas Eksekusi Jaminan Hak Tanggungan dalam Kontrak Kredit (Studi Kasus Nomor: 207/Pdt.G/2020/PN Byw)", *Proceeding: 5TH NATIONAL CONFERENCE on Law Studies 2023*, hal. 333.

[6] *Ibid*, hal. 146.

PT. Bangun Bumi Bersatu received a credit facility in the form of an Investment Loan (PI) amounting to Rp. 101,000,000,000,- from PT. Bank MNC Internasional, Tbk, with the realization of the search carried out in 3 stages. Whereas in reality, the realization of credit disbursement as stated in the Credit Agreement apparently cannot be carried out as it should. This is because PT. Bank MNC Internasional, Tbk only realized Phase 1 (one) credit disbursement of Rp. 51,000,000,000,-. In fact, these funds were used to return shares amounting to Rp. 40,000,000,000,- to PT. Harbin Perkasa. and used for payment of Financial Consultant Services amounting to Rp. 6,000,000,000,- to PT. MNC Investama, Tbk., so that PT. Bangun Bumi Bersatu only received a small portion in the form of the remaining Rp. 5,000,000,000,- for operational needs of the Cibareno 1 PLTM project. Meanwhile, for Phase 2 and Phase 3 credit disbursement which is really needed by PT. Bangun Bumi Bersatu to continue construction work on the Cibareno 1 PLTM project was apparently not realized by PT. Bank MNC Internasional, Tbk. This resulted in the business activities of PT. Bangun Bumi Bersatu stopped due to a lack of working capital which resulted in huge losses for PT. Bangun Bumi Bersatu.

Whereas the Parties are each company that is part of the MNC Corp business group where the CEO is Harry Tanoe Soedibyo. So, PT. Bangun Bumi Bersatu feels that the creation of the CREDIT AGREEMENT was motivated by the actions of the Parties which aimed to benefit the Parties themselves by exploiting the weaknesses of PT. Bangun Bumi Bersatu is currently in a position where it is very dependent and requires the availability of working capital from PT. Bank MNC Internasional, Tbk. That the losses experienced by PT. Bangun Bumi Bersatu was caused because the Credit Agreement (CREDIT AGREEMENT) was made with a defect of will, both in the process of making and in implementing the agreement involving the Bank Parties and other Parties, including in the form of abuse of circumstances (undue influence) carried out by the Parties. The Bank and other Parties. The action in question is abusing the situation in the implementation of the agreement which is an unlawful act, namely an act that is contrary to propriety by taking advantage of the PT's weak position. Bangun Bumi Bersatu, which action has clearly caused losses for PT. Bangun Bumi Bersatu. In this case, there is an unlawful act due to the abuse of undue influence in the credit agreement (CREDIT AGREEMENT).

Law covers various fields, one of which is the field of civil law which is specifically related to contract law. Contract law is regulated in Book III of the Civil Code regarding agreements. Engagements according to Article 1233 of the Civil Code can occur either because of an agreement or because of law. In general, an agreement occurs because of an agreement. In book III of the Civil Code, regarding this agreement, it is not stated what the meaning of the agreement itself is, but in Article 1234 of the Civil Code it is written that the form of an agreement is to give something, to do something or not to do something. In Article 1313 of the Civil Code it is written that an agreement or agreement is an act by which one or more people bind themselves to one or more other people. Basically, an agreement can be made by anyone, if it meets the requirements for a valid agreement as stated in Article 1320 of the Civil Code, namely the existence of; their agreement that binds them, the ability to make an agreement, a certain subject matter, and a cause that is not prohibited / a cause that is lawful.

The provisions of Article 1338 do provide freedom for the parties to an agreement to make and determine the contents of the agreement, but this is not simply freedom without any restrictions at all. Freedom of contract often gives rise to problems of injustice because it requires a balanced bargaining position between the parties. An unequal bargaining position causes the party with a higher bargaining position to often dictate its will to the opposing party whose position is weaker, and in practice the contract itself often occurs because of "coercion, fraud and mistakes in its drafting". Indeed, in the end an agreement was reached, but this agreement was not free from elements of coercion or fraud. This type of agreement is known as an agreement that contains a defect of will.[7]

METHOD

This thesis research uses a normative juridical approach method by inventorying, reviewing and researching secondary data.[8] The type used in legal writing for this thesis is analytical descriptive, namely in the form of describing, reviewing and analyzing applicable legal provisions. This research uses statutory, comparative and case approach methods. Based on its nature, this research is descriptive, namely research that is intended to provide as accurate data as possible about people, conditions or other symptoms. The aim is primarily to confirm hypotheses so that they can help in strengthening old theories, or in the framework of developing new theories. The data collection methods used in research basically depend on the scope and objectives of the research. The way data is collected determines the quality of the data and the quality of the data determines the quality of the research.[9] Secondary data collection is carried out by means of library research in the form of document studies of primary legal materials and secondary legal materials.

[7] Ridwan Khairandy, *Iktikad Baik dalam Kebebasan Berkontrak*, Universitas Indonesia, Jakarta, 2004, hal. 217.
[8] Soerjono Soekanto dan Sri Mamudji, *Op.Cit*., hal. 52.
[9] Amidurddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum,* PT. Raja Grafindo Persada, Jakarta, 2006, hal. 65.

DISCUSSION

Article 1313 confirms that "an agreement is an act in which one or more people bind themselves to one or more other people. Since an agreement was reached between the parties, the agreement is in place. In making an agreement, the parties must be conscious, act freely and responsibly. The quality of the agreement in manifesting the statement of will will determine the quality of the agreement. Agreements made with agreements that are not based on free will will give rise to defects of will.[10] Article 1321 of the Civil Code determines that an agreement is "invalid" if it is given due to (1) mistake, (2) coercion, (3) fraud. If there is one of the above in an agreement, then the agreement between the parties to the agreement is imperfect or known as a defect of will (willsgebreken). Defects in the will in the agreement which are given the consequence of the agreement becoming "cancelable". That apart from error, coercion and fraud, there is a fourth form of defective will which is not regulated in the Civil Code, but has been recognized through jurisprudence, namely "Abuse of Circumstances (misbruik van omstandigheiden/ undue influence)".

Defects of will occur, in part, because the principle of freedom of contract which is developing nowadays gives rise to injustice. Often an unequal bargaining position between the two parties causes the party with the bargaining position to dictate its will to the other party. So that abuse of circumstances arises in carrying out transactions.[11] Currently, the development of the application of the abuse of circumstances doctrine has developed into many legal cases. The meaning of abuse of circumstances (misbruik van omstandigheiden) is the occurrence of a flaw in the agreement, one of the parties taking advantage of the opportunity to abuse his authority over another person who is in an emergency situation, an unhealthy state of mind or a lack of experience in carrying out a legal action, thereby causing a loss.[12] Indonesia, which uses the Civil Code derived from the Dutch BW, does not appear to be following the Netherlands, which has revised the Dutch Civil Code or NBW. In these new provisions, the influence of the French Civil Code has been reduced, although this does not mean it has disappeared completely. In the case of misuse, we are actually dealing with an agreement that is not actually wanted or is not desired in that form (content), the problem in this case is that there is an interest of one of the parties who feels disadvantaged in an agreement so that they demand an annulment.[13] The formula that can be adopted by one of the parties can be the loss formula, namely that the agreement that has been made under misuse of circumstances has caused losses to one of the parties, the second formula is the profit formula, namely that there is excessive profit from one of the parties, these two formulas complement each other. This basis is then widely used by parties in Indonesia in arguing for abuse of circumstances in the lawsuit material as well as requesting cancellation of the agreement. If one of the parties feels disadvantaged due to misuse of conditions that contain defects in the agreement between the parties as regulated in Article 1321 of the Civil Code, this means that the parties can cancel the agreement. If the agreement has not been cancelled, the agreement remains binding on the parties who made it. The claim can also be chosen whether to cancel part or all of the contents of the agreement.

In this research, a comparison was made with 3 (three) countries, namely Malaysia, Singapore and the United States. If a search is carried out regarding abuse of circumstances or Misbruik Van Ombstandigheden in Malaysia, what is found in Malaysian articles are the terms undue influence, unfair contract term or unfair advantage. The focus of studies conducted in Malaysia focuses on misuse of conditions in consumer agreements and several studies related to Islamic finance. This unfair contract term is discussed in commercial contracts such as standard consumer contracts in conventional and sharia banking in Malaysia. *Unfair contract terms occur at the approval stage, therefore unfair contract terms can be corrected by returning to the agreement of each party.*[14] At this stage of agreement, one of the parties to the agreement when giving consent is not accompanied by free will. Article 10 (1) of the Malaysia Contract Act states that all agreements are contracts if they are made with the free consent of the parties authorized to make the contract, with valid consideration and with a valid object, and if it is not accompanied by this, then expressly declared cancelled. Unfree will is included in the discussion of unfair contract terms. The term unfair is used in contracts because it is a standard form of agreement governed by a commercial nature. Unfair contract terms do not make the contract valuable if it is biased towards the innocent party and has the right to sue the dominant party legally. According to contract law, all agreements are contracts if they are made with the free agreement of the parties who have the pleasure of making the contract. Consent is considered “free” if it is not caused by coercion, undue influence, fraud, misrepresentation and error.[15] When examined from the perspective of Malaysia's foreign policy, the close relationship between Indonesia and Malaysia is very important because apart from being

[10] Beni Tri Prasetyo, *Penyalahgunaan Keadaan sebagai Alasan Pembatalan Perjanjian*, Universitas Islam Indonesia, Yogyakarta, 2010, hal. 94.

[11] Sumriyah, Cacat Kehendak *(Wilsgebreken) sebagai Upaya Pembatalan Perjanjian dalam Perspektif Hukum Perdata*, Simposium Hukum Indonesia, Volume 1, Nomor 1, 2019, hal. 663.

[12] Dwi Fidhayanti, *Pandangan Hakim Pengadilan Negeri Kota Malang tentang Makna Penyalahgunaan Keadaan (misbruik van omstandigheiden) sebagai Syarat Cacat Kehendak dalam Hukum Perjanjian*, UIN Maulana Malik Ibrahim, Malang, 2021, hal. 59.

[13] Nanang Hermansyah, “Analisis Yuridis Eksistensi Asas Kebebasan Berkontrak dalam Perjanjian Dewasa Ini (Standar Kontrak) di Masyarakat), *Jurnal Wasaka Hukum*, Volume 8, Nomor 1, 2020, hal. 155-182.

[14] Noor Mahinar Abu Bakar, Norhashimah Mohd Yasin, Ng See Teong, “Unfair Contract Terms in Malaysian Islamic Banks: Empowering Bank Consumers by Islamic Education Ethics”, *Humanities & Social Sciences Review*, Volume 8, Nomor 2, 2020, pp. 13-24. https://doi.org/10.18510/hssr.2020.823

[15] Syuhaeda Aeni Mat Ali, Rusni Hassan, Ahmad Azam Othman, “Inadequacy of Consumer Protection from Unfair Contract Terms in Musharakah Mutanaqisah Home Financing in Malaysia”, *Journal of Islamic Finance*, Special Issue, Volume 6, 2017, p. 231-241. 10.12816/0047351

neighboring countries, both Malaysia and Indonesia have many of the same characteristics, including standard reference frames in history, culture and religion.[16] Although both countries are separate and independent countries, there are also deeply ingrained similarities. Indonesia was the first non-Commonwealth country to have representatives from Malaysia after Malaysia achieved independence on 31 August 1957. Meanwhile, on 17 April 1959, the Malaysia-Indonesia Friendship Agreement was signed. Indonesia plays an important role in the history of Malaysia's bilateral diplomacy, especially in the economic and social fields.[17] Indonesia and Malaysia, which have similar history, culture and religion, in fact have different legal systems. These differences in legal systems make each country, Indonesia and Malaysia, different countries. Bagir Manan explained that the role of legislation in a country depends on the legal traditions adopted by the country concerned.[18] There are two main groups of (principal) legal systems in the world, namely civil law systems or continental European legal systems and common or Anglo-Saxon law systems. The difference between the civil law system and the common law system is based on the role of statutory law and jurisprudence. Countries that are members of the civil law system place laws as the main framework of their law, while countries that adhere to the Anglo-Saxon legal tradition make jurisprudence the main framework of their legal system. The rules and patterns of behavior that are real in various areas of life of the citizens concerned, which are influenced by the constitution and the laws and regulations under it, the making of which are influenced by local/domestic and global laws. This difference also influences the use of abuse of circumstances as a reason for cancellation which is different between Indonesia and Malaysia. The use of different legal systems is inseparable from the history of each country which was colonized by two different countries, Indonesia is more familiar with the nuances of Dutch law, while Malaysia is more familiar with the nuances of English law. Apart from that, the problems faced by each country and legal attitudes in resolving disputes also influence the legal development of the country. The development of the legal system in Indonesia is unique because it was built based on a process of discovery, development, adaptation, and even compromise of several existing legal systems. Not only prioritizing local characteristics, but also general principles adopted by the international community, as well as abuse of this situation which is the result of applying doctrines from the common state legal system.*[19]* So, Indonesia operates a combination of a civil law system and a common law system. These influences form similarities and differences in abuse of circumstances as a reason for canceling the agreement between Indonesia and Malaysia as the country that has regulated this doctrine.

The legal system currently applied in Singapore is the common law legal system. This legal system that can be applied in Singapore cannot be separated from the influence of the British state, both during and after its colonial period in Singapore. In the early days of the British East India Company's entry into Singapore, there were many gaps in the legal field that caused chaos. It was only in 1826 that the Second Charter of Justice was born, namely a new court system that was established in Singapore, eliminating the previous court system.[20] The problem again arises regarding what law will be applied in the court that has been created, because The Second Charter of Justice does not yet contain clear directions regarding the applicable law even though through this charter, the jurisdiction and authority of the English courts have been implemented. Abuse of circumstances in contract law in Singapore can generally be categorized as pressure applied to one party that is applied to another party. Abuse of circumstances, as previously explained, originates from the teachings of equity. Abuse of circumstances according to contract law in Singapore contains two substantive aspects, namely the existence of losses due to the wishes of the party who abuses the circumstances and the party's carelessness and inaccuracy in an agreement. Abuse of conditions in contract law, by New Zealand, which is also a country that adheres to the common law legal system, is defined as an unfair gain of advantage through the unconscious use of power by a stronger party over a weaker party in the form of some inappropriate behavior, excessive force, and cheating.[21] This then leads to an agreement that is reached not with the free will of all parties to the agreement. This understanding is also generally recognized in the law of Agreements in Singapore. Through the Singapore High Court decision on Lim Geok Hian v. Lim Guan Chin, abuse of circumstances is defined as an unreasonable use of one's authority over another person to gain advantage or achieve a goal. In short, abuse of circumstances relates to harm to the will of the plaintiff as well as inappropriate or careless behavior of the defendant. In Singapore contract law, abuse of circumstances is divided into two types, namely actual undue influence and presumed undue influence. The Singapore High Court through Rajaratnam Kumar (aka Rajaratnam Vairamuthu v. Estate of Rajaratnam Saravana Muthu (deceased), stated that in contract law, abuse of circumstance falls into two categories. The first is actual undue influence, while the second is presumed undue influence. The second category of abuse of circumstances arises in the case of certain specific relationships, such as those between parent and child, doctor and patient, lawyer and client. In the first

[16] Adek Risma Dedees, "Melayu di Atas Tiga Bendera: Konstruksi Identitas Nasionalisme Masyarakat Perbatasan di Kepulauan Batam", *Jurnal Ilmu Sosial dan Ilmu Politik,* Volume 19, Nomor 2, 2015, hal. 141-153.

[17] Ghani, Rohani Hj. Ab; Kib, Mat Zin Mat; Eah, Azlizan Mohd, "Indonesia-Malaysia Confrontation (1963-1966) and the Peace Talks for Restoration of Relationship", *Tamkang Journal of International Affairs,* Volume 23, Issue 3, 2020, pp. 103.

[18] Siti Zuliyah, "Comparison of Indonesian and Malaysian Legal Systems in Rules, Traditions, and Community Behavior", *Journal of Transcendental Law,* Volume 3, Nomor 1, 2021, pp. 15-29.

[19] Andi Maysarah, "Perubahan dan Perkembangan Sistem Hukum di Indonesia", *Jurnal Warta,* Edisi 52, 2017, hal. 53.

[20] Benjamin Low, "The Law on Treasonable Offences in Singapore", *Singapore Academy of Law Journal,* Volume 33, Issue 2, 2021, pp. 810-869.

[21] *Ibid.,* hal. 318.

category, the person alleging abuse of circumstances must prove his or her claim. Meanwhile, in the second category, the person accused of committing abuse of circumstances is the party who must refute the assumption that there was abuse of circumstances in an agreement. Actual undue influence is the first form of abuse of circumstances in contract law in Singapore.

The concept of undue influence in American law is notoriously difficult, and any attempt to define undue influence degenerates into nothing more than words about substituting one person's will for another and generally about an heir being vulnerable to some kind of influence deemed undue by law.[22] Early Roman law did not provide for testing a will based on the undue influence of another person.[23] In Justinian's 6th century compilation of Roman Laws, Paul wrote that although an individual may be compelled to act out of fear, the act is still lawful because he has the will to act. Later, the praetor (a special Roman judge whose job was, in part, to reduce the severity of the ius civile) would intervene, at least in extreme cases, such as when the act was compelled by duress. In the Decree, the praetor, stated "I will not hold as valid what has been done under duress [metus causa]." Although the precise meaning of metus causa has been debated, traditionally, the praetor was thought to disapprove of actions caused by fear. Actual intervention and legal protection from fear in juridical acts, however, is not common, as the duress (metus causa) relevant to this decree is not so much experienced by a weak-minded person but rather by a man of the most eminent character. The Roman was generally expected to be responsible for his actions and statements, and any attempt to distance himself from what he had done or said was instinctively impermissible. Fear of death, prison, or sexual crime is clearly sufficient to constitute metus causa, but not fear of humiliation or aggravation. In addition, being influenced by respect for the opposing party is also not enough. The Code of Justinian, a compilation of twelve books of Imperial Constitutions, stated that, "The mere dignity of your enemy's senators is not sufficient to arouse the fear that will cause you to enter into a contract." On the other hand, force or fraud is required before a will will be void. The subtle pressure that is often characteristic of undue influence, which occupies a position between fraud and coercion, is not recognized as a reason to annul a will. Additionally, the presence of force or intimidation is necessary to show that a person's free will has been compromised. The doctrine of undue influence is a doctrine that involves one party taking advantage of another, more vulnerable party for financial gain. The concept of undue influence is most often used in the context of contract law. In contract law, when one party to a contract (the tortfeasor) exerts power over another party (the victim) to the extent that the free will of the other party is called into question, a court may declare the contract unenforceable and be voided by the victim party, because the action would likely satisfy definition of undue influence. Often the victim, or witness to the contract, will assert that the victim was taken advantage of in some way. For example, the victim may claim that the dominant party has more education, information, money, or take advantage of their closeness to the victim to manipulate them into giving the dominant party something they want. When the victim party, or those close to them, realize that a contract may have been created by undue influence, that party may then choose to file a lawsuit against the dominant party in court to return them to the state they were in before the undue influence was exerted on them. The victim can request a contract that can be canceled due to undue influence. The reason that undue influence makes a contract void rather than void, is because there are often cases where the contract benefits the party accusing the other party of taking advantage of it. For example, a child may use undue influence over their parents to force their parents to invest in a particular business. However, if the investment is truly fair and beneficial to the parent party, the court will allow the party to maintain the contract or cancel the contract and receive the initial investment back. Courts often grant undue influence as a legal remedy, because the legal system has an interest in seeing the injured party in its entirety, and in ensuring that vulnerable parties are protected. There are many different examples of types of relationships where undue influence can occur. *Undue Influence is an equitable doctrine that involves one party taking advantage of another, more vulnerable party for financial gain. The concept of undue influence is most often used in the context of contract law. In contract law, when one party to a contract (the wrongdoer) exerts power over another party (the victim) to the extent that the free will of the other party is called into question, a court may declare the contract unenforceable and be voided by the victim party, because the action would likely satisfy definition of undue influence. Often the victim, or witness to the contract, will assert that the victim was taken advantage of in some way. For example, the victim may claim that the dominant party has more education, information, money, or take advantage of their closeness to the victim to manipulate them into giving the dominant party something they want.*

When the victim party, or those close to them, realize that the contract may have been created by undue influence, that party may then choose to file a lawsuit against the dominant party in court to restore them to the state they were in before the undue influence was exerted to them. Abuse of circumstances in contract law in America can generally be categorized as pressure applied to one party that is applied to another party. Abuse of circumstances, as previously explained, originates from the teachings of equity. The abuse of circumstance doctrine is a legal concept that refers to a situation in which an individual exerts an inappropriate level of control or influence over another person, causing the individual to act against their own interests and make decisions they would not otherwise have made. This concept is relevant in a variety of legal contexts, including contract law, property law and

[22] Ronald J. Scalise Jr., "Undue Influence and the Law of Wills: A Comparative Analysis", *Duke Journal of Comparative & International Law*, Volume 19, Nomor 1, 2008, hal. 43.

[23] *Ibid.*, hal. 44.

estate planning. Although the basic concept of undue influence is similar in America (especially the United States) and Indonesia, there may be some differences in the way it is handled and treated in the legal systems of each country.

CONCLUSION

Cancellation of agreements in Indonesia is regulated in Article 1320 of the Civil Code, which states that agreements are invalid if mistakes, coercion and fraud are found. If elements of a defective will be found in an agreement, an annulment can be filed. Nieuw Burgerlijk Wetboek has also updated its regulations regarding cancellation of agreements, which explains that a legal act can be canceled if there are threats, fraud, abuse of circumstances and misguidance. So far, because abuse of circumstances has not been regulated in existing regulations in Indonesia, the cancellation of agreements in Indonesian courts which fall into the category of abuse of circumstances is resolved on the grounds that the agreement is contrary to propriety, justice and good faith. The application of abuse of circumstances as a reason for cancellation between Indonesia and several countries such as Malaysia, Singapore and the United States includes differences in legal systems. Indonesia adheres to a civil law legal system, while Malaysia, Singapore and the United States adhere to a common law legal system. Of the three countries, Malaysia is more flexible because agreements do not have to be annulled in court if the contents of the agreement that contain abuse of mutual consent can be renegotiated. Apart from that, if a profit has been received by the injured party, then the agreement should not be canceled, but rather provide compensation if necessary. Meanwhile, for Singapore and the United States, abuse of circumstances is known as undue influence, where the defendant does not need to prove the existence of real loss but rather he needs to prove that when giving the consent he was under the influence of another party. Abuse of circumstances in Indonesia includes the doctrine of unconscionability which focuses on unequal bargaining positions and unfair agreements, while undue influence only focuses on giving free consent. So, it seems that Malaysian regulations provide a win-win solution for the parties rather than fighting in court to resolve agreement disputes that contain abuse of circumstances.

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