Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

Implementing the Undue Influence Doctrine (*Misbruik Van Omstandigheden*) as a Reason for Annulment of Agreement in Indonesia: An Evolution of the Law Through Court Decisions

Dr. Faizal Kurniawan, S.H., M.H., LL.M.[1], Xavier Nugraha, S.H.[2], Luisa Srihandayani, S.H.[3],

[1]Department of Private Law, Faculty of Law Universitas Airlangga, Indonesia,
[2] Faculty of Law, Airlangga University, Surabaya, Indonesia,
[3] Faculty of Law, Diponegoro University, Semarang,Indonesia

Abstract:

The law often lags behind with the development of society. It also applies to contract law, one of which concerning the doctrine of undue influence (*misbruik van omstandigheiden*) as a new ground for the annulment of agreement in Indonesia. However, the undue influence doctrine has not been regulated in the Indonesian Civil Code. As a result, the sources of the law on the undue influence doctrine are limited to doctrine and court decisions. This paper will discuss: Firstly, indicators of the doctrine of undue influences as a basis to see the rationale behind the judgment of the judges. Secondly, the development of the application of the doctrine of undue influencethrough court decisions in Indonesia. Both of these will be analyzed based on legal research using the statutory, conceptual, and case approach.

Keywords: Agreement annulment, undue influence, law development

I. INTRODUCTION

John Stuart Mill's theory about *homo economicus* said: "Human has a mindset that calculates the advantages and disadvantages of taking each of his actions"(Friedland & Cole, 2019). This natural trait of a human being, which tends to calculateprofit and loss (*compensatio lucri cum domno*), is then what proceeds to be business activities(Winarsi, Abrianto, Nugraha, & Danmadiyah, 2020). Thereby, Benny S. Tablujan and Valerie Du Toit Low state: "The essence of business is the art of providing goods or services to make a profit"(Tablujan & Low, n.d.).

The primary goal of obtaining profit in business relationships often encourages business owners to do everything to get the maximum profit they can get (Rakasatutya & Aprilianto, 2020). Especially, if one party is in a higher position than the other party. The party with a higher position will have the potential to abuse the situation and exploit other weaker parties (Salmon, 2020). Thereby, to ensure that the business relationships of these business actors are fair for both parties, the law must be involved to frame the act (Isnaeni, 2019).

In Indonesia, one of the basic arrangement of business activities is regulated in theIndonesian Civil Code ("ICC"), a codification from the Dutch law origin (Hariyanto,

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

http://www.iratde.com

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

2009),particularly in ICC Book III titled Law of Obligations (*rechtvan verbintenis*). Unfortunately, the regulating norms of the agreements in Book III ICC are not immune to the abuse of circumstances due to imbalanced positions between the parties (Garnett, 2019). For instance, Article 1321 ICC stated: "No consent is valid if it is granted based on a mistake or obtained by duress or fraud", yet it does not explicitly cover a situation when consent is given based on urgent needs. If a person faces urgent basic necessities of his life, he tends to agree with all of the clauses made by other parties, even if they are frequently irrational and unjust. In fact, this kind of agreement contains a defect of consent (*wilsgebreken*) (Khairandy, 2013), that is a condition when it seems there is a consent, but the consent is not formed based on the actual free will(Ramadianto, 2017).

Following the aforementioned situation, the classic defect of consent factors stated in Article 1321 ICC(Saputra, 2016), which are mistake, duress, or fraud, should be developed concerning to the presence of a new factor known as the doctrine of undue influence (*misbruik van omstandigheden*) (Parapang, 2016). The idea of undue influence doctrine is to minimize the negative impact of imbalanced positions between parties, whether they occur due to economic superiority or psychiatric reasons (Pangabean, 2010), which prevents one party from making an independent decision. In other words, this doctrine's existence tries to ensure that the various advantages of all parties, both economically and psychologically, are not misused (Campsi, Winet, & Calvert, 2018).

The importance of undue influence doctrine has urged many countries to adopt it in their law systems, both in common law system and civil law system countries. For example, England, as the adherent of the common law system, had incorporated it as the extension of the power of equity for the court to intervene in an agreement containing imbalanced positions between the parties since the 15th century (Mark Pawloski, 2018). Thereafter, this doctrine has been favored by the judges in England courts and used as the basis of consideration whenever there is an unequal position of disputing parties (Saputra, 2016). After its development in England, the judges in Netherland followed to use it as one of the considerations to void a contract and even enact it as jurisprudence. Nowadays, this doctrine has already been set explicitly in Book III Article 44 paragraph 1 Dutch Civil Code, which states: "An agreement (*legal action*) may be canceled if there are threats (*bedreigeng*), deception (*bedrog*), and abuse of circumstances (*misbruik van omstandigheden*)".

The development of undue influence doctrine all around the world, more or less affects Indonesia as well. Although this doctrine is not found in ICC, various judicial decisions have shown the judges' acceptance of undue influence doctrine. However, the professionalsstill neither familiar nor comprehendthe knowledge of the doctrine, which then has caused legal disparity in judicial practices. This paper will further discuss: (a) the indicators of undue influence doctrine to comprehend the rationale of the judges and (b) the analysis of rationale of the judges on several decisions to see inaccurate use of the term even though the judges real intention is regarding the undue influence doctrine.

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

http://www.iratde.com

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

II. INDICATORS OF THE UNDUE INFLUENCE DOCTRINE

Before understanding the indicators of the doctrine of undue influence, it is necessary to understand the doctrine's position in the Indonesia contract law concept.

The conceptual foundation of undue influence doctrine as a defect of consent factor in contract law in Indonesia

In general, Article 1313 ICC defines an agreement as: "An act under which one or more individuals bind themselves to one another". Regarding an agreement, one of the most crucial rules in contract law is the determination of valid agreement (Indrahati, 2014). According to Article 1320 ICC, a valid contract must satisfy these four following conditions:

1. there must be the consent of the individuals who are bound thereby (*de toestemming van degenen die zich verbinden*);
2. there must be the capacity to conclude an agreement (*de bekwaamheid om eene verbintenis aan teaan*);
3. there must be a specific subject matter (*een bepaald onderwerp*);
4. there must be an admissible cause (*eene geoorloofde oorzaak*).

Theoretically, the first and second conditions are named subjective elements because they are related to people or subjects who enter the agreement. The third and fourth conditions, on the other hand, are named objective elements because they are related to the agreement itself or the object of the legal action (Subekti, 1996). Failing to fulfill one or more conditions of the valid agreement as stipulated in Article 1320 ICC, both subjective and objective elements, will have the following consequences(Setiawan, 1994):

1. The non-existence of contract, happened if there is no deal;
2. *Vernietigbaar* or voidable, happened if the contract was born due to a defect of consent (*wilsgebreke*) or incompetency (*onbekwaamheid*). This consequence is specifically related to subjective elements that make the contract voidable; and
3. *Nietig* or null and void, happened if a contract does not meet certain subject matter or admissible cause. This consequence is particularly related to objective elements that make the contract null and void meaning: "have no legal effect and therefore is considered as if it did not exist".

In regards to these four conditions of contract validity, the position of undue influence doctrine is questionable, either it is categorized as a violation of the consent element or the admissible cause element. This unclear position could be confirmed if people discern the following explanation for 'the consent element' yet 'the admissible cause element (Nugraha, 2019):

1. The consent of the individuals who are bound to each other
   Consent among the parties implies that each party wills are met and matched with one another (Setiawan, 1994). This consent matter is strongly linked to freedom of contract

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

principle contained in Article 1338 ICC wherein covers the following scopes (Gomulja & Adjie, 2019):

a. freedom to make or not to make agreements
b. freedom to choose a partner to create an agreement with
c. freedom to determine the cause of the agreement made
d. freedom to determine the object of the agreement
e. freedom to determine the form of an agreement
f. freedom to accept or deviate optional provisions of the law
g. freedom to determine the forum for solving the dispute

2. The admissible cause

The concept of admissible cause, as regulated in the fourth condition Article 1320 ICC, has not been explained yet. According to Wirjono Prodjodikoro, the meaning of cause in contract law is the content and purpose of an agreement, whereby the parties want to achieve when closed the contract(Nugraha, 2019).

Furthermore, the admissible cause should also be understood together with Articles 1335 and 1337 ICC. Article 1335 ICC stipulated that: "Any agreement without a cause, or concluded pursuant to a fraudulent or implausible cause, shall not be enforceable". Besides, Article 1337 ICC explained that: "A cause is not permissible if it is prohibited by law, or if it violates good conduct or public order". Based on Articles 1335 and 1337 ICC above, an agreement is null and void, if (Sulastin & Atalim, 2019):

a. has no cause
b. the cause is fake
c. the cause is against the law
d. the cause is against the decency
e. the cause is against the public order

The two basic theory of consent and admissible clause above has helped the position of the undue influence doctrine become clearer that it is one of the reasons to defect the consent. Several reasons underlie it among others:Condition 1 Article 1320 ICC regarding agreement is closely related to the principle of freedom of contract stipulated in Article 1338 ICC, the scope of which covers (Gomulja & Adjie, 2019):

1. Firstly, the imbalance in position between the parties has actually affected the freedom of one party to determine the cause of the agreement made, thereby makes an agreement imperfect as it is not based on real freedom. A violation of the freedom to determine the cause of the agreement made is clearly within the scope of consent matter. Therefore the undue influence doctrine is categorized as part of violation towards consent. J. Satrio supports this perspective as he stated that the problem of the undue influence doctrine is not related to 'admissible cause', but it is more likely about the defect of consent caused by manipulative measures in obtaining other party approval (Satrio, 2001).
2. Secondly, in regards to the consequences of subjective or objective elements, one party who wants to void the contract is commonly the weaker party who feels the

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

coercion. Since the injured party will propose the proposal of the contract cancellation, it means the undue influence doctrine is more into subjective elements than the objective elements. In addition, placing the undue influence doctrine as part of the admissible cause is inappropriate because the one who determines if the causes are against the law, morality, and/or public order shall be the judges in courts.

The inclusion of undue influence as part of the consent violation results in the undue influence being a new element causing defect of consent, along with the three other elements listed in Article 1321 of ICC those are a mistake, duress, or fraud.

Indicatorsof the undue influence doctrine

According to Rendy Saputra, indicators of undue influence are categorized into two aspects (Saputra, 2016):

1. Aspects of the position of the parties in the contractual phase
   According to Niewenhuis, as cited by Muhammad Syarifuddin, within a reciprocal contract, the quality of the performance will be justified by the rule of law (Purbasari, 2018). However, the contract must be immediately "rejected/canceled" if the factual position of one party to the other party is stronger as that imbalanced position can affect the scope of content, intention, as well as the purpose of the contract. Unequal performance thereof even can excuse the weaker party to claim a contract invalidation. In certain situations, if the imbalance position occurs even if when the obligation distribution already relies on equality, the attention will be given to the equality in contract formation foremost(Syaifuddin, 2012). In summary, the Niewenhuis explanation provides an understanding that the execution to uphold the equality principle among the parties who made the contract are not only about the equality of obligation distribution but also the equality of the parties' position. Both of the equality factors are what then reflect the will of the parties to realize a fair exchange of economic interests for the goods and services promised in a contract (Syaifuddin, 2012).

   According to Van Dunne, there are several conditions that cause the two parties' positions to be unbalanced, namely, economic and psychological advantage. Van Dunne further distinguishes the undue influence from one of the parties' economic and psychological superiority as follows(Pangabean, 2010):
   a. Terms of misuse of economic advantage
      1) one party must have an economic advantage over the other
      2) the other party is forced to bound into an agreement
   b. Terms of abuse of psychological superiority
      1) one of the parties abuses relative dependence, such as special trust relationships, for example between parent and child, husband and wife, doctor-patient, pastor and his congregation

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

http://www.iratde.com

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

2) one of the parties abuses the individual mental state of the opposing party, such as mental disorders, inexperience, carelessness, lack of experience, poor health condition, and else.

Satrio stated about the factors of undue influence when closing an agreement could occur because one party is in a state of unfortunate situation, namely(Satrio, 2001):

a. Economic disadvantages, such as urgent financial problems/difficulties;
b. A relationship between superiors and subordinates, or economic superiority on one party, such as the relationship between employers and laborers, parents or guardians with minors;
c. There are other adverse conditions, such as patients who need the help of a doctor;
d. The agreement contains an unequal relationship in mutual obligations between the parties (unequal responsibility), such as the employer's release from the obligation to bear the risk and shift the risk into the worker.

Nieuwenhuis, as quoted by Henry P. Panggabean, stated that an agreement could be annulled if misuse occurs. Four conditions or factors of misuse occurrence are as follows(Pangabean, 2010):

a. Special circumstances (*bijzondere omstandigheden*), such as emergencies, dependencies, carelessness, mental illness and inexperience.
b. An actual matter/circumstances (*kenbaarheid*). It can be interpreted that one party knows or should know that the other party is moved to close an agreement because of special circumstances.
c. Misuse (*misbruik*). It can be interpreted when one of the parties implement the agreement even though he knows or understands that they shall not do it.
d. Causal relationship (*causal verband*). It is an important reason in which without undue influence, the agreement will not take place.

2. Aspects of the agreement formulation

Generally, a weaker bargaining position of one party due to urgent financial conditions will make the weaker party always accept the contents of the agreement even if they do not read it entirely or not involved in the clauses preparation process. As a result, there are several clauses of the contract that are actually improper/unfair, which is why the judge should carefully examine the contents of clauses in the contract to determine whether there is undue influence in the agreement. Examples of imbalances in the contract can be observed in several contract models, namely:

a. consumer standard/form contracts in which there can be clauses whose contents (tend to be) biased. In the practice of lending/credit in the banking environment, for example, some clauses require customers to comply with all forms of bank instructions and regulations, both existing and future ones, or clauses that free banks from customer losses as a result of bank actions.

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

b. Lease-purchase contracts, for example, there is a clause that contains the payment obligation in full and immediately if the buyer of the loan is in delays the installments twice in a row.

It is important to emphasize, although the imbalance of rights and obligations in the agreement is one indicator of abuse of the situation, it should not then always be interpreted that undue influence has occurred in every agreement which is detrimental to the economy of a weaker party. Each case must be seen individually, whether there is a forced position or any other alternative that could be taken. Even asking, is there any improper distribution of benefits, burdens, and risks (Hernoko, 2013)? J. Satrio gave an example of the possibility that people consciously and voluntarily signed an agreement where the obligation between him and the opposing party is unbalanced(Satrio, 2001).Satrio mentioned a debtor could accept interest of up to 15% per month willingly as he sees the possibility of getting a 30% profit when he receives the cash he needed immediately. The debtor is indeed desperate for time and money, but in this case, it can not be said that there is an abuse of the opponent's urgency because the debtor was only pressured by his desire to take a higher profit than the burden he would bear (Satrio, 2001).

According to Rendy Saputra, the misuse of economic power in a contract will usually be seen and contained in the contents and clauses of the agreement if(Saputra, 2016):

1. The conditions agreed upon, which are actually inappropriate and contradictory to humanity (*onredelijke contractvoorwaarden*);
2. It appears or turns out that the debtor is in certain circumstances;
3. There are certain circumstances for debtors to have no other choice, except to enter into contracts with burdensome conditions;
4. The value of the contract results is very unbalanced when compared to the mutual responsibility of the parties.

Indicators or benchmarks of undue influence above if described in tabular form can be seen as follows:

Table 1: Aspects and Indicators of Undue Influence

Aspects	Indicators
Parties Position in the Contractual Phase	Abuse of advantages both economically and psychologically
Agreement Formulation	There is an inappropriate agreement clause that can be seen from improper distribution of benefits, burdens, achievements, and risks

Note: Obtained from various sources

III. ANALYSIS OF RATIO DECEDENDI OF THE JUDGE IN APPLYING DOCTRINE OF UNDUE INFLUENCE (MISBRUIK VAN OMSTANDIGHEDEN)

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

IN INDONESIA

There are three verdicts that will be analyzed in this paper, which had been chosen for its mark on the evolution of undue influence doctrine in Indonesia. The verdicts will be described in the following table:

Table 2: Summary of the Ruling Contents, Decisions, and Views Development on the Doctrine of Undue Influence

	Rulings/Court Judgement	Summary	Notes
1	Supreme Court Decision Number 3431/ K/PDT/1985	**Case** This case began when the Defendant, Mrs. Boesono, borrowed money from the Plaintiff, Mrs. Sri Setia Ningsih, amount to Rp. 540,000 with a promise of 10% interest per month and accompanied by a Pension Certificate in the name of her husband as the collateral. In the future, the Defendant was unable to return the debt as her business failed. The Defendant, as the borrower, could only pay the debt's interest periodically, the total of which is Rp. 400,000. Therefore, Mrs. Sri Setia Ningsih sues Mrs. Boesono to the District Court. **Court Decision** The District Court and the High Court in Semarang City granted the Plaintiff's claim and sentenced the Defendant to pay her debt in the amount of Rp. 540,000, - along with interest from the case in court until the decision legally binding. However, the Supreme Court overturned the verdict of the district court and the high court as the judges stated that the 10% interest was too high and was against decency and justice, considering that the Defendant's husband was a retiree and had no other income. Besides, the Supreme Court also believes that the Defendant was forced to create the agreement. Finally, the Supreme Court determined the interest *ex aequo et bono* with a rate of 1% per month. The interest which had been paid by the Defendant that was Rp. 400,000 has to be received by the creditor as payment, so the remaining debt to be paid by the Defendant is Rp. 140,000 + Rp. 54,000 (interest) = Rp. 194,000.	The doctrine of undue influence is seen as a violation of Article 4 of Article 1320 ICC's provisions because it is against the decency and justice.
2	Supreme Court Decision Number 192 PK/PDT/2014	**Case** This case began when on 8 April 1994, when Yunan Nasution (Plaintiff I) borrowed a sum of Rp. 50.000.000, - to PT Bank Pembangunan Daerah Sumatera Utara ("Bank of North Sumatra") (Defendant I). The term of repayment is 3 (three) years as described in the Credit Opening Agreement (In Indonesian Perjanjian Membuka Kredit, hereinafter "PMK") Number: 021/C-Pkr/KAL/1994 dated 8 April 1994. Within the agreement, there are various collaterals of debt repayment, one of which was a 459 m2 piece of land proof by Certificate	The doctrine of undue influence is seen as an illegal act.

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

	Number 27 in the name of Syamsiyah Lubis (wife of Plaintiff I). Shortly after, Plaintiff I began to experience difficulties in paying his installments since mid-1994, which then causes the Bank of North Sumatra to ask for payment by selling one of the collateral in the form of a plot of land mentioned earlier. The Bank of North Sumatra request is accompanied by attempts to frighten Plaintiff I and Syamsiah Lubis (Plaintiff I's wife) thereby Syamsiah Lubis agree to sell the land based on the Sale and Purchase Deed Number 3/SOSA/1996 dated 29 February 1996 which was made before H. Syafarhum Siregar, SH, PPAT, a notary in the Level II Region of South Tapanuli Regency (Defendant II). The sale of the collateral object, then encouraged PlaintiffI and Syamsiah Lubis's heirs filed a lawsuit to the Padang Sidempuan District Court. They argued that Defendant I had used the Plaintiff I's condition to influence, urge, and scare Plaintiff I as the Debtor and Syamsiyah Lubis (Deceased, Plaintiff I's wife) as the Collateral Owner to sell the land to Defendant I. The Plaintiff demanded that the deed of sale and purchase of land for the collateral object be declared invalid and null and void. **Court Decision** Concerning this case, the judges' consideration in the District Court, High Court, and Supreme Court showed similarity, that Defendant I had committed an illegal act (*onrechtmatigedaad*). The illegal act could be seen from the Bank of North Sumatra's action to own the collateral object by making untrue 'buying and selling', which clearly will harm land sellers because they would get an unreasonable price. Also, the parties' agreements are not economically balanced as the debtor is unable to pay the credit installment. This condition had defected the debtor freedom to determine attitudes, therefore it must be declared legally flawed.	
3	The Supreme Court Decision Number 472 K/Pdt/2019	**Case** This case began with the monetary crisis in Indonesia in 1997-1998, which resulted in PT Grahasahari Suryajaya ("PT GSSJ") (Plaintiff) being unable to pay credit to PT. Bank Negara Indonesia (Defendant). Due to this condition, the Plaintiff's loan was restructured in ways arranged by the Defendant. The problem happened when the Defendant did not take into account the change in the US dollar exchange rate difference against the rupiah when the credit agreement was signed so that the Plaintiff's obligations became even greater. The significant increase in the US dollar exchange rate against the rupiah made it difficult for the Plaintiff to settle its obligations to the defendant because the loss on the foreign exchange difference was entirely burdened to the Plaintiff.	Judge's view has put the case as a form of undue influence.

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

http://www.iratde.com

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

	Decision
	The panel of judges in the District Court, High Court, and Supreme Court held the same view, that is, to grant the Plaintiff because the Defendant had abused the situation in the agreements restructuration, so the agreements need to be declared null and void by law and had no binding force. Finally, the judges decided that the Defendant shall return the excess amount of money to the Plaintiff.

Note.obtained from various sources

Based on the data above, it is necessary to consider several things in each of these decisions among others:

1. The decision of the Supreme Court Number 3431/K/PDT/1985
   This verdict is indeed an 'embryo' of undue influence doctrine in Indonesia. The rationale of the judge is that the amount of interest was born from the plaintiff's undue influence, so the defendant forcefully bound to the improper clauses of interest. However, this decision is not appropriate if it is used as a basis for jurisprudence related to the doctrine of undue influence because:
   a. The judges place the undue influence as a reason to void the agreement related to the admissible clause (condition 4 of Article 1320 ICC), not because of a defect of consent (Article 1 Article 1320 ICC). This consideration is inappropriate since the theoretical explanation earlier already categorizes the undue influence doctrine is related to the issue of will coercion in a particular situation, and whoever is forced is the one who recognizes the compelling conditions.
   b. This decision contains certain circumstances that have not been concerned in Indonesia. That condition is when the Supreme Court only void and adjust the loan interest. Conceptually, the legal effect of canceling the agreement is the return to its original position, likewise before the contract has been made. For instance, in a canceled sale and purchase contract, the goods and price must be returned to each party, and if returning the item is no longer possible, it can be replaced with a similar object with similar value (Lepong, 2016). It means if the Plaintiff asks for an annulment of the agreement, then there is no annulment of half measures. Supposedly, the more appropriate terminology to be used is a partial annulment. This kind of annulment has already recognized in the UNIDROIT Principles of International Commercial Contracts and the Indonesian Contract Draft on Article 3.16 (Hernoko & Anand, 2017). By using partial annulment, only specific clauses in the agreement are considered 'never exist', not the whole content of the agreement is going to be considered 'never exist'. If there might be any vacancy in the clause, the judge will fill the clauses as needed. To sum up, this decision inaccuracy lies in the use of the terminology in the lawsuit filed by the parties, yet the judge justifies it as well.

2. The decision of the Supreme Court Number 192 PK/PDT /2014
   In this decision, the judge stated that the transfer of the land as a collateral item is

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

due to the misuse of the economic situation done by the defendant. Therefore the defendant's action has defected the consent. This judgment shows that the *ratio decidendi* of the judges actually embodies the undue influence doctrine. However, the judge granted the plaintiff's claim by arguing that the defendant had committed an illegal act. Notwithstanding, the two terms, namely annulment and unlawful act, are obviously different in the context of legal science.

In a lawsuit of unlawful acts, the act therein is not related to the parties' contractual relationship (Sedyo, 2016). Refer to Article 1365 ICC: "a party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor". This means the illegal act put concern about the damage caused by another party in an accident, even if there is no agreement between the parties. This concern is distinct from the context of the problem in this decision, which tends to raise the issue of agreement validity due to defects of consent. Therefore, the argument in the lawsuit is undoubtedly more appropriate if connected to the contractual matter itself, namely the default lawsuit and cancellation/annulment lawsuit. The difference between them is that a default claim is filed when a person or group of people violates the agreement by their performance. However, an annulment claim is a lawsuit that causes the agreement not to be considered never existed(Mantili & Sutanto, 2019). Seeing the two primary arguments of a lawsuit in a contractual relationship, the existence of undue influence doctrine should use the argument of an agreement annulment that questions the validity of the agreement rather than the performance, which violates the agreement.

3. The decision of the Supreme Court Number 472 K/Pdt/2019
In this decision, it is apparent that the judge noticed the undue influence as part of the aspects of the parties' position in the pre-contractual phase and aspects of the agreement formulation. Concerning parties' positions in the pre-contractual phase, the judge considered the existence of economic conditions abuse, including the economic dependence and monetary crisis conditions of the plaintiff. This urgent economic conditions have made the plaintiff follow all of the defendant's requests. In the aspect of the agreement formulation, the judge considered the agreement's substance improper as seen from the unfair distribution of profits, expenses, responsibilities, and risks, whereby the plaintiff entirely bore the loss of the foreign exchange difference. Based on this ruling, it can be concluded that the judge used the doctrine of undue influence to void the agreement. The judgment of the judges has shown the rationale of the judges, which already recognizes the undue influence doctrine as a defect of consent rather than the admissible clause. Furthermore, the lawsuit for undue influence has been used distinctively as a claim to void an agreement in Indonesia.

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

http://www.iratde.com

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

III. CONCLUSION

1. The doctrine of undue influence (*misbruik van omstandigheeden*) is one form of defect of consent which causes the agreement to be voided (*vernietigbaar*). Abuse of the situation can occur in the aspect of parties' positions in: (1) pre-contractual phase, which can be seen from the abuse of economic advantage or psychological advantage indicators; and (2) the agreement formulation phase, which can be seen from the inappropriate or unequal distribution of benefits, burdens, responsibilities, and risks. However, the indicators of this undue influence are not absolute indicators. It is such a guide for judges who will later play a role in determining whether or not there is an abuse of the condition/undue influence.

2. Based on the Supreme Court's Decision Number 3431 / K / PDT / 1985, the Supreme Court's Decision Number 192 PK / PDT / 2014, and the Supreme Court's Decision Number 472 K / Pdt / 2019, it can be seen the phases of undue influence doctrine development in Indonesia. It initially entered as an admissible violation, then developed into the elements related to the agreement that is a defect of consent, until finally, it stands alone as a cancellationlawsuit.

REFERENCES

1. Campsi, D. J., Winet, E. D., & Calvert, J. (2018). Undue Influence: The Gap between Current Law and Scientific Approaches to Decision-Making and Persuasion. *Actect Law Journal*, *43*(359), 360–381.
2. Friedland, J., & Cole, B. M. (2019). From Homo-economicus to Homo-virtus: A System-Theoretic Model for Raising Moral Self-Awareness. *Journal of Business Ethics*, *155*, 191–205. https://doi.org/https://doi.org/10.1007/s10551-017-3494-6
3. Garnett, R. W. (2019). Ellis M. West: The Free Exercise of Religion in America: Its Original Constitutional Meaning. *The Review of Politics*, *82*(1), 175–178. https://doi.org/10.1017/S003467051900072X
4. Gomulja, I., & Adjie, H. (2019). *Pengendalian Asas Kebebasan Berkontrak Dalam Sistem Pre Project Selling*. *5*(1), 39–54. https://doi.org/https://doi.org/10.23917/laj.v5i1.10395
5. Hariyanto, E. (2009). Burgelijk Wetboek (Menelusuri Sejarah Hukum Pemberlakuannya di Indonesia). *Al-Ilhkam*, *4*(1), 143. https://doi.org/http://dx.doi.org/10.19105/al-ihkam.v4i1.268
6. Hernoko, A. Y. (2013). *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*. Jakarta: Kencana Prenada Media Group.
7. Hernoko, A. Y., & Anand, G. (2017). The Application Of Circumstance Abuse Doctrine (Misbruik Van Omstandighenden) On Judicial Practice In Indonesia. *Journal of Advanced Research in Law and Economics*, *8*(7), 2138–2143.
8. Ilham, A. (2016). Akibat Hukum Cacat Kehendak Terkait Hakikat Benda Pada Perjanjian Jual Beli Batu Akik Bongkahan. *SYARIAH : Jurnal Hukum Dan Pemikiran*, *16*(2), 99. https://doi.org/http://dx.doi.org/10.18592/sy.v16i2.1020
9. Indrahati, N. S. (2014). Aspek Keabsahan Perjanjian dalam Hukum Kontrak (Suatu Perbandingan antara Indonesia dan Korea Selatan). *Prioris*, *4*(1), 18.
10. Isnaeni, M. (2019). *Urgensi Kontrak Dalam Dunia Bisnis*. Surabaya.
11. Khairandy, R. (2013). *Hukum Kontrak Indonesia dalam perspektif Perbandingan (Bagian Pertama)*. Yogyakarta: FH UII.
12. Lepong, D. R. U. (2016). *Keabsahan Klausul Syarat Putus Sebagai Alasan Pengakhiran Kontrak* (Universitas Airlangga). https://doi.org/https://doi.org/10.14505/jarle.v8.7(29).09
13. Mantili, R., & Sutanto. (2019). Kumulasi Gugatan Perbuatan Melawan Hukum Dan Gugatan Wanprestasi

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

Talent Development & Excellence
Vol.12, No. 1, 2020, 3035 - 3047

Dalam Kajian Hukum Acara Perdata Di Indonesia. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, *10*(2), 1–18. https://doi.org///doi.org/10.28932/di.v10i2.1210

14. Mark Pawloski. (2018). Undue Influence: towards a Unifying Concept of Unconscionability ? *The Deming Law Journal*, *30*, 117–151.
15. Nugraha, X. (2019). *Perkembangan Doktrin Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Alasan Pembatalan Perjanjian Dalam Putusan Pengadilan*. Universitas Airlangga.
16. Pangabean, H. P. (2010). *Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Alasan (Baru) Untuk Pembatalan Perjanjian (Berbagai Perkembangan Hukum di Belanda dan Indonesia* (Edisi Revi). Yogyakarta: Liberty.
17. Parapang, F. (2016). MISBRUIK VAN OMSTANDIGHEDEN DALAM PERKEMBANGAN HUKUM KONTRAK. *Jurnal Hukum Unsrat*, *22*(6), 46–59. Retrieved from https://ojs.unud.ac.id/index.php/kerthapatrika/article/view/51367
18. Purbasari, P. (2018). Kajian Perlindungan Employee Invention Terhadap Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) dalam Perjanjian Kerja. *Meta Yuridis*, *1*(2), 39. https://doi.org/http://dx.doi.org/10.26877/m-y.v1i2.2865
19. Rakasatutya, F., & Aprilianto, S. (2020). The Authority to Rule Out A Case (Deponering) by The Attorney General. *Talent Development and Excellence*, *12*(SpecialIssue2), 378–384.
20. Ramadianto, A. Y. (2017). Informed Consent As The Agreement In Therapeutic Contract Between Physician And Patient. *Simbu Cahaya*, *24*(1), 5248–4279. https://doi.org/10.1136/bmj.289.6450.937
21. Salmon, H. (2020). Essentiality Of Governmental Authority (Political Construction Of Local Government Law). *Talent Development and Excellence*, *12*(2), 1444–1456.
22. Saputra, R. (2016). *Kedudukan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) dalam Hukum Perjanjian di Indonesia*. Yogyakarta: Gadja Mada University Press.
23. Satrio, J. (2001). *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian Buku I*. Bandung: PT. Citra Aditya Bakti.
24. Sedyo, P. (2016). Penerapan Batas-Batas Wanprestasi Dan Perbuatan Melawan Hukum Dalam Perjanjian. *Jurnal Pembaharuan Hukum*, *3*(2), 287. https://doi.org/http://dx.doi.org/10.26532/jph.v3i2.1453
25. Setiawan, R. (1994). *Pokok-Pokok Hukum Perikatan*. Bandung: Binacipta.
26. Subekti. (1996). *Hukum Perjanjian*. Jakarta: Pt Intermasa.
27. Sulastin, I. C., & Atalim, S. (2019). Analisis Mengenai Kedudukan Perjanjian Nominee Antara Karpika Wati (Wni) Dan Alain Maurice Pons (Wna) (Contoh Putusan Nomor 3403 K/Pdt/2016). *Jurnal Hukum Adigama*, *2*(2), 13.
28. Syaifuddin, M. (2012). *Hukum Kontrak Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (seri Pengayaan Hukum Perikatan)*. Bandung: Mandar Maju.
29. Tablujan, B. S., & Low, V. D. T. (n.d.). *Singapore Business Law* (6th Editio). Singapore: Business Asia Law.
30. Winarsi, S., Abrianto, B. O., Nugraha, X., & Danmadiyah, S. (2020). Optimization the Role of APIP (Government Internal Supervisory Apparatus) in the Region as a Preventive Action in the Criminal Act of Corruption in Indonesia. *International Journal of Psychosocial Rehabilitation*, *24*(8), 1376–1385. https://doi.org/10.37200/IJPR/V24I8/PR280151
31. Wirjono, P. (2003). *Asas-Asas Hukum Pidana di Indonesia*. Bandung: Refika Aditama.

ISSN 1869-0459 (print)/ISSN 1869-2885 (online)

http://www.iratde.com