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Legal Certainty Against Cancellation of Agreement Using the Element of Abuse of Circumstances

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Abstract: The aim of this study is to examine a verdict that involves the element of Misuse of Circumstances or Undue Influence, which is a crime that cannot be directly observed but significantly affects an agreement, as an event where one person promises something to another, or where two people promise each other to do something. Misuse of Circumstances is an act where the parties are bound by an agreement that one party has an unbalanced position and the other party exploits their weakness to gain an advantage. This research is conducted using a normative juridical method, which involves examining various formal legal regulations such as legislation and literature containing theoretical concepts, which are then linked to the issue to be discussed in this journal. The research findings in this verdict indicate that there has been a misuse of circumstances in the agreement between the parties involved in this decision. Due to the misuse of circumstances, the agreement of Sale and Purchase between the parties can be annulled.

Keyword: Agreement, Undue Influence, Sale and Purchase.

INTRODUCTION

The agreement includes a binder for the parties who make it, so it is obligatory to carry out or perform the agreement as agreed upon. In carrying out the agreement, the parties should have good faith, in order to create justice and legal certainty. This shows that the agreement can create a legal correlation between the parties, because the agreement makes the parties bind themselves and are obliged to carry out the agreement. An agreement is an event in which one party makes a promise to another party, or in which both parties promise each other to carry out a certain action. From this event, a correlation is formed between the two parties. Agreement includes an act between two or more parties to bind themselves. In correlation with that, it is regulated in the provisions of Article 1313 of the Civil Code which states that, "An agreement is an act by which one or more people bind themselves to one or more other people".

The running of an agreement must be based on the valid requirements of an agreement stipulated in Article 1320 of the Civil Code, namely “For the validity of an agreement, four conditions are required:

1. Agreement of those who bind themselves;
2. Capacity to make an agreement;
3. A specific thing; and
4. A lawful cause”.

In the implementation of agreements, disputes are often found, because of the position of a party that is weak compared to other parties who have a higher or bargaining position. This makes the agreement a defect of will, namely the agreement is invalid or imperfect. An agreement can be canceled if a party cannot carry out the agreement properly or is forced to carry it out, then the agreement is invalid and contains a defect of will, this is in line with the provisions in Article 1321 of the Civil Code, namely “No agreement is valid if the agreement is given due to delusion, or obtained by force or fraud”. The existence of an unbalanced or unequal position raises the opportunity to take advantage of the weaknesses of the party who has a weak position to achieve certain goals or benefit themselves, so that it will raise new problems it is called *misbruik van omstandigheden* or Abuse of Circumstances. Abuse of circumstances (*misbruik van omstandigheden / undue influence*) includes an act where the parties are bound by an agreement, one party has an unbalanced position so that the other party takes advantage of this weakness to take advantage. Misuse of this condition can cause the agreement to lose its legal force, especially if the agreement is based on a reason that is contrary to good morality and the utilization of conditions that make the opposing party unable to make decisions independently. This makes the other party unable to exercise its free will in determining the contents of the agreement making the other party inevitably carry out the agreement by force or pressure, certainly not based on the principle of freedom of contract which is regulated in 1338 paragraph 1 of the Civil Code which states that “All agreements made legally apply the law to those who make them”.

Agreements that have been agreed bring legal consequences or consequences that the parties who have been bound in the agreement, are obliged to carry out the agreement. If a party feels that the agreement is detrimental to him, then the party who feels disadvantaged can carry out a lawsuit to the court regarding the cancellation of the agreement. The agreement that binds the two parties actually makes the element of abuse of circumstances or *misbruik van omstandigheden* can be applied when a party is disadvantaged in certain conditions such as being pressured or forced to agree to the agreement.

METHOD

This research adopts the juridical-normative method, which is document research that utilizes legal sources, such as laws and regulations (statute approach), court decisions or rulings, legal theories, and opinions of legal experts. In addition, this study also applies the case study method by analyzing the legal reasons used by judges in making case decisions (*ratio decidendi*). The method of analysis applied is qualitative analysis, which focuses on legal interpretation to determine whether legal materials, especially primary legal materials, contain a void norm or a vague norm. The conclusions in this study are drawn deductively, by taking legal principles or principles that are general in nature and then formulating them into more specific conclusions based on the problems studied.

RESULTS AND DISCUSSION

Abuse of Circumstances as a Basis for Cancellation of Agreement

An agreement is formed according to the principle of freedom of contract between two parties with equal positions. In line with the principle of freedom of contract in the agreement, both parties have the freedom to determine the contents of the agreement

according to the principle of freedom of contract as regulated in book III which adheres to an open system, Article 1338 paragraph 1 states that “All agreements made legally apply as laws for those who make them”. The principle of freedom of contract means that each individual has the freedom to make agreements with various conditions, as long as the agreement is made legally, carried out in good faith, and does not contradict public order and norms of decency. The agreement becomes the basis of a civil correlation that binds itself between the parties who make it, like a law for both parties (*Pacta Sunt Servanda*). In determining the contents of the agreement, the parties must have limitations in making the agreement, the limitations of an agreement are regulated in Article 1339 of the Civil Code, namely “An agreement is not only binding for things that are expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom, or law”. In addition to paying attention to the contents and limitations of an agreement, the parties must also pay attention to what the parties have agreed to. This affects the position of the parties who are balanced or unbalanced so that, when closing an agreement, it does not harm anyone. In the implementation of agreements, disputes are often found, because of the position of a party that is weak compared to other parties who have a higher or bargaining position.

This makes the agreement defective in will, that is, the agreement is invalid or imperfect. An agreement can be canceled if one of the parties cannot carry out the agreement as it should or is forced to carry it out, then the agreement is invalid and contains a defect of will, this is in line with the provisions in Article 1321 of the Civil Code, namely “No valid agreement, if the agreement is given due to oversight, or obtained by force or fraud”. The existence of an unbalanced or unbalanced position creates an opportunity to take advantage of the weaknesses of parties who have a weak position to achieve certain goals or benefit themselves, so that it will raise new problems called *misbruik van omstandigheden* or Abuse of Circumstances.

Misbruik van omstandigheden / undue influence (Abuse of circumstances) includes an act where the parties are bound by an agreement, one party has an unbalanced position so that the other party takes advantage of the weakness to take advantage. This abuse of circumstances can cause an agreement to lose its legal force, especially if the agreement is based on reasons that are contrary to good morality and the utilization of conditions that make the other party incapable of making independent decisions. It makes the other party unable to exercise its free will in determining the contents of its agreement making the other party inevitably carry out the agreement under duress or pressure, certainly not based on the principle of freedom of contract which is regulated in 1338 paragraph 1 of the Civil Code which states that “All agreements made legally apply the law to those who make them”.

Agreements that have been agreed by all parties have legal consequences that require each party to fulfill the obligations agreed upon in the agreement. If a party feels aggrieved by the agreement, the aggrieved party has the right to file a lawsuit to the court to demand the cancellation of the agreement. The agreement that binds both parties actually makes the element of misuse of circumstances or *misbruik van omstandigheden* applicable when a party is disadvantaged in certain conditions such as being pressured or forced to agree to the agreement.

Analysis

Decision No. 2/Pdt.G/2022/PN Lmg is based on an act of default in the purchase of fish farm land and fish farm business. Civil case No. 2/Pdt.G/2022/PN Lmg was filed by the Heirs of X against Y for default, namely the plaintiff bought land at the end of August 2013 and bought XY-1 fishpond land sold by Z for 2,000,000,000 (Two Billion Rupiah), X and Z carried out transactions for XY-1 fishpond land for 10,000,000 (Ten Million Rupiah) as proof of completion for the purchase of land or known as DP (Down Payment). Then X notified Y of the purchase of the XY-1 fishpond land, and made a joint ownership agreement that the

payment of the rest of the fishpond land will be paid using joint capital money and this fishpond land will belong to X, Y and A according to this verbal agreement was witnessed by Z as the seller and also agreed by Y, then Y asked for help from A to take care of the payment to Z. In fact, Y violated what had been promised. In reality, Y violated what had been promised, namely Y wanted the fishpond land for himself, not for joint ownership between X, Y and A based on an agreement that had been made together.

In the decision, there are facts that parties X and Z were in unfavorable conditions at the time of making a joint ownership agreement, be it an oral agreement or a written agreement. An agreement that occurred in the case was a Sale and Purchase Bond (IJB) agreement made in front of a notary and witnessed by witnesses. The panel of judges canceled the sale and purchase bond on the basis that it was not based on an oral agreement between parties X and Y, which was proven by the testimony of witnesses in the trial, so the judge confirmed the default.

However, I would like to review the cancellation of the joint ownership agreement between the plaintiff or defendant from a different perspective, namely the element of misuse of circumstances (*misbruik van omstandigheden*), and emphasize the point that a weaker party was economically and psychologically experienced by X and Z, so that Z was forced to agree to the agreement and sign the sale and purchase bond agreement. This abuse of condition relates to the process of forming an agreement, where a party is in a psychologically and economically weak position prior to the execution of the agreement. In this situation, parties X and Z were taken advantage of by party Y to gain benefits through the agreement. Because of this psychological and economic weakness, this party does not have freedom of will in making an agreement, as stipulated in the provisions of Article 1338 paragraph 1 of the Civil Code, therefore party Z has no other choice but to agree or sign the sale and purchase agreement.

The validity of an agreement must be based on the legal requirements based on Article 1320 BW which has 2 (two) elements, namely subjective elements and objective elements. The difference in the validity of an agreement makes a difference in legal consequences. Agreements that do not meet the subjective requirements can be canceled while agreements that do not meet the objective requirements become null and void.

The subjective element of the first condition, namely the existence of an agreement to bind themselves, requires that in the process of drafting the agreement, both parties must have freedom of will. Therefore, for the agreement to be valid in the agreement, both parties must be able to make decisions freely without pressure or coercion. According to Article 1321 of the Civil Code, it is stated that "No agreement is valid if the agreement is given by mistake or obtained by force / fraud". The second requirement in terms of eligibility to make an agreement is that the individuals involved must be legally capable. A person is considered legally capable if he is able to take responsibility for his legal actions. According to the law, a person is considered legally competent if he/she has reached the age of 18 or has been married before. Conversely, a person is considered legally incapable if they meet the criteria listed in Article 1330 of the Civil Code, namely: a) individuals who are not yet adults; b) individuals who are under guardianship; c) women in certain matters stipulated by law, and in general, everyone who is prohibited by law from making certain agreements. However, along with developments, wives can now carry out legal actions based on the provisions in Article 31 of Law Number 1 Year 1974 and Supreme Court Circular Letter Number 3 Year 1963.

The objective element in the third condition says a certain thing: A certain thing in the agreement is the goods that are the object of an agreement. Article 1333 paragraph 1 of the Civil Code states that "An agreement must have as its subject matter an object of at least specified type". This means that everything agreed upon in the agreement, including the rights and obligations of each party, must be clear and identifiable. The goods that become the object of the agreement must at least be able to determine its type. The fourth requirement

is the word *halal*: Related to this *halal* cause is regulated in Article 1337 of the Civil Code, which states that “A *halal* cause is prohibited if it is prohibited by law, or if it is contrary to decency or public order.”

Thus, when a person agrees to an agreement, he automatically agrees to all the consequences that will arise from the agreement. This means that he wants or accepts the impact of the agreement he has agreed to, or in other words, he agrees to be bound by the results of the agreement. However, the agreement in that case is a true agreement, namely an agreement that is not misguided, not forced, and not deceived based on Article 1321 of the Civil Code, namely “There is no valid agreement if this agreement is given due to misguidance or obtained by force or fraud.”

If an agreement contains elements of mistake, fraud or coercion, then the agreement on the agreement is considered imperfect, so it can be called a defect of will. In addition to these three elements, there is another form of defect of will that is not regulated in the Civil Code, namely *Undue Influence / Misbruik Van Omstandigheden*.

Abuse of circumstances includes a condition of abuse of circumstances or actions carried out by a party in making an agreement with the aim of taking advantage by utilizing one party who has an unbalanced position. Abuse of circumstances is a factor that interferes with or limits a person's ability to make decisions freely, which includes the requirements in determining the contents of the agreement and agreement between the two parties, as stipulated in Article 1338 paragraph 1 of the Civil Code. According to J. Satrio, abuse of circumstances occurs if a person knows or should know if the other party is affected by special conditions, such as dependence, emergency, carelessness, or abnormal mental conditions, which encourage the legal action, even though the information should prevent the action from occurring.

Positive law in Indonesia, especially in the Civil Code, has not provided specific rules regarding the abuse of circumstances as a reason to cancel the agreement. In Indonesia, the cancellation of an agreement still refers to the provisions of Article 1321 of the Civil Code, which stipulates that “No agreement is valid if the agreement is given by mistake, or obtained by force or fraud.”

Although the doctrine of abuse of circumstances has not been explicitly regulated in the Civil Code, in jurisprudential practice, abuse of circumstances has been used as a reason to cancel an agreement. In Indonesia, this doctrine has been developed and supported by a number of judicial decisions, which state that agreements formed due to the influence of abuse of circumstances are considered as defects of will and can be canceled. For example, Supreme Court Decision No. 3431 K/Pdt/1985 dated March 4, 1987, which related to interest on money loans and collateral that was not based on decency and fairness, shows the application of the doctrine of abuse of circumstances. This case, known as the “pension book case”, reflects the application of the principle of abuse of circumstances in relation to the elements of loss and abuse of opportunity by the plaintiff, the creditor.

Developments in the *Nieuw Burgerlijk Wetboek (NBW)* can be seen from the addition of new reasons for canceling an agreement. The provisions regarding the reasons for canceling an agreement are regulated in Book 3 Article 44 paragraph 1, which include: a. threat (*bedreiging*); b. fraud (*bedrog*); c. *misbruik van omstandigheden* (abuse of circumstances).

Based on the *Nieuwenhuis* theory, there are four conditions for the occurrence of abuse of circumstances, namely: a. Special circumstances (*bijzondere omstandigheden*), such as emergencies, dependence, carelessness, unstable mental conditions, and inexperience; b. Clear facts (*kenbaarheid*), where a party knows or should know if the other party is in a special condition and is encouraged to agree to an agreement; c. Abuse (*misbruik*), which is when a party continues to carry out an agreement even though he knows he should not carry it out; d. Causal correlation (*causaal correlatie*) (causal correlation). Causal correlation

(causaal verband), which shows that without the abuse of circumstances, the agreement would never have occurred.

An agreement has no legal force and can be canceled if the agreement that has been made contains elements of abuse of circumstances. To determine whether abuse of circumstances exists or not, it is necessary to look at aspects of the formulation of the agreement, namely the comparison between achievements and counterproducts imposed on the unbalanced parties. In addition, it is also necessary to consider aspects of the process of forming an agreement, where abuse of circumstances occurs because there are parties who take advantage of a more dominant position, either economically or psychologically.

As in this case, the basis for the formation of a legal correlation between the two parties is the existence of cooperation and agreements carried out by X and Y. The cooperation in question is cooperation in managing fish ponds under the name XY-1, which is divided into two forms of cooperation agreement, namely fish pond profit sharing and fish pond land purchase agreement. The fish pond land purchase agreement is further divided into two forms of agreements, namely the agreement between X, Y, and A to buy fish pond land with the middle money or the proceeds of the fish pond business and the agreement in the form of a Sale and Purchase Bond (IJB) between Y and Z. That in the case there are two agreements, namely the agreement between X and Y, namely an oral agreement regarding the purchase and distribution of grouper fish pond land, and agreements - oral or written agreements between buyers, namely X, Y, and Z. An agreement that occurred in the case was a Sales and Purchase Bond (IJB) agreement made in front of a notary and witnessed by witnesses.

First, the agreement between X, Y, and Z regarding the purchase of fish pond land, that X and Y have agreed that the purchase of the pond land is carried out using the middle money, namely the profits obtained from the fish pond business. X and Y agreed that the purchase of the land will be divided into three ownership after the name is reversed, namely 40% belonging to Y, 30% belonging to X, and 30% belonging to A. There is an agreement between X and Y who then paid a down payment or DP as a sign of the purchase of fish pond land amounting to Rp 10,000,000.00 to Z so that the land is not sold to other parties. This agreement is certainly valid and binding for both parties between X and Z based on the provisions of Article 1320 of the Civil Code, the agreement between X and Y can be classified as an oral agreement, namely an agreement that is not written and only based on the agreement of the parties. Oral agreements are carried out by the parties who make them, because the parties are obliged to obey what they have agreed. As long as the agreement is declared valid based on Article 1320 of the Civil Code. With regard to the second agreement, namely the agreement in the form of a Sale and Purchase Bond (IJB) between Y and Z, which before the sale and purchase bond was made there was actually a commitment between consisting of X, Y, and A. However, this commitment was only continued individually and separately by Y as the buyer where the XY-1 land wanted to be owned by Y himself.

The sale and purchase bond is based on the elements contained in Article 1320 BW, namely, the first requirement is an agreement to bind itself, namely that the parties to the making of the sale and purchase bond, namely Y and Z, have agreed, but the agreement here is an agreement because they are forced to sell the fish pond land at a price of 2,000,000,000.00 (Two billion rupiah), this agreement should be based on their oral agreement that this pond land becomes joint ownership, but Y utilizes the condition of Z to achieve his goal of having fish pond land. So X, and A felt aggrieved because this oral agreement was not based on their initial agreement. The second requirement is the ability to make an agreement, namely that in this case the parties are legally capable so that they can make an agreement.

The third requirement of the word a certain thing is a certain thing in the agreement is that in this case the parties promise a clear object, namely the purchase of fishpond land. The

fourth condition of the word halal is that in this case the parties agreed on the purchase of fishpond land and this is not at all contrary to statutory regulations or contrary to public order or decency based on the provisions of 1337 Civil Code. Therefore, if based on the provisions of Article 1320 of the Civil Code, the sale and purchase agreement executed by Y and Z is a valid and binding agreement for the parties.

Of these two agreements, namely the agreement between X, Y, and Z, then the agreement in the form of a sale and purchase bond between Y and Z, can potentially be canceled due to the existence of elements of abuse of circumstances (*misbruik van omstandigheden / undue influence*) during the making of the agreement. If constructed, the making of the Sales and Purchase Bond can actually be categorized as an act of default by Y, because Y did not carry out the oral agreement between X, and Y who had agreed to buy the land with the profit of the fish pond business and including the common land.

That in such cases, the sale and purchase bond agreement between Y and Z reduces the freedom of contract or is not in line with the principle of freedom of contract that has been stipulated in the provisions of Article 1338 paragraph 1, then in that case Z should not have signed the sale and purchase bond but Z signed the sale and purchase bond but because of special circumstances (*bijzondere omstandigheden*) to carry out legal actions and Y abused the situation or took advantage of the position of the seller, namely Z. That the position between X and Z is certainly different, an unbalanced situation in a sale and purchase bond agreement and in such conditions the strong Y party takes advantage of the position of the weak Z party. Z, who was in a weak position, did not have the opportunity to discuss thoroughly about his rights and obligations in the existing agreement.

That Z has committed to sell the fish pond land to X, Y, and A but in reality that Y is a person who has a stable economy and all the finances of the fish pond business is held entirely by Y, so that Z feels there is no choice to refuse to agree to the sale and purchase bond especially since there is already a down payment or DP worth 10,000,000.00 (Ten million rupiah) paid by X as proof that the XY-1 pond land belongs to X, Y, and A not to be traded to other parties. Y consciously knew or should have known that Z was in a special condition such as emergency, dependency, limitation in thinking deeply, or lack of experience in carrying out legal actions. Although Y realized or should have realized that Z might be able to act in good faith in carrying out the agreement, the condition still affected Z. Y must have known that the basis for the purchase of the pond land was a joint purchase paid for using the profits of the fish farm business. However, Y suddenly invited Z to sign the sale and purchase bond for the purchase of the fishpond land with a specific purpose and purpose. In carrying out an agreement, we should not forget that we must act in good faith based on the provisions of 1338 paragraph 3 of the Civil Code, but in this case Y did not act in good faith towards X.

X and Z are parties who are in a weak position both psychologically and economically, either before the implementation of the agreement or in the making of the sale and purchase bond, which party Z is used by party Y to benefit from the agreement. Because of this psychological and economic weakness, Z and X do not have freedom of will in formulating or determining the contents of the agreement. Their freedom of will was not fully realized due to socio-economic conditions and other factors during the agreement process. This is related to the principle of agreement law, namely the principle of freedom of contract, which requires the free will of all parties involved in the agreement. So that a party is not free in determining the contents of his agreement, it is contrary to the provisions of 1338 paragraph 1 of the Civil Code. This is because Y is a very strong party economically and psychologically. In fact, all operations, bookkeeping, pond profits, and fish farm capital are fully controlled and managed by Y, so that neither Z nor X can do anything because they have already signed the sale and purchase bond.

Thus, if an agreement contains an element of abuse of circumstances, the party who feels aggrieved or the party who has given a statement containing a defect of will can submit a request to cancel the agreement, so in that case Z together with X can sue Y on the basis of abuse of circumstances because there is an element of abuse of circumstances either before the agreement or at the time of making the agreement. The element of abuse of circumstances can be used as a reason to cancel the agreement, apart from the other three old factors, namely coercion, oversight, and error, each of which affects a person's freedom of will in contracting. An agreement that contains a defect of will is an agreement that from the beginning of its formation has contained defects in the will. In an agreement that has a defect of will, the will expressed in the agreement is not based on a pure will, but is affected by other parties who take advantage of existing circumstances. This is in line with the abuse of circumstances stipulated in NBW book 3 article 44 paragraph 1, where there is an abuse of circumstances, the agreement between Y and Z can be canceled.

CONCLUSION

This agreement between parties X, Y, and Z has occurred abuse of circumstances. Abuse of circumstances includes a condition or action carried out by a party in making an agreement with the aim of taking advantage by utilizing one party who has an unbalanced position. X and Z are economically unequal parties under Y, making X and Z psychologically weaker so that it is utilized by Y by making Z to immediately sign the Sale and Purchase Bond (IJB) of fish pond land.

Because there has been an abuse of circumstances, the IJB agreement between Y and Z can be canceled. That the agreement between X and Y is not running properly, it is certainly not based on the agreement that has been made between X and Y. The agreement stipulated in 1321 Civil Code is that there is no valid agreement if the agreement is given due to delusion, or obtained by force or fraud.

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