

JURIDICAL REVIEW OF ABUSE OF CONDITION (MISBRUIK VAN OMSTANDIGHEDEN) AS REASON FOR CANCELLATION OF A DEBT AGREEMENT

Brigitta Difania Dyarisca^{1*}
Wiwin Yulianingsih²

^{1,2}Law Study Department, Faculty of Law UPN “Veteran”, Jawa Timur, Indonesia

Abstract

This study aims to find out the reasons for the cancellation of the receivables debt agreement containing elements of Misbruik Van Omstandigheden and the legal consequences for the parties. In this study, normative juridical research methods were applied to examine laws and regulations, legal rules, and legal principles to answer the problem of misuse of the situation. The source of the data is Judgment Number: 778/Rev.G/2017/PN. Jkt.Cells, laws and regulations, official documents, government regulations, and correlated literature. The results of the study concluded that the debt receivables agreement was made between the Plaintiff, Defendant, Co-Defendant I, Co-Defendant II and Co-Defendant III in Judgment Number: 778/Rev.G/2017/PN. Jkt.Sel about the misuse of circumstances in the debt receivables agreement that does not meet the subjective requirements is contained in Article 1320 of the Civil Code, so this agreement is considered an abuse of circumstances and it can be said that this agreement is null and void. As a result of the legal annulment of an agreement made because there is an abuse of the defective circumstances of the will in an agreement in which one of the parties to the agreement has a superior position, the agreement made and agreed upon becomes a null and void agreement with an element of abuse with economic superiority.

Keywords: Abuse of circumstances, debt receivables agreement, cancellation

1. INTRODUCTION

^{1*}Corresponding author, email: brigittadifania04@gmail.com

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Humans are social creatures and cannot live alone without the support or help of others, either while doing something or doing something connected with someone around to fulfill all that life needs. These needs are primary, secondary and tertiary needs. In starting an agreement, one of the conditions for a valid agreement is the agreement or conformity of each party. It can be seen that the agreement exists when there is an agreement between two parties. It is hereby emphasized in Article 1320 of the Civil Code for the validity of the agreement, four conditions are needed: first, it is agreed for those who bind themselves. Second, the ability for those who make an engagement. Third, on a special matter. Fourth, for lawful reasons."

According to Subekti, an agreement is something that is very meaningful in an agreement, upon reaching an agreement as to the main points of the agreement, so the agreement has been born." The agreement in this agreement is based on article 1322 of the Civil Code, it is stated "Mistakes do not result in the cancellation of an agreement other than if the error occurs regarding the nature of the goods that are the subject of the agreement." With this, the agreement is not allowed by coercion, oversight/mistake, and fraud. In making an agreement, it is not allowed to have an element of coercion on one party, which can cause a loss to the other party, contained in Article 1321 of the Civil Code "there is no valid agreement, if the agreement was given by mistake, or obtained by coercion or fraud".

A legal relationship is created because of an agreement between the parties as members of the community to carry out the agreement. Humans as legal entities interact to create bonds between them. Agreements can arise by agreement or by law. Engagement leads to agreement formation. A contract as referred to in Article 1313 Book 3 of the Civil Code: "An agreement is an act in which one or more people bind themselves to one other person".

The agreement in the preparation of an agreement must be a unanimous and useful agreement. In practice, often the agreement is the result of coercion, fraud, oversight, which can be called a defect of will. Defects of will occur in a person in an emergency, urgency, and short-sighted. It can be referred to as *Misbruik Van Omstandigheden* or abuse of circumstances. The birth of an agreement is due to an agreement that is not based on the actual will, and the agreement arises because it is wrong, pressured, cheated, or influenced by other people.

The agreement has legal consequences that can be brought to a court of competent jurisdiction to cancel it. Appropriate consent is of course consent that is not lost, forced, cheated or given as a result of abuse of circumstances. An agreement in an agreement is a meeting of two wills given by the parties in an agreement. If such an agreement exists and there is an element of defect in the will, the consequences of the agreement can be canceled. *Misbruik Van Omstandigheden* occurs in everyday life in the community, especially in debt agreements. There

are many cases of abuse of circumstances decided by the court in the agreement. Misbruik Van Omstandigheden is carried out by one of the parties which can cause the other party to feel aggrieved, then submits the cancellation of the agreement to be free from all these losses.”

In this thesis research there is a case in Decision Number: 778/Pdt.G/2017/PN.Jkt.Sel there is a debt agreement based on the Misbruik Van Omstandigheden. In the decision, Misbruik Van Omstandigheden, in which the defendant asked Plaintiff I and Plaintiff II to sign the Deed of Recognition of Debt Number: 63, as a condition for the settlement of GSEI's debt transaction to be carried out by Co-Defendant II. But the signing was based on compulsion in conditions that were difficult to refuse. Which is where GSEI's condition is overshadowed by the threat of bankruptcy if it is unable to settle its debts.

So, based on this problem, the author is interested in carrying out legal writing and research with the title "Misbruik Van Omstandigheden Juridical Review as Reasons for Cancellation of Reasons for Debt Agreements".

2. METHODS

In this research, the writer uses normative juridical research (legal research). This research was conducted because the author studied the Misbruik Van Omstandigheden. There is another type of approach used by researchers, namely using a statutory approach. The data analysis used is a qualitative approach with primary data and secondary data. The source of the data used is secondary data which is done by researching library materials.

3. RESULTS AND DISCUSSION

3.1 Reasons for Cancellation of General Accounts Payable Agreement

In contract law, article 1320 of the Civil Code regulates the conditions for the validity of an agreement, namely responsibility to the person who made it, that the agreement must be reached, that there must be certain things and valid reasons. These conditions are the basis for a person to enter into a contract. If any of the conditions are not met, the agreement may be declared void or cancelled. All agreements are basically made because there is an agreement from the parties, but many of these agreements contain violations of the rules of the agreement, so the content of the agreement does not necessarily reflect a sense of justice in it. An agreement is a relationship between two people to promise each other to do something. Article 1320 of the Civil Code regulates four conditions so that an agreement is considered valid, namely:

1. Agree on those who bind themselves.
2. Able to make an agreement

There is Article 1330 of the Civil Code which can be referred to as someone who is not capable of making an agreement:

- a. "An immature person. In this case, Article 330 of the Civil Code explains that competence is measured if the parties are under 21 years of age, are married and are reasonable. Therefore, anyone over the age of 21 can enter into a contract with full responsibility," and according to the Marriage Law, Law No. 1 of 74 "Abilities for men are at the age of 19 years and for women at the age of 16 years" .
- b. "The one who is under mercy. An underhanded person who takes irregular initiatives, appears mature but is unable to take care of himself and others, and is rude and wasteful. A guardian must be represented by a guardian."
- c. A married woman who has been determined by law is not allowed to make consent Regarding a certain matter.

3. Halal reasons

"That the agreement is valid, of course, it must fulfill the conditions stated in the law. These conditions consist of subjective conditions, and objective conditions. Cancellation of the agreement can ask one of the parties who feel aggrieved in the agreement. There are legal consequences of not fulfilling Article 1320 of the Civil Code, namely: First, the agreement made violates the objective conditions for the validity of the agreement in the provisions of Article 1320 Paragraphs 1 and 2 of the Civil Code, "then if the conditions 1 and 2 do not exist, the agreement is still valid but can be canceled. Second, the agreement made violates the objective conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code paragraphs 3 and 4, the object requirements regarding goods. If the objective conditions are not met, then the agreement is null and void, i.e. the agreement is considered to have never existed.

"If you look at Article 1321 of the Civil Code "There is no valid agreement if the agreement is given an error, or is allowed by coercion or fraud." Thus, several examples of violations mentioned in the article can be classified, such as coercion that violates the requirements of Article 1320 of the Civil Code and inability to violate the requirements of Article 1320 of the Civil Code, namely subjective requirements. Then it can be stated that the agreement can be canceled by the party who has previously agreed to bind himself in an agreement. Then in Article 1321 of the Civil Code it is mentioned again about mistakes and

fraud that violates condition 3, namely the objective requirements in Article 1320 of the Civil Code. So if it violates the objective conditions, the agreement is considered to have never been born in the eyes of the law.

The results of interviews conducted by the author to the Deputy Leaders of BNI (Bank Negara Indonesia) by Mrs. Nanik Koernianingsih, S.E, M.AK, M.B.A. in Semarang City on June 4, 2022 which discussed the debt agreement and the cancellation of accounts payable. Factors in the occurrence of debt or credit lending in banking are a difficult economy and capital to build a business. For example, KUR (People's Business Credit), there are 2 types of KUR, namely "

1. KMK (Working Capital Credit) for a period of 4 years
2. KI KUR (Investment Credit) for a period of 5 years, subject to a 1% contract signing fee
3. Employees may not have credit card loans

KUR does not have a guarantee, but to maintain the good faith of the community, the guarantee is 70% of the value lent to the bank. KUR is guaranteed with an insurance so if the debtor is unable to pay off or there are problems or jams there is actual insurance, but the bank deliberately does not tell the debtor as the borrower openly if there is insurance, because so that the debtor has good faith to immediately pay on time according to agreement.

"It is rare for an agreement to be canceled because it has been checked beforehand. However, there has been a cancellation due to the Program Credit Information System (SIKP), when checking info on the bureau, it turns out that the debtor has a loan at another bank, KUR cannot have a loan from another bank. Then there was an error from the creditor, namely not being careful with the information on Bank Indonesia SLIK OJK, it turned out that there was a problem with Call 3, I didn't know when we gave SLIK OJK / BI Info, at the time of the update there were no loans at other banks that were in arrears but were checked by the auditor every day, so it becomes a warning, which can lead to the cancellation of the credit agreement."

3.2 Reason for Cancellation of Accounts Payable Agreement Due to Misuse of Circumstances (Misbruk Van Omstandigheden)

Regarding who has the authority to apply for a cancellation of the agreement, which is seen in the provisions of Article 1449 of the Civil Code, namely "providing an opportunity aimed at canceling the agreement to the party to whom error, coercion, and fraud has been given, so based on an extensive interpretation of Article 1449 of the Civil Code, the party who has undergoing abuse of circumstances that is authorized to ask for the cancellation of the agreement, but not to a dishonest person."

“An agreement can be canceled due to a defect of will. Defects of will are formed when a person has committed a legal event,” but that will is imperfectly formed. This imperfectly formed will can arise because:

1. Threats/coercion (bedreiging, dwang);
2. error/misguidance/mistake (dwaling);
3. fraud (bedrog); and
4. abuse of circumstances (misbruik van omstandigheden)

Seen in the provisions of Article 1449 of the Civil Code, namely "providing an opportunity aimed at canceling the agreement to the party to whom error, coercion, and fraud has been given, so based on an extensive interpretation of Article 1449 of the Civil Code, the party who has undergoing abuse of circumstances that is authorized to ask for the cancellation of the agreement, but not to a dishonest person."

Then in Article 1321 of the Civil Code, namely an agreement that can be canceled if agreed, which is the first condition regarding the validity of the agreement in Article 1320 of the Civil Code given because of the existence of,

- 1) mistake (dwaling),
- 2) Coercion (dwang),
- 3) Fraud (bedrog).

In Decision Number: 778/Pdt.G/2017/PN.Jkt.Sel regarding the cancellation of the debt agreement due to misuse of circumstances, it was found in a civil case that was experienced by Maher Algadri who was the president director and shareholder of PT. Golden Spike Energy Indonesia (GSEI) as the plaintiff, who experienced difficulties in paying debts to Co- Defendant II, then Co-Defendant II also received a credit facility restructuring but still had difficulty paying off the debt. The Plaintiff then contacted and asked the Defendant for help, hoping that the Defendant could provide a way out to pay off GSEI's debt to Co-Defendant II. The Defendant then stated that he would assist GSEI in relation to GSEI's debt to Co- Defendant II, which at that time was still outstanding in the amount of USD 10,303,843.52 (ten million three hundred three thousand eight hundred forty-three US Dollars and fifty two cents). Which will be repaid by Defendant III, by means of the Plaintiff providing guarantees for a total of 15 plots of land located in the village of Kedewatan, Gianyar Regency, Bali Province. This guarantee is sold at a selling price equal to the total debt of GSEI. From the discussion above by the plaintiff, defendant and co-defendant, a meeting was held where an agreement was reached that GSEI's

debt was paid off by co-defendant III to co-defendant II. Previously, the defendant also conveyed to the plaintiff that on the day of settlement of the debt to appear before Indra Gunawan, S.H., M.Kn., Notary (also Defendant I), a notary appointed by the defendant to sign the deed of binding sale and purchase of 15 parcels of land and other deeds. to complete the transaction. Then before the co-Defendant 1, the plaintiff was presented by the defendant, namely the deed of statement number 60 and deed of recognition of debt number 63. In the Deed of Recognition of Debt Number 63 the total debt was Rp. 15,898,631,193.15 (fifteen billion eight hundred ninety eight million six hundred thirty one thousand one hundred ninety three point fifteen Rupiah). In the defendant's explanation, the deed appeared as compensation due to the lack of land area in 15 plots of land purchased by co-defendant III. Whereas what was stated by the defendant in the deed of acknowledgment of debt is not true, it is not in accordance with the reality that occurred. Due to the Plaintiff's debt to co-Defendant III amounting to USD 10,303,843.52 (ten million three hundred three thousand eight hundred forty three US Dollars and fifty two cents), but in the Deed of Recognition of Debt NO.63 if it is considered as compensation for the lack of land sold , then the debt is to co-defendant III not to the Defendant."

That even though the Defendant knew that the Plaintiff never owed the Defendant, and the payment of GSEI's debt by the Co-Defendant III, the Defendant still requested that Plaintiff II sign the Deed of Recognition of Debt Number: 63, as a condition for the settlement of GSEI's debt transaction with the Co-Defendant III. The Plaintiff is in a difficult position to refuse, because it is already bound by a commitment to Co-Defendant II to pay off GSEI's debt on that day. The situation of GSEI, which is overshadowed by the threat of bankruptcy if it is unable to settle its debts, has forced GSEI and Plaintiff I as the President Director and owner of GSEI to carry out debt settlement transactions at BNI and the sale and purchase of the land. So that finally the Plaintiff complied with the Defendant's wish by signing the Deed of Debt Recognition Number: 63 which was presented by the Defendant. In signing the deed of acknowledgment of debt, there must be a guarantee for the repayment of the debt to the defendant (who originally never had a debt), the guarantee is in the form of land and buildings belonging to the plaintiff. In the end, Co-Defendant III transferred the money amounting to USD 10,303,843.52 (ten million three hundred three thousand eight hundred forty three US Dollars and fifty two cents) into the USD giro account Number 30496990 which was designated as a collection account for the payment of GSEI's debts. Then issue a letter that the credit facility or debt to Co-Defendant III on behalf of GSEI has been paid off. From the beginning, the Plaintiff did not agree with the Deed of Recognition of Debt Number: 63. So that the Plaintiff objected to paying the debt to the Defendant which in fact never existed

In this case, according to Decision Number: 778/Pdt.G/2017/PN.Jkt.Sel regarding the cancellation of the loan agreement due to abuse of circumstances, there is a civil case experienced by Maher Algadri who is the president director and shareholder of PT. Golden Spike Energy Indonesia (GSEI) as the plaintiff, who experienced abuse of circumstances, in which the debt agreement is in the form of Deed of Recognition Debt NO. 63, which was misused because of the signing of the agreement whose contents greatly harmed the plaintiffs. The Plaintiff cannot give his will freely, because he has no other choice but to sign the Deed of Recognition of Debt NO.63. The misuse of this situation resulted in the agreement in the Deed of Recognition of Debt NO.63 being legally invalid and not fulfilling the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, which hereby concludes the Deed of Recognition of Debt NO.63 which can be declared as cancellation of the agreement. In that case, the cancellation of the agreement in the Deed of Recognition of Debt Number: 63 does not fulfill the conditions for the validity of an agreement, as referred to in Article 1320 of the Civil Code, in particular the 1st condition, namely the existence of an agreement. The existence of the subject of the agreement, namely the subjective condition of the validity of an agreement. This means that if it is not fulfilled, the signed agreement will be canceled. Deed of Recognition of Debt Number: 63 if it does not meet the subjective requirements for the validity of an agreement, because the subjective agreement itself does not exist.

The results of this interview were conducted by the author to the Judge of the South Jakarta District Court, Mr. Anry Widyo Laksono, S.H., M.H. on Friday, March 4, 2022. Which discussed the cancellation of the agreement due to abuse of circumstances (*Misbruik Van Omstandigheden*). Judging from the legal terms of the agreement in article 1320 of the Civil Code. The agreement here is made on the basis of coercion, freedom of contract, both parties must be balanced, one strong party is superior to the interior. If the abuse of circumstances means that there is a defect of will that is carried out because of compulsion. Misuse of circumstances is a violation that violates the principle of agreement. The element of this abuse is an agreement, when the agreement is defective, the agreement can be canceled.

Taking into account the description and discussion as to the reasons for the cancellation of the loan agreement due to misuse of circumstances (*Misbruik Van Omstandigheden*) it can be concluded, Deed of Recognition of Debt NO.63 which can be declared the cancellation of the agreement. The cancellation of the agreement in the Deed of Recognition of Debt Number: 63 does not meet the legal requirements of an agreement as referred to in Article 1320 of the Civil

Code, in particular the 1st requirement, namely the existence of an agreement parties must be balanced, one strong party is superior to the interior.

3.3 LEGAL CONSEQUENCES FOR THE PARTIES IN ABUSE OF CIRCUMSTANCES (MISBRUIK VAN OMSTANDIGHEDEN) IN A DEBT AGREEMENT

As is the case in Article 1338 of the Civil Code concerning the principle of freedom of contract and the principle of consensualism, it is necessary to know that the principles contained in the article are in a unified scope and are related to other provisions, one of which the three principles are limited by the principle of good faith which states that "Agreements must be executed in good faith." What is meant by good faith in the Big Indonesian Dictionary is "faith, firm belief, good intentions and will". As mentioned above, the agreement requires the importance of good faith built in an agreement. If it is related to the case of abuse of circumstances in the loan agreement experienced by the President Director of PT. GSEI is in a disproportionate condition because it cannot pay its debts due to the unstable economy of the company, but the defendant cannot determine his attitude which does not have a sense of worthiness and justice. In the event that there is an economic advantage, "the little one has a dependent position, so that in order to get a certain position that is urgently needed by him, he is forced to be willing to accept promises and clauses that are self-defeating, his financial position is urgent to do that."

"Misbruik Van Omstandigheden can cause legal consequences. An agreement is not legally valid if it is made for reasons contrary to public order and morality and if it is made by taking advantage of circumstances where the other party cannot make decisions independently. Thus the agreement is due to misuse of circumstances (Misbruik Van Omstandigheden) if it is carried out by the debtor then what will happen. Repayment of loans or repayments that have been given by creditors. The loan is returned, after which the agreement can be canceled after the completion of the debt settlement.

The legal consequences of the case in the decision Number 778/Pdt.G/2017/PN.Jkt.Sel are null and void. The third party (the defendant) has abused the circumstances in the signing of the Deed of Recognition of Debt No:63. This, after further investigation, violates the provisions of a certain matter in Article 1320 of the Civil Code, where a certain matter is a subjective requirement in the agreement, so that if it is not achieved or there is a violation of this provision, the agreement is considered null and void. The cancellation of the Deed of Recognition of Debt Number: 63 was carried out because of the abuse of circumstances in the process of signing the deed, in signing the Deed there was coercion because the plaintiff was in a state of urgency.

“Then the next legal consequence is where the defendant has to pay material losses to the plaintiff in the form of costs that have been incurred by the plaintiffs. The existence of the Plaintiff's loss in the provisions of Article 1365 of the Civil Code can be used to be held responsible for both material and immaterial losses. However, based on the decision there are material losses, namely:

1. “Non-tax State Revenue Fees for the imposition of mortgage rights on 4 (four) parcels of land that are pledged for repayment of debts in Deed of Debt Recognition Number: 63, amounting to @ Rp 2,500,000,- x 4 parcels of land = Rp 10,000,000, - (ten million rupiah);”
2. “Non-tax State Revenue Fees for registration of waiver of mortgage/roya on 4 (four) parcels of land which are pledged for settlement of debts in Deed of Recognition of Debt Number: 63, amounting to @ Rp. 50,000,- x 4 parcels of land = Rp. 200,000, - (two hundred thousand Rupiah);”

In a legal act in an agreement, it can be canceled if there is an abuse of circumstances. Nieuwenhuis put forward 4 conditions for abuse of circumstances:

- a. The state of special circumstances (*bijzondere omstandigheden*), similar to emergencies, dependence, carelessness, insanity, and inexperience.
- b. A real thing (*kenbaarheid*) is the provision that one party understands the other party because of special circumstances moved (*his heart*) to close an agreement.
- c. Abuse (*misbruik*) enforces the agreement on one party but he knows or should understand that he should not do it.
- d. The causal relationship is important that without abusing the circumstances the agreement will not be closed.

It can be seen in the 4 conditions of abuse of circumstances, which in this case has entered into the conditions of special circumstances in the form of an emergency where the plaintiff is experiencing it because the PT. GSEI company which is his responsibility as a director has difficult conditions in its economy. Then, there is a real thing where the plaintiff and a third party ask for help on how to help him in paying off his debt to creditors, where it has been seen that the plaintiff has trusted a third party to help him solve his difficult situation. However, that trust has been shattered. Furthermore, on abuse, the third party has realized from the beginning that the plaintiff has no problems with third parties or debts to third parties, the debt is only on creditors, but third parties exist if the plaintiff has debts to third parties. Therefore, the plaintiff was forced to sign the Deed of Recognition of Debt NO.63 because he was pressed, and overshadowed by bankruptcy in a difficult situation. Fourth, the causal relationship has been

seen that the abuse actually occurred between the plaintiff and a third party, and as a result the agreement can be canceled because it does not comply with the legal terms of the agreement in Article 1320 of the Civil Code.

In this case what happened in the decision Number 778/Pdt.G/2017/PN.Jkt.Sel subordinates, a third party had forced the plaintiff to sign the deed of recognition of debt. This is very clear, it can be analyzed that it has complied with Article 1321 of the Civil Code that coercion includes an invalid agreement to an agreement. It is reaffirmed in Article 1323 of the Civil Code that one of the reasons for canceling an agreement is by coercion so that the legal object is an agreement. Misuse of circumstances is related to subjective conditions in the agreement, expressing his will not freely by the party abusing the situation

4. CONCLUSION

1. Misuse of conditions related to the subjective conditions of the agreement, therefore according to the law of the case, the consequences are that the agreement can be requested for cancellation to the judge by the party who has been harmed, because it does not meet the subjective requirements contained in Article 1320 of the conditions for the validity of the agreement. To the extent that the Bululum agreement can be canceled, the agreement remains binding on the parties to the agreement. The claim for cancellation can be in whole or in part.”

2. "The legal consequences of the decision Number 778/Pdt.G/2017/PN.Jkt.Sel, namely in the cancellation of the debt agreement made due to misuse of circumstances, the agreement made and agreed upon is null and void. If there are parties who are harmed, a lawsuit is filed on the basis of violating the law. Misuse of circumstances is considered a factor that interferes with the free will of the parties making the agreement to determine the agreement, which is caused by an imbalance. Then the third party has very clearly violated two rules, the first is the legal norms that apply in society and the second violates articles 1320, 1321 of the Civil Code."

5. SUGGESTION

1. Agreements should meet the requirements as well as articles 1320 and 1321 of the Civil Code are bound by an agreement between the parties at the time of the agreement maker without the principle of abuse of circumstances in order to avoid demands for compensation and there is no coercion in making agreements.

2. The teaching on abuse of circumstances (misbruik van omstandigheden) should be put into Nieuw Burgelijk Wetboek (NBW) which can be concluded that contract law has undergone a very important development, and in this case the need for reform of the rule of law in the Indonesian Civil Code, especially contract law so that not lag behind in its universal development in this case

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