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LEGAL PROTECTION AGAINST THE ABUSE OF CIRCUMSTANCES (*MISBRUIK VAN OMSTANDIGHEDEN*) IN THE FORMATION OF FAIR CONTRACTS

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Abstract

The doctrine of abuse of circumstances (misbruik van omstandigheden) plays a crucial role in achieving justice in the formation of contracts, with the principles of equality and fairness as its foundation. This doctrine aims to maintain a balance of bargaining power and protect the dignity of individuals. However, the absence of specific regulations governing it in Indonesia leads to legal uncertainty, disadvantages the weaker party, and creates a paradox between freedom of contract and social justice, potentially undermining the legitimacy of the legal system. This research is a normative legal study. The approach used in this research includes the statutory approach, conceptual approach, philosophical approach, and case approach. The theoretical framework employed as the analytical tool consists of John Rawls' theory of justice, the theory of basic legal values, and the theory of constructive interpretation. The findings of this research are: The doctrine of abuse of circumstances is crucial to be integrated into Indonesian contract law to protect weaker parties, uphold justice, and ensure balance in contractual agreements. This can be realized through new legislation or Supreme Court regulations prioritizing good faith, the protection of vulnerable parties, and the principle of substantive justice. Such an approach enhances legal protection and fosters the formation of equitable contracts in Indonesia.

Keywords: Abuse of Circumstances, Contract Law Protection, and Justice in Contracts.

INTRODUCTION

Herbert Hart stated that although legal concepts are utilized in everyday practice, the theoretical understanding behind their application is often difficult to explain. In this context, legal doctrine plays a crucial role in developing legal concepts and bridging the gap between theory and practice.[1] In line with the thoughts of Martin H. Redish, the doctrine of abuse of circumstances (*misbruik van omstandigheden*) holds significant relevance in this context, playing a key role in achieving justice in the process of contract formation. This doctrine not only addresses the practical needs in contract drafting, but also provides a foundation for the development of a more comprehensive philosophical and theoretical analysis.

The philosophical (*ontological*) aspect of this doctrine questions the nature of the reality underlying the formation of agreements. The theoretical aspect concerns the definition of the doctrine of abuse of circumstances, as well as its substance and existence in the context of contract formation. These questions are crucial for formulating a more holistic approach to justice in contract formation. Thus, it is not only about upholding procedural aspects but also the substantive aspects of the creation of agreements. In this regard, the principle of equality of bargaining positions and protection of vulnerable conditions become fundamental elements.

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In the context of Indonesia, the principle of equality and protection for vulnerable parties in contract formation is part of human rights as enshrined in Article 28D paragraph (1) of the 1945 Constitution, which affirms the right of every individual to recognition, guarantee, protection, and equal treatment before the law.

This principle is relevant in contract law, particularly at the stage of contract formation. Its primary objective is to ensure that each party is in an equitable bargaining position, so that the agreement not only avoids exploitation but also protects the dignity of the individual.

Although it has been constitutionally reinforced in principle, the legal issue is that the doctrine of abuse of circumstances has not been explicitly regulated in Indonesian legislation, resulting in legal uncertainty. The absence of such regulation creates the risk that weaker parties may become trapped in unfavorable agreements, amid the continued occurrence of transactions involving the exploitation of vulnerable conditions. The normative vacuum regarding this doctrine in Indonesian law may give rise to various issues, requiring critical analysis from philosophical, theoretical, and sociological perspectives.

Philosophically, this normative vacuum may undermine the legitimacy of the legal system, given the lack of clarity in providing protection to weaker parties. The conflict between values such as social justice and freedom of contract can create a complex dilemma. Theoretically, the uncertainty in the application of this doctrine may result in inconsistency in law enforcement, weakening legal certainty and stability. In this context, tensions between distributive justice and freedom of contract may arise.

From a sociological perspective, the inability to address abuse of circumstances will exacerbate social inequalities, increase the potential for conflict, and heighten dissatisfaction within society. This has the potential to trigger social instability, highlighting the tension between legal integrity and practical realities.

Based on philosophical, theoretical, juridical, and sociological foundations, and considering the potential issues arising from the normative vacuum surrounding the doctrine of abuse of circumstances, the author argues that the positivization of this doctrine in Indonesia is a moral obligation to provide protection for vulnerable parties, reflecting a commitment to the principle of justice in agreements. This view resonates with Pottaro's perspective that the doctrine should "*promote justice and morality, as by interpreting old law in a new way*".[3] In this context, the doctrine of abuse of circumstances plays a vital role in promoting justice and morality during the contract formation phase. Therefore, the doctrine of abuse of circumstances must be integrated into the Indonesian legal system to prevent the exploitation of weaker parties and ensure that every agreement is formed based on free will, without undue pressure from unjust external conditions.

METHOD

The type of research used in this study is normative legal research, which treats law as a system of norms. This type of research examines the principles, norms, and rules contained in legislation, court decisions, agreements, and doctrines (teachings). According to Peter Mahmud

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Marzuki, normative legal research (legal research) aims to discover coherence truth, specifically whether legal rules align with legal norms, whether commands or prohibitions are consistent with legal principles, and whether an individual's actions are in accordance with legal norms (not just legal rules) or legal principles.[4] As a form of legal research, and in line with the unique characteristics of jurisprudence, several approaches are employed in normative legal research, including:[5] (a) the Statute Approach, (b) the Conceptual Approach, (c) the Analytical Approach, (d) the Comparative Approach, (e) the Historical Approach, (f) the Philosophical Approach, and (g) the Case Approach. This research utilizes library materials or secondary data, which include primary, secondary, and tertiary legal materials. The collection of legal materials is conducted through documentary studies related to the constitutional responsibilities of the state in fulfilling the right to education for children with disabilities. The collected legal materials are then analyzed through a series of consistent, systematic, and aesthetic activities. This series of activities involves presenting, examining, systematizing, interpreting, and evaluating the entirety of the data or legal materials available.

RESULTS AND DISCUSSION

1. The Urgency of the Positivization of the Doctrine of Abuse of Circumstances in Indonesia

The doctrine of abuse of circumstances cannot be separated from the understanding of undue influence, which has deep historical roots in intellectual traditions dating back to the classical Roman era. In this context, we encounter the concept of *metus causa*[6] *(Pressure)* that highlights the complex interaction between external pressures that cause an individual to act against their will.

From *metus causa*, the concept shifted towards subtle coercion known as *captatio* (inheritance hunting), which is carried out by individuals outside the family of the testator. However, individuals within the family may also be involved in *captatio*, although relatively.[7] Such as the involvement of a stepmother in *captatio*.[8] The subsequent development can be observed in the story of Regulus, who convinced a seriously ill woman to bequeath her inheritance to him, despite knowing that her condition was critical.[9]

In its development, the concept then spread to England, where undue influence was only recognized in the nineteenth century.[10] In the nineteenth century, American law began adopting the doctrine of undue influence from English law. Early treatises cited English cases such as *Huguenin v. Baseley* and soon adopted the doctrine of undue influence. At that time, undue influence was limited to discussions regarding the English case *Mountain v. Bennett*, in which a will was contested on the grounds of “undue influence... [by] the testator's wife, whom he married from a lower social status”.[11]

In the twentieth century, it remained standard practice to read discussions on undue influence in law school textbooks, which explained that the type of influence required to invalidate a will “always involves elements of coercion or deceit”. Treatises explained that for “undue influence to exist under the law, there must be coercion”.[12] However, shortly thereafter, the concept of

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undue influence in American law became more relaxed. Throughout the twentieth century, the English rule, which stated that undue influence was never presumed, was softened to allow for the consideration of indirect evidence.[13]

In Civil Law systems, such as in Germany, undue influence is viewed as contrary to the principle of good faith, influenced by the strong currents of the Historical School. In contrast, the Netherlands focuses on external factors, such as vulnerable conditions that must be protected from the application of freedom of contract. This means that the doctrine acts as a countermeasure to freedom of contract, which, in practice, leads to contractual injustices. Leon Duguit (1839-1928), a prominent figure in the social ethics school, strongly opposed freedom of contract at that time. According to Duguit, legal norms are established when the economic and moral values that prevail in a society are considered fundamental to the relevant society.[14]

In Indonesia, although the doctrine of abuse of circumstances is recognized, its application remains limited. The practice of this doctrine in Indonesia has not been clearly regulated, unlike in civil law countries such as the Netherlands, which has the feature of *misbruik van omstandigheden*, and in common law countries with the feature of undue influence. Therefore, a clear and firm legal framework regarding the regulation of abuse of circumstances (*misbruik van omstandigheden*) is needed in Indonesia, amidst the still limited understanding of the importance of these principles, which presents its own challenges. Hence, the integration of philosophical perspectives into the Indonesian legal system is necessary to create more effective protection for the weaker party in contractual relationships, particularly at the stage of contract formation.

2. The Legal Protection Framework Against Abuse of Circumstances in the Formation of Fair Contracts.

The doctrine of abuse of circumstances stands as a guiding beacon in the pursuit of justice. It is not merely a normative foundation, but a reflection of human efforts to address imbalances arising from dependency and domination. This doctrine elaborates and reinforces the application of subjective good faith, ensuring more specific protection for the weaker party in the hidden layers of legal relations, where injustice often lurks beneath the cloak of formal legality. Thus, in order to find a clear path toward achieving its objectives, the discovery and construction of legal principles within it are essential as a fundamental step in articulating and upholding the principle of justice in contract formation.

In this endeavor, it is inseparable from the effort of positivization. This reflects an attempt to ensure that every legal action or contract adheres to the higher norms of justice, much like how lower-level regulations must conform to higher norms in accordance with Kelsen's hierarchy theory.[15]

However, the positivization of the doctrine of abuse of circumstances should not only be viewed through its formal rules but must also encompass the embodiment of its substance, as stated by Hayyanul Haq: "*Legal norms are often created by merely following the hierarchy of regulations, focusing on formal aspects without delving into their essence. As a result, the substance of the norms is overlooked. To construct norms with greater significance, a value-*

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based approach is needed, grounded in principles, standards, and norms. For instance, the prohibition of abuse of circumstances in the Civil Code must begin with the value of goodness, elevated to the principle of justice, and manifested in the standard of equality. With this approach, the prohibition of abuse of circumstances becomes robust, as such actions clearly disrupt balance and violate the principle of justice.[16]

Based on the views above, the legal construction of the doctrine of abuse of circumstances essentially begins with the following stages:

1) **Justice as the Purpose of the Doctrine of Abuse of Circumstances**:

   Law, as the bearer of the value of justice, according to Radbruch, serves as the measure for determining the fairness or unfairness of the legal system. Furthermore, the value of justice forms the foundation of law itself. Thus, justice is both normative and constitutive for law. Justice becomes the basis for every legitimate positive law.[17]

2) **Justice as the Purpose of the Doctrine of Abuse of Circumstances**:

   Principles such as justice, equality, and legal certainty play a crucial role in ensuring that legal decisions align with fundamental human and social values. In situations where written law fails to provide a solution, these principles offer the necessary guidance to achieve outcomes that are both fair and consistent with fundamental norms.[18] By embedding these principles, the law can continually renew itself, ensuring that it remains relevant and just in addressing the challenges of the times.

3) **The Balance between Freedom of Contract and Protection of the Weaker Party in the Doctrine of Abuse of Circumstances**.

   The application of justice through the doctrine of abuse of circumstances requires careful evaluation of the balance between freedom of contract and protection of the weaker party. While the principle of autonomy allows individuals to make their own decisions, justice mandates that this autonomy should not be undermined by external pressures. It is here that the legal doctrine of abuse of circumstances becomes an essential tool in the pursuit of fairness, ensuring that all parties enter into agreements with genuine, free consent.

By applying Hayyanul Haq's perspective, the construction of the standards for the doctrine of abuse of circumstances, which includes its position and legal consequences, definition, requirements for harm, burden of proof, and prescription, can lead to the creation of fair contracts. In this context, the position of the doctrine of abuse of circumstances becomes an instrument not only for upholding procedural justice but also for substantive justice, namely, protecting the weaker party in contract formation, while emphasizing the values of fairness and equality.

Abuse of circumstances, according to Haq, must be understood as an act that violates the principle of balance and undermines the free will autonomy of the party in a vulnerable condition, as reflected in its definition. The requirement of harm refers not only to material harm but also to harm to the dignity and freedom of will of the more pressured party. The burden of proof in this context must reflect the value of justice, taking into account the

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inequality of positions and the impact of the injustice that occurs, without imposing an excessive burden of proof on the vulnerable party. In terms of prescription, Haq emphasizes the need for flexibility, allowing sufficient space for the recognition of inequalities that may only come to light after a certain period, while still setting a reasonable time limit to prevent the doctrine from being misused as a justification that undermines the very justice of the contract. The relevance of this view can be seen in relation to the theory of Gustav Radbruch, who emphasized the importance of morality in law. In this context, justice is an inseparable part, as Radbruch stated that justice is one of the fundamental values of law.[19] In line with Haq's approach to exploring the substance of norms based on ethical values and principles.

Similarly, John Rawls' theory of justice as fairness, which advocates for the use of the difference principle, posits that those who have more capabilities should enjoy various advantages in order to create opportunities for the less fortunate to improve their prospects.[20] This aligns with Haq's view on the importance of equality in contracts.

Ronald Dworkin, in his theory of law as integrity, which integrates three closely related values justice, fairness, and procedural due process[21], also supports Haq's approach that emphasizes substantive justice in addressing imbalances in conditions and power. By integrating these perspectives, the doctrine of abuse of circumstances can prioritize substantive justice and ensure that contracts formed in Indonesia remain grounded in the principles of fairness and protection for the weaker party.

Based on the views of Hayyanul Haq, which resonate with the approaches of Gustav Radbruch, John Rawls, and Ronald Dworkin, in the context of constructing the standard doctrine of abuse of circumstances in positive law in Indonesia to create fair contract formation as outlined above, the following norms can be constructed as outlined in the table below:

Table 1: Legal Construction of Abuse of Circumstances in Contract Formation

No	Aspect	Details
1	**Principles**	1) Principle of Freedom of Contract, Principle of Protection for Weaker Parties, and Principle of Participation: Ensure fairness and balance in contractual relationships. 2) Principle of Openness and Obligation of Information: Requires all parties to provide complete and clear information. 3) Principle of Good Faith, Integrity, and Equality: Emphasizes honesty and fair treatment in agreements. 4) Principle of Prevention and Certainty: Prevents conflicts and ensures enforceable agreements. 5) Principle of Balance: Ensures no party dominates or exploits the weaker position of another.
2	**Definition**	Abuse of circumstances occurs when someone, knowing or should have known that the other party is in a vulnerable condition, such as being under pressure, dependent, negligent, mentally abnormal, or inexperienced, is induced to take legal action, and the person facilitates that legal action despite understanding that such a condition should prevent them from doing so.
3	**Cancellation of Entire Agreement**	Section (1): An agreement may be canceled entirely if there are provisions deemed unjust and detrimental to the weaker party. Section (2): The harmed party may file a lawsuit to annul the agreement in court, providing supporting

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		evidence for the abuse of circumstances claim. Section (3): Cancellation does not waive the harmed party's right to claim damages.
4	**Modification of Agreement Terms**	Section (1): Provisions or terms of a contract may be altered or removed if deemed unfair. Section (2): Special attention to protect parties with weaker bargaining power in the contractual relationship. Section (3): Renegotiation may be conducted, and the result of the agreement must be validated by the judge.
5	**Burden of Proof**	Section (1): If a person is in a vulnerable condition, the burden of proof shifts to the party accused of abusing circumstances. Section (2): The vulnerable party only needs to demonstrate the unfairness present at the time the contract was made.
6	**Statute of Limitations**	Claims for the cancellation of agreements due to abuse of circumstances must be filed within five (5) years from the time the harmed party became aware of the abuse.

The scope of the legal construction of the doctrine of abuse of circumstances outlined in the table above covers several important aspects that must be considered in applying this doctrine within positive law in Indonesia. This approach represents a balanced legal framework that bridges the gap between legal norms and social realities, with a focus on substantive justice. This approach can be pursued through two pathways: medium-term and short-term.

In the medium-term, it is proposed to design a new *Undang-Undang Perikatan* (Contract Law) that would replace the provisions in the *Burgerlijk Wetboek* (BW), incorporating the doctrine of abuse of circumstances as grounds for contract annulment, alongside other existing grounds such as *dwang* (coercion), *dwaling* (mistake), and *bedrog* (fraud). The annulment of a contract or agreement based on abuse of circumstances could be sought within five years from the discovery of the abuse.

Meanwhile, in the short-term, an alternative solution would be to issue a regulation of the supreme court of Indonesia (PERMA) which would ensure that principles of substantive justice, morality, and the utility of law are not merely theoretical, but are practically applicable in judicial practice. Although its scope is limited to internal jurisdiction, this PERMA would serve as a binding reference for judges in cases involving abuse of circumstances. Although the Supreme Court does not have the authority to issue regulations that are binding in general, PERMA is valid under Law Number 12 of 2011 on the Formation of Laws and Regulations, and its authority applies within the internal judicial system. This makes it a final and concrete decision, a tactical solution to ensure justice for litigants seeking contract annulment based on abuse of circumstances.

CONCLUSION

The doctrine of abuse of circumstances is crucial to be integrated into Indonesian contract law to protect weaker parties, uphold justice, and ensure balance in contractual agreements. This can be realized through new legislation or Supreme Court regulations prioritizing good faith, the protection of vulnerable parties, and the principle of substantive justice. Such an approach enhances legal protection and fosters the formation of equitable contracts in Indonesia.

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Footnote

1) Neil Duxbury, "The Structure of Legal Theory: A Reflection on the Role of Legal Concepts, *Oxford Journal of Legal Studies*, Vol. 35, No. 4 (2015), p. 799.
2) Martin H. Redish dalam Emerson Tiller dan Frank B. Cross, *What is Legal Doctrine*, Public Law and Legal Theory Papers, Northwestern University School of Law, 2005. hlm.4
3) Enrico Pattaro, *A Treatise of Legal Philosophy and General Jurisprudence: The Law and the Right, A Reappraisal of the Reality that Ought to Be*, 2005, Vol. 1, *University of Bologna, Italy*, CIRSFID and Law Faculty, Bologna, p.6
4) Peter Mahmud Marzuki, 2016, *Penelitian Hukum*, Edisi Revisi, Kencana Persada Group, Jakarta, p. 47.
5) Amiruddin dan Zainal Asikin, 2019, *Pengantar Metode Penelitian Hukum*, Rajawali Press, Depok, hlm.163-167.
6) Reinhard Zimmermann, 1996, *The Law Of Obligations: Roman Foundations Of The Civilian Tradition*, Oxford University Press, New York. p. 654
7) *Ibid.,*
8) See: DIG. 5.2.4 (Gaius, *Lex Glitia*) (membahas tuntutan atas wasiat yang tidak patut atau *querela inofficiosi testamenti*).
9) J.W. Tellegen, 1982, *The Roman Law Of Succession In The Letters Of Pliny The Younger*, Terra Publishing Co, Holland, p. 49
10) See: The Case of Morris, 1 Atk. p. 403. In the case of *Morris v. Burroughs*, the court held that "to prevent undue influence... there must be valuable consideration from the father, and a tangible benefit obtained by the child."
11) Thomas Jarman, 1845, *Treatise On Wills*, 1st American ed, Charles C. Little and James Brown, Boston, p.30
12) John R. Rood, 1904, *A Treatise on the Law of Wills,* Callaghan &. Company, Chicago, p. 105
13) *Ibid,* p.20
14) Theo Huijbers, 1986, *Filsafat Hukum Dalam Lintasan Sejarah,* Kanisius, Yogyakarta, p.21.
15) Muntoha, 2008, *Otonomi Daerah dan Perkembangan "Peraturan-Peraturan Daerah Bernuansa Syariah"*, Dissertation at the Graduate Program of the Faculty of Law, University of Indonesia, Jakarta.
16) Hayyan ul Haq (Co-Supervisor I in the writing of this dissertation) during the consultation session on March 9, 2023, at 24:15.
17) Inge Dwisvimiar, *Keadilan Dalam Perspektif Filsafat Ilmu Hukum,* Jurnal Dinamika Hukum Vol. 11 No. 3 September 2011, hlm. 15
18) J. Smith, 2022, *Introduction to Legal Principles*, 2nd ed, Legal Publishers, New York, p.45-50
19) Satjipto Rahardjo, 1986, *Ilmu Hukum*, Alumni, Bandung, p. 6
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