Impact of Contract Constructions Containing Misuse In Conducting Perspective Legal Business of Pekanbaru City

Yeni Triana

Universitas Lancang Kuning, Pekanbaru, 28265, Indonesia
E-mail: yeni_hukum@yahoo.com

Abstract: Agreement with a defect of will, a misuse of undue influence, causing harm to one party, taking advantage of the circumstances of another, causing abused desires is not granted in a free state, resulting in an improper performance imbalance, the agreement may be canceled. The formulation of the problem in this study is how the position of a contract agreement that contains the existence of abuse of undue influence in the perspective of business law in Pekanbaru City. In line with the formulation of the problem, the research method used is a sociological law; this study was conducted with a field study in Pekanbaru City. The data analysis technique used is a juridical analysis, the object of which is the data of this research is the study of legal science based on the judge's decision in its consideration to cancel the agreement of a contract containing abuse of undue influences. The result of this study that the agreement of a contract can be canceled if it contains elements of abuse of the situation, the reason for judge consideration in this case, is based on a sense of propriety and justice in society to uphold the rule of law, especially business law. The doctrine of state misuse is accepted as a justification for canceling the contract in consideration of the unbalancing of one party, and abusing the undue influences, so as not to be free. The conclusion that a treaty containing a defect in the will of abuse of undue influences becomes the judge's judgment to cancel the agreement in the contract. Suggestion that misuse of state is expected to be a positive law and regulated in law, there by enriching the business law.

Keywords: Consent, Contract, Abuse of undue influence.

1. Introduction

A contract is the result of a free choice, no one is bound to a contract, if done so long as it is not based on a free choice, meaning that both parties agree to create intent and will to carry out a contractual obligation. The contract is exclusively the free will of the contracting parties. This is in line with the principle of freedom of contract according to the classical contract law theory which has two categories in a contract, namely contracts based on agreement (agreement of both parties), and contract as a free will product (vote). So in principle a binding contract to be implemented immediately after reaching an agreement, meaning that from the moment of reaching agreement then had born a contract.

Agreement is to bring together the will of each of the different parties or the inequality of interests among the parties onwards accommodated in an agreement. The existence of a contract begins with a formulation of contractual relations which in general both parties do it always starts through the negotiation of bargaining on both sides. Through the process of bargaining both parties seek to make an understanding to bring together something that is expected from the agreement through bargaining process. This means that a commercial contract is born begins a distinction of interest that is accommodated through agreement, where the obligations of the parties are poured through mechanisms that are regulated through the division of rights and entitlements proportionately, regardless of the final result received by the parties. But sometimes the problems that arise in the future, it turns out that if the contract has been agreed previously before it on the one hand favoring one party and cause harm to the other party, so that one of the parties did not get justice from the contract.
As stated in the provisions of Article 1320 of the Civil Code, that the requirement for the validity of a contract in the first point is the existence of the agreement of both parties to bind them in a contract, the agreement is a condition of validity of a contract. The parties each express their own willingness to accept the offer of the offered contract, with the acceptance of the offer, and accordingly or in accordance with the statement of the other party, meaning that both parties agree to close the contract. An agreement is a meeting or conformity of the will among the contracting parties. One party will agree because or if the other party agrees also, agreed formed based.

Agreement in contract formation is a "round" agreement and a mutual benefit agreement. In everyday reality, sometimes agreement is the result of an error or mistake, coercion, or deceit. Where the agreement occurs, but in the agreement contains disability, so it contains elements of fraud, dures and mistaken, this is supposed the provisions of Article 1321 of the Civil Code, as a consensus that contains classic defects of will. Where defective will this is imperfect agreement. If the agreement contains defective will, it seems there is an agreement, but the agreement was formed not based on free will. However, in addition to the defect of the will set forth in the provisions of Article 1321 of the Civil Code, in the judicial practice reflected in the yusprudence is also known the fourth form of defect of the will, namely the existence of misuse of the situation (eg van brand van omstagdigheid or undue influence).

The legal institution (rechtsfiguur) misuse of undue influence (misbruik van omstagdigheid or undue influence) is a new form of defective will in the legal system of contractual law of the Netherlands State. The Dutch contract law adopts an institution of abuse of this state from the laws of the State of England. At first this misuse of undue influence in the law of the Dutch developed in jurisprudence, but this seat in the law of the Netherlands is governed by the provisions of Article 3.44.1 Nederland Burgerlijk Wetboek (bias as the Nieuwe BW (NBW), the new BW). States that legal acts may be canceled, in the event of: Threat (bedreiging), Fraud bedrog), Misuse of undue influence (misbruik van omstagdigheid). With the dismissal of the reason for the cancellation of the agreement in the provisions of Book III of the NBW, on the property rights in general, the teachings of abuse of the undue influence will be applicable to various types of agreements.

However in Indonesia this institution has no regulation in the Civil Code, but the doctrine of abuse of undue influence has been accepted in jurisprudence as the fourth defect form of will. Therefore, finding out “How the position of a contract that contains the existence of abuse of undue influence in the perspective of business law in Pekanbaru City? Is the question that need an answer in this study.

2. Method

The research method used is a sociological law; this study was conducted with a field study in Pekanbaru City. The data analysis technique used is a juridical analysis, the object of which is the data of this research is the study of legal science based on the judge's decision in its consideration to cancel the agreement of a contract containing abuse of undue influences.

3. Result

Misuse of undue influence when a person in an agreement is affected by a thing that prevents him from making a judgment free from the other so he can not make an independent decision. The emphasis can be made because one party has a special position (eg dominant position or has a fiduciary and confidence). According to Van Dunne, that abuse of undue influence can occur because of: 1). Misuse of the state of an economic advantage, ie if one party has an economic advantage over another, so that the other party is forced to enter into a contract. 2). Misuse of the state of psychological superiority, if one of the parties abuse relative dependent or special state of the soul of the opponent. Meanwhile, according to Nieuwenhuis, related to the existence of the undue influence of the existence of the following conditions,
3. Specific undue influence (bijzondere omstandigheden), such as emergencies, dependence, carelessness, insanity, and inexperience. A real thing (kenbaarheid), either party knows or should know that the other party because of special undue influence moved (his heart) to close a contract. Misuse (misbruik), one of the parties keeps closing the contract even though he knows or should know that he should not do it. 4. The causal relationship (causal verband), meaning without any abuse of the undue influence then the contract will not be closed with the same conditions.

Misuse of undue influence that harm one party in principle is an abuse of opportunity by another party. In the case of a contract whose reality contains elements of abuse of undue influence, then the position of the contract shall be void (vernietigbaar) not null and void (nietig van rechtswege). This is in line with the principle of establishing that abuse of undue influence is related to contract formation, especially the formation of agreements that are not in accordance with the will, or agreements that contain defective wills. Menuru Z. Asikin Kusumah Atmadja, abuse of state as a factor that limits or disrupts the free will to determine Agreement between the parties. This is possible because of the imbalance and incompatibility of the parties' position. In Indonesia, despite the abuse of state of mind (misbruik van Omstandigheden) has not yet been regulated in the Civil Code, but in the practice of jurisprudence has accepted the doctrine of abuse of undue influence, the development of the abuse of state in Indonesia has been supported by several judicial decisions through the judiciary, The civil dispute concerning the agreement between the plaintiff and the defendant where based on the facts revealed in the hearing, the agreement has been considered unfair, thus harming the weak party, as in the decision of the Supreme Court, namely:

Supreme Court Decision No. 1992 / K / Pdt / 2010, Maonah case against Herman Santosa, this decision is a judge's decision in the misuse of circumstances because of the agreement containing the defective will. Abuse of the situation occurs because Herman Santosa hides the real state that the land bought from Maonah, where the reason for vanilla gardens, but later known is not for its own sake, but the land will be purchased by the Government of Magelang Municipality c.q. Walikota Magelang with a much higher price, Magelang government intends to develop Samapta Magelang Sports Center as a sports center so Magelang government needs land in Samepta Magelang area, one of them is Maonah land. While Herman Santosa did not tell the real situation, that the land would be purchased by the Magelang City Government, the deed was done by Herman Santosa with the aim of making a profit for Herman Santosa himself, and harming Maonah. Against the lawsuit the Magelang District Court has taken a decision, namely No. 24 / Pdt / G / 2008 / PN.MGL., Dated June 11, 2009, states that Herman Santosa has committed abuse of undue influence.

This is in line with the verdict of Magelang Magistrate had been upheld by the High Court of Semarang with Decision No. 288 / Pdt / 2009 / PT.Smg., Dated November 10, 2009, and also this Decision is upheld by the Supreme Court in its Decision Letter no. 1992 K / Pdt / 2010. Misuse of the undue influences that cause such losses is included in the case that could undermine the agreement, So in Indonesia itself, there have been some decisions stating that the abuse of the undue influences is not justifiable, so the agreement containing the element is canceled. As explained above, the judge is authorized to use interpretation as a legal means to paralyze an unbalanced agreement. The judge in this case sees whether there is a situation that one party misuses against the other in the covenant agreement. Noting the provisions contained in the Civil Code, the fact that the principle of consensuality in Article 1320 (1) of the Civil Code implies that without the consent of one party to the contract, the invalidity of a contract is imposed. The provision of Article 1321 of the Civil Code affirms that there is no freedom in the encounter of will or consensus which is given erroneously / erroneously, coercively, and deceitfully. If the Agreement is obtained due to mistakes, dures and fraudulence, the contracts are invalid.
4. Conclusion

Based on the above discussions, it can be concluded that the agreement in the given contract is not based on free will, but due to forced undue influence, the contract can be canceled on the basis of abuse of undue influence. It may be argued that irresponsible contracting freedom will tend to lead to abuse of undue influence. With the recognition of misuse of undue influence as one of the reasons for the cancellation of the contract, the doctrine of abuse of undue influence at the same time serves as a limiting factor to the practice of freedom in contracts which have a disagreeable agreement.

5. Suggestion

Whereas the application of the teachings of abuse of undue influence as the free delimitation of the will of the contract has been accepted by the Supreme Court, the doctrine of abuse of the state can be incorporated into positive law in Indonesia as enrichment of Business Law and useful to give a sense of justice for society.

6. References

[1] Agus Suki Widodo, Responsibility of the Parties in the Implementation Car Lease-Rent Agreement in Surakarta, Magister Kenotratiatan Universitas Diponegoro Semarang, 2004.
[2] Agus Yudha Hernoko, Law of Agreement on Proposal of Contract Commercial, LaksBang Mediatama, Yogyakarta, 2008.
[3] Herlien Budiono, General Doctrine of the Covenant Law, Bandung, PT Citra Aditya Bakti, Bandung, 2009.
[4] Hendry P. Abuse, Misuse of Circumstances (misbruik van Omstandigheden) As Reason (new) For Cancellation Agreement, Liberty, Yogyakarta, 1991.
[5] J. Satrio, Hukum Perikatan, Perikatan Lahir Dari Perjanjian, Buku II, Bandung, Citra Aditya Bakti, 1995.
[6] Ridwan Khairandy, Iktikad Baik Dalam Kebebasan Berkontrak, Program Pasca Sarjana, FH Universitas Indonesia, 2004.
[7] Muhammad Arifin, Penyalahgunaan Keadaan Sebagai Faktor Pembatas Kebebasan Berkontrak, Jurnal Ilmu Hukum, UMS, Vol.14, No. 2 September 2011: 276-195.
[8] Winahyu Erwingsih, Perananan Hukum Dalam Pertanggungjawaban Perbuatan Pemerintah, Jurnal Ilmu Hukum, Vol. 9, No. 2, September 2006.
[9] Anggita Prihartini, Asas Kebebasan Berkontrak dan Penyalahgunaan Keadaan Pada Kontrak Jasa Konstruksi, Review Jurnal Hukum Perikatan 2, Vol. 05, 2013.