

Abuse of Circumstances as a Reason for Cancellation of Agreement in the Indonesian Legal System



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ABSTRACT: This research aims to find out the development of the doctrine of abuse of circumstances as a reason for canceling an agreement in the Indonesian Legal System. The proposed problem formulation contains: How is the development of the doctrine of abuse of circumstances in the Civil Law Legal System, especially Indonesia? and how is the consideration of judges in Indonesia in giving court decisions related to the doctrine of abuse of circumstances? This research includes normative legal research, with data collected based on written regulations and expert opinions. The results of this study indicate that the development of the doctrine of abuse of circumstances has been recognized in the Netherlands which adheres to the Civil Law System in the form of legislation, while Indonesia only recognizes this doctrine as limited to court decisions or has not been adapted in the form of legislation. Nevertheless, some judges in deciding civil cases in Indonesia recognize and use the doctrine of abuse of circumstances as a reason for canceling agreements in several civil cases. This shows a dilemma in the enforcement of justice in Indonesia, especially in the context of civil law considering that Indonesia adheres to the Civil Law System so that the main reference for judges in deciding cases is the law. In this case, the doctrine of abuse of circumstances has not been regulated in written civil law in Indonesia.

KEYWORDS: Civil Law System, Doctrine of Abuse of Circumstances, Indonesian Civil Code, Reason for Cancelling Agreements

1.0 INTRODUCTION

Civil Law is a law between individuals that controls the rights and obligations of individuals towards others in family relationships and in the association of society. Law in family relations gives birth to two areas of law, namely personal law and family law, while law in the association of society gives birth to the law of objects and ties (Mertokusumo, 2010). Relationships that exist in society lead to the emergence of various forms of legal relations between humans, especially in the field of binding law, where the majority of binding relationships that exist between humans are based on agreements.

An agreement is a legal act in which one or more people bind themselves or equally bind themselves to one or more people (Setiawan, 1987). Sudikno Mertokusumo explains that an agreement is a legal relationship between two or more parties based on an agreement to create a legal effect. This legal effect arises because there are rights and obligations which, if the agreement is violated, will be subject to sanctions (Mertokusumo, 1999).

An agreement is considered born or established when an agreement is reached between the parties to the agreement. This agreement is the basis for the birth of an agreement (Subekti, 2022). The word agree means that the parties express their respective wills in order to create an agreement, where the will of one party is reciprocally in accordance with the will of the other party.

The statement of will of the parties entering into an agreement can be distinguished between a statement of will describing the offer (*aanbod*) and a statement of will describing the acceptance (*aanvaarding*) (Mertokusumo, 1999). The offer accompanied by acceptance is what gives rise to the birth of an agreement, because the conformity of will or agreement is considered to be established when the will to offer meets the will to accept the offer.

Although the field of agreement law is growing rapidly, there are basic things about an agreement, such as the provisions for the validity of agreements and the principles of agreements still exploring old doctrines. Article 1320 of the Indonesian Civil Code (KUH Perdata) which regulates the validity of an agreement, for example, becomes a *dwingend recht* which means that the requirements regarding the validity of the agreement are binding, must be fulfilled for each person who binds himself in the agreement. Article 1320 of the Civil Code stipulates that an agreement is valid if it fulfills the following conditions: a) Agreement of those who bind themselves; b) Capacity to make an agreement; c) A certain thing; d) A halal cause.

Basically, the agreement of those who bind themselves is a unanimous agreement, an unblemished agreement, an agreement that is given freely. The will of the parties must be a pure will, a free will, and expressed in a free atmosphere as well (Satrio, 1992). In an agreement, sometimes there is a defect in the conformity of the will because one of the parties cannot express his will freely or purely,

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which is known as a defect in the will which has been regulated in the Civil Code. Article 1321 of the Civil Code regulates that there is no valid consent if the consent is given due to delusion (*dwaling*), or obtained by force (*dwang*) or fraud (*bedrog*). The legal effect of a defect of will is that the agreement can be canceled by the party who feels that he has given a statement that has a defect of will (Satrio, 1995).

In Indonesian treaty law in the Civil Code, the reason for canceling an agreement is only based on Article 1321 of the Civil Code. Not only Article 1321 of the Civil Code, the reasons for canceling the agreement also grew with the existence of the doctrine of abuse of circumstances. The development of the doctrine of abuse of circumstances is not only known in countries that adhere to the Civil Law legal system, but also known in the Common Law legal system. In the Civil Law legal system (for example the Netherlands) the doctrine of abuse of circumstances is known as *Misbruik van Omstandigheden* and is currently included in the Nieuw Burgerlijk Wetboek (NBW) (Panggabean, 2001), whereas in the Common Law legal system it is known as the doctrine of undue influence (Setiawan, 1994).

In practice, abuse of this situation often arises in unbalanced ties between the parties, for example in ties between superiors and subordinates or ties between business actors and consumers, namely by using the form of a standard agreement. This standard agreement is usually made by economically strong parties against debtors whose economic role is weak (Roesli et al., 2019). In this standard agreement, there are often standard clauses that are burdensome to one of the parties, so that for various reasons and certain circumstances, the weak party wants to just accept or sign an agreement containing the standard clause (Satory, 2015), even though he may object to the provisions and conditions set out in the standard agreement.

The use of standard agreements in practice is indeed more effective to use, because it is easy and simple where the agreement can be directly signed by the parties (Sekarini & Darmadha, 2014). The use of this standard agreement is a form of freedom of contract of the parties which certainly has consequences, if the parties carrying out the agreement are obliged to submit and comply with the agreement they have made (Kurniawan et al., 2022). However, the use of this standard agreement often creates an imbalance in the rights and obligations of the parties, which has the potential to harm one of the parties. One of the efforts that can be taken to balance the rights and obligations in an agreement is restitutive, which can take the form of renegotiation, adjustment, and cancellation of the agreement (Budiono, 2006).

In the Civil Law system, in terms of its form is written law and statutory law, so that in this Civil Law system understands the existence of codification so that the main legal source used by judges to decide a problem is the law. In the Netherlands, judges can decide cases on the pretext of abuse of circumstances as a reason for canceling an agreement because the doctrine of abuse of this situation has been regulated in a law (for example in the Netherlands in NBW). While the Common Law system this doctrine has been adapted considering the centralized formation of law through the decisions of judges through the judiciary.

Indonesia itself is a country that adheres to Civil Law, with its written law system and legislation, only understands 3 (three) forms of defect of will that have been regulated in the Civil Code. Based on considerations as a country that adheres to the Civil Law system, does the Indonesian treaty law system need to specifically regulate the doctrine of abuse of this situation in a law. This is considering that historically the Civil Code was adopted from the Burgerlijk Wetboek (BW), while in the Netherlands itself a change has been made in the Nieuw Burgerlijk Wetboek (NBW), or always allowing the doctrine of abuse of this situation to grow in judicial practice, even though basically the Indonesian legal system (Civil Law) in its judicial system does not recognize the principle of *stare decisis et queta non movera*, as adopted in Common Law countries.

Even so, in the application of justice in Indonesia, not only the reasons for canceling an agreement listed in Article 1321 of the Civil Code are used as a reference for reasons for canceling an agreement, but there are some decisions that cancel an agreement because the judge believes that there is an abuse of circumstances or *misbruik van omstandigheden* in the agreement. The use of the doctrine of abuse of circumstances is a new breakthrough for civil law in Indonesia because this doctrine has not been regulated in the Civil Code (Clarins, 2022).

In practice in Indonesia, there are some decisions that contradict each other in accepting or rejecting the use of the doctrine of abuse of circumstances. This is because the position of jurisprudence in Indonesia is only limited to the development of legal science itself, because written law is not always complete and tends to lag behind, therefore it needs to be developed so that it remains actual and always keeps up with legal developments. This is because judges in Indonesia are not bound by precedent or previous judges' decisions on legal issues that are similar to those they decide.

A comparison of judges' considerations in addressing the implementation of the principle of abuse of circumstances can be seen from the existence of decisions stating that the agreement is void because there is an abuse of circumstances and there are also decisions stating that the agreement is not void if there is clearly no abuse of circumstances. There are some decisions such as Decision No. 13/PDT/2011/PN END and Decision No. 3/PDT.G/2015/PN SOS which states that there has been an abuse of circumstances in the agreement so that through these decisions, the related agreement becomes void. On the other hand, there are decisions such as Decision Number 16/PDT.G/2011/PN TBK where the panel of judges ruled that the agreement was not void even though in that case there had been an abuse of circumstances.

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Based on these facts, this research was conducted to find out how the development of the doctrine of abuse of circumstances in countries with Civil Law legal systems such as the Netherlands and Indonesia and specifically discuss how the considerations of judges in Indonesia in providing court decisions in cases related to the doctrine of abuse of circumstances.

2.0 METHOD

The research method used in this research is normative juridical, with a statute approach and case approach. The statutory approach is carried out by examining all laws related to the legal issues discussed (Soekanto & Mamudji, 2003). While the problem approach is carried out by examining cases related to the issue at hand (Marzuki, 2006), especially overwriting the abuse of circumstances in the agreement. The method of data collection is using literature research and internet research. Information analysis is tried qualitatively, which is to analyze information using legal principles, legal doctrines, and positive legal materials, which are carried out on the data that has been collected, carried out by describing data related to the object of research, analyzing data on the object of research and interpreting these data in order to draw conclusions about the prospects for regulating abuse of circumstances as a basis for canceling agreements in the Indonesian legal system.

3.0 RESULT

3.1 The Development of the Doctrine of Abuse of Circumstances (*Misbruik van Omstandigheden*) in the Dutch Legal System

Discussing Civil Law, the Netherlands is deliberately used as a reference as the object of this research given the historical ties between Indonesia and the Netherlands. The Civil Law system applies in Continental European countries such as France, Germany, and the Netherlands, which afterwards spread to Asia because it was brought during colonial times such as the Netherlands, which in conclusion made Indonesia also use this legal system (Aulia & Al-Fatih, 2018). As is well known, Indonesia until now in civil law still inherits Dutch colonial legal products, namely BW. Meanwhile, in the Netherlands itself, a change has currently been tried, namely with the enactment of NBW which has been in effect since January 1, 1992. Not only that, another consideration is the similarity of the legal systems adopted by Indonesia and the Netherlands, namely the civil law legal system.

The development of treaty law in the Netherlands has accepted the abuse of circumstances as one of the factors that give rise to an agreement made in the atmosphere of abuse of circumstances can be canceled, either completely or partially (Satrio, 1992). For Van Dunne as reported by (Panggabean 2001), distinguishes abuse of circumstances due to psychological gain, namely the requirements for abuse of economic gain, among others: a) One party must have an economic advantage over the other party; b) The other party is forced to enter into the agreement. While the requirements for abuse of mental state: a) One party abuses relative dependence, such as a special relationship of trust between parent and child, husband and wife, doctor's patient, pastor of the congregation. b) One party abuses the special mental state of the other party such as mental disorders, inexperience, rashness, lack of knowledge, poor physical condition, and so on.

Currently in the Netherlands the doctrine of abuse of circumstances as an alibi for the cancellation of this agreement has been recognized and regulated in Article 44 NBW. The article explains that *Een rechtshandeling is vernietigbaar, wanneer zij door bedreiging, door bedrog of door misbruik van omstandigheden is tot stand gekomen* (a legal act can be canceled if there is a threat, fraud, or abuse of circumstances). For van Dunne, the formulation of Article 44 NBW was historically inspired by the doctrine of undue influence in English law when the NBW was drafted by Meijer. (Van Dunne, 1993)

More fully, the NBW contains reasons for the cancellation of an agreement consisting of: threats (*bedreiging*), deception (*bedrog*), abuse of circumstances (*misbruik van omstandigheden*) which are regulated in Article 3: 44 NBW and misrepresentation (*dwaling*) which is regulated in Article 6: 228 lid 1 NBW. NBW decided 4 conditions for the occurrence of misrepresentation, namely: (1) special circumstances such as emergency, dependency, carelessness, lack of sound mind, and inexperience; (2) something real; (3) abuse; and (4) causal relationship. The doctrine of abuse of circumstances concerns the embodiment of the principle of freedom of contract (Arifin, 2011), because it concerns abuse in order to disrupt the existence of free will to express his agreement.

Prior to its inclusion in the NBW, the development of the doctrine of abuse of circumstances had already been accepted through various court decisions. One of the court decisions that became a milestone in the acceptance of the doctrine of abuse of circumstances as a new reason for canceling agreements in the Netherlands was the Hoge Raad Decision known as Bovag Arrest III, HR February 26, 1960 NJ 1965, 373 (Setiawan, 1987).

Based on the explanation above, it can be recognized that the growth of the doctrine of abuse of circumstances as a new reason for the cancellation of the agreement in the Netherlands which adheres to the Civil Law system, its recognition was first initiated through a court decision. Subsequently in its development, the doctrine of abuse of circumstances was then raised in a statutory requirement, namely the NBW (Suwandono & Yuanitasari, 2023). This is because basically the main source of law in the Netherlands, which adheres to the civil law system, places the law, which is written law, as the main source of law that provides more legal certainty for judges to decide a problem.

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3.2 The Development of the Doctrine of Abuse of Circumstances (*Misbruik van Omstandigheden*) in the Indonesian Legal System

The discussion of the development of the doctrine of abuse of circumstances in the Indonesian legal system cannot be separated from the characteristics of the legal system itself. As is known, Indonesia is a country that has a close legal history with the Netherlands. This is due to the colonization carried out by the Netherlands in the past which left a legacy including the laws that have been applicable in Indonesia since Indonesia's Independence based on Article II of the Transitional Rules of the 1945 Constitution. In this case, Indonesia adheres to the same legal system as the Netherlands, namely Civil Law.

Unlike the Netherlands, the doctrine of abuse of circumstances in Indonesia can be said to be relatively new which has been accepted in some of the court decisions described above. The recognition of this doctrine is a good intention in judicial application inseparable from the growth and needs of the law. This matter is inseparable from the reality that written law is currently not a perfect product that cannot control all human life completely, so the law grows outside the codification (Mertokusumo, 1999), to fulfill a sense of public justice through court decisions. Moreover, legal needs must adjust to the development of community behavior, including in the civil context.

Indonesia as one of the countries that adheres to the Civil Law legal system with the main source of law is the law (Fuady, 2007). The judge in deciding a case must be based on a law. Judges in deciding a case in this case are heteronomous, because judges base their decisions on laws and regulations (Mertokusumo, 1999) or judges here are not bound by previous decisions of similar judges. But in its development, judges in Indonesia in handing down their decisions can be oriented towards previous judges' decisions because the accompanying decisions convince judges to be accompanied in deciding a case, here the principle of the persuasive power of precedent applies (Mertokusumo, 1999).

The doctrine of abuse of circumstances as a basis for canceling this agreement in the future needs to be regulated in Indonesian treaty law. This matter is based on the consideration that Indonesia adheres to a civil law legal system whose main source of law is the law. Another consideration is to provide legal certainty, considering that basically in the legal system adopted by Indonesia (civil law) does not recognize the principle of *stare decisis et queta non movera*, although in the application of the judiciary in Indonesia the doctrine of abuse of this condition has been recognized in some decisions, but it is very likely that there will be inconsistencies among judges in deciding a uniform case.

3.3 Consideration of Judges in Indonesia in Giving Court Decisions in Relation to the Doctrine of Abuse of Circumstances

In law enforcement in Indonesia, the doctrine of abuse of circumstances has not been regulated in legislation. But in fact, the doctrine of abuse of circumstances has been recognized and used by Indonesian Judges in considering cases relating to the cancellation of an agreement.

Although Indonesia is a country that adopts a Civil Law legal system that upholds legal certainty or law is identified with written rules to avoid abuse, in its development the doctrine of abuse of circumstances is quite often a conversation in law enforcement along with the emergence of the cancellation of agreements under the pretext of imbalance of the parties. In its development in Indonesia, the abuse of circumstances is considered as a situation that can result in a defect in the will of the parties so that the agreement made is not with a perfect agreement between the parties. In other words, if there is an abuse of circumstances, then the agreement is not made with the free will of both parties.

If correlated with the valid requirements of an agreement in Indonesia which are regulated in Article 1320 of the Civil Code, then the consequences of the abuse of circumstances are the same as if there is a threat, fraud or mistake from the parties making the agreement, namely the existence of a defect in the will of the parties making the agreement. As a result, the abuse of circumstances causes a violation of the first subjective condition of the agreement, namely the agreement of the parties. Therefore, the agreement can be canceled. In this research, the author analyzes 3 (three) judge's decisions related to the abuse of circumstances as a reason for canceling the agreement, namely: Court Decision Number 13/PDT.G/2011/PN END, Court Decision Number 3/PDT.G/2015/PN SOS, and Court Decision Number 16/Pdt.G/2011/PN TBK.

First, Court Decision Number 13/PDT.G/2011/PN END, namely this case originated from a working capital loan agreement between Charles Foek (Plaintiff) and PT Bank Rakyat Indonesia (Defendant) dated August 12, 2008 with a loan amount of Rp. 750,000,000, - with a credit period of 12 months and has matured on August 12, 2009. The Plaintiff is a Take Over debtor customer of PT Bank Nasional Indonesia with the realization of a loan for closing credit to the original Bank of Rp. 300,000,000,- and a third party of Rp. 250,000,000,- and the remaining Rp. 150,000,000,- for working capital. Thus, the Plaintiff already had an indirect debt to the Defendant, even though there was no agreement between the two parties. In the agreement, there are 3 articles that are problematic, namely: a) Article 9 states that PT BRI has the right to determine the amount owed to the Debtor, then conduct a sale according to the law of all pledged goods and PT BRI cannot be obliged to pay losses to the Debtor; b) Article 10 states that the approval of the opening of this credit along with all powers available to it, the second party (debtor) states that he has given his consent by waiving his right to object in the future; c) Article 13 states that all powers in this agreement have been given to PT BRI on the condition that they cannot be revoked and by releasing all good obligations according to customary law and the provisions of article 1813 BW.

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After that, because the Plaintiff's business faced extreme shrinkage, the Plaintiff requested the Defendant to extend the maturity period of the agreement. When the Plaintiff made the request, the Defendant was always adamant that it did not want to share any relief at all. The climax occurred 2 (two) years later, in 2011, the Defendant immediately sent a message offering a credit decision to the Plaintiff with a situation that could not be resolved by the Plaintiff where the initial month installment was Rp50,000,000, -, the second month was Rp110,000,000, - and the third month was Rp740,000,000. The Defendant also summoned the Plaintiff through the practice of debt collectors who denounced the execution and told the Plaintiff and his family to leave the Plaintiff's house.

After that, the Defendant also immediately carried out an auction of the collateral contained in the agreement based on Article 9 of the credit agreement. Therefore, the Plaintiff felt aggrieved and continuously pressured, so the Plaintiff filed a lawsuit with the Ende District Court requesting that the agreement be annulled because in the making of the agreement, the Plaintiff was not in a state of freedom and did not have the free will to accept all the contents of the agreement, especially the three articles mentioned above.

In this case, the Defendant had committed an abuse of circumstances in the form of economic gain. This was because the Defendant recognized that in entering into the credit agreement, the Plaintiff was in need of money, so whatever terms were given by the Defendant, the Plaintiff had no other option but to agree to them. Despite recognizing this, the Defendant always included standardized clauses that were burdensome to the Plaintiff, so that the Plaintiff in a weakened state was "forced" to sign the agreement. Therefore, the credit agreement had a defect in the will of the Plaintiff.

The Panel of Judges of the Ende District Court invalidated Articles 9, 10 and 13 of the Agreement due to an abuse of circumstances or *misbruik van omstandigheden*. For the judges, because of the existence of these articles, the roles of the Plaintiff and the Defendant were not equal in the credit agreement. Under these disparate circumstances, for the Panel of Judges, the principle of consensualism had been violated.

The decision of the Panel of Judges has been appropriate by reporting accepting the existence of abuse of circumstances as an alibi for the cancellation of the agreement because the Panel of Judges quoted the comment of Sutan Remy Sjahdeni which explains that if the legal assembly reports a clause in the agreement is invalid because there is "abuse of circumstances" so that the clause must be canceled by law.

Second, Court Decision Number 3/PDT.G/2015/PN SOS, namely this case was between Rugaya Hadadi (Plaintiff) and Achmad Zulfikar (Defendant). The Plaintiff and the Defendant are husband and wife who have formally separated based on the Decision of the Soasio Religious Court dated December 11, 2013. Throughout their marriage, the Defendant used office funds amounting to Rp20,000,000 and could not repay the debt so the Defendant asked the Plaintiff to cover the Defendant's debt by borrowing credit at the Bank.

After that the Plaintiff borrowed Rp30,000,000 which was used to pay off the Defendant's debt and the remainder was used as capital to open a grocery business by the Defendant. After opening the grocery business, the business faced bankruptcy.

Initially, the Defendant failed to pay and the Plaintiff reported this case to the police. In the presence of investigators, through a Mutual Agreement Letter, the Defendant was asked to agree to pay in 2 (two) installments where the first installment was paid in the amount of Rp. 15,000,000,- on June 10, 2014 and the second installment was paid in the amount of Rp. 15,000,000,- on December 30, 2014. If up to the predetermined time limit, the Defendant did not carry out its obligations. Therefore, the Plaintiff sued the Defendant at the Soasio District Court.

In this case, the Plaintiff has committed an abuse of circumstances in the form of psychological advantage. This is because the Plaintiff knew that in entering into the agreement in the form of a Joint Agreement dated December 19, 2013, the Defendant was in a state of psychological distress because the Plaintiff reported the Defendant to the police over issues relating to the same debt and forced the Defendant as the reported party to sign the agreement in the presence of investigators. The Plaintiff knew that the Defendant had no other option but to agree because if the Defendant did not agree then the Plaintiff's report would be processed and the Defendant would become a suspect. Despite knowing this, the Plaintiff still signed the agreement in front of the investigator with the Defendant so that the Defendant with his weakness and the circumstances was "forced" to sign the agreement. Thus, the agreement contained a defect in the will of the Defendant.

The judges of the Soasio District Court believed that by signing the agreement in the presence of investigators, there was an imbalance between the Plaintiff and the Defendant, and that the position of the Defendant, who was under pressure, was weaker than the Plaintiff, who was the whistleblower at the time. Therefore, the decision in this case declared the Joint Agreement null and void.

The decision of the Panel of Judges of the Soasio District Court was correct in applying the doctrine of abuse of circumstances as a reason for canceling the agreement. The Panel of Judges applied the doctrine because according to the Panel of Judges, the abuse of circumstances as a reason for the cancellation of an agreement has been recognized in Indonesia through Jurisprudence Number 2356 K/Pdt/2010. With its consideration, the Panel of Judges considered that with the existence of abuse of circumstances, the validity requirement of an agreement in the form of an agreement of the parties was not fulfilled. Furthermore, the Panel of Judges also considered that due to the abuse of circumstances in the agreement, the making of the joint agreement letter was an unlawful act and the lawsuit based on the invalid agreement was contrary to Article 1320 of the Civil Code so it had to be rejected. Third, Court Decision Number 16/PDT.G/2011/PN TBK, namely the Plaintiff (PT Multi Adverindo represented by Askaris

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Chloe as President Director) and the Defendant (PY Piacentini Turchi Indonesia) entered into a Small Works Contract Number 001/PTMA-PTT/VI/2009, whereby the Defendant was a contractor of PT Saipem Indonesia to undertake a concrete management and stone grinding construction project in Pangke Village, Karimun.

In the execution of the contract, the Plaintiff has carried out all its obligations based on the contract until the project ended. That the Plaintiff has also sent the Minutes of Calculation to the Defendant. Therefore, based on Article 6 of Work Agreement Number 001/PTMA-PTT/VI/2009, the Plaintiff is entitled to be paid USD 147,726.74 and Rp. 103,029,780.

Pursuant to Article 5 of the Agreement, the Minutes must clearly detail the calculation of each month and provide it to the Defendant. However, in reality the Plaintiff never detailed these costs so the Defendant felt that the Plaintiff had defaulted by not providing a clear calculation. The Defendant requested an itemization of costs from the Plaintiff, but the Plaintiff never responded. As a result, the Defendant did not pay the bill, and the Plaintiff through its legal representative issued a summons No. 1170/FT-ENELHS/VI/2011 dated June 8, 2011 to the Defendant to immediately pay the bill. The Defendant never provided any response to the Plaintiff. Therefore, the Plaintiff filed a lawsuit for default against the Defendant at the Tanjung Balai Karimun District Court and demanded compensation from the Defendant. However, because according to the Defendant, the Plaintiff also made a default, the Defendant filed a counterclaim against the Plaintiff, with the argument of misuse of circumstances.

In this case, according to the author, there was no abuse of circumstances, either economic or psychological, and there was only a pure default committed by the Plaintiff, namely not seeking the Defendant's consent before sending the goods. However, this situation did not constitute an abuse of circumstances, because the agreement was made with balanced circumstances from both parties where the Plaintiff needed payment and the Defendant needed goods.

The Panel of Judges of the Tanjung Balai Karimun District Court also stated that there was no abuse of circumstances (*misbruik van omstandigheden*) on the part of the Plaintiff because the situation of not asking for approval regarding the goods to be rented and sent by the Plaintiff to the Defendant was not a weak situation on the part of the Defendant, because the Defendant could have refused and canceled the agreement, and could also send a summons. In this case, the Panel of Judges was right to reject the application of the doctrine of abuse of circumstances in its decision by rejecting the circumstances of abuse of circumstances argued by the Defendant. The decision of the Panel of Judges with regard to the abuse of circumstances was appropriate because according to the author, supported by an analysis of the terms of the abuse of circumstances, the situation of not asking for approval regarding the goods carried out by the Plaintiff is not an act of abuse of circumstances, but only a situation of violation of the contents of the agreement. Thus, the Tanjung Balai Karimun Panel of Judges has understood by rejecting the correct application of abuse of circumstances in Decision Number 16/PDT.G/2011/PN TBK.

From the decisions analyzed by the author, there are 2 (two) Indonesian court decisions that accept the application of the doctrine of abuse of circumstances, namely: a) Decision Number 13/Pdt.G/2011/PN END; b) Decision Number 3/Pdt.G/2015/PN SOS. In these decisions, the Panel of Judges invalidated the agreement in the case because according to the Panel of Judges, the agreement contained elements of abuse of circumstances and the act of abuse of circumstances was declared an unlawful act. The Panel of Judges accepted the application of the doctrine of abuse of circumstances in its decision because it recognized that abuse of circumstances is one of the reasons for the cancellation of an agreement known in Indonesia in addition to threats, fraud, mistake, and violation of the requirement of the parties' capacity to make an agreement.

Furthermore, in the consideration of the Panel of Judges, it is stated that the consequence of the misuse of these circumstances is the violation of the principle of consensualism in making agreements as stipulated in Article 1338 of the Civil Code. Therefore, the agreement made by the parties became defective, giving rise to circumstances that could invalidate the agreement as stated in Article 1321 of the Civil Code. By submitting a case of misuse of circumstances to the court, the Panel of Judges with its authority has the right to cancel the agreement so that the agreement becomes null and void.

Meanwhile, from the decisions analyzed by the author, there are also Indonesian court decisions that reject the application of the doctrine of abuse of circumstances, namely Decision Number 16/Pdt.G/2011/PN TBK. The judges of the Tanjung Balai Karimun District Court have rightly rejected the application of the doctrine of abuse of circumstances in their decision because there was no abuse of circumstances at all in the case.

4.0 CONCLUSION

Based on the analysis described above, it can be concluded that the development of the doctrine of misuse of circumstances as a reason for canceling an agreement in the Dutch and Indonesian legal systems initially grew in various court decisions which after that the Netherlands specifically regulated in a law, namely in the NBW. The NBW regulates *misbruik van omstandigheden* because it has previously been adopted by various court decisions so that it is necessary to be regulated in writing in the NBW. The development of the doctrine of abuse of circumstances in the Dutch legal system is indeed inseparable from the influence of the adaptation of the Common Law System which is more adaptive by growing more in court decisions. In the context of agreement law in Indonesia, the doctrine of abuse of circumstances as a basis for canceling an agreement needs to be regulated in the Indonesian Civil Code in the future. This matter is based on the consideration that Indonesia is a country that adheres to the Civil Law System whose main source of law is the law. Another consideration is to provide legal certainty, considering that basically in the Civil Law legal system adopted by

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Indonesia does not recognize the principle of *stare decisis et queta non movera*, although in judicial applications in Indonesia the doctrine of abuse of this situation has been recognized in some decisions.

Indonesian judges' understanding of the doctrine of abuse of circumstances is still not uniform. This can be seen from the 3 court decisions that the author analyzes, where there are still judges who feel that the abuse of circumstances is not a meaningful matter to consider. The consideration of judges who accept the implementation of the doctrine of abuse of circumstances in their decisions is due to the fact that the judges recognize that abuse of circumstances is one of the reasons for canceling agreements known in Indonesia, not only threats, fraud, oversight, and violations of the provisions on the capacity of the parties to make agreements. As a result of the abuse of circumstances, the principle of consensualism in making agreements as stipulated in Article 1338 of the Civil Code is violated. Therefore, the agreement made by the parties becomes defective, giving rise to circumstances that can invalidate the agreement as stated in Article 1321 of the Civil Code. On the other hand, the reason why the judge refused to practice the implementation of the doctrine of abuse of circumstances in his decision is because for the judge, the abuse of circumstances does not need to be considered, and what needs to be considered is whether the actions of the stronger party are unlawful. Regarding the validity of the agreement, it is actually not necessary to consider, because in that matter, for the panel of judges, what needs to be considered is the actions of the stronger party in implementing the agreement. This was because the panel of judges did not understand the implications of misuse of circumstances in the making of an agreement.

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