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CONTRACT AGREEMENT

RETHINKING “FREEDOM OF CONTRACT” **FREEDOM OF CONTRACT OR COERCION IN DISGUISE?**

The Illusion of Free Choice: Undue Influence and the Boundaries of Contractual Freedom

WHAT IS UNDUE INFLUENCE?

Under the New Dutch Civil Code (NBW), undue influence occurs when **one party exploits a weaker party's vulnerability**. If these circumstances induce the agreement, the party aware of them should have refrained from proceeding, yet failed to do so (*J. Satrio, 1992 : 238*).

Undue influence arises from **a significant power imbalance** (e.g., **emergency, dependency, abnormal mental state, or lack of experience**). To invalidate a transaction, the harmed party must **prove this exploitation led to an unfair agreement**. Conversely, the stronger party can uphold the agreement only by proving fairness, typically by showing that the weaker party received independent professional advice beforehand (*Purwahid Patrik, 1994 : 61*).

PROVISIONS (Nieuwenhuis (*Panggabean, 2010: 47–48*))

- **Extraordinary circumstances (*bijzondere omstandigheden*)** → vulnerabilities like emergencies, dependency, recklessness, mental incapacity, or inexperience;
- **A matter of knowledge (*kenbaarheid*)** → both parties knew or ought to know that these exceptional circumstances induced the weaker party to contract;
- **Abuse** → one party pushed the contract forward despite knowing (or owing a duty to know) that they should not have done so;
- **Causal connection (*causal verband*)** → the agreement would not have been formed without the abuse of those circumstances.

THE HISTORY OF “UNDUE INFLUENCE”

Freedom of Contract vs Undue Influence

Freedom of contract is founded on the assumption that parties negotiate on equal footing and freely determine contractual terms. However, this principle is limited by the doctrine of **undue influence**, which arises when one party exploits another’s vulnerability to secure **an unfair agreement**. Because such pressure undermines **genuine consent**, the law permits these contracts to be set aside, ensuring fairness and preventing exploitation.

The Landmark Case: BOVAG II (January 11, 1957)



Before 1957, the Dutch Civil Code (*Burgerlijk Wetboek*) lacked rules for non-physical contractual pressure. The Supreme Court (*Hoge Raad*) changed everything with the **BOVAG II** case by recognizing **Economic Superiority** as a ground for **cancellation**. The Court established that a contract lacks "legal cause" if a dominant party exploits a situation to gain an unfair advantage.

The Court established a Two-Pronged Test:

Undue Hardship → The weaker party suffers a significant, imbalanced burden.

Act of Abuse → The stronger party intentionally exploits the vulnerable situation of the weaker party to force the agreement.

Because this exploitation violates public morality, the *Hoge Raad* ruled that such agreements are legally void.



Refining the Doctrine: Van Elmbt vs Feierabend (1964)

The Court later clarified that a contract can be voided even without a specific financial loss. What matters is whether the way the agreement was formed - the relationship and the pressure used violates moral standards.

Codification in Modern Law

This judicial history eventually led to the doctrine being officially written into **Article 3:44 of the New Dutch Civil Code (NBW)**, where undue influence is now a **formal ground for annulment** alongside fraud and threats.



FACTOR OF UNDUE INFLUENCE

ECONOMIC FACTOR



Abuse of economic power involves a **major imbalance of strength during contract formation**. The dominant party recognizes and **exploits** the other's economic vulnerability while leaving the weaker party with no choice but to accept the agreement.

CRITERIA

The criteria for the abuse of economic dominance which encompass situations that **cannot** be classified as **acting in good faith, reasonably, and fairly, or that conflict** with public order as traditionally understood will enrich the criteria used by Indonesian law in determining whether or not there is a balance of **bargaining power** in a contract" (Z. Asikin Kusumaatmaja).

CONDITIONS



Conditions indicating the abuse of economic power:

- One party has an **economic advantage** over the other.
- The other party, whose position is dependent, is forced to enter into the agreement.

FACTORS

Factors indicating the abuse of economic power:

- **Unfair terms** : The existence of contractual terms that are **unreasonable, unfair, or unconscionable** (*onredelijke contractvoorwaarden*).
- **Economic duress** : A situation where the debtor is placed in a **position of extreme pressure** (*dwangpositie*).
- **Lack of choice** : Circumstances where the debtor has **no viable alternative** but to enter the agreement under onerous terms.
- **Gross imbalance** : A value in the agreement that is significantly **disproportionate** compared to the actual performance of the parties.

LEGAL STANDINGS ON UNDUE INFLUENCE MATTERS

Status Quo

Indonesia has no specific law addressing Undue Influence, as the Indonesian law limits contractual invalidity to **duress** (*dwang*), **fraud** (*bedrog*), and **error** (*dwaling*). Instead, Indonesian legal practice relies on case law. While judicial decisions do not directly create legislation, lower courts routinely follow supreme courts precedents, integrating Undue Influence into Indonesian law through jurisprudence.

Legal Basis

LEGAL

What It Stipulate

Black's Law Dictionary

Undue influence is a persuasion, pressure or non-physical influence exceeding ordinary advice that compromises a person's judgment. It overrules free will, dictating their actions according to the influencer's intent.

Supreme Court Decision Number 1904K/SIP/1982

"Whereas, based on the foregoing considerations, the Supreme Court finds that there are sufficient grounds to grant the petition for cassation filed by the petitioner"

Judges hold the authority to intervene in a contract's substance. In undue influence claims, this authority directly limits the principle of freedom of contract under Indonesian civil law.

Supreme Court Decision Number 3431K/Pdt/1985

"That, upon closer examination of this loan agreement, the interest rate set at 10% (ten percent) per month is excessively high and even contrary to reason and fairness, given that the defendant is a retired military officer with no other source of income."

"That the provision in the agreement requiring the surrender of the pension fund payment book as "collateral" also violates fairness and justice."

SEVERAL CASES ON UNDUE INFLUENCE IN INDONESIA

Lisa Juliana Tanjung vs Agus Susanto, et.al.

Decision No. 1395 K/Pdt/2017 - A private lender exploited a married couple's financial hardship by turning a loan transaction into the sale of their only home. Using an irrevocable power of attorney, the lender transferred the property to herself without the couple's knowledge. The Supreme Court found this to be undue influence (misbruik van omstandigheden) and declared the sale deeds void.

Charles Foek vs PT Bank Rakyat Indonesia

Decision No. 13/PDT.G/2011/PN - A debtor sued a bank to annul a credit agreement after the bank exploited his urgent financial need to impose oppressive standard clauses. These one-sided clauses granted the bank absolute power to seize assets arbitrarily and entirely stripped the debtor of his legal right to object. The judges annulled the problematic clauses based on the abuse of economic superiority, ruling that the extreme power imbalance violated the fundamental principle of free consent.

Luhur Sundoro vs Dr. Soetardjo, et.al.

Decision No. 1904K/Sip/1982 → The court examined a power of attorney agreement to sell a house, revealing it was actually a sham contract designed to cover up an unpaid debt. The debtor was in a desperate financial position due to other massive debts, forcing him to sign the severely burdensome agreement under pressure. Consequently, the court recognized this as a one-sided contract resulting from undue influence and ruled that the house should only be treated as standard collateral to ensure fairness.

Wasid vs Herman Santoso

Decision No. 1979 K/PDT/2010 → The Supreme Court ruled in favor of Wasid and ordered Herman Santoso to pay Rp 669,195,000 in damages. The Court found that Herman had abused the circumstances by trapping Wasid's child in debt and making threats, which pressured Wasid to sell his land at a very low price. Herman then quickly resold the land at a much higher price, earning a large profit.

HOW TO AVOID ?

Do not treat a contract as a **final, unchangeable** document. treat it as a **negotiable** framework. Before signing, seek legal advice to **identify risks** and **ensure** the terms protect your **interests**.

Never sign a contract without fully **understanding** its contents. Read every clause carefully, especially those relating to **obligations, rights, and penalties**. If a term is unclear, ask for clarification before agreeing to it.

If circumstances change and the contract no longer works for both parties, consider **renegotiating the terms**. We can help you find solutions and negotiate a fair adjustment.

If renegotiation fails and the contract is unfair or has been breached, you may seek **legal remedies through the courts**. In some cases, a lawsuit can be filed to **annul** the contract and **restore** the parties to the position they were in before the agreement was made.



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