

Research Article

The Influence of the Equity Principle on Undue Influence Doctrine and The Urgency of Its Application in Indonesian Contract Law

Ariyanto*, Lucky Suryo Wicaksono

Department of Private Law, Universitas Islam Indonesia, Yogyakarta, Indonesia

ORCIDAriyanto: <https://orcid.org/0000-0002-1841-8275>Lucky Suryo Wicaksono: <https://orcid.org/0000-0002-8582-2470>**Abstract.**

In Indonesia, the concept of undue influence is being used to annul agreements. There is a need to thoroughly analyse the undue influence doctrine, its relationship with the influence of the equity principle, and the urgency of its application in Indonesian contract law because Indonesia does not have a clear defining rule for the term. This study employs normative juridical research techniques by utilising a statutory approach, a case study approach, a historical approach, a comparative approach, and a conceptual approach. In conclusion, the equity principle is crucial when examining excessive influence. Therefore, the doctrine of equity should be considered while formulating the undue impact on the development of favourable legislation in Indonesia.

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1. Introduction

The doctrine of undue influence in the Netherlands as found in Article 44 (3.2.10) of the *Nieuw Netherlands Burgerlijk Wetboek* ('NBW') or the new Dutch Civil Code, is one of the elements that can invalidate a contract [1]. According to Z. Asikin Kusumah Atmaja as quoted by Agus Yudha Hernoko, undue influence is considered as a factor that limits or interferes with the existence of free will to if there is an abuse of circumstances in the agreement between the parties. However, positive law in Indonesia does not govern the annulment of contract based on the undue influence doctrine (*Misbruik Van Omstandigheden*). In fact, the court has used the doctrine merely as the basis for court consideration.

The varying imposition of *Van Omstandigheden's misbruik* doctrine will consequently lead to the diverse final or downstream rulings. The meaning of *Misbruik Van*

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Omstandigheden is actually very complex since it originates from another principle, namely the principle of *Equity*. Thus, the absence of regulation or adoption of this doctrine in positive law in Indonesia is an important point for conducting this research. Furthermore, this study also traces the missing link or the often forgotten relationship between the principle of *equity* and the doctrine of *Misbruik Van Omstandigheden* in *Dutch Civil Code* and *Undue Influence* in the context of Anglo-Saxon (*History Research*).

There are previous studies that poses similar variables with the present study, including: Fatmah Paparang, '*Misbruik Van Omstandigheden in the Development of Contract Law*'; Dwi Fidhayanti, '*Abuse of circumstances (misbruik van omstandigheden) as a prohibition in sharia agreements*'; Febriyanti, '*Abuse of Circumstances (Misbruik Van Omstandigheden) in Developing Contract Law in Indonesia*'; Agus Yudha Hernoko, '*The Application Of Circumstances Abuse Doctrine....on Judicial Practice in Indonesia*'; Wiwin Dwi Ratna..., '*Abuse Of Circumstances (Misbruik Van Omstandigheden) in Developing Contract Law in Indonesia*. These studies have contributed well to the development of literature and legal references in Indonesia. However, this present research identifies the previous criteria of the principle of equity and its communicative patterns to the undue influence doctrine.

2. Methods

This is a normative legal research utilising the approaches as described by Peter Mahmud Marzuki, namely a *statutory approach*, a *case study approach*, a *historical approach* [2], a *comparative approach*, and a *conceptual approach*. [3]The legal sources used in this study are secondary data consisting of primary legal materials which include the *Nieuw Netherlands Burgerlijk Wetboek*, and the Indonesian Civil Code. Secondary legal materials include books and journal articles relating to *Misbruik Van Omstandigheden*. Finally, tertiary law materials that include Indonesian dictionary, and the *Black's Law Dictionary*.

3. Result & Discussion

3.1. The Principle of Equity in Continental and Anglo Saxon Legal Systems

The Corpus Juris Civilis although created in the sixth century but still receives attention to this day. The discussion of *Corpus Juris Civilis* remains relevant to countries that adhere to *Civil Law* system and countries that adhere to *Common Law* system as of today. [4] The effectiveness of Roman law, however, was never fully analyzed. It is agreed by Professor Birley using several epigraphic sources, in works source of its laws, such as *the Theodosian Code* [5] and *Justinian's Digest and Code*. [6] In the beginning, when the Romans created the English provinces in 43 AD, they introduced Roman law to the Celtic population. [7] In the sixteenth to eighteenth centuries, [8] it is known that the combined structure of the 'English Law' is the result of several sources. At that time, everyone was referring to a long-standing judicial practice, with the practice of using 'continental authority' in a case that was even doubtful. Later in the eighteenth century, there was a situation wherein the classification called *equity* developed, but during that period, its development was still limited to sequential data and it was only sometime after that its development emerged, one of which was classification, carried out with three main parts as David Yale stated in the *Tricotomy of Equity*. [9]

In 1759 Lord Hardwick made a correspondence with Lord Kames in which he made the statement that because of the failure of *the common law* courts to adopt a new solution to the new circumstances, From this cause the court of equity, which recognized greater discretion, had an *adjuvandi mind vel supplendi juris civilis* (to assist or supplement civil law), and was obliged to accommodate the wishes of mankind. [10] For this reason, the *Principles of Equity* were first published, the year 1760 was a historic time, due to Kames' contribution contained in jurisprudence. He sought to explain the difference between the nature of justice and common law. Furthermore, to answer the related questions of whether Equity should be bound by the rules and whether there should be a separate court of law and *Equity*. [11]

Then In 1869, when the Judiciary Commission reported, there was a consensus regarding the reform of equity relations with the common law was indispensable. [12] One of the *figures of Equity* reform, Jeremy Bentham, explained the problem. However, in the entire historical narrative of the English law, it must be admitted that Bentham's role is little traced. [13] Then in the history of the courts of England and Wales, which began in the 1870s, began the alignment of the English and the Welsh court systems that have not found their common ground until now. [14]

Allcard v Skinner (1877) LR 36 Ch D 145 was a Landmark Decision on the early implementation of Undue Influences in England [15] from this case, it can be seen that the main distinguishing factor which is coercion (*the Duress*) [16] is based on *threats*, while *Undue Influences* is based on relationships that have been exploited.[17] In its development, Academics and Practitioners such as Mr. Fonbanque, Mr. Jeremy, Joseph Story have given a classification of jurisdictions from *Equity*, then Mr. Mitford, spelled out the 'object' of equity jurisdiction, namely: [9] 1). Where the principles of law by which ordinary courts are guided grant rights but the powers of such courts are not sufficient to provide a complete remedy, or the simple mechanisms by which they are inadequate for that purpose, 2). Where courts of ordinary jurisdiction are made instruments of injustice, 3). Where the principles of law by which ordinary courts are guided do not give rights, but to the principles of universal justice the interference of judicial power is necessary to prevent wrongdoing, while the rest is only limited to complementary [9]

3.2. Undue Influence in the Netherlands

The influence of *Undue Influences* in the *Anglo-Saxon* country was seen after the Netherlands participated in UNIDROIT in 1940, the Dutch Civil Code also underwent several adjustments. As found in Chapter 3:44(4) NBW.(18) Although the jurisprudence for the Abuse of Economic Circumstances can actually be found in the case of *Bovag II*, Arrest 11 January 157, NJ 1959, 57 in the Netherlands. [18] Meanwhile, the Case that became the *Landmark Decision* in the abuse of Psychiatric-related circumstances [18] was the *Van Elembt/Fereinband Case*. HR May 29, 1964, NJ 1965, 104. [18]

3.3. Undue Influence in the Indonesian Legal Context

The undue influence is known in the jurisprudence of the Supreme Court of the Republic of Indonesia Number 3431K / Pdt / 1985 dated March 4, 1987. Meanwhile, it is not yet adopted nor recognised by the Civil Code(18). In the Civil Code, only the annulment of agreements caused by defects of consent were recognised, namely: *Dwang*, *Dwaling*, and *Bedrog*. Thus only the three defects of consent are contained in the Civil Code. As for the subsequent defect of consent, the abuse of circumstances is not regulated in the Civil Code. It is precisely the fourth defect of consent that was born later from jurisprudence. [19]

4. Conclusion

It is known that the combined structure of the 'English Law' is the result of several sources. Every state that adheres to English law should refer to the long-standing practice of the judiciary, the practice of using 'continental authority' in an indecisive case. Then in the eighteenth century England, a situation arose where the classification was called *equity*. However, in that century its development was still limited to lists. Some time after its developments, this was further explained in the Journal compiled by David Yale in his *Tricotomy of Equity*. In the history of the courts of England and Wales, *the Judicature Acts* took an important role for the alignment of civil law.

The communication between Lord Hardwick and Lord Kames became the momentum for the development of *Equity* and the Dutch participation in UNIDROIT in 1940, the Dutch Civil Code also underwent some adjustments, hence the Netherlands officially recognized the buse of Circumstances in their legal system. In the Indonesian Civil Code, the doctrine of *Misbruik Van Omstandigheden* has not been accommodated and is limited to Jurisprudence and purely the interpretation of judges, even though discussions on this matter have been going on for centuries. In the wake of that, the need for the adoption of this doctrine in the Indonesian Civil Code presents as relevant and urgent.

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