

The Undue Influence Doctrine and Its Function in Consumer Financing Cases

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ABSTRACT

*The practice of freedom of contract in Indonesia is only enjoyed by one party with a stronger position. This imbalance is momentum for companies to take advantage of the situation and harm consumers. This study aims to explain the "undue influence" doctrine in Indonesia's legal practice, and its function emphasizes the importance of the consensual principle in contracts. This study uses a normative juridical approach based on secondary legal materials, statutory regulations, and court decisions. Data were collected through literature study and analyzed qualitatively. The terminology of undue influence or *misbruik van omstandigheden* in the Indonesian Civil Code has not been explicitly regulated but has the same character as the concept of "cacat kehendak" or "defect of the will" as regulated in Article 1321 of the Code. The provision of "cacat kehendak" or "defect of the will" is an integral part of the consensual principle in Article 1320 of the Code. The function of this doctrine limits the application of the absolute principle of freedom of contract and becomes a source of law for judges in resolving contract disputes in court. In the reform of the national contract law, this doctrine should be considered to be included as an essential aspect to compliment the main aspects in Article 1321 of the Code.*

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1. Introduction

The high need for financing and investment encourages consumers to tie themselves up with companies like consumer financing companies. The increase in business contracts boosted the growth of corporate assets and the national economy. But on the other hand, there is a risk that threatens the emergence of unreasonable contracts that harm the consumer by taking advantage of the consumer's weak condition from various scientific, economic, and psychological aspects.

Theoretically, the agreement should be based on the principle of freedom of contract as a balance of position between the two parties. However, such a process is currently no longer found in consumer financing because the contract's text or contract is usually prepared in advance by the business contract (standard contract). There is almost no freedom in determining the contents of the agreement in the negotiation process in agreement. The contents or terms of the agreement have been determined unilaterally by a consumer financing company. On the one hand, this practice is very beneficial for entrepreneurs, but on the other hand, it causes losses for consumers.¹

Application of standard contracts from the beginning of its birth has caused controversy both regarding the existence or the validity of its standard contracts. The Indonesian Civil Code does not explicitly regulate standard contracts. With the entry into force of the Consumer Protection Law, the question of the contract's validity has to be answered.²

Although contract law in Indonesia adheres to the principle of freedom of contract, in *misbruik van omstandigheden* reality, freedom of contract and the existence of standard contracts that are becoming a trend in the business world today are seen to have obscured the position of the consensual principle as an essential principle must be fulfilled in the agreement. The presence of standard contracts and the magnitude of business actors' role, causing consumers to give agreements or their desires are not wholehearted, because of economic pressure, forcing consumers to begrudge their agreement. This is as referred to as the "defect of will," and in its development, "defects of will" can also occur in the event of an abuse of circumstances (*undue influence/misbruik van omstandigheden*).³ Business actors use this condition to seek profits and harm consumers. In the common law system contract law, this provision is known as the doctrine of undue influence, or in the civil law, system referred to as. In the New Dutch Civil Code (NDCC) Article 3:44, states that "legal action can be canceled if there is a threat of fraud or abuse of circumstances."⁴

This research aims to figure out the doctrine of undue influence in the perspective of Indonesian contract law, its function in limiting the principle of freedom of contract, and the position of this doctrine in reaffirming the importance of the principle of consensual.

2. Method

This study uses a library research approach by relying on secondary legal materials of statutory regulations, legal doctrine, and court decisions in consumer financing cases. The research sample selected only a few court decisions purposively. These data, such as statutory regulations and court decisions. The material is analyzed using a content analysis approach. Analysis of court decisions is useful for observing the practice of applying the undue influence doctrine in resolving consumer financing cases.

¹ Panggabean, R. M. (2010). Keabsahan Perjanjian dengan Klausul Baku. *Jurnal Hukum Ius Quia Iustum*, 17(4), 651-667.

² *Ibid.*

³ Putra, F. M. K. (2015). Paksaan ekonomi dan penyalahgunaan keadaan sebagai bentuk cacat kehendak dalam perkembangan hukum kontrak. *Yuridika*, 30(2), 232-253.

⁴ Khairandy, R. (2003). *Iktikad baik dalam kebebasan berkontrak*. Universitas Indonesia, Fakultas Hukum, Pascasarjana, p.21.

3. Analysis and Results

3.1. The Doctrine of Undue Influence in Indonesian Contract Law

Traditionally an agreement takes place based on the principle of freedom of contract between two parties with a balanced position. Based on the principle and a balanced position, both parties must agree on all clauses that will be included in the agreement or contract. The contents of clauses of the agreement must not be prepared by one of the parties themselves, then the other party is only required to agree to take it or leave it. However, over time, based on reasons of time efficiency, uniformity, and the importance of formulating in detail the interests of parties that must be protected (usually those with a strong position), the standard agreement was introduced (standard contract, *standard voorwaarden*, standardized contract) and is currently seen as something that is commonly practiced. Almost all parties cannot deny its existence.

According to Mariam Darus, the standard agreement is an agreement whose contents have been standardized in the form of a form or modeled draft of the contract.⁵ The standard agreement is also known as the "unconscious bargain" because this agreement is considered inhuman. Besides, it is also often referred to as a "standard agreement" because it suppresses one party.⁶ The standard agreement, which is called a one-sided adhesion agreement, is likely to be misused by parties with economic and psychological advantages to pressure their contract partners (consumers), while their contract partners only accept what is offered to them.⁷ Using standard agreements now (whether realized or not), has limited or eliminated the importance of freedom of contract.⁸ Besides, the use of standard contracts in the agreement has opened space for business actors to suppress and exploit opportunities or conditions of their contract partners who have a weak bargaining position withdraw profits by including exoneration clauses to weaken their position and burden their contract partners or consumers with responsibilities which are sometimes considered irrational.

According to Hippel, the exoneration or exemption clauses are clauses/articles) which excludes or limits the injured party's right/the weak party to take action for the loss suffered.⁹ In principle, the exoneration clause may be included in the agreement based on the principle of freedom of contract, provided that the inclusion does not exceed the limit by necessarily sacrificing the interests of other parties (contract partners).

The presence of the doctrine of undue influence in contract law limits the freedom of a party whose position is vital in contractual relations, which is understood to adhere to the principle of freedom of contract. Abuse of circumstances has long been recognized in the legal profession and the court, usually concerning defect of will.¹⁰ Its position is recognized to limit the application of the principle of freedom of contract, which exceeds the limit manifested in standard contracts so that other parties who have weak bargaining positions are protected.

⁵ Badruzaman, M. D. (1990). *Perjanjian Baku (Standar) Perkembangannya di Indonesia*, p.96.

⁶ Seran, M., & Setyowati, A. M. W. (2008). Penggunaan Klausula Eksonerasi Dalam Perjanjian dan Perlindungan Hukum Bagi Konsumen. *Jurnal Hukum Pro Justitia*, 26(2), 163.

⁷ *Ibid.*, p. 164.

⁸ Simanjuntak, R. (2020). Akibat dan Tindakan-Tindakan Hukum Terhadap Pencantuman Klausula Baku Dalam Polis Asuransi Yang Bertentangan Dengan Pasal 18 Undang-Undang No. 8/1999 Tentang Perlindungan Konsumen. *Jurnal Hukum Bisnis*, 8(5), 53.

⁹ Hippel, E. V. (1967). Control of Exemption Clauses, The: A Comparative Study. *Int'l & Comp. LQ*, 16: 591.

¹⁰ Quinn, M. J. (2000). Undoing undue influence. *Journal of Elder Abuse & Neglect*, 12(2), 9-17.

The term abuse of circumstances or *misbruik van omstandigheden*), as regulated in the NDCC is a conception of law derived from the Common law system's influence, known as the undue influence doctrine. The *misbruik van omstandigheden* or undue influence doctrine is a new conception of law that has not been regulated in Indonesia's contract law. However, its existence has now been recognized as a new doctrine in contract law which is widely used in resolving contract cases by judges in Indonesia.

The NDCC has determined the abuse of circumstances as one of the reasons for canceling the contract.¹¹ Abuse of circumstances in the Netherlands has been regulated in such a way, then its position is no longer a doctrine as it is still ongoing in Indonesia, but rather it is a statutory regulation that must be followed by business actors in making contracts and court judges in resolving conflicts.

The "*misbruik van omstandigheden*" arrangement in the NDCC is currently found in the provisions of Article 3:44, and is part of the *rechtshandeling* chapter which contains the contents of "*een rechtshandeling is vernietigbaar, wanneer zij door bedreiging, door bedrog of door misbruik van omstandigheden is tot stand gekomen*" (a legal action can be canceled if there is a threat, fraud, or abuse of circumstances.¹² Before the doctrine of abuse of state surfaced, every contract event that arises because one party misused an opportunity cause harm to other parties, the court usually relates it to the fourth condition of the validity of the agreement in the ICC. It views the abuse of circumstances including causal which is not lawful, *ie* conditions contrary to public order and good habits, and based on that, consider that the contract does not apply partly or wholly.¹³

Most of the Indonesian contract law still refers to the Civil Code legacy of the Netherlands, which is regulated in the Indonesian Civil Code (ICC). Unfortunately, the term "undue influence" as a principle in the ICC has not been explicitly regulated, but has a close relationship with the concept of "cacat kehendak", "defect of the will", or "wilsgebreken" in Dutch terms, it is regulated in Article 1321 of the ICC. The provision "cacat kehendak" (*wilsgebreken*) is of course, an inseparable part of the previous article (Article 1320 of the ICC) regarding the conditions for the validity of the agreement, especially the first subjective condition, namely the principle of consensual.

According to contract law, in drafting or making contracts, the important thing the parties must consider it is the fulfillment of the legal conditions of the agreement as regulated in Article 1320 of the ICC, which in essence requires the agreement of the parties, the abilities of the parties, certain objects, and causes the lawful.

Terms 1 and 2 are called subjective conditions because it involves the subject of the contract maker. As a result of the law not fulfilling subjective conditions, the contract can be canceled (*vernietigbaar*), meaning that it will be canceled or not, it's up to the parties concerned. Terms 3 and 4 are called objective conditions because they involve the object of the contract. The legal consequences if not fulfilled objective conditions, then the contract is *null and void*, which means that the contract from the beginning was

¹¹Budiono, H. (2007). *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*. Jakarta: Citra Aditya Bakti, p. 17.

¹²Khairandy, R. *Loc.Cit.*

¹³Arifin, M. (2017). Penyalahgunaan Keadaan Sebagai Faktor Pembatas Kebebasan Berkontrak. *Jurnal Notarius*, 3(2), 67

considered to have never existed. Also, agreements that are against the law, decency, and public order are *null and void*.¹⁴

The first requirement of Article 1320 of the Civil Code requires realizing the principle of consensualism between the parties so that the agreement or contract is considered valid and binding. The parties who enter into an agreement or contract must declare their agreement or freely agree over all the contents and terms agreed in the agreement or contract.

Agreement in the sense of juridical occurs because of an offer by one party and accepted by another party, where the time of acceptance is the agreement's time. The offer and acceptance must contain the statement of both the offerer and his opponent's will that they agree to make a consent each other. Thus the most critical requirements have been fulfilled the agreement by Article 1320 of the ICC required for the agreement's validity. As important as there is an agreement between the parties. If the statement of the will does not exist, then the agreement also does not exist.¹⁵

3.2. The Doctrine of Undue Influence Limiting Freedom of Contract

The principle of freedom of contract is one of the basic principles in treaty law that gives everyone the widest freedom to enter into a contract (agreement) containing anything, as long as it does not violate public order and morality.¹⁶ However, this does not mean that with the principle of freedom of contract, the parties are free to agree whatever the content and form are unlimited. The use principle of freedom of contract must be controlled from being abused by those who have a stronger position. This abuse is caused by a weak party's inability to bargain a position against a strong party.¹⁷ In a financing agreement, the consumer will never have the opportunity to bid on the clauses specified in the standardized agreement. Consumer rejection of standard clauses on the grounds of being unfair or not following the propriety principle will result in the non-realization of financing loans by finance companies.¹⁸

The application of the principle of freedom of contract stated in Article 1338 (1) of the ICC is not by itself. It means that the parties are not free to enter into any agreement they want, based solely on this provision, but they must also link it with other provisions before and after Article 1338 (1) of the ICC, which is very closely related and not may be separated from each other.¹⁹ Provisions that limit the principle of freedom of contract referred to are Article 1320, Article 1321, Article 1330, Article 1332, Article 1335, Article 1337, and 1338 (3) of the ICC.

Freedom of contract is recognized as a universal principle because it is recognized in the Civil law and Common law systems, even recognized and recognized in the Islamic legal system. The principle of freedom of contract in Islamic law is commonly referred

¹⁴ Noor, M. (2015). Penerapan Prinsip-Prinsip Hukum Perikatan dalam Pembuatan Kontrak. *Mazahib*, 14(1), 90.

¹⁵ Kusmiati, N. I. (2016). Undue Influence Sebagai Faktor Penyebab Cacat Kehendak di Luar KUHPerdara, dalam Upaya Mengisi Kekosongan Hukum. *Litigasi*, 17(1), 3263.

¹⁶ Prawirohamidjojo, S., & Pohan, M. (1984). *Bab-Bab tentang Hukum Benda*. Surabaya : Bina Ilmu, p. 190

¹⁷ Winarni, L. N. (2015). Asas Itikad Baik Sebagai Upaya Perlindungan Konsumen Dalam Perjanjian Pembiayaan. *Jurnal Hukum*, 2(2), 89-102.

¹⁸ *Ibid*.

¹⁹ Rokhim, A. (2016). Daya Pembatas Asas Kebebasan Berkontrak dalam Hukum Perjanjian. *Jurnal Negara dan Keadilan*, 5(9), 77-91.

to as freedom of intent (*mabda hurriyyah at ta'aqud*).²⁰ This principle is found in the Word of Allah, the Qur'an: 1. This verse of the Lord Allah the Almighty God commands that the believers fulfill their promises

The practice of transgressing freedom of contract tends to lead to undue influence and detrimental actions for one party in a weak bargaining position. Thus, this doctrine is considered good because it has the function of limiting freedom of contract and protecting the interests of consumers.

The abuse of circumstances (undue influence) was divided into two groups. First, the abuse of circumstances due to economic advantages from one party to another. Second, the abuse of circumstances because of psychological superiority (*geestelijke overweicht*).²¹ Third, according to Lebens De Mug, abuse is due to an emergency (*noodloestand*), but this opinion is usually included in the abuse group because of economic advantages. The legal cases discussed in this paper are generally of abuse of circumstances due to economic advantages.²²

The legal case between Kahar v. PT. Sinar Mas Multifinance (SMM) with Case Register No.140/Pdt.G/2013/PN.Jr provides an overview of how old and illiterate consumers (Plaintiffs) are exploited by business actors by providing false information (misrepresentation) with what the Plaintiff wants so that the Plaintiff was ultimately willing to sign / thumbprint the Consumer Financing Agreement and Trust Guarantee (Fiduciary), on 17 January 2013. If the information provided to the Plaintiff is correct, it is not confident that the Plaintiff will sign the Consumer Financing Agreement and Trust Guarantee (Fiduciary) letter. The Panel of Judges then gave its considerations on page 24, that in the Consumer Financing Agreement and Fiduciary Guarantee, which was made between the Plaintiff as a debtor and the Defendant as a creditor contained a defect of will, namely the abuse of circumstances (*undue influence; misbruik van omstandigheden*).

With the existence of this judge's Decision, it is clear that the doctrine of abuse of circumstances has the same meaning as defects of will (in this Decision), canto limit the practice of freedom of contract beyond the limits carried out by consumer financing companies due to it is detrimental to consumer rights.

It considers the panel of judges on pages 25 and 26 of the Decision, which stated that the Consumer Financing Agreement and Fiduciary Guarantee, on 17 January 2013, between the Plaintiff and Defendant were invalid. The judge's opinion is based on Article 1321 of the ICC, which states "no agreement has the power if it is given because of a defect of will".

The abuse of the situation, as another form of defect, will also be strengthened in the Registrar of Case No.13/Pdt's decision.Sus-BPSK/2014/PN.Grt., Between Tati Hayati v. PT.Multindo Auto Finance (MAF). In the Decision, the panel of judges has the opinion that an agreement may contain defects of will, or the agreement is considered non-existent if things occur, namely coercion (*dwang*), error (*dwaling*) and fraud (*bedrog*). The other defects of will, namely abuse of circumstances (*misbruik van*

²⁰ *Ibid.*

²¹ Nugraha, X., Putra, J. E. P., & Putra, K. D. H. (2020). Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*). *Jurnal Ilmiah Galuh Justisi*, 8(1), 54-72.

²² Miru, A. (2010). *Hukum Kontrak dan Perancangan Kontrak*, Cet. Ke-3, Jakarta : Rajawali Pers.

omstandigheden), as in the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 1904/Sip/1982, concerning the Cancellation of an Engagement.

South Jakarta District Court Judge when deciding case No.590/Pdt.G/2018/PN Jkt.Sel between PT. Asia Multidana (AM) v. Dasep Hidayat, et al., referring to Prof. Dr. Gr. Van der Burgh, Book On Engagement, 1999:68, states "abuse of circumstances can occur when someone moves the heart of another person to commit a legal act by abusing the situation that person is facing". According to Van der Burgh, the creditor in a loan agreement with high-interest rates has taken advantage of the debtor's condition that is in a weak position where he really needs money for a very urgent need, so he is forced to agree to the interest set by the creditor, this is a known abuse of circumstances (undue influence or *misbruik van omstandigheden*) in civil law.

In the case of PT. AM v. Dasep Hidayat, the judge was forced to win over the Plaintiff because the defendants did not attend the hearing to read the Decision, even though they had been properly summoned. Although the Plaintiff was won, the Plaintiff's demand that the Defendant's debt is subject to a fine of 0.5% (zero point five percent) a day was rejected by the panel of judges for it was excessive and burdensome to the defendant, exceeding the principal debt itself, because it is an undue influence.

In Indonesia, the application of freedom of contract under Article 1338 (1) of the ICC is not absolute freedom of contract but is limited by good faith and other principles. The Decision of the Supreme Court No. 3641 K/Pdt/2001, on 11 September, 2002, stating that "the freedom of contract principle is not absolute. Meaning that in certain circumstances, the judge is authorized through legal interpretation to examine and assess and state that the position the parties to an agreement are in an unbalanced state so that one of the parties is considered not free to state his will as if the agreement occurred unilaterally".

The principle of freedom of contract in Article 1338 (1) of the Civil Code from the beginning of its enactment has a negative impact, and lawmakers have been realized if it is carried out beyond the limit by business actors. So the regulation is deliberately juxtaposed with the presence of Article 1338 (3) of the ICC, which states that the agreement must be carried out in good faith.

Apart from the principle of good faith, other principles that have been regulated in the Prevailing Laws and Adat Law can also limit the applicability of freedom of contract. Likewise with traditional values that live in society, humanitarian values, including the abuse of circumstances (undue influence). This principle has been emphasized in the Decision of the Supreme Court of the Republic of Indonesia No. 3641 K / Pdt / 2001 dated 11 September, 2002, which states:

"Considering the legal system of agreements is open when an agreement occurs, not only the Code and/or Adat Law applies, but other legal values that live among other people following with propriety, justice, humanity, such as the abuse of circumstances/opportunities and/or the prohibition of complementing each other so that it constitutes a unity. Therefore, the legal values in question have influence that can be used as an effort to change the provisions as stated in the agreement".

Meanwhile, statutory regulations (outside the ICC codification) regulate restrictions on freedom, such as Law No. 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Law Number 8 of 1999 concerning Consumer

Protection, Law Number 22 of 2001 concerning Oil and Gas, and Law Number 13 of 2003 concerning Labor.²³

3.3. Undue Influence Doctrine Emphasizes the Importance of Consensual Principles

The doctrine of abuse of circumstances requires that the agreement or contract be made based on the principle of real consensual as required by contract law, namely Article 1320 of the ICC. In practice, it often happens that the will's statement does not always describe the real will of the party. One party can be deceived by the other party about the contents of the contract to be entered into, which affects his will, which is called an oversight. It is also possible that one party was given the wrong information about the contents of the agreement in this case called fraud, or a party was forced by another party to give a statement of intent that caused the agreement to occur because of coercion. This is regulated in Article 1321 of the Code. Judges' Decision is referred to as "the classical defect of the will". It is always associated with the "defects in the formation of the will", based on its statement.²⁴

The practice of misuse of conditions by parties, who have a strong position, is an effort to reduce the importance of the principle of consensualism in agreements or contracts. This principle is universal in making agreements or contracts known in global contract law and regulated explicitly in Indonesia's contract law. The principle referred to the principle that an agreement or contract must be made based on consensus or statement. This is known as the principle of consensual. The application of the doctrine of misuse of the situation in the court forum by the judge examining the case of the contract is undoubtedly a means to reaffirm the importance of consensual in making contracts that have so far begun to be reduced who have a strong position. Through the role of judges, the doctrine of misuse of the situation is at the same time a new means for consumers who have a weak position to protect and defend their rights or interests.

The panel of judges, in the case of Kahar versus PT. Sinar Mas Multifinance (SMM) states that no agreement has the power, given because of a defect of will. The dispute between Tati Hayati v. PT. Multindo Auto Finance (MAF), the judge stated that the agreement basically must be an agreement between the parties, and the statement of intention must be a statement that he wants a legal relationship to arise. Likewise, in the agreement between Rosminah Br. Surbakti versus PT Sinar Mitra Sepadan Finance, the judge stated that the agreement was contrary to the Decision of the Supreme Court of the Republic of Indonesia No. 2356 K/Pdt/2008 on 18 February 2009, which stated that an agreement which is "*misbruik van omstandigheden*", can be canceled, since it does not meet the criteria as stated in the Article 1320 of the Code.

Through judges' role in court, several financing contract cases have been won by consumers thanks to the application of the undue influence in resolving conflicts of interest between the two parties without having to wait for the doctrine to be regulated firmly in the law. For example, decision No. 140/Pdt.G/2013/PN.Jr, Decision No.13/Pdt.Sus-BPSK/2014/PN.Grant, and Decision No.516 K/Pdt.Sus-BPSK/2016. Judges in their legal considerations state that they have the authority through legal interpretation to examine and evaluate and stated that the position of the parties in an

²³ Hasan, A. M. (2009). *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum*. Jakarta: Fikahati Aneska, p.116.

²⁴ Kusmiati, N. I. (2016). *Loc.Cit.*

agreement was in an unstable condition in such a way that one of the parties was considered not free to state his wish as if the agreement had occurred unilaterally. However, there was one task which has no place for the court to do is to force its view on the parties about rights and obligations.²⁵ If an agreement is an "undue influence/*misbruik van omstandigheden*", the judge can cancel it because it does not meet the elements in Article 1320 of the ICC, namely free will".

The principle of consensual is a principle that states that agreements are generally not held formally, but sufficient with both parties' agreement. The agreement is a match between the will and the statement made by both parties.²⁶ The agreement in the agreement is a meeting or agreement between the parties in the agreement. Someone is said to give an approval or agreement if he wants what was agreed upon.²⁷

Statement of the will must be a statement that he wants the emergence of a legal relationship. The compatibility of the will between the two has not yet given rise to an agreement because the will must be stated, must be real to the other party, and must be understandable by the other party. If the other party has said to accept or approve it, then there is agreement.

The principle of consensual emerged inspired by Roman law and German law. In German law, the consensual principle is not known, but it is better known as the real agreement and formal agreement. A real agreement is an agreement made and implemented in real terms (in customary law referred to in cash). A formal agreement has been determined in form, written (both in the form of an authentic deed and underhand deed). In Roman law, the terms contracts *verbis literis* and *contractus innominate* are known. That is, that an agreement occurs if it fulfills a predetermined form.

Concerning the form of agreement, in general, the ICC does not require certain forms or formalities. Thus the agreement can be realized in various forms, whether orally or in writing (under the hand or notarial deed), both have legal force. Only if an agreement is implemented in written form will facilitate proof when a dispute occurs. Of course, several types of agreements are required to be made in writing or termed a formal agreement.²⁸

According to the contract's legal provisions, it is known that the statement of agreement or the parties' wishes in the agreement or contract has been realized properly and naturally is if the statement is given without any element of oversight, coercion, and fraud. This is based on Article 1321 of the Code, which confirms that an agreement does not have binding power. If the agreement was created because of an error or by force or fraud. Provisions regarding "defect of the will" need to be expanded by adding the element of "abuse of the situation" as a fourth element to accommodate the development of contract law that is currently developing in the community.

²⁵ Epstein, R. A. (1975). Unconscionability: A Critical Reappraisal. *The Journal of Law and Economics*, 18(2), 293-315.

²⁶ Muhtarom, Muhammad. (2014). Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak. *SUHUF*, 26(1), 48-56

²⁷ Satrio, J. (1995). *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian: buku II*. Jakarta : Citra Aditya Bakti, p.164

²⁸ Jamilah, L. (2012). Asas Kebebasan Berkontrak Dalam Perjanjian Standar Baku. *Syiar Hukum*, 14(1), 26-36.

Practices of settling contract cases in court at present, judges examining cases often use an element of abuse (undue influence) as an element that can be incorporated into factors that cause disability of the will. Misuse of conditions in the contract causes the contract to be canceled because the contract's first subjective conditions are violated. This element brings legal consequences to the parties who signed the contract.²⁹

In essence, the doctrine of abuse of circumstances is not solely related to the first subjective conditions. This doctrine can also be applied to the provisions of the second subjective conditions of Article 1320 of the Code. They are utilizing the conditions of others who cannot be invited to enter into agreements or contracts. Inviting others to give consent or agreement in the contract, while the other person is known to be incompetent (not yet old enough, under authority) at the time of stating their will, also threatened with pressure, or deceived. Finally, stating his will or approval is also seen to violate the legal conditions of the agreement, which is what is meant by "defect of the will." Provisions regarding this matter are explained in Article 1329 to Article 1331 of the Civil Code.

It cannot be denied, the emergence of the practice of misusing conditions in an agreement or contract is an attempt to rip or break the provisions of Article 1320 and the provisions regarding the importance of good faith principles that have been regulated in Article 1338 paragraph (3) of the Civil Code. The presence of the misuse doctrine has the function of limiting the application of the principle of freedom of contract so that the adoption of the undue influence or *misbruik van omstandigheden* doctrine essentially gives legal protection to one party in an agreement or contract that has a weak position from the other party while reaffirming the importance of the agreement (the principle consensual) in contracting.

The practice of abuse of conditions in consumer financing contracts can be considered with the flexibility of consumer finance companies (finance companies), which have a stronger bargaining position to regulate the contents of the contract by the inclusion of standard clauses and exoneration, which is weakening their contract partners or consumers.

4. Conclusion

The terminology of the "undue influence" or "*misbruik van omstandigheden*" in the ICC is not yet firmly regulated, but it has a close relationship with the concept of "defect of the will" as regulated in Article 1321 of the ICC. The provision "defect of the will" is, of course, inseparable part of Article 1320 of the ICC regarding the legal conditions of the agreement, especially the first subjective condition, namely the fulfillment of the principle of consensual. The principle of freedom of contract in its development tends to be met with restrictions. It is assumed that freedom without limits will cause abuse of circumstances and harmful actions for one party in a weak bargaining position. The presence of this doctrine has the function of limiting the application of the principle of freedom of contract so that the adoption of the undue influence or *misbruik van omstandigheden* doctrine essentially gives legal protection to one party in an agreement or contract that has a weak position from the other party while reaffirming the importance of the agreement (the principle of consensualism) in contracting. In the

²⁹ Kusmiati, *Op.Cit.*, p. 3261

renewal of national contract law, the doctrine of undue influence must be considered as one of the critical aspects that can cancel the contract in addition to the main aspects stipulated in Article 1321 of the ICC.

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