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Implementation of Common Law Doctrine in Indonesian Law of Obligation

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ABSTRACT
Indonesia as a country which adopts civil law system has a number of differences with common law countries. However, by the time the differences become narrow through the adoption of several common law doctrines by civil law countries including Indonesia. One of the doctrines is undue influence which has been applied in Indonesia through court decisions. Such doctrine is not explicitly stated in the Indonesian Civil Code. This paper will explain the Implementation of common law doctrine in Indonesia where the Civil Code has not been changed since 1848, especially in the field of law of obligations. Court decisions become primary resources as a tool in conducting analysis. The results show that common law doctrine is not implemented directly in Indonesia but through the Netherlands. This raises a number of similarities and differences. The reasons why the common law doctrine is not directly Implemented in Indonesia and the similarities and differences of such doctrine will be discussed in this paper.
Keywords: *common law, doctrine, abuse of circumstances, undue influence, law of obligation*

A. Introduction

The Common Law and Civil Law systems have traditional differences. However, in their development several areas in the common law and civil law systems show convergence. One area that is experiencing convergence is in the field of contract law or the law of obligation. Indonesia, as a country that adheres to the civil law system, has not escaped these developments. Although the Civil Code provisions governing contract law or law of obligation still use the old provisions of the Dutch heritage, judges through their decisions can create new legal norms of jurisprudence. One of the jurisprudence in force today is regarding the abuse of circumstances which in the common law system are known as the undue influence doctrine.

Although jurisprudence is not the main legal source in Indonesia, the use of jurisprudence as a binding legal source after the law has long been applied in Indonesia. Jurisprudence can even exclude the enactment of the provisions of the law if it is considered no longer in accordance with the values that apply in society. This is for example related to the promise to get married. Article 58 of the Civil Code states that promises to have a marriage are not binding. However, in the case of Masudiati v. Gusti Lanang Rajeg, the Supreme Court stated that not fulfilling the promise to hold a marriage was an illegal act in accordance with decision No. 3191 K/Pdt/1984. Thus, jurisprudence does not always become the second source of law after the law to fill the legal vacuum.

In addition to laws and jurisprudence, doctrine is also a binding source of law in Indonesia. If there are no statutory provisions or jurisprudence, the judge can use the doctrines in deciding cases (Mertokusumo,1993). There are no provisions in civil procedural law in Indonesia that limit the doctrine that can be used by judges in deciding cases. Thus, judges can use doctrines derived from the opinions of Indonesian law scholars as well as those of law graduates from outside Indonesia. Including doctrines originating from countries that adopt the common law system.

The application of common law doctrine in Indonesia is interesting to analyze considering that as a country that adopts a civil law system, Indonesia has different methods and approaches in applying the law to actual cases. Legal practitioners in Indonesia in applying legal provisions to actual cases are based on general and abstract legal provisions to be deductively applied in actuals. Therefore understanding the scope of the regulation and its elements is important for a legal practitioner in Indonesia in order to find the law that will be applied in actual cases. This is, of course, different from common law practitioners. In applying the law to actual cases, common law legal practitioners start with the actual cases and compare it with the same or similar issues that have been decided by the previous court, and based on the precedent the binding legal provisions are determined through the induction method (Pejovic, 2001).

With the differences mentioned above, this paper will analyze the application of common law doctrines in Indonesia, especially the undue influence doctrine, how the doctrine is applied, and whether there are differences in its application. This paper will focus on the application of the undue influence doctrine in Indonesia. This paper will not analyze the application of common doctrines in Indonesia as a whole. This paper also will

not compare the law of obligation in Indonesia with countries that adopt a common law system.

2. DEFINITION AND SCOPE OF THE LAW OF OBLIGATION

As a country that adopts a civil law system, Indonesia is familiar with the field of public law and private law. The law of obligation is part of the civil law regulated in Book 3 of the Civil Code. The definition of obligation is not found in the Civil Code. The civil law code only explains that the obligation was born because of an agreement or law. This is as regulated in Article 1235 of the Civil Code. Subekti provides the definition of the obligation as a legal relationship between two people or two parties, where one party has the right to claims something from the other party and the other party is obliged to fulfill the claims (Subekti, 2010).

Thus, the source of the obligation is the agreement and the law. The difference between the two is the existence of agreement. An obligation originating from an agreement is based on an agreement between the parties so that the obligation exists because it is desired by the parties (voluntary), while the obligation originating from the law is not based on an agreement or the wishes of the parties so that it is mandatory.

Obligations that originate from the law are divided into those that are purely sourced from the laws and those that arise from a certain act. Obligation arising from a certain act is divided into lawfull act and act that are against the law. Included in the act that is permitted is voluntary representation where someone represents the obligations of others who are unable to fulfill without a request from the person being represented.

The law of obligation is open system. Open means the parties are free to determine the contents of the agreement that binds them as long as it does not contrary to the law, morality and public order. Certain agreements as regulated in the Civil Code such as purchase and sale agreement, exchange, leasing and so on are only valid if the parties do not specify otherwise. Thus the provisions regarding certain types of agreements in the Civil Code are only as supplementary laws.

Unlike Indonesia, which adopts a civil law system, a country that adheres to the common law system does not recognize the term law of obligation. This is because countries with a common law system do not recognize the division of public and private law. However, based on its substance, law of obligation material as is known in Indonesia and other civil law countries in the common law system is regulated in contract law, tort law and unjust enrichment.

Regarding the contract law in the Civil Code is regulated in Chapter II, V. s.d. XVIII. However, it also applies to the general provisions regarding obligation as regulated in Chapter I of the Civil Code, as well as the provisions concerning the termination of obligations as regulated in Chapter IV of the Civil Code.

Tort Law is part of an obligation that was born from the law. This is as regulated in Chapter III of the Civil Code, specifically starting from Article 1365 to 1380 Civil Code. For the tort law applies also the general provisions of the law of obligation and the provisions regarding the termination of the obligation.

Regarding unjust enrichment, there is no specific regulation in the Civil Code. However, there are provisions of the Civil Code which is part of the doctrine of unjust enrichment in the common law system as regulated in Article 1359 of the Civil Code. The article regulates the payment that is not required. According to the article, a person who has paid without any obligation can claim for what has been paid.

3. COMMON LAW DOCTRINE IS NOT APPLIED DIRECTLY IN INDONESIA

As a country that adopts a civil law system, Dutch influence still strongly influences the thinking of legal experts in Indonesia including the judges. Therefore, changes in the Netherlands also affect the state of the law in force in Indonesia. This generally applies to legal provisions that are considered neutral such as law of obligation. Legal provisions in the Netherlands certainly have had little effect on sensitive legal fields such as family law. Family law provisions which are strongly influenced by religious and cultural provisions certainly cannot necessarily be applied in Indonesia. The differences in the religion of the majority population and culture do not allow the application of Dutch family law in Indonesia.

Unlike Indonesia, which still uses the old civil law, on January 1, 1992 the Netherlands announced the entry into force of the new Civil Code (Hijma and Snijder, 2010). These provisions replace the old provisions that came into effect in 1838. The old provisions largely adopted the French Civil Code with a number of adjustments and additions. In the new provisions, the influence of the French Civil Code has been reduced, although that does not mean it is completely dissapear.(Hijma and Snijder, 2010).

The Civil Code consists of 8 books. Book 1 contains Family Law and the Law of Persons. Book 2 about Legal Person, Book 3 about Property Law, Proprietary Rights and Interests, Book 4 about Inheritance Law, Book 5 about Rights in Rem, Book 6 about General Part of Law of obligation, Book 7 about Specific Contract, and Book 8 about the Law of Carriage and Means Transportation (Warendorf, 2009).

In addition to being influenced by France, not all the old Civil Code provisions were abolished. The New Dutch Civil Code also gained the influence of the German Civil Code in 1900 and other European countries including Britain (Hijma and Snijder, 2010). The German Civil Code strongly influences the provisions of

the structure of the Dutch Civil Code. This is especially related to the idea of General Part, or to be more precise, of various general parts, with layered structure. Lawmakers are also influenced by common law doctrines such as undue influence and anticipatory breach (Hijma and Snijder, 2010).

Although doctrine is one of the sources of law in Indonesia, legal practitioners in Indonesia are not accustomed to using doctrines from countries that have different legal systems. Therefore, the application of common law doctrine in Indonesia is not directly implemented, but through other countries that adopt common law doctrines such as the Netherlands. This can be seen in the application of the misuse of the abuse of circumstances doctrine in Indonesia, which was adopted from the Netherlands, where the Dutch were influenced by countries that adopted the common law system.

As explained previously, there are doctrines from the common law countries that influenced the formation of the new Dutch Civil Code. If Indonesia uses the provisions of the Dutch Civil Code which is influenced by the common law doctrine, then Indonesia has indirectly applied the common law doctrine. This is reflected in the application of the doctrine of abuse of circumstances in Indonesia, which was influenced by the undue influence doctrine in the United Kingdom indirectly.

The doctrine of abuse of circumstances is a new doctrine in Indonesia and the Netherlands. This is because the doctrine is not contained in the Old Civil Code of 1838 used by the Dutch and applied in Indonesia. Unlike the Netherlands and Indonesia. The undue influence doctrine has existed in England since 1887 in the case of Allcard v. Skinner (Peel, 2011). Based on such doctrine, the agreement that was agreed upon earlier can be canceled. In the Civil Code of 1838, this was not regulated. The Civil Code of 1938 had only three things that could cancel the agreement. The three things that can cancel the agreement are error, duress and fraud. Abuse of circumstances as something that can cancel the agreement has not been regulated in the provisions of the Civil Code of 1838.

Before being regulated in the law, the doctrine of abuse of circumstances in the Netherlands was applied based on the 1957 Hoge Raad jurisprudence in the BOVAG case. In the case Hoge Raad stated:

> "An agreement may not have a legal cause, due to special influences, which play a role at the time of creating an agreement, in which the injured party bears an unbalanced burden due to the pressure of the situation and conditions abused by the party the opponent" (Burg, 2011).

Based on the jurisprudence, Hoge Raad uses an objective approach that emphasizes the content of the agreement that is unfair so that it is considered to violate the legal causes. An agreement violates a legal cause if it is against the law, morality and public order. Due to the absence of statutory provisions governing this matter, it can be considered to violate good morals or public order.

The objective approach was opposed by the Dutch legal expert J.M van Dunne and Gr. Van der Burght. They claim that it is not appropriate if the abuse of circumstances is contrary to good morals. They are of the view that abuse of circumstances does not cause the contents of the contract or its intentions to be illegal, but that the wills given are not free due to abuse of circumstances (Dunn and Burg, 1987). Thus the Dutch legal experts used a subjective approach where the abuse of circumstances was related to defects of the will where the will was not freely given.

Hoge Raad finally confirmed the subjective approach as contained in the decision of May 29, 1964 in the case of Van Elmbt v. Feierebend. In its legal considerations, Hoge Raad stated that for the cancellation of an agreement due to abuse of circumstances there is no need for a certain amount or form of loss but related to the agreement. The loss suffered by one party is only one factor, in addition to various other special things that play a role when granting approval (Dunn and Burg, 1987).

The doctrine of abuse of circumstances (*Misbruik van Omstandigheiden*) with the subjective approach was finally included in the new Dutch Civil Code (*Niew Burgelijk Wetboek* / NBW) in Article 3: 44. Article 3: 44 paragraph (4) NBW as follows:

Undue Influence occurs where a person knows or ought to understand that another is being induced to perform a juridical act as a result of special circumstances – such as a state of necessity, dependency, wantonness, abnormal mental condition or inexperience – and promotes the realization of that juridical act, although what he knows or ought to understand should cause him to refrain from doing so (Worendorf,, 2009).

In Indonesia the doctrine of abuse of circumstances explicitly is contained in the Supreme Court Decree No. 2356 K/Pdt/2010. In that decision, the Supreme Court overturned the High Court's decision and stated as follows:

"That the Court of Appeal did not consider the situation of the Plaintiff at the time of the sale and purchase agreement, namely the Plaintiff was detained by the police because of reports from Defendant I and Defendant II to pressure the Plaintiff to want to make or approve the sale and purchase agreement. This is a "*misbruik van omstandigheden*" which can result in an agreement being canceled because it no longer fulfills the elements of Article 1320 of the Civil Code namely that there is no free will of the Plaintiff;"

Based on this decision, the Supreme Court Explicitly used the term abuse of circumstances "*misbruik van omstandigheiden*" as a basis for consideration in deciding a case. This explains that the doctrine of abuse of circumstances which was first known in the common law system is not directly applied in Indonesia, but through the Netherlands which has applied the doctrine first.

Long before the aforementioned decision which became jurisprudence in Indonesia, the judge actually applied the doctrine of abuse of circumstances. It's just not clearly mentioning the doctrine that is the basis of the judge's judgment in deciding his case. This judge only mentioned the existence of a defective will. This is as contained in the decision of the Indonesian Supreme Court No. 1904 K / Sip / 1982 (Panggabean, 1991). In one of its considerations, the Supreme Court stated as follows:

> "Because the debtor is also bound by other debts that have obtained a court decision that has permanent legal force, then he is in a position of weakness and urgency, so he is forced to sign agreements in notarial deeds which are burdensome for him, then the next agreement can be classified as one party will (*eenzijdig contract*), which is unfair if fully applied to him."

4. COMPARISON OF DOCTRINES

As explained previously, Indonesia applies the doctrine of abuse of circumstances that originate from the common law not directly, but through the Netherlands. As a country that adheres to the civi law legal system, surely the doctrines adopted from the common law need to be adjusted to the legal system in force in the Netherlands and in Indonesia to be implemented. The following is a comparison of the doctrine of abuse of circumstances (*misbruik van omstandigheiden*) as it applies in the Netherlands and Indonesia with the undue Influence doctrine originating from common law countries.

A. Function

Both the doctrine of abuse of circumstances (*misbruik van omstandigheiden*) and the doctrine of undue influence have the same function of ensuring the free will of the parties when binding themselves in an agreement. Both documents are the basis for the injured party to cancel the agreement. The doctrine complements the three previous reasons that agreements can be canceled due to errors, duress and fraud.

As explained earlier that the abuse of circumstances doctrine was not initially associated with the disability of the free will, but was associated with an illegal cause because it was considered contrary to good morals or public order. However, this was opposed by Dutch legal experts. Besides van Dunne and van De Brugh who opposed it, Cohen also said the same thing. Cohen stated that it was inappropriate to classify it as a prohibited cause as regulated in Article 1320 paragraph (4) of the Civil Code. Illegal cause ones have different characteristics which have nothing to do with defective will. Violation of a illegal cause will result in the agreement being null and void without the need for cancellation. In contrast to the defect will (*wilgebrek*) where the cancellation of the agreement will only be examined by the judge if proposed by the person concerned (Panggabean, 1991).

The abuse of circumstances doctrine associated with the existence of a defect of will just existed on May 29, 1964 in the case of Van Elmbt v. Feierebend. In the case, a widow named Feiereband borrowed money from a creditor with her house collateral accompanied by the option to buy. The loan was made by Feiereband because his house will be executed by other creditors. The Option Rights are valid for 10 years at a fixed price, after Feiereband has paid off its debts. At the time the creditor would exercise his Option rights, Feiereband claim the case before the caourt on the basis of abuse of circumstances (*misbruik van omstandigheiden*). The claim was granted and the creditor's option rights were canceled. In this case Feiereband was considered not to understand the consequences of the options given. This is due to the depressed mental condition and lack of understanding about the problem (Panggabean, 1991).

Similar to the abuse of circumstances doctrine, the function of the undue influence doctrine is also to protect the free will of the parties when binding themselves in an agreement. This is reflected in the court's refusal to include elements of fairness in the doctrine of undue influence. English law in relation to the doctrine of undue influence is more focused on procedural justice rather than substantive justice (Stone, 2009).

In the undue influence doctrine, the plaintiff does not need to prove the existence of manifest disadvantageous. The plaintiff needs to prove that when he gives his consent, he is under the influence of another party. When the influence is proven, the defendant's obligation to prove that the influence is not abused. This is reflected in the case of Royal Bank of Scotland plc v. Etridge (Stone, 2009).

Based on the above it is clear that agreement freely given is the focus of the abuse of circumstances doctrine as well as the undue influence doctrine. As for the contents of the agreement that is unfair or does not bring benefits to the defendant is not the focus or element in proving the existence or absence of van abuse of circumstances or undue influence.

B. Forms of Abuse of Circumstances or Undue Influence

Since Indonesia as well as the Netherlands adheres to the Civil Law system, the forms of abuse of circumstances are based on the written laws that govern them. Since in Indonesia there is no written law governing the abuse of circumstances doctrine, so to analyze this matter it is necessary to refer to the written provisions in force in the Netherlands. Based on the provisions of Article 3: 44 paragraph 4 of the Dutch Civil Code, there are four conditions to prove the abuse

of circumstances. These requirements are as follows (Nieuwenhuis, 2012):

1) Special circumstances, such as urgency, dependency, carelessness, abnormal mental condition or lack of experience;
2) Knowledge, the other party knows or at least knows that there are special circumstances that motivate the first party;
3) Abuse, the other party must have proposed contract formation, even though he knows or should understand that he should not do it;
4) Causality, that the contract will not occur if there is no abuse of circumstances.

According to the prevailing doctrine in the Netherlands, the form of abuse of circumstances as regulated in Article 3: 44 of the Dutch civil law is divided into two types (Panggabean, 1991). Firstly there is abuse of the circumstances because of the economic superiority owned by one of the parties. Second, there is abuse of circumstances due to psychiatric superiority. The conditions for abuse of economic superiority are: (1) One party must have an economic superiority over the other party; (2) Other parties are forced to enter into agreements. The conditions for the abuse of psychiatric superiority are: (1) one of the parties abuses the relative superiority, such dependency or trust and confidence between parents and children, husband and wife, patient and doctors, religious adviser and disciple, (2) One party abuses the special mental state of the opposing party, such as urgency, carelessness, abnormal mental condition or lack of experience and so on.

In contrast to Indonesia and the Netherlands, which adheres to the civil law system, Britain, which adopts the common law system, develops the doctrine of undue influence based on court decisions. Since the common law doctrine was built based on court decisions, the existing provisions are more detailed than those in Indonesia and the Netherlands. Thus, in England the forms of undue influence can be explained in detail.

In England the doctrine of undue influence is divided into two namely actual undue influence and presumed influence. Presumed influences consist of presumed influences originating from recognised relationships and presumed influences originating from other relationships (Stone, 2009).

Actual undue influence occurs when there is evidence that directly proves that one of the parties commit itself to an agreement is under the influence of undue pressure at that time. This is reflected in the BCCI v Aboody and CIBC Mortgages v Pitt cases. In the BCCI v Aboody Case, a wife who is under pressure from her husband signs a document for her husband's business interests. The wife acts as guarantor for the house which is their matrimonial home. During a meeting, Mr. Aboody, in a state of agitation, entered the room and argued with the solicitor, managed to reduce his wife tears.This case failed in the appeal level because Mrs. Aboody could not prove that the agreement he signed did not provide him with manifest disadvantage. Loans where he as a guarantor in fact has provided benefits to the company and provide an opportunity for the company to survive. However, in the future in the case of CIBC Morgagesbplc v. Pitt, the condition that there is no real manifest disadvantageous in the actual event of undue influence is no longer needed (Stone, 2009).

In the event of a presumed influence, there must be a relationship first that is considered to cause undue influence. The relationship then influences one party against another weak party. In this connection Lord Nicholls in the case of Royal Bank of Scotland v Etrige (No2) explains as follows:

> "The law adopted a sternly protective attitude toward certain types of relation in which one party acquires influence over another who is vulnerable and dependent…In these cases the law presumes, irrebuttably, that one party had influence over the other. The complainant need not prove he actually reposed trust and confidence in the other party. It is sufficient for him to prove existence of the type of relationship" (Stone, 2009).

The presumed influence that gives rise to trust and confidence is divided in two. First, the relationship is irrebutable where there is no need for further proof of the fact of this relationship. Second, the relationship that needs to be proven that one party has a dominant position towards the other party, and the weak party puts trust and confidence in the people who influence.

Included in the irrebutable relationships are parent-child, guardian-ward, trustee-beneficiary, doctors-patient and religious adviser-disciple (Stone, 2009). Outside of these relationships, it is necessary to prove the existence of trust and confidence between the parties affected against the parties that influence. Such prove is not necessary in the event that there is an irrebutable relationship. However, even if there is an irrebutable relationship, it cannot necessarily cancel the agreement. If it can be proven that the weak party has obtained an explanation independently, then the agreement remains binding (Peel, 2011).

In the common law system, undue influence does not have to come from one of the parties bound in the agreement. The undue influence can come from third parties that are not bound by the agreement. This is especially so if one of the parties conducting a transaction acts as a guarantor for the debt of a third party, as a result of undue influence from the debtor (Stone, 2009).

Based on the above explanation, the common law system provides a clear indicator of undue influence in the formation of an agreement. This is not clearly seen in the provisions governing abuse of circumstances (*misbruik van omstandigheiden*) in the civil law system. The law does not provide an explanation of how an dominant position is abused by a party of higher position.

C. Scope

The scope of the abuse of circumstances doctrine (*misbruik van omstandigheiden*) is broader than the undue influence doctrine. The doctrine of abuse of circumstances in the civil law system includes what in the common law system is known as the doctrine of unconscionability. Unlike the undue influence doctrine which focuses on giving agreements freely, the unconscionability doctrine focuses on an unequal bargaining position and an unfair or grossly inadequate agreement) (Stone, 2009).

According to the undue influence doctrine, whether the affected party benefits from the transaction does not have an important role. This is not an element of the undue influence doctrine. Even though they do not get benefits, the agreement cannot be canceled on the basis of undue influence, if the party affected has obtained independent advice regarding the transaction he undertook. Thus, the undue influence doctrine focuses on giving agreements freely without regard to whether the contents of the agreement bring benefits or not to the parties affected.

In contrast to the undue influence doctrine which does not consider the presence or absence of benefits received by the affected party, according to the doctrine of abuse of circumstances, the content of the contract that is unfair so that it benefits the party that is economically stronger can be used as the basis for canceling the agreement due to abuse of circumstances. This generally occurs in the case of an abuse of economic superiority. The party who has economic superiority is considered to have abused his dominant position if he obtained an improper advantage.

In the Netherlands the abuse of economic superiority which requires unfairness in the contents of the agreement is reflected in the Bovag II, HR II Case January 1957, Nj 1959, 57, and the BUMA / Brinkman Case, HR 24 May 1968, NJ 1968, 252 (Panggabean, 1991). The same is also stated by Van Dunne where the abuse of economic superiority requires an unfairness in the contents of the agreement in addition to other conditions namely (1) the existence of an economic advantage; and (2) urgent needs (Panggabean, 1991).

The doctrine of abuse of circumstances occurs due to special circumstances that are abused by those whose position is stronger to profit improperly. This special situation is not limited to a relationship between one party and another based on a relationship of trust and confidence, but includes all circumstances that create an unbalanced state. This unbalanced situation can be abused by a party with a strong position to profit improperly.

5. CONCLUSION

The doctrine of abuse of circumstances is a doctrine originating from the common law system. The doctrine was applied in Indonesia through the Netherlands which adopted it from the United Kingdom. In his home country in England, the doctrine of abuse of circumstances is known as the undue influence doctrine. The strong influence of the Dutch and the different legal systems caused Indonesia not to apply the doctrine of abuse of circumstances directly from its home country in England. It is not easy for legal practitioners in Indonesia to apply doctrines originating from common law countries. A different approach in applying the law to concrete events is thought to be a major obstacle in applying the common law doctrine directly. Legal practitioners in Indonesia use the deductive approach, whereas in the UK use the inductive approach.

As the doctrine of undue influnece is not directly applied in Indonesia but indirectly adopted fron the Netherland. The Netherlands Civil Code is influenced from a number of countries including the UK which adhered to the common law tradition. Common law doctrines affecting the new Dutch Law Law include the undue influence doctrine and anticipatory breach.

BIBLIOGRAPHY

Agustina, Rosa (2003) *Perbuatan Melawan Hukum.* Jakarta: Program Pascasarjana Fakultas Hukum UI, 2003).

Burg, Van der. (2012). *Buku Tentang Perikatan (Dalam Teori dan Yurisprudensi)*. Bandung: CV Mandar Maju,2012.

Dunne, Van Dunne, and Burg,Van der(1987). *Hukum Perjanjian.(Yogyakarta: Dewan kerjasama Ilmu Hukum Belanda dengan Indonesia Proyek Hukum Perdata*, 1987.

Hijma, Jaap and Snijder, Henk. *the Netherlands New Civil Code*. Jakarta: Mational Legal Reform Program.

Mertokusumo, Sudikno (1993) *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty.

Nieuwenhuis, Hans. (2012). *Penyimpangan Dalam Pembentukan Kontrak. In Rosa Agustina et.all (ed), Hukum Perikatan (Law of Obligation)*. Denpasar: Pustaka Larasan.

Panggabean, Hanry P (1991). *Penyalahgunaan Keadaan (Misbruik van Omstandigheiden) Sebagai Alasan (Baru) Untuk Membatalkan Perjanjian (Berbagai Perkembangan Hukum di Belanda)*. Yogyakarta: Liberti.

Peel, Edween. (2011).*Treitel the Law of Contract*, (London; Sweet and Maxweel.

Pejovic, Caslav (2001). *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*. PPP God. 40),155.

Stone, Richard. (2009). *the Modern Law of Contract Law*, 8ed. London and New York: Routlege-Cavendish.

Subekti (2010). *Hukum Perjanjian*. Jakarta: Intermasa.

Warendorf,Hans. (2009). *the Civil Code of The Netherlands*, (The Netherlands: Kluwer Law International BV.