

Application of Article 1321 of the Civil Code Concerning Vitiated Consent in Court Decisions in Indonesia

Natasya Yunita Sugiastuti^{1*}, Rakhmita Desmayanti¹, Nahla Samir¹

¹Faculty of Law, Trisakti University, 11440, Indonesia
Corresponding author's email: natasyays@yahoo.com

ABSTRACT

Article 1321 of the Civil Code applies in a limited manner three forms of vitiating consent, namely mistake, duress and fraud. The consequence of vitiating consent is potential petition for the cancellation of agreement. The purpose of this research is to elaborate on the application of the normative provisions of Article 1321 of the Civil Code in concrete cases, namely how judges apply the provisions of duress, fraud or mistake as a basis for the cancellation of agreement. It is based on literature review, it is qualitative in nature, using secondary data obtained based on review of literature and court decisions, reaching conclusion based on the inductive method. The results indicate that Civil Code does not provide for specific criteria or elements which must be met in order to be able to determine the will is defective as result of duress, mistake, or fraud. Consequently, judges do not have clear guidance in determining defective will. Moreover, the issue of defective will is centered around the construction of the formation of agreement. Judges therefore need to take a comprehensive rather than formalistic approach in understanding legal facts and related acts. This research helps law students understand legal norms as they are applied in practice.

Keywords: *Vitiating Consent; Court Decision; Indonesia*

1. INTRODUCTION

As provided for in Article 1320 of the Civil Code the first requirement for the validity of an agreement is consent of the parties entering into it. Such consent must arise out of free will, which means that such will should not be defective [1]. Article 1321 of the Civil Code sets forth three forms of defective will with the potential consequence that the agreement is deemed to have never existed, namely duress, mistake, and fraud. If such consent is given as a result of defective will, the law provides protection to the party which has given his/her consent without free will, to nullify the agreement [2]. It is provided for in Article 1449 of the Civil Code that contracts concluded under duress, or due to error or fraud, shall result in a legal claim to nullify such. The last phrase in the above Article, namely “[it] shall result in a legal claim to nullify such” indicates that a consent which contains defective will of the parties thereto shall not automatically become void; rather, it shall be void if there is a legal claim for having it nullified.

The issue that arises is that the Civil Code does not set forth detailed provisions on the criteria or elements

which must be proven for duress, mistake and fraud [3]. As well as the problem of defective will raises an issue in the construction of forming an agreement [4], hence it cannot be proven with a written instrument. At the same time, in the civil judicial process judges are seeking to find and materialize formal truth, namely a form of truth derived from conclusion based on facts revealed in a court proceeding. It is in such context of finding formal truth that judges are required to rely on statements and strong evidence submitted or presented by the disputing parties [5], [6]. Article 1866 of the Civil Code which provides for instruments of evidence in civil cases determines documents or written instruments as primary instruments of evidence. In addition to that, there are other instruments of evidence such as testimony, allegations, confession, and oath.

Accordingly, the purpose of this research is to describe the manner in which the normative provisions of Article 1321 of the Civil Code are applied in concrete cases, namely by looking at the way in which judges apply the provisions on duress, fraud, and mistake as a basis for considering the annulment of agreement.

2. METHOD

This research is purely normative legal research [7], [8]. The norms observed are norms concerning the annulment of agreement due to defective will (duress, mistake, and fraud) as provided for in Article 1321 of the Civil Code. For the purpose of understanding such legal norms, literature review [9] has been conducted of laws and regulations as well as court decisions as primary legal materials, as well as legal doctrines as secondary legal materials.

Data has been obtained through literature study and study of court decisions. The resources to be discussed accessible both in print (books) and electronically using internet search engines [10] such as Google Scholar, Google Books, free internet sites particularly those provided by Supreme Court of the Republic of Indonesia, electronic database such as Integrated Management System of Indonesian Journals, The Indonesian Publication Index (IPI), *Portal Garuda Jurnal Indonesia* online.

Comprehensive description concerning the manner in which the provisions of Article 1321 of the Civil Code are applied in concrete cases has been obtained through qualitative data analysis [11] and inductive reasoning method [12] in view of legal norms, legal doctrines and the legal consideration of judges in court decisions concerning defective will.

3. RESULT AND DISCUSSION

For the purpose of understanding how Article 1321 of the Civil Code concerning defective will have been applied in concrete cases, the research team has studied three cases of claiming the annulment of agreement as a result of duress, mistake, and fraud. Following is a brief outline of the cases studied.

3.1. *The Case of Mu'awanah v. Desi Cahyaningtyas and Erdi Yanto*

The first case is *Mu'awanah v. Desi Cahyaningtyas and Erdi Yanto* concerning the claim for the annulment of house Sale and Purchase Obligation Agreement [*Perjanjian Pengikatan Jual Beli*] based on defective will due to duress in the Decision of the Supreme Court of the Republic of Indonesia Number 472 K/PDT/2012, January 10, 2013. In this case *Mu'awanah* (Plaintiff) and *Erdi Yanto* (Co-defendant) entered into an Agreement Number 225 dated June 23, 2009 (hereinafter referred to as "Agreement") drawn up by Notary *Hj. Siti Reynar, S.H.* with *Desi Cahyaningtyas* (Defendant). The Plaintiff did not wish to sell her house. The Plaintiff's consent to sell her house to the Defendant was based on defective will, rather she did so under pressure by the Defendant and her parents to the Plaintiff and Co-defendant. Based on the foregoing reasons, the Plaintiff filed for the

annulment of the aforementioned "Agreement" at the Lamongan District Court. In this case the Supreme Court affirmed the decision of Lamongan District Court Decision Number 09/Pdt.G/2010/PN.LMG., July, 28, 2010 and Surabaya High Court Decision Number 325/PDT/2011/PT.SBY., July, 18, 2011., and overruled the filing for cassation arguing that the argument of the Plaintiff's claim could not be proven. Similarly, the process of drawing up the "Agreement" by the Plaintiff and Co-defendant had been conducted with consciousness as evidenced by the Plaintiff's signature in said deed. In fact, in the examination of the cassation level, a Dissenting Opinion emerged from one of the cassation judges. However, the assembly of Supreme Court judges decides by majority vote.

In the researchers' view, the above decision of the Supreme Court is not well founded, based on four considerations. First, in simply way duress occurs when someone trigger another person to commit a legal act[13]. By virtue of Article 1324 of the Civil Code, duress is considered to have occurred if the act concerned is such that it intimidates a rationally thinking person, and if such act can cause fear to the person for his/her life or assets with the threat of express and real damage. In the *a quo* case the Plaintiff experienced duress which according to *Sudargo Gautama's* doctrine constitutes an act of mental intimidation which is a threat of physical violence and which can be used as a basis for claim[14]. In this case, the researchers are of the view that in fact the "Agreement" between the Plaintiff and Co-defendant and Defendant should be declared void due to defective will because in fact the consent given by the Plaintiff was not given out of free will, namely she had done it because she had experienced psychological pressure, among other things as it was revealed in the court proceeding whereas the Defendant's mother and her team came to the Plaintiff's house using harsh words asking the Plaintiff to immediately sell her house, the Defendant and her mother and her team forcefully and without the Plaintiff's permission and approval put up a large-size Printing Banner with the inscription "House for Sale", the Defendant's parents invited individuals from the National Police Headquarters and the Regional Police threatening that if she was not willing to sell her house, the Plaintiff's would be put in prison. Without such duress the Plaintiff would never have given her consent. These events caused the Plaintiff to experience fear and there was no other choice for her but to follow the Defendant's demand to visit the Notary on June 23, 2009 bringing the original house certificate in the name of the Plaintiff to be sold to the Defendant. With reference to *J.H. Niewenhuis' doctrine*, duress in consent for entering into agreement occurs if one or more of the parties to the agreement give their consent due to fear of threat,[15] accordingly the "Agreement" between the Plaintiff and Co-Defendant with the Defendant should be declared null because without such threats the Plaintiff would never

have consented. Second, in accordance with Article 1323 of the Civil Code, even though duress is exercised by a third party in a *quo* case the Defendant's parent, the Plaintiff as the party consenting due to duress is still entitled to claim for the nullification of the agreement. Third, also as provided for in Article 1325 of the Civil Code, even though the threat was not made directly against the Plaintiff, rather against the Plaintiff's husband (Defendant II), the Plaintiff is still entitled to claim the nullification of agreement. Fourth, related furthermore to Article 1324 (2) of the Civil Code based on which in considering whether or not duress has occurred, the age, gender and position of the persons concerned must be taken into account, the Plaintiff's condition as a mother of two living along with her two young children under the age of five must receive a more careful consideration by the judges.

Anggita Vischarina Damayanti and Indri Fogar Susilowati in their research on the same case stated that there was a mistake in the formation of the will in the "Agreement" between the Plaintiff and Co-Defendant because the signature affixed by the Plaintiff in the "Agreement" is the result of a duress [16]. In the researchers' opinion the element of mistake actually appears in the contents of the "Agreement," namely the provisions of Article 1 and Article 2 of the "Agreement" are on the contrary to the provisions of the Civil Code concerning the nature of the Sale and Purchase Agreement. Accordance to the Civil Code, the main essence of the sale and purchase agreement is that the seller is the party who is obliged to deliver the goods and the buyer is obliged to provide payment. Not the other way around as regulated in articles 1 and 2 of the "Agreement." The researcher's view is in line with Subekti's view that mistake occurs if one of the parties has an erroneous idea of the substantive matters which are the subject of the agreement or about the significant characteristics of the goods which are the object of the agreement concerned [17].

3.2. The Case of Agustinus Sastro Suparjo (Plaintiff I) and MF. Suharman (Plaintiff II) v. Hermanus I Ketut Suyatra (Defendant I), Andrea Ismargyaning Utami (Defendant II), and Sutrisno, S.H. (Defendant III)

The second case under study was the case of Agustinus Sastro Suparjo (Plaintiff I) and MF. Suharman (Plaintiff II) v. Hermanus I Ketut Suyatra (Defendant I), and Andrea Ismargyaning Utami (Defendant II), and Sutrisno, S.H. (Defendant III) concerning the annulment of agreement based on defective will as a result of fraud in the decision of the Bantul District Court No. 03/PDT.G/2015/PN.BT. The case started when a Sale and Purchase Agreement was entered into between Plaintiff I as seller and Defendant I as buyer of a piece of land with Proprietary Right [Hak Milik] Number 2175

(hereinafter referred to as "Agreement") before Land Deed Official Sutrisno, SH (Defendant III). Based on such sale and purchase deed Defendant I had transferred the title on such land into the name of Defendant I, however despite repeated attempts to collect, Defendant I did not pay the full sale and purchase amount for such land. Since 2007 the residence of Defendant I was unknown whereas Defendant II as Defendant I's legally wedded wife stated that she was unable to pay the outstanding amount for the sale and purchase of such land, hence the Plaintiffs and Defendant II prepared a Joint Statement Letter and Agreement for the annulment of the sale and purchase of such land. The Bantul District Court granted the request for the annulment of the "Agreement" based on defective will due to fraud and declared that based on the law the "Agreement" between the Plaintiffs and Defendant I and Defendant II was void and it does not have binding legal force on the Plaintiff and Defendant I and Defendant II. The judge considered that there had been defective will due to fraud based on the fact that Defendant I had misused the Plaintiffs' good will and trust. Whereas even though Defendant I had not yet paid in full the sale and purchase price for the land, based on trust and good will, the Plaintiffs were prepared to sign the "Agreement," conduct the process for Transferring Title on Proprietary Certificate No. 2175 which had been initially in the name of Plaintiff I to the name of Defendant I. Based on such good will and trust, the Plaintiffs had expected that Defendant I would forthwith make full payment for the sale and purchase of such land. The judge found that such act of Defendant I was fraud against the Plaintiffs, because had the Plaintiffs been aware of the attitude of Defendant, I refusing to make full payment for the sale and purchase of land, the Plaintiffs would not have signed the sale and purchase deed between Plaintiff I and Defendant I before Land Deed Official Sutrisno, SH.

In the researchers' opinion the fact that Defendant I misused the Plaintiffs' good will and trust cannot adequately prove that the Plaintiffs had stated their intent without free will as a result of fraud. It is because in Article 1328 of the Civil Code it is expressly stated that for the annulment of agreement based on defective will due to fraud, the existence of deceit is required. At the same time, according to Subekti's doctrine fraud occurs when a party intentionally provides false or untrue information accompanied by deceit to entice another party to give his/her approval. There must be an active act by one party to deceive another party. It is not sufficient for such person to tell lies about something, there must be at least a series of lies or deceitful acts [17]. In this case there appears to be no series of lies or false information or incitements by Defendant I and II to deceive the Plaintiffs hence the Plaintiffs had given their consent.

3.3.A. *Yosua (Plaintiff) v. PT. Genting (Defendant I), Jaya Samaya Monong (Defendant II)*

The third case is *A. Yosua (Plaintiff) v. PT. Genting (Defendant I), Jaya Samaya Monong, SE (Defendant II)* concerning the annulment of agreement based on defective will as a result of a mistake and fraud in Supreme Court Decision Number 3324 K/Pdt/2019, December 2, 2019. In this case the Plaintiff was the owner of a piece of land based on Statement Letter on Customary Forest Land on an area of 4,000 (four thousand) hectares located in Sei Pinang Hamlet, Mandau Telawang Village, Kapuas Regency, Kedamaian Kapuas Hulu Sei-Hanyo. In 2012 Defendant I, a company engaging in the area of Oil Palm Plantation committed illegal encroachment of such customary forest land owned by the Plaintiff, whereby the Location/Customary Forest Land Area owned by the Plaintiff is within the oil palm plantation area owned by Defendant I. On May 6, 2015 an Agreement for the Release and Transfer of Right on Land (hereinafter referred to as “Agreement”) was entered into between the Plaintiff as Second Party and Defendant I as First Party. It is stated in Article 1 of the “Agreement” that the Second Party (Plaintiff) hereby agrees to release and transfer all ownership rights on the disputed land along with all objects and plant there upon and/or other rights on such disputed land to the First Party (Defendant I), and the First Party (Defendant I) agrees to accept the release and transfer of such right from the Second Party (Plaintiff); for the avoidance of doubt, as from the date of this “Agreement” the disputed land shall be entirely the property of the First Party (Defendant I), whereas the Second Party (Plaintiff) no longer has any right on such disputed land. From the Plaintiff’s side, the “Agreement” contains defective will because it does not specify the amount of compensation for damages or compensation, thus the Plaintiff expected that the payment by Defendant I was going to be for the total customary forest land owned by the Plaintiff, namely 4,000 hectares – (deducted by) 402 hectares owned by the Masaha Community, thus making it a total of 3,598 hectares multiplied with the value of IDR 4,000,000./hectare (four million Rupiah per hectare).

The Kuala Kapuas District Court in Decision Number 14/Pdt.G/2018/PN Klk, dated January 10, 2019 rejected the Plaintiff’s claim in its entirety and declared that the “Agreement” between the Plaintiff and Defendant I was valid and binding considering that both parties had mutually agreed on the release and transfer of right on land as stated in Article 1 namely that “as from the date of this “Agreement” the disputed land shall be entirely the property of the First Party (Defendant I), and the Second Party (Plaintiff) no longer has any right whatsoever on such disputed land”. Based on such facts, the District Court declared that the “consent” element had

been fulfilled. The Palangka Raya High Court in its Decision Number 18/PDT/2019/PT PLK dated May 9, 2019 affirmed the District Court’s decision. The Supreme Court overruled the Palangka Raya High Court’s decision affirming the Kuala Kapuas District Court’s decision and granted the Plaintiff’s claim in its entirety; in its decision Number 3324 K/Pdt/2019, in its considerations the Supreme Court stated among other things that act of Defendant I against Plaintiff, among other things by drawing up and entering into the “Agreement”; intentionally allowing the Plaintiff to suffer losses as a result of the “Agreement”, and took away opportunity and profit from the Plaintiff, causing the Plaintiff’s defective will because it was misleading and it was filled with deceit/lies. Based on such consideration, the Supreme Court declare that the “Agreement” legalized by the Co-defendant was not valid, it was legally defective, and it did not have legal force because it was contradictory to the requirements for the validity of an agreement as set out in the provisions of Article 1320 of the Civil Code due to deceit and fraud the agreement automatically annulled or it is null and void. It is evident from this decision that in considering whether or not there is a defective will, the Supreme Court did not merely rely on the contents of the signed Agreement, rather it considered facts related to the process of expressing intent.

The researchers’ opinion concurs with the Supreme Court’s decision, namely there was a defective will in the form of error and fraud in the process of creating the “Agreement” between the Plaintiff and Defendant I. Quoting from Subekti, mistake occurs if one of the parties has an erroneous idea of the substantive matters which are the subject of the agreement or about the significant characteristics of the goods which are the object of the agreement concerned[17]. The “Agreement” gives rise to mistake on the Plaintiff’s part in view of the substantive matters of the agreement because the “Agreement” does not specify the area of land, the specific amount of compensation for damages or the value of compensation. It has thus created the impression in the Plaintiff’s mind that the compensation for damages would include the total area of customary forest land owned by the Plaintiff, namely 4,000 hectares, whereas the Plaintiff received compensation for damages for only 1,098 hectares of land. With reference to J Satrio’s view, this is a mistake which has occurred due to the condition under which there is a concurrence of will and representation between the parties, however the will of one or both of the parties has been created in a defective manner[18]. Had the Plaintiff not been mistaken about the said matters, she would not have given her consent. Quoting from Niewenhuis’s view, fraud is a qualified mistake. It means that fraud is considered to have occurred if there is a misrepresentation of the characteristics and conditions arising as a result of the counter-party’s conduct intentionally misleading in a

series of deceitful acts^[15]. Based on the foregoing, all acts of Defendant I against the Plaintiff, namely drawing up and entering into the “Agreement”, intentionally allowing the Plaintiff to suffer damages as a result of the “Agreement” and intentionally taking away opportunity and profits from the Plaintiff are deceitful acts or a series of lies.

4. CONCLUSION

The results of research of several judicial decisions indicate that it is not easy to prove the occurrence of defective will due to duress, mistake, and fraud. It caused by the fact that the issue of defective will evolve around the construction of the formation of agreement. It is due to the fact that the Civil Code does not provide for specific criteria or elements which must be met in order to be able to determine the a will is defective as result of duress, mistake, or fraud. Consequently, judges do not have clear guidance in determining defective will. Moreover, the issue of defective will be centered around the construction of the formation of agreement. Therefore, in their considerations judges should not be merely looking at the formality, namely the parties have signed an agreement. Rather than that, judges need to consider the relevance of legal facts and other related acts in a comprehensive manner.

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