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COMPARATIVE ANALYSIS OF UNDUE INFLUENCE AS A BASIS FOR CONTRACT ANNULMENT: COMPARISON INDONESIA AND MALAYSIA

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Abstract

This research offers novelty by conducting a comparative analysis of the application of the doctrine of undue influence in contract cancellation in Indonesia, particularly in the context of comparing different legal systems. Previous study such as those conducted by Ariyanto (2023), revealed that Indonesia lacks a clear legal framework regarding undue influence in contract cancellation. Meanwhile, Azam (2020) highlighted that the doctrine in consumer financing cases in Indonesia limits contractual freedom. This study compares the application of the doctrine of undue influence as a basis for contract cancellation in Indonesia and Malaysia, aiming to formulate an ideal model for Indonesia inspired by the application in Malaysia. The research method employs normative legal research method with a comparative legal approach. Legal materials are collected through extensive library research and analyzed using systematic and grammatical legal interpretation methodology. The novelty of this study lies in its in-depth comparison of the application of this doctrine in Indonesia and Malaysia, focusing on significant similarities between two countries, influencing how the harmed party seek cancellation. Indonesia has the opportunity to adopt Malaysia's approach, which encourages judges to offer alternative solution and conduct deeper psychological analysis. This research may inspire ideas to explore the application of the doctrine of undue influence in the countries with different legal systems, such as those following common law or civil law systems.

Keywords: Agreement; Comparative Analysis; Contract Annulment; Undue Influence Doctrine.

Introduction

In the realm of Indonesia contract law, the agreements annulment due to defects of will, namely *dwang, dwaling*, and *bedrog* holds significance. In addition, according to legal developments developed through decisions of judicial bodies, it is also known as the principle of undue influence.[1]

Undue Influence is a doctrine or teaching that first appeared in England. England is a

1 Sutedjo Bomantoro, "Implementasi Doktrin Penyalahgunaan Keadaan Dalam Perjanjian Dalam Praktek Peradilan Di Indonesia," (PhD Thesis, Universitas Islam Indonesia, 2004), https://dspace.uii.ac.id/handle/123456789/9186.

 https://doi.org/10.21776/ub.arenahukum2025.01801.7

country that uses the common law system so that several countries that use the common law system also apply this doctrine in their contract law, including Malaysia. In Malaysia, undue influence is regulated in detail in the Law of Malaysia, Contract Act: 136, 1950. Section 16 of this Act expounds that "A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other." This section further delineates illustrations that exemplify contracts encompassing undue influence.

Interestingly, the doctrine of undue influence has transcended its origins within common law jurisdiction, permeating civil law systems including the Netherlands and Indonesia as former colonies. Dutch contract law adopted this institution of undue influence from English law.[2] At the beginning of its appearance in the Netherlands, the teaching on the undue influence as a basis for consideration by judges to decide on the annulment of a contract in court developed into jurisprudence and now the doctrine of undue influence which in Dutch is called *misbruik van omstadigheden* has been included in the *Nieuw Burgerlijk Wetboek* (hereinafter referred to as NBW). The concept of undue influence is regulated under article 3:44 lid 1 NBW.

In judicial practice in Indonesia, the doctrine of undue influence has been recognized as a basis for contract annulment, even in the absence of explicit provisions in the Civil Code. In accordance with Article 10 paragraph (1) of Indonesia Law Number 48 of 2009 concerning Judicial Power stipulates that "the court is prohibited from refusing to examine, try and decide on a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and try it". The court is mandated as assess and adjudicate cases without denial based on absence or ambiguity of law. Cases invoking undue influence are guided by prevailing jurisprudence established by the Supreme Court. As such, Indonesia could benefit from the codification of regulations addressing undue influence, ensuring consistent interpretation of this concept in judicial decisions. Despite the presence of precedent guiding judgment related to undue influence, disparate outcomes have surfaced, reflecting varied interpretations, occasionally attributed to good faith, wrongful acts, or breaches of permissible causes.[3]

While Indonesia and Malaysia possess distinct legal frameworks, they share comparable social and cultural attributes as Southeast Asian neighbors. These shared characters present an opportunity for diplomatic and economic collaboration, motivating a comparative exploration of undue influence regulations. This assessment aims to discern the merits and drawbacks inherent in the regulatory approaches adopted by both nations, with Indonesia seeking to leverage this analysis as a foundation for refining its legal framework concerning undue influence, thereby

2 Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan* (FH UII Press, 2013).

3 Dwi Fidhayanti, "In Contract Law: Unpacking Undue Influence through a Judge's Lens," *Journal of Judicial Review* 25, no. 2 (1 December 2023): 193–208, https://doi.org/10.37253/jjr.v25i2.7725.

enhancing contractual equity.

Previous studies on the undue influence have a different focus even though they are related to the same theme. Fani Martiawan Kumara Putra Given its civil law orientation, Indonesia diverges from the common law tradition in significant ways.[4] Akhmad Budi Cahyono give the differentiation evident when juxtaposing this doctrine with the concept of *dwang* (coercion), although certain similarities persist. Owing to its doctrinal nature, the adjudication of undue influence calls for prudence and circumspection from the judiciary.[5] While Wan Zulhafiz examines imbalances in oil and gas industry contracts in Malaysia, which focuses more on unfairness in risk sharing, although it does not focus directly on undue influence.[6] In practice, Md. Nannu Mian dan Shalina found that an undue influence is an exceptional phenomenon in a transaction; however, the remedy for an undue influence is a very pertinent issue in every transaction.[7] Furthermore, Noor Inayah Yaakub examines one of the obscurities of the law regarding unreasonable effects in three-party transactions is the principle to waive the transaction.[8]

This research has similarities with previous research in terms of its focus on undue influence, but highlights the comparison between Indonesia and Malaysia, two countries with different legal backgrounds (civil law legal system in Indonesia and common law in Malaysia). The difference lies in the more specific objectives of the research to formulate an ideal model in contract rescission based on undue influence in Indonesia by looking at the existing application in Malaysia, which is more flexible and includes similar social and cultural factors. This research also attempts to produce a more uniform understanding of undue influence in the Indonesia legal context.

This research constitutes a nuanced examination of the doctrine of undue influence, focusing on the comparative legal landscape of Indonesia and Malaysia regarding its role as a basis for contract annulment and create an ideal model of the doctrine of undue influence in Indonesia with insight from Malaysia undue influence. This step is an effort to establish a uniform determination of undue influence rulings in Indonesia by studying the characteristics

4 Fani Martiawan, "Paksaan Ekonomi Dan Penyalahgunaan Keadaan Sebagai Bentuk Cacat Kehendak Dalam Perkembangan Hukum Kontrak," *Yuridika* 30, no. 2 (2015): 232–53.

5 Akhmad Budi Cahyono, "Implementation of Common Law Doctrine in Indonesian Law of Obligation," *Proceedings of the 3rd International Conference on Law and Governance (ICLAVE 2019)* (2020): 320–26, https://doi.org/10.2991/aebmr.k.200321.041.

6 Wan Zulhafiz, "Unfair Contract Terms Act 1977: Does It Provide a Good Model in Regulating Risk Allocation Provisions in Oilfield Contracts in Malaysia?," *International Journal of Trade and Global Markets* 8, no. 1 (2015): 3.

7 Md Nannu Mian and Shalina Akter, "A Comparative Study of a Restitutionary Remedy for an Undue Influence between the English Law and the Islamic Legal Principles," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 12, no. 5 (2013), https://m.utcg6e.com/iosr-jhss/papers/Vol12-issue5/G01253742.pdf.

8 Noor Inayah Yaakub, "The Basis for Setting Aside a Three-Party Bank-Lending Transaction Entered into by 'Undue Influence'under Section 16 of the Malaysia Contracts Act 1950: A Grey Area of Laws," *Jurnal Undang-Undang Dan Masyarakat* 9 (2005): 85.

of the causes of undue influence claims in Indonesia and examining Malaysia undue influence, a country with similar in legal systems and cultural aspects.

This study used normative legal research to investigate the doctrine of undue influence as a basis for contract annulment in Indonesia and Malaysia. The research focus centers on understanding the application of undue influence within the legal frameworks of these two countries. Despite the divergence in their legal systems—Indonesia adheres to a civil law legal system, while Malaysia follows a common law legal system—the shared cultural characteristics and regional proximity of both nations provide a compelling basis for comparative analysis. The aim is to explore the similarities and differences in the regulation of undue influence in Indonesia and Malaysia, offering insights for potential future regulatory enhancements.

The research approach used in this study is a comparative approach, which allows for an in-depth exploration of the distinctions and parallels in addressing undue influence. Primary legal materials underpinning the study encompass the Indonesian Civil Code, relevant judicial decisions, and jurisprudence, alongside the Malaysian Contract Act: 136 of 1950. Furthermore, authoritative textbooks from both Indonesian and Malaysian sources are leveraged, alongside references from international journals that align with the research's thematic focus. The acquisition of primary and secondary legal materials is accomplished through an exhaustive literature review, forming the basis for the research's interpretative analyses.

Interpretative analyses are pivotal in this study. To clarify the rules surrounding undue influence within Indonesia, a systematic legal interpretation approach is used. On the other hand, grammatical interpretation is utilized to glean insights into the meaning of undue influence within both Indonesian and Malaysian contexts. This comprehensive analysis enables the identification of disparities and commonalities, thereby facilitating the formulation of a model that holds potential for emulation and application to instances of undue influence within the Indonesian legal landscape.

Discussion

A. The Comparison of Undue Influence as a Basis for Contract Annulment in Indonesia and Malaysia

Within the Asian legal landscape, the exploration of comparative law, including contract law, across diverse national contexts remains in its embryonic stages.[9] The dearth of funding allocated to examining Asian contract law precludes extensive cross-jurisdictional comparisons.[10]

9 Muhammad Arifin, "Penyalahgunaan Keadaan Sebagai Faktor Pembatas Kebebasan Berkontrak," *Jurnal Notarius* 3, no. 2 (2017): 61–75.

10 Stefan Vogenauer, "Interpretation of Contracts and Control of Unfair Terms in Asia: A Comparison," *Studies in the Contract Laws of Asia* 3 (2021): 477–558.

Several conjectures underlie this paucity of intra-Asian comparative contract law inquiry. The contractual regulations across Asian jurisdictions are broadly categorized into three paradigms, contingent on the historical trajectories of the respective nations.[11] Evolving from European legal traditions that have exerted influence over multiple centuries, these frameworks differ. Notably, countries such as Hong Kong, India, Malaysia, Myanmar, and Singapore adhere to a common law legal system, aligning with English law doctrines. In contrast, China, Japan, Korea, Taiwan, and Thailand's contract law aligns with German civil law norms. On another axis, the development of private law in Indonesia, the Philippines, and Vietnam finds its origins significantly shaped by the French Civil Code and its derivatives from the Netherlands and Spain. The legal framework in these jurisdictions is often referred to as the Romanistic or, at times, Germanic systems.

Malaysia, characterized by a common law legal system, regulates its written contract law through the Malaysia Contracts Act 1950 (MCA). In common law, legal doctrines are primarily derived from case law, rendering it a pivotal source for contractual interpretation. The transference of British contract law principles to the Malaysian legal landscape was incremental. English law made its foray into the former United Malay Federation via the assimilation of Indian laws, subsequently adapted to local legal structures. The non-Federated Malay States, less influenced by British interventions, eventually followed suit. The Contracts Act 1950 was enacted throughout Malaysia, encompassing Malay states on 23 May 1950 and Melaka, Pulau Pinang, Sabah, and Sarawak on 1 July 1974. Reflecting a 19th-century British contract theory model, the Act mirrors the ethos of laissez-faire justice that prevailed during that epoch.[12]

Meanwhile, in Indonesia, regulations pertaining to contract law mirror the provisions of Articles 1342–1351 of the Civil Code 1847 (Code Civil Indonesia), faithfully copied from the Dutch Civil Code of 1838 (Burgerlijk Wetboek or BW 1838). Notably, the exceptions lie in these regulations mirroring Article 1156-1162 of the French Code Civil 1804, alongside Articles 1138 (3) and 1139 replicating the tenets of Article 1134 (3) and 1135 Code civil 1804. This tenet underscores that legally concluded contracts "must be executed in good faith" and are bound not only by their explicit terms but also by all consequences mandated by equity, customary practice, or the law of obligations intrinsic to their essence.

The development of the undue influence doctrine has involved into numerous legal cases. Unlike Malaysia, which is a country with common law system that grants judges the freedom to interpret acts of undue influence, with their rulings serving as a source of law, in Indonesia, the doctrine of undue influence lacks a legal basis, resulting in varied judicial outcomes.

11 David M. Engel, "A Concise Legal History of South-East Asia Oxford," *The American Journal of Legal History* 24, no.1 (1980), https://doi.org/10.2307/844595.

12 Nurretina Ahmad Shariff, "Contract Law in Malaysia: Reflections on Its Ideologies and Concepts," *Journal of Governance and Development (JGD)* 1 (2005): 32–39.

The concept of undue influence or *misbruik van omstadigheden* refers to the occurrence of defects in contracts, where one party takes advantage of the opportunity to abuse their authority over others who are in state of emergency, unsound mind, or lack experience in carrying out legal act, resulting in harm. Indonesia utilizes the Civil Code derived from the Dutch Civil Law, seems not to follow the Netherlands, which has already revised the *Dutch Civil Code* into *Neo Burgerlijk Wetboek*. The undue influence doctrine is regulated in Book III of the Dutch Civil Code Article 3:44, while Indonesia only uses jurisprudence as a basis for problem solving.

This study pertains to the development of contract law, with a particular focus on undue influence within Indonesia and Malaysia. Serving as an incremental advancement, this paper augments the corpus of knowledge concerning contract law evolution within the Asian context, specifically between these two nations. The research journey commences by scouring legal resources encompassing terms such as "*misbruik van omstandigheiden*," "*Indonesia undue influence*," "*Malaysia undue influence*," and "*undue influence*." The investigation narrows its scope to encompass the years 2017 to 2022, thus capturing a representative data sample reflective of undue influence's legal evolution within the two jurisdictions over the past five years. This collated information subsequently serves as the foundation for a comprehensive inquiry, revealing categories of undue influence causes, objects, and ensuing legal ramifications. Complementary legal materials pertaining to undue influence's progression are also drawn from diverse literature originating in both Indonesia and Malaysia.

Previous studies on undue influence exhibit a common focus on its role in contract annulment, but they approach the doctrine from different perspectives and legal context. Studies such as Fani Martiawan Kumara Putra[13] and Akhmad Budi Cahyono[14] emphasize the importance of undue influence in safeguarding fairness in contracts, underlining the need for juridical prudence when adjudicating cases involving undue influence. This aligns with the broader theme in existing literature, which underscores the cautious approach required by judges in these cases. Moreover, studies like Ariyanto[15] and Azam[16] highlight the lack of clear legal framework in Indonesia regarding undue influence, with Ariyanto[17] particularly pointing out the inconsistency in judicial outcomes due to the absence of clear legal guidelines[18].

However, what differentiates this research from previous studies is its comparative approach between Indonesia and Malaysia, with a focus on developing an ideal model for

13 Martiawan, *op. cit.*

14 Cahyono, *op. cit.*

15 Ariyanto and Wicaksono, *op. cit.*

16 Syaiful Azam, Mulhadi, and Dedi Harianto, "The Undue Influence Doctrine and Its Function in Consumer Financing Cases", *Jurnal Media Hukum* 27, no. 2 (31 December 2020): 240–51, https://doi.org/10.18196/jmh.20200154.

17 Ariyanto and Wicaksono, *op. cit.*

18 *Ibid.*

Indonesia, inspired by Malaysia's more flexible and practical application of the doctrine. While Wan Zulhafiz[19] explores the issue of imbalance in contracts within the Malaysian oil and gas industry, it does not directly focus on undue influence. In contrast, this research goes further by not only comparing the legal framework of the two countries but also suggesting that Indonesia could benefit from adopting Malaysia's approach, which offers more flexibility in resolving undue influence cases-such as through renegotiation or mediation-rather than strictly relying on annulment through court decisions.

Another significant difference is the focus on the psychological aspect of undue influence a dimension not thoroughly explored in previous studies like those by Md. Nannu Mian & Shalina and Noor Inayah Yaakub[20]. These studies acknowledge the presence of undue influence in contract law but do not delve as deeply into the psychological and emotional dynamics involved. This research advocates for a deeper psychological analysis, inspired by Malaysia's judicial approach, to more accurately address the nuances of undue influence in contractual relationships.

In conclusion, while earlier studies such as Ariyanto[21] and Azam[22] identify gaps and inconsistencies in Indonesia's legal framework regarding undue influence, this research goes beyond diagnosis and offers a concrete model for reform. By drawing on Malaysia's approach, it proposes actionable steps to improve Indonesia's legal handling of undue influence, filling the gap identified in previous studies. Thus, this research not only contributes to the theoretical understanding of undue influence but also offers practical solutions for refining Indonesia's legal framework on the subject.

The symbiotic relationship between Indonesia and Malaysia finds expression in various dimensions. The historical, cultural, and religious affinities between these two nations underscore their interconnectedness. While maintaining their separate sovereignties, these countries share deeply embedded commonalities in history, culture, and religion, which are significant factors cementing their relationship.[23] This bond of equality was strengthened by the opinion expressed by Tunku Abdul Rahman Putra Al-Haj who at that time served as Chief Minister of Malaysia (Malaysia) at the Ministerial Meeting in Jakarta on November 8 1955 that "the world cannot deny international relations between the Malays and Malays." and the Indonesian nation where we were previously known as one nation inhabiting the Malay Archipelago ... Indeed, we are separated in one aspect but united in another aspect, namely the cultural aspect.

19 Zulhafiz,*op. cit*.

20 Mian, and Akter, *op. cit*.

21 Ariyanto and Wicaksono, *op. cit*.

22 Azam, Mulhadi, and Harianto, *op. cit*.

23 "Here Is Why Indonesia Is Alike Malaysia, and Vice Versa | GIV - Indonesian Perspective to Global Audience", accessed April 16, 2025, https://web.archive.org/web/20190910110752/http://www.globalindonesianvoices.com/27223/here-is-why-indonesia-is-alike-malaysia-and-vice-versa/.

Historically, Indonesia stood as Malaysia’s first non-Commonwealth counterpart following Malaysia’s attainment of independence on August 31, 1957. This collaboration was crystallized through the Malaysia-Indonesia Friendship Agreement signed on April 17, 1959. In the bilateral diplomacy annals, Indonesia played a pivotal role, particularly in economic and social dimensions, often being referred to as the “big brother” to Malaysia.[24]

Despite the resonant history, culture, and religion that link Indonesia and Malaysia, they diverge in terms of legal systems, which significantly differentiate their respective identities. Bagir Manan underscores the role of legal tradition in shaping a nation’s legal structure.[25] These nations fall into two primary legal system categories: the civil law system, or continental European legal system, and the common law, or Anglo-Saxon legal system. The distinction hinges on the primacy of statutory law and jurisprudence. Countries adhering to the civil law system emphasize legislation, whereas those aligned with the Anglo-Saxon tradition centre their legal systems around jurisprudence. This divergence not only influences the legal landscape but also impacts the utilization of undue influence as a basis for contract annulment, an area where Indonesia and Malaysia differ due to their legal system origins.

Both Indonesia and Malaysia share fundamental aspects in their legal frameworks, including the highest judicial structures, regulations, and citizen attitudes toward the legal system. However, economic development paths diverge. During the Dutch colonial era, Indonesia’s population was stratified into distinct groups – Bumi Putera, Eastern Foreign, and European – with varying legal enforcement dynamics, influenced by these group divisions. Conversely, Malaysia’s legal regulations extend to transactions within the country, with significant economic influence stemming from Chinese immigrants, thus shaping its economic trajectory (International Shari’ah Research Academy for Islamic Finance).[26]

Moreover, the distinct problems faced by each nation and their legal approaches to dispute resolution contribute to the divergent evolution of their legal systems. Indonesia’s legal framework is uniquely constructed, amalgamating diverse legal systems through discovery, adaptation, and compromise. While emphasizing local attributes, it also reflects international principles, resulting in the amalgamation of common law doctrine within its civil law framework.[27] Consequently, Indonesia operates within a hybrid of the civil law and common law systems. These factors engender both commonalities and disparities in how undue influence

24 Rohani Ab Ghani and Zulhilmi Paidi, *Malaysia-Indonesia: Pengalaman Hubungan Dua Negara Serumpun* (Institute of Tun Dr. Mahathir Mohamad’s Thoughts, Universiti Utara Malaysia, 2010), https://repo.uum.edu.my/id/eprint/3175/.

25 Siti Zuliyah, “Comparison of Indonesian and Malaysian Legal Systems in Rules, Traditions, and Community Behavior,” *Journal of Transcendental Law* 3, no. 1 (2021): 15–29.

26 Perpustakaan Negara Malaysia, “International Shari’ah Research Academy for Islamic Finance (ISRA) Vol. 7, No. 2,” accessed April 16, 2025, https://core.ac.uk/download/pdf/300433148.pdf.

27 Andi Maysarah, “Perubahan Dan Perkembangan Sistem Hukum di Indonesia,” *Warta Dharmawangsa*, no. 52 (2017), https://doi.org/10.46576/wdw.v0i52.252.

is invoked as basis for contract annulment in Indonesia and Malaysia.

Table 1. Comparison of Undue influence as Legal Standing for Contract Annulment

No	Description	Indonesia	Malaysia
1	Legal System	Civil law	Common law
2	Legal Standing	1. Art on disability of will 2. Jurisprudence	1. Section 16 Malaysia Contract Act 1950 2. Jurisprudence
3	Dispute resolution venue	District Court	High Court
4	The subject matter of contract annulment	Sale & purchase contract	Contracts involving obligations of parties, such as business or consumer contracts.
5	Occurrence of Undue Influence	Pre-contractual phase	Pre-contractual phase
6	Burden and Methods of Proof	Victims who experience psychological or economic influence, deception, persuasion, knowledge superiority, or psychological dominance initiate civil suits in District Court. They present evidence and seek to annul the contract through a petitum.	The victim bears the burden of proving undue influence. They file an application in court. The accused is required to rebut the allegations with evidence.
7	Legal Consequences of Annulment of Contracts	The contract becomes annullable and requires court intervention. If granted, the contract reverts to its original state.	The contract is annullable, and in some instances, court proceedings are unnecessary. Instead, renegotiation between parties suffices. If benefits were received, the recipient is obliged to return or compensate the other party.

Sources: data processed by author

Differences and commonalities emerge when comparing Indonesia and Malaysia in terms of undue influence as a basis for contracts annulment. The shared aspect between these nations revolves around the presence of undue influence, particularly within the pre-contractual phase. Upon examining 50 court decisions in Indonesia, it becomes evident that instances of undue influence often originate in pre-contractual relationships, encompassing friendships, business partnerships, and even familial ties such as siblings. This undue influence stemming from positive relationships is rooted in trust, a factor accompanied by relative advantages such as dependency or the trust and confidence vested in the other party.[28] Trust in family and known people such as

28 Cahyono, *op. cit*.

business partners is included in the "trust in the group". As Tim Reeskens puts it, "in-group trust" includes trust in your family, your environment, and people you know personally.[29] Trust within and between families emerges as a core construct.[30] However, it's important to acknowledge that many transactions carried out in such scenarios might not truly reflect free will and could indeed involve elements of undue influence. The allure of the pre-contractual stage lies in the expectation that, should unforeseen events transpire, the agreement will be upheld, securing the agreed-upon compensation or equivalent remuneration.[31]

In Indonesia, victims who feel psychologically and economically influenced by either deception or persuasion, superiority in knowledge and superiority in psychology will file a civil lawsuit to the District Court with a petition for annul a contract by bringing evidence. In Malaysia, the victim proves guilt make a request to the court and the accused must be able to prove that the allegations are not true. This is not easy; the court must further examine the relationship between the parties before the contract was made. Consequently, one party in these agreements may not act of their own volition but rather under the influence of the other party. In practice, the promises made during the pre-contractual phase are often left unfulfilled by the party who manipulated the situation.

Conversely, in Malaysia, the exploitation of such situations falls under the purview of unfair contracts, as evidenced by 11 reviewed court decisions that predominantly involve business relations among commercial entities or with consumers. One party takes advantages of the other party's lack of knowledge. This dominant position with better knowledge than others is used to influence the will of other party to sign a contract with them. The pre-contractual relationship dynamics in Indonesia and Malaysia significantly influence how aggrieved parties approach annulment agreements tainted by undue influence.

Notably, there is no disparity in the legal consequences applicable to agreements in both countries; namely, they can be cancelled due to undue influence. However, Malaysia presents a more flexible approach wherein contracts need not be annulled through court proceedings. Instead, if both parties desire, they can renegotiate the contract's terms, rectifying any abusive conditions through mutual consent. Furthermore, if the aggrieved party has gained benefits from the agreement, cancelling the contract may not be obligatory; compensation can be deemed sufficient if deemed necessary. It appears that Malaysian regulations foster a win-win

29 Tim Reeskens, "But Who Are Those "Most People" That Can Be Trusted? Evaluating the Radius of Trust Across 29 European Societies," *Social Indicators Research* 114, no. 2 (November 2013): 703–22, https://doi.org/10.1007/s11205-012-0169-7.

30 Jerry Kudlats, William C. McDowell, and Raj V. Mahto, "Unrelated but Together: Trust and Intergroup Relations in Multi-Family Businesses," *Journal of Business Research* 101 (2019): 750–56.

31 Robert C. Bird and Vivek Soundararajan, "The Role of Precontractual Signals in Creating Sustainable Global Supply Chains," *Journal of Business Ethics* 164, no. 1 (June 2020): 81–94, https://doi.org/10.1007/s10551-018-4067-z.

scenario for parties involved, promoting negotiated settlements rather than protracted legal battles to resolve agreements marred by undue influence. Consequently, Indonesia could benefit from adopting and adapting some of these regulations as a reference point for the continued development and application of the doctrine of undue influence.

B. An Ideal Model of the Doctrine of Undue Influence in Indonesia: An Insight of Undue Influence from Malaysia

Article 1313 of the Civil Code sets forth that "An agreement is an act by which one or more individuals bind themselves to one or more other individuals." The engagement of parties commences through an agreement where the will of the parties converges. For their will to meet, each party's intention must be openly stated and free from any external influences, including coercion, fraud, error, or undue influence. No one is legally bound by a contract unless it is entered into based on a voluntary choice. In essence, the obligations within a contract arise solely from the intent and will of the parties involved.[32]

The fundamental principle of contract law is that contracts must be the product of the parties" free will, following the doctrine of freedom of contract. Contracts emerge from nothing, representing an embodiment of the parties" freedom to contract, exercised through their free will.[33] Therefore, the formation of a contract is contingent upon mutual agreement. A valid agreement results from a confluence of free will, an equitable position, and an independent atmosphere.[34]

Nonetheless, the doctrine of freedom of contract often leads to injustices, especially when parties have unequal bargaining power. Such imbalances can result in one party, typically the stronger one, imposing its will upon the weaker party. This lopsided dynamic frequently gives rise to situations of undue influence, where the weaker party is unduly pressured, both economically and psychologically. Malaysia's approach to dealing with contracts involving unequal bargaining positions is worth emulating. Parties can, by mutual consent, modify and renegotiate such contracts.[35] Alternatively, should circumstances allow and the case be brought before a court, the court can order the parties to amend the clauses that have been violated to salvage the contract.[36]

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32 Rendy Saputra, *Kedudukan Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Hukum Perjanjian Indonesia* (Gadjah Mada University Press, 2016).

33 Arthur S. Hartkamp, *Contract Law in the Netherlands* (Kluwer Law International BV, 2015).

34 Saputra, *op. cit.*

35 Noor Mahinar Abu Bakar, Norhashimah Mohd Yasin, and Ng See Teong, "Banking Ethics and Unfair Contract Terms: Evidence from Conventional and Islamic Banks in Malaysia," *Journal of Islamic Management Studies* 2, no. 2 (2019): 11–26, https://doi.org/10.18510/hssr.2020.823.

36 Anwar Abdrahman, "Unfair Contract Terms: Malaysia Cases Review," *Seminar on Law & Society II (SOLAS II)*, January 1, 2017, https://www.academia.edu/40019710/Unfair_Contract_Terms_Malaysia_Cases_Review.

Under Malaysian contract rules, when the innocent party is no longer under the influence of the dominant party, they can elect to withdraw from the contract, reject any claims related to specific performance, petition the court for the annulment or voidance of the contract, or affirm the contract. Once this election is made, whether in favor of annulment or affirmation, it is irreversible. Partial annulment is not recognized under Malaysian contract rules.

In contrast, Indonesia's court decisions do not provide for such alternatives. The legal consequences of violating the terms of a contract under Article 1320 of the Civil Code are limited to voidance or nullity. In cases involving undue influence, the contract is rendered annullable. This implies that the contract can continue if parties do not object to the undue influence. However, if any party feels aggrieved, they may apply for the contract's cancellation. Agreements tainted by undue influence have two options: they can either continue, uncontested, or be annulled. Nevertheless, in practice, Indonesian courts, like Malaysian ones, can order parties to amend clauses influenced by bad faith through unlawful act lawsuits.[37] Despite differences in application, Indonesian courts do not handle undue influence as a civil lawsuit but address it as a direct violation of the law.

Judges have the ability to take initiative in mending relationships marred by undue influence. In cases involving undue influence, judges can issue orders for the modification of the violated provisions or clauses and facilitate reconciliation. This reconciliation achieved during mediation is termed a "peace agreement." Pursuant to Article 1(8) of PERMA No. 1 of 2016, a peace agreement is a written document containing provisions for dispute resolution, signed by the parties and the mediator. In this phase, judges are expected to provide solutions and remedies for cases of undue influence. If, during mediation, the two parties fail to reach an agreement to amend clauses influenced by bad faith, and the new agreement is implemented after a follow-up hearing post-mediation, the settlement becomes a "deed of peace." Article 1(10) of PERMA No. 1 of 2016 designates a deed of peace as a document that encapsulates the terms of the peace agreement and the judge's decision that fortifies the peace agreement. Legal consequences resulting from a peace agreement are bolstered by the inclusion of decrees based on principles of justice (including faith in the One and Only God) that render these decrees executable.

Efforts to resolve undue influence issues before a judge offer advantages as judges possess the authority to order modifications to clauses influenced by bad faith. While lawyers may at times express discomfort with abstract concepts like good faith on the basis of potential uncertainty in the law and overreach by judges, these initiatives empower the judiciary to

37 Timothée Kencono Malye and Rahdiansyah, "Kewenangan Hakim Dalam Mengubah Klausul Kontrak Yang Dibuat Atau Dilaksanakan Dengan Itikad Buruk." *UIR Law Review* 4, no. 1 (2020): 9–13.

promote fairness, rather than leaving all power in the hands of the contracting parties.[38]

If mediation attempts and agreements to rectify actions or clauses influenced by bad faith prove unsuccessful, the lawsuit proceeds to a civil trial. During trial, it's worth noting that Malaysian judges have demonstrated a more thorough investigation into cases of undue influence. They delve deeper into elements like deception, persuasion, pre-transaction relationships, and the dominant positions that exist between the parties (Based on search results on "Malaysia undue influence"). This approach aims to restore the situation to its original state or, in certain cases, to order changes to clauses influenced by the wrongful situation. Indonesia should consider adopting this model for the resolution of undue influence cases in court. Notably, Indonesian courts, upon further examination of undue influence cases, tend to focus on annulment and compensation resulting from these cases. They rarely, if ever, conduct in-depth investigations into the psychological aspects of undue influence, including deception, seduction, pre-transaction relationships, or dominant positions. Judges primarily consider economic interests, focusing solely on matters of profit and loss. The ideal model, as exemplified by Malaysia, suggests that the focus should extend beyond whether the undue influence is acceptable to examining the motives underlying these transactions.

Concerning claims for damages due to breach of contract, Malaysia's Contract Act 1950, under Sections 74 to 76, provides for three types of compensation that a plaintiff can seek: 1) Compensation for loss or damage resulting from a breach of contract; 2) Compensation for the failure to fulfill obligations akin to those established by the contract; and 3) Compensation for a breach of contract where fines are established for settling disputes.

The objective of adopting Malaysia's undue influence rule as an ideal model for contractual arrangements in Indonesia is to ensure the proper application of the common law's doctrine of abuse of circumstance. This model seeks to address the community's need for well-crafted laws and regulations, especially in dealing with the doctrine of undue influence. It is essential for the government to establish precise, standardized regulations governing undue influence that apply uniformly and effectively to all parties engaged in an agreement or contract. The existence of clear rules on undue influence is a key goal of the government, aiming to make Indonesia a nation governed by the rule of law. The state is duty-bound to develop national law systematically, comprehensively, and sustainably within the national legal system, guaranteeing the protection of the rights and obligations of all Indonesian citizens as stipulated in the 1945 Constitution. Ultimately, the aspiration is that similar decisions will be reached in cases of undue influence as a basis for contracts annulment, a goal that has remained elusive due to the

38 Paula Giliker, "Contract Negotiations and the Common Law: A Move to Good Faith in Commercial Contracting?," *Liverpool Law Review* 43, no. 2 (August 2022): 175–202, https://doi.org/10.1007/s10991-022-09299-2.

lack of precise rules and indicators regarding undue influence.

The analysis of the doctrine of undue influence in the context of contract annulment reveals significant insights for constructing an ideal model tailored to Indonesia. The historical and cultural ties between Indonesia and Malaysia underscore their shared attributes. However, their distinct legal systems, shaped by colonial histories, significantly impact their approaches to the doctrine. Indonesia's blend of civil and common law influences contracts with Malaysia's common law emphasis, setting the foundation for their respective legal frameworks. Central to both countries are their highest judicial structures and legal institutions. While they share these features, disparities in dispute resolution methods manifest Indonesia often resorts to District Courts, whereas Malaysia predominantly employs High Courts for this purpose.

The subject matter subject to the doctrine varies between these nations. In Indonesia, undue influence frequently pertains to sale and purchase contracts. Conversely, in Malaysia the tort of undue influence is broader in scope, including business and consumer contracts.

The precontractual phase emerges as a pivotal stage for undue influence in both countries. Within this context, psychological and economic dynamics, deception, persuasion, and knowledge asymmetry play significant roles. The responsibility for proving undue influence differs Indonesia places the onus on the victim, whereas Malaysia requires the accused to refute allegations.

The legal implications of undue influence results in the annulment of contracts in both countries. Malaysia's more flexible approach stands out, allowing for renegotiation of annulled contracts without restoring to the courts, with the option of restitution if benefits were derived from the influenced agreement.

Constructing an ideal model for Indonesia's doctrine of undue influence requires meticulous consideration of its distinct legal framework. A comprehensive definition of undue influence, encompassing psychological, economic, and knowledge related facets, serves as an essential foundation. Recognizing the pre contractual phase as a potential locus for undue influence is imperative, particularly in scenarios involving trust or dependency. The pre-contractual phase is intricately linked to the doctrine of undue influence in contract law. During this phase, parties engage in negotiations and discuss leading up to the formulation of a contract. The doctrine of undue influence comes into play when one party exerts improper pressure or influence over the other during these negotiations, thereby undermining the voluntariness of the contractual agreement.

Achieving a balanced burden of proof assumes paramount importance. Shifting some onus to the accused to substantiate the absence of undue influence can enhance the fairness of proceedings. This adjustment, mirroring Malaysia's approach, promises to contribute to a more equitable resolution.

Incorporating the flexible legal consequences inspired by Malaysia's model warrants serious consideration. Allowing parties to renegotiated annulled contracts without obligatory court intervention promotes collaborative problem solving. Furthermore, introducing provisions for compensating benefits acquired under influenced contracts addresses equity concerns.

To promote awareness and safeguard the interests of parties involved, public educational initiatives on under influence and its prevention should be launched. These proactive measures, in conjunction with an expanded scope of application to safeguard consumers, would fortify consumer protection laws.

Harmonizing legal viewpoints through interdisciplinary dialogue among experts versed in civil and common law can facilitate a comprehensive and equitable approach. By amalgamating these insights, Indonesia can formulate an ideal model of the doctrine of undue influence. This model would aptly account for the country's unique legal landscape while drawing inspiration from successful international practices.

Conclusion

In the analysis of the doctrine of undue influence within the context of contract annulment in Indonesia and Malaysia, a nuanced understanding has emerged. The interplay of historical and cultural ties between these nations, coupled with their distinctive legal systems, has revealed the intricate nature of applying this doctrine. The fusion of civil and common law influences in Indonesia and the predominance of common law in Malaysia underscore the role of legal traditions in shaping the interpretation and response to undue influence. Despite these legal differences, both countries share a common concern in recognizing and mitigating undue influence's potential impact on contractual integrity.

This study's insights offer a foundation for future research to navigate certain limitations and expand the comprehension of undue influence further. Cross-cultural comparative studies could delve into the intricate interplay between cultural norms and undue influence, while detailed case analyses might unravel the complexities of specific instances. Investigating consumer behaviour, legal harmonization strategies, and alternative dispute resolution mechanisms could yield practical insights that enhance the doctrine's application. Furthermore, empirical investigations and explorations into the influence of the digital age could shed light on novel dimensions of undue influence. By pursuing these avenues, future research can amplify the understanding of undue influence's operation in both Indonesia and Malaysia, contributing to refined legal frameworks and practices.

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